NOTE: For ease of study, we've put all Future Interests questions together, beginning with Question 41.

Question 1
A landlord and a tenant orally agreed to a commercial tenancy for a term of six months beginning on July 1. Rent was to be paid by the first day of each month, and the tenant paid the first month’s rent at the time of the agreement.

When the tenant arrived at the leased premises on July 1, the tenant learned that the previous tenant had not vacated the premises at the end of her lease term on May 31 and did not intend to vacate. The tenant then successfully sued the previous tenant for possession. The tenant did not inform the landlord of the eviction action until after the tenant received possession.

The tenant then sued the landlord, claiming damages for that portion of the lease period during which the tenant was not in possession.

If the court finds for the landlord, what will be the most likely explanation?

(A) By suing the previous tenant for possession, the tenant elected that remedy in lieu of a suit against the landlord.

(B) The landlord had delivered the legal right of possession to the tenant.

(C) The tenant failed to timely vacate as required to sue for constructive eviction.

(D) The tenant had not notified the landlord before bringing the eviction action.

Question 2
Six months ago, a man told his cousin that he would give her his farm as a gift on her next birthday. The cousin then entered into a valid written contract to sell the farm to an investor with the closing to take place “one week after [the cousin’s] next birthday.”

The man failed to convey the farm to the cousin on her birthday. One week after the cousin's birthday, on the intended closing date, the investor first learned of the cousin's inability to convey the farm because the man had breached his promise. The investor considered suing the cousin but realized that she could not compel the cousin to convey the farm because it was still owned by the man.

Two weeks after the cousin’s birthday, the man died. Under his valid will, the man devised the farm to the cousin. Within a week, the executor of the man’s estate gave the cousin an executor’s deed to the farm in compliance with state law. The investor promptly learned of this transfer and demanded that the cousin convey the farm to her. The cousin refused.

The investor sued the cousin for specific performance. Who will likely prevail?

(A) The cousin, because the contract to convey was not signed by the legal owner of the farm as of the date of the contract and was therefore void.

(B) The cousin, because she received title by devise rather than by conveyance.

(C) The investor, because the contract to convey merged into the executor’s deed to the cousin.

(D) The investor, because the contract to convey remained enforceable by her within a reasonable period of time after the proposed closing date.

Question 3
A mother who died testate devised her farm to her son and her daughter as “joint tenants with right of survivorship.” The language of the will was sufficient to create a common law joint tenancy with right of survivorship, which is unmodified by statute in the jurisdiction. After the mother’s death and with the daughter’s permission, the son took sole possession of the farm and agreed to pay the daughter a stipulated monthly rent.

Several years later, the son defaulted on a personal loan, and his creditor obtained a judgment against him for $30,000. The creditor promptly and properly filed the judgment.

A statute of the jurisdiction provides: “Any judgment properly filed shall, for 10 years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.”

Six months later, the son died.

There are no other applicable statutes.
Is the creditor entitled to enforce its judgment lien against the farm?
(A) No, because the daughter became sole owner of the farm free and clear of the creditor's judgment lien when the son died.
(B) No, because the son's interest was severed from the daughter's interest upon the filing of the lien.
(C) Yes, because a joint tenancy cannot be created by devise, and the son died owning a 50% undivided interest in the farm as a tenant in common.
(D) Yes, because the son died owning a 50% undivided interest in the farm as a joint tenant with the daughter.

Question 4
A landowner borrowed $100,000 from a lender and executed a valid mortgage on a commercial tract of land to secure the debt. The lender promptly recorded the mortgage.

A year later, the landowner conveyed the same tract to a developer by a deed that expressly stated that the conveyance was subject to the mortgage to the lender and that the grantee expressly assumed and agreed to pay the mortgage obligation as part of the consideration for the purchase. The mortgage was properly described in the deed, and the deed was properly executed by the landowner; however, because there was no provision or place in the deed for the developer to sign, he did not do so. The developer promptly recorded the deed.

The developer made the monthly mortgage payments of principal and interest for six payments but then stopped payments and defaulted on the mortgage obligation. The lender properly instituted foreclosure procedures in accordance with the governing law. After the foreclosure sale, there was a $10,000 deficiency due to the lender. Both the landowner and the developer had sufficient assets to pay the deficiency.

There is no applicable statute in the jurisdiction other than the statute relating to foreclosure proceedings.

At the appropriate stage of the foreclosure action, which party will the court decide is responsible for payment of the deficiency?
(A) The developer, because he accepted delivery of the deed from the landowner and in so doing accepted the terms and conditions of the deed.
(B) The developer, because he is estopped by his having made six monthly payments to the lender.
(C) The landowner, because the developer was not a signatory to the deed.
(D) The landowner, because he was the maker of the note and the mortgage, and at most the developer is liable only as a guarantor of the landowner's obligation.

Question 5
Seven years ago, a man, his sister, and his cousin became equal owners, as tenants in common, of a house. Until a year ago, the man lived in the house alone. The sister and the cousin are longtime residents of another state.

One year ago, the man moved to an apartment and rented the house to a tenant for three years under a lease that the man and the tenant both signed. The tenant has since paid the rent each month to the man.

Recently, the sister and the cousin learned about the rental. They brought an appropriate action against the tenant to have the lease declared void and to have the tenant evicted. The tenant raised all available defenses.

What will the court likely decide?
(A) The lease is void, and the tenant is evicted.
(B) The lease is valid, and the tenant retains exclusive occupancy rights for the balance of the term.
(C) The lease is valid, but the tenant is evicted because one-third of the lease term has expired and the man had only a one-third interest to transfer.
(D) The lease is valid, and the tenant is not evicted but must share possession with the sister and the cousin.

Question 6
A man decided to give his farm to his nephew. The man took a deed to his attorney and told the attorney to deliver the deed to the nephew upon the man's death. The man also told the attorney to return the deed to him if he asked. None of these instructions to the attorney were in writing, and the deed was not recorded. The man then e-mailed the nephew informing him of the arrangement.

Shortly thereafter, the nephew died testate. In his will, he devised the farm to his daughter. Several years later, the man died intestate, survived by two sons. The nephew's daughter immediately claimed ownership of the farm and demanded that the attorney deliver the deed to her.

Must the attorney deliver the deed to the daughter?
(A) No, because a gratuitous death escrow is void unless supported by a written contract.
(B) No, because the man never placed the deed beyond his control.
(C) Yes, because the death of the nephew rendered the gratuitous death escrow irrevocable by the man.
(D) Yes, because the deed to the nephew was legally delivered when the man took it to his attorney.

Question 7
A businesswoman owned two adjoining tracts of land, one that was improved with a commercial rental building and another that was vacant and abutted a river.
Twenty years ago, the businesswoman conveyed the vacant tract to a grantee by a warranty deed that the businesswoman signed but the grantee did not. The deed contained a covenant by the grantee as owner of the vacant tract that neither he nor his heirs or assigns would “erect any building” on the vacant tract, in order to preserve the view of the river from the commercial building on the improved tract. The grantee intended to use the vacant tract as a nature preserve. The grantee promptly and properly recorded the deed.

Last year, the businesswoman conveyed the improved tract to a businessman. A month later, the grantee died, devising all of his property, including the vacant land, to his cousin.

Six weeks ago, the cousin began construction of a building on the vacant tract.

The businessman objected and sued to enjoin construction of the building.

Who is likely to prevail?

(A) The businessman, because the commercial building was constructed before the cousin began his construction project.

(B) The businessman, because the cousin is bound by the covenant made by the grantee.

(C) The cousin, because an equitable servitude does not survive the death of the promisor.

(D) The cousin, because the grantee did not sign the deed.

Question 8

A seller owns a 400-acre tract of land with 5,000 feet of frontage on a county highway. The seller and a buyer entered into a written agreement for the sale of a portion of the tract identified only as “a parcel of land, containing not less than 100 acres and having not less than 1,000 feet of frontage on the county highway, whose exact location and dimensions are to be determined by the parties hereto, at a price of $8,000 per acre.”

Shortly after the execution of the agreement, the parties met to stake out the parcel of land to be sold, but they could not agree. The disagreement intensified, and the seller repudiated the contract.

The buyer has sued the seller for specific performance. The seller has asserted all available defenses.

Is the buyer entitled to specific performance of the contract?

(A) No, because a contract for the sale of real property that requires further agreement on an essential element cannot be specifically enforced.

(B) No, because the purchase price was not fixed by, nor determinable under, the contract terms.

Question 9

A woman died, devising land that she owned in another state to her daughter, who was then 17 years old.

A neighbor who owned the property immediately adjacent to the land wrongfully began to possess the land at that time. For 24 of the next 25 years, the neighbor planted and harvested crops on the land, hunted on it, and parked cars on it. However, in the sixth year after he first took possession of the land, the neighbor neither planted crops nor hunted nor parked cars on the land because he spent that entire year living in Europe. The neighbor built a small gardening shed on the land, but he never built a residence on it.

When the daughter was 28, she was declared mentally incompetent and had a conservator appointed to oversee her affairs. Since then, she has continuously resided in a care facility.

The applicable statute of limitations provides as follows: “An ejectment action shall be brought within 21 years after the cause of action accrues, but if the person entitled to bring the cause of action is under age 18 or mentally incompetent at the time the cause of action accrues, it may be brought by such person within 10 years after attaining age 18 or after the person becomes competent.”

If the daughter’s conservator wins an ejectment action against the neighbor, what will be the most likely explanation?

(A) The daughter was age 17 when the neighbor first took possession of the land.

(B) Because the daughter is mentally incompetent, the statute of limitations has been tolled.

(C) The neighbor never built a residence on the land.

(D) The neighbor was not in continuous possession of the land for 21 years.

Question 10

Ten years ago, a seller sold land to a buyer, who financed the purchase price with a loan from a bank that was secured by a mortgage on the land. The buyer purchased a title insurance policy running to both the buyer and the bank, showing no liens on the property other than the buyer’s mortgage to the bank. Eight years ago, the buyer paid the mortgage in full.

Seven years ago, the buyer sold the land to an investor by a full covenant and warranty deed without exceptions.
Six years ago, the investor gave the land to a donee by a quitclaim deed.

Last year, the donee discovered an outstanding mortgage on the land that predated all of these conveyances. As a result of a title examiner’s negligence, this mortgage was not disclosed in the title insurance policy issued to the buyer and the bank.

Following this discovery, the donee successfully sued the buyer to recover the amount of the outstanding mortgage.

If the buyer sues the title insurance company to recover the amount he paid to the donee, is he likely to prevail?
(A) No, because the buyer conveyed the land to an investor.
(B) No, because the title insurance policy lapsed when the buyer paid off the bank’s mortgage.
(C) Yes, because the buyer is protected by the title insurance policy even though he no longer owns the land.
(D) Yes, because the buyer was successfully sued by a donee and not by a bona fide purchaser for value.

Question 11
A woman owned a house on a lot abutting a public street. Six months ago, the city validly revised its zoning ordinances and placed the woman’s lot and the surrounding lots abutting the public street from the north in a zone limited to residential use; the lots abutting the public street on the south side were zoned for both residential and light business use.

The woman asked the city’s zoning appeals board to approve her proposal to operate a court-reporting service from her house. This type of use would be permitted on the south side of the public street and, in fact, one such business has existed there for several years.

The board approved the woman’s proposal. Why?
(A) A variance was granted.
(B) The doctrine of amortization applied.
(C) The doctrine of change of circumstances applied.
(D) The woman’s use of her house was a nonconforming use.

Question 12
A woman acquired title to a four-acre lot. Several years later, she executed a mortgage on the lot to a bank to secure repayment of a $100,000 loan. Subsequently, the woman executed a mortgage on the same four-acre lot to a finance company to secure repayment of a $50,000 loan. Both mortgages were promptly recorded.

The woman recently defaulted on both loans. The bank promptly initiated foreclosure proceedings and sent proper notice to all necessary parties. The current fair market value of the four-acre lot is $250,000.

The finance company has filed a timely motion in the foreclosure proceeding asking the court to require the bank to first foreclose on two of the four acres in the four-acre lot. The bank opposes this motion and insists that it has the right to subject the entire four-acre lot to the foreclosure sale.

Will the court grant the finance company’s motion?
(A) No, because the bank holds a purchase-money mortgage.
(B) No, because the entire four-acre lot is subject to the bank’s senior mortgage.
(C) Yes, because a pro rata foreclosure of the lot will not prejudice the rights of the bank.
(D) Yes, because of the “two funds” rule of marshalling.

Question 13
Last year, a buyer and a seller entered into a valid contract for the sale of a parcel of real property. The contract contained no contingencies. The seller was killed in a car accident before the parcel was conveyed, but the closing eventually took place with the conveyance by a deed from the personal representative of the seller’s estate.

The personal representative of the seller’s estate wants to distribute the proceeds of the real property sale. The seller’s will was executed many years ago and was duly admitted to probate. Paragraph 5 of his will leaves all of the seller’s real property to his son, and Paragraph 6 leaves the residue of the estate to the seller’s daughter. No other provisions of the will are pertinent to the question regarding to whom the proceeds of the sale should be distributed.

What will determine who receives the proceeds?
(A) Whether Paragraph 5 refers specifically to the parcel of real property that was sold or simply to “all of my real property.”
(B) Whether the closing date originally specified in the contract was a date before or after the seller’s death.
(C) Whether the jurisdiction has adopted the doctrine of equitable conversion.
(D) Whether the sale was completed in accordance with a court order.

Question 14
A man conveyed his house to his wife for life, remainder to his only child, a son by a previous marriage. Thereafter, the man died, devising his entire estate to his son.

The wife later removed a light fixture in the dining room of the house and replaced it with a chandelier that was one of her family heirlooms. She then informed her nephew and her late husband’s son that after her death, the chandelier should be removed from the dining room and replaced with the former light fixture, which she had stored in the basement.
The wife died and under her will bequeathed her entire estate to her nephew. She also named the nephew as the personal representative of her estate. After the nephew, in his capacity as personal representative, removed the chandelier and replaced it with the original light fixture shortly after the wife's death, the son sued to have the chandelier reinstalled.

Who will likely prevail?
(A) The nephew, because he had the right to remove the chandelier within a reasonable time after the wife's death.
(B) The nephew, because of the doctrine of accession.
(C) The son, because the chandelier could not be legally removed after the death of the wife.
(D) The son, because a personal representative can remove only trade fixtures from real property.

Question 15
A landowner owned a tract of land in fee simple. He executed an instrument in the proper form of a deed, purporting to convey the tract to a purchaser in fee simple. The instrument recited that the conveyance was in consideration of "$5 cash in hand paid and for other good and valuable consideration." The landowner handed the instrument to the purchaser, who promptly and properly recorded it.

Two months later, the landowner brought an appropriate action against the purchaser to cancel the instrument and to quiet title. In support, the landowner proved that no money in fact had been paid by the purchaser, notwithstanding the recitation, and that no other consideration of any kind had been supplied by the purchaser. In such action, the landowner should
(A) lose, because any remedy the landowner might have had was lost when the instrument was recorded.
(B) lose, because the validity of conveyance of land does not depend upon consideration being paid, whether recited or not.
(C) prevail, because the recitation of consideration paid may be contradicted by parol evidence.
(D) prevail, because recordation does not make a void instrument effective.

Question 16
A woman had a season ticket for her home town hockey team's games at a private arena (her ticket was in section B, row 12, seat 16). During the intermission between the first and second periods of a game, the woman solicited signatures for a petition urging that the coach of the home team be fired.

The arena and the home hockey team are owned by a management company, a privately owned entity. As evidenced by many prominently displayed signs, the company prohibits all solicitations anywhere within the arena at any time and in any manner. The company notified the woman to cease her solicitation of signatures. The woman continued to seek signatures on her petition during the team's next three home games at the arena. Each time, the company notified her to cease such solicitation. She announced her intention to seek signatures on her petition again during the next home game at the arena. The management company wrote a letter informing the woman that her season ticket was canceled and tendering a refund for the unused portion. The woman refused the tender and brought an appropriate action to establish the right to attend all home games. In this action, the court will decide for
(A) the management company, because it has a right and obligation to control activities on realty it owns and has invited the public to visit.
(B) the management company, because the woman's ticket to hockey games created only a license.
(C) the woman, because, having paid value for the ticket, her right to be present cannot be revoked.
(D) the woman, because she was not committing a nuisance by her activities.

Question 17
By a writing, an owner leased his house to a tenant for a term of three years, ending December 31 of last year, at the rent of $1,000 per month. The lease provided that the tenant could sublet and assign.

The tenant lived in the house for one year and paid the rent promptly. After one year, the tenant leased the house to his friend for one year at a rent of $1,000 per month. The friend took possession of the house and lived there for six months but, because of her unemployment, paid no rent. After six months, on June 30, the friend abandoned the house, which remained vacant for the balance of that year. The tenant again took possession of the house at the beginning of the third and final year of the term but paid the owner no rent. At the end of the lease term, the owner brought an appropriate action against both the tenant and his friend to recover $24,000, the unpaid rent. In such action the owner is entitled to a judgment
(A) against the tenant individually for $24,000, and no judgment against the friend.
(B) against the tenant individually for $18,000, and against the friend individually for $6,000.
(C) against the tenant for $12,000, and against the tenant and the friend jointly and severally for $12,000.
(D) against the tenant individually for $18,000, and against the tenant and the friend jointly and severally for $6,000.
Question 18
A landowner conveyed a tract of land in fee simple to a lawyer for a recited consideration of "$10 and other valuable consideration." The deed was promptly and properly recorded. One week later, the landowner and the lawyer executed a written document that stated that the conveyance of the tract was for the purpose of establishing a trust for the benefit of the landowner's daughter. The lawyer expressly accepted the trust and signed the document, as did the landowner. This written agreement was not authenticated to be eligible for recordation and there never was an attempt to record it.

The lawyer entered into possession of the tract and distributed the net income from it to the landowner's daughter at appropriate intervals. Five years later, the lawyer conveyed the tract in fee simple to a buyer by warranty deed. The buyer paid fair market value for the tract, had no knowledge of the written agreement between the landowner and the lawyer, and entered into possession of the tract. The landowner's daughter made demand upon the buyer for distribution of income at the next usual time the lawyer would have distributed. The buyer refused. The daughter brought an appropriate action against the buyer for a decree requiring her to perform the trust the lawyer had theretofore recognized. In such action, judgment should be for

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

Question 19
An elderly woman owned the house in which she and her daughter both lived. The daughter always referred to the house as "my property." Two years ago, the daughter, for a valuable consideration, executed and delivered to a buyer an instrument in the proper form of a warranty deed purporting to convey the house to the buyer in fee simple, reserving to herself an estate for two years in the house. The buyer promptly and properly recorded his deed.

One year ago, the woman died and by will, duly admitted to probate, left her entire estate to her daughter. One month ago, the daughter, for a valuable consideration, executed and delivered to her friend an instrument in the proper form of a warranty deed purporting to convey the house to the friend, who promptly and properly recorded the deed. The daughter was then in possession of the house and her friend had no actual knowledge of the deed to the earlier buyer. Immediately thereafter, the daughter gave possession to the friend. The recording act of the jurisdiction provides: "No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law." Last week, the daughter fled the jurisdiction. Upon learning the facts, her friend brought an appropriate action against the buyer to quiet title to the house. If the daughter's friend wins, it will be because

(A) The daughter had nothing to convey to the buyer two years ago.
(B) The daughter's deed to the buyer was not to take effect until after her deed to her friend.
(C) The friend was first in possession.
(D) The daughter's deed to the buyer was not in her friend's chain of title.

Question 20
A landowner owned several vacant lots in a subdivision. She obtained a $50,000 loan from a bank, and executed and delivered to the bank a promissory note and mortgage describing Lots 1, 2, 3, 4, and 5. The mortgage was promptly and properly recorded.

Upon payment of $10,000, the landowner obtained a release of Lot 2 duly executed by the bank. She altered the instrument of release to include Lot 5 as well as Lot 2 and recorded it. The landowner thereafter sold Lot 5 to a developer, an innocent purchaser, for value. The bank discovered that the instrument of release had been altered and brought an appropriate action against the landowner and the developer to set aside the release as it applied to Lot 5. The landowner did not defend against the action, but the developer did. The recording act of the jurisdiction provides: "No unrecorded conveyance or mortgage of real property shall be good against subsequent purchasers for value without notice, who shall first record." The court should rule for

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

Question 21
A farmer owned a farm in fee simple, as the land records showed, when he contracted to sell the farm to a buyer. Two weeks later, the buyer paid the agreed price and received a warranty deed. A week thereafter, when neither the contract
nor the deed had been recorded and while the farmer remained in possession of the farm, a creditor properly filed her money judgment against the farmer. She knew nothing of the buyer’s interest.

A statute in the jurisdiction provides: “Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.” The recording act of the jurisdiction provides: “No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.” The creditor brought an appropriate action to enforce her lien against the farm in the buyer’s hands. If the court decides for the buyer, it will most probably be because

(A) the doctrine of equitable conversion applies.
(B) the jurisdiction’s recording act does not protect creditors.
(C) the farmer’s possession gave the creditor constructive notice of the buyer’s interest.
(D) the buyer was a purchaser without notice.

Question 22
Six years ago, the owner of a parcel in fee simple, executed and delivered to a buyer an instrument in the proper form of a warranty deed, purporting to convey the parcel to the buyer “and his heirs.” At that time, the buyer was a widower who had one child, a daughter.

Three years ago, the buyer executed and delivered to a developer an instrument in the proper form of a warranty deed, purporting to convey the parcel to the developer. The buyer’s daughter did not join in the deed. The developer was and still is unmarried and childless. The only possibly applicable statute in the jurisdiction states that any deed will be construed to convey the grantor’s entire estate, unless expressly limited. Last month, the buyer died, never having remarried. His daughter is his only heir. The parcel is now owned by

(A) the daughter, because the buyer’s death ended the developer’s life estate pur autre vie.
(B) the developer in fee simple pursuant to the buyer’s deed.
(C) the daughter and the developer as tenants in common of equal shares.
(D) the daughter and the developer as joint tenants, because both survived the buyer.

Question 23
A landowner owned a lot, which was improved with a dwelling. A developer owned an adjoining, unimproved lot suitable for constructing a dwelling. The developer executed and delivered a deed granting to the landowner an easement over the westerly 15 feet of the unimproved lot for convenient ingress and egress to a public street, although the landowner’s lot did abut another public street. The landowner did not then record the developer’s deed. After the landowner constructed and started using a driveway within the described 15-foot strip in a clearly visible manner, the developer borrowed $10,000 cash from a bank and gave the bank a mortgage on her lot. The mortgage was promptly and properly recorded. The landowner then recorded the developer’s deed granting the easement. The developer subsequently defaulted on her loan payments to the bank.

The recording act of the jurisdiction provides: “No conveyance or mortgage of real property shall be good against subsequent purchasers for value and without notice unless the same be recorded according to law.” In an appropriate foreclosure action as to the developer’s lot, brought against the landowner and the developer, the bank seeks, among other things, to have the landowner’s easement declared subordinate to the bank’s mortgage, so that the easement will be terminated by completion of the foreclosure. If the landowner’s easement is not terminated, it will be because

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

Question 24
An hotelier owned a hotel, subject to a mortgage securing a debt the hotelier owed to an investor. The hotelier later acquired a nearby parking garage, financing a part of the purchase price by a loan from a bank, secured by a mortgage on the parking garage. Two years thereafter, the hotelier defaulted on the loan owed to the investor, which caused the full amount of that loan to become immediately due and payable. The investor decided not to foreclose the mortgage on the owner’s hotel at that time, but instead brought an action, appropriate under the laws of the jurisdiction and authorized by the mortgage loan documents, for the full amount of the defaulted loan. The investor obtained and properly filed a judgment for that amount.

A statute of the jurisdiction provides: “Any judgment properly filed shall, for ten years from filing, be a lien on the real property then owned or subsequently acquired by any person against whom the judgment is rendered.” There is
no other applicable statute, except the statute providing for judicial foreclosure of mortgages, which places no restriction on deficiency judgments. The investor later brought an appropriate action for judicial foreclosure of its first mortgage on the hotel and of its judgment lien on the parking garage. The bank was joined as a party defendant, and appropriately counterclaimed for foreclosure of its mortgage on the parking garage, which was also in default. All procedures were properly followed and the confirmed foreclosure sales resulted as follows:

The investor purchased the hotel for $100,000 less than its mortgage balance.

The investor purchased the parking garage for an amount that is $200,000 in excess of the bank’s mortgage balance.

The $200,000 surplus arising from the bid paid by the investor for the parking garage should be paid:

(A) $100,000 to the investor and $100,000 to the hotelier.
(B) $100,000 to the bank and $100,000 to the hotelier.
(C) $100,000 to the investor and $100,000 to the bank.
(D) $200,000 to the hotelier.

Question 25

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

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

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

Question 26

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

The purchaser entered into possession of the tract. After paying 10 of the 300 installment payments obligated under the contract, the purchaser discovered that there was outstanding a valid and enforceable mortgage on the tract, securing the payment of a debt in the amount of 25 percent of the purchase price the purchaser had agreed to pay. There was no evidence that the vendor had ever been late in payments due under the mortgage and there was no evidence of any danger of insolvency of the vendor. The value of the tract now is four times the amount due on the debt secured by the mortgage. The purchaser quit possession of the tract and demanded that the vendor repay the amounts the purchaser had paid under the contract. After the vendor refused the demand, the purchaser brought an appropriate action against the vendor to recover damages for the vendor’s alleged breach of the contract. In such action, should damages be awarded to the purchaser?

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

Question 27

An owner held 500 acres in fee simple absolute. In 1960 the owner planned and obtained all required governmental approvals of two subdivisions of 200 acres each, one for commercial use and one for residential use. In 1960 and 1961 commercial buildings and parking facilities were constructed on the commercial subdivision in accordance with
the plans disclosed by the plat for each subdivision. The commercial subdivision continues to be used for commercial purposes.

The plat of the residential subdivision showed 250 lots, streets, and utility and drainage easements. All of the lots in the residential subdivision were conveyed during 1960 and 1961. The deeds contained provisions, expressly stated to be binding upon the grantee, his heirs and assigns, requiring the lots to be used only for single-family, residential purposes until 1985. The deeds expressly stated that these provisions were enforceable by the owner of any lot in the residential subdivision. At all times since 1959, the 200 acres of the commercial subdivision have been zoned for shopping center use, and the 200 acres in the residential subdivision have been zoned for residential use in a classification that permits both single-family and multiple-family use. In an appropriate attack upon the limitation to residential use by single families, if the evidence disclosed no fact in addition to those listed above, the most probable judicial resolution would be that

(A) there is no enforceable restriction, because judicial recognition constitutes state action that is in conflict with the Fourteenth Amendment to the U.S. Constitution.
(B) there is no enforceable restriction because the owner’s conflict of interest in that he did not make the restriction applicable to the 100 acres he retains.
(C) the restriction in use set forth in the deeds will be enforced at the suit of any present owner of a lot in the residential subdivision.
(D) any use consistent with zoning will be permitted but that such uses so permitted as are in conflict with the restrictions in the deeds will give rise to a right to damages from owner or the owner’s successor.

Question 28
A vacant lot is contiguous to a farm. Thirty years ago the then-record owner of the vacant lot executed and delivered to the owner of the farm an instrument in writing that was denominated “Deed of Conveyance” granting the farmer “and her heirs and assigns a right-of-way for egress and ingress” to the farm. If the quoted provision was sufficient to create an interest in land, the instrument met all other requirements for a valid grant. The farmer held record title in fee simple to the farm.

Twelve years ago, an investor succeeded to the vacant lot owner’s title in fee simple in the vacant lot and seven years ago the farmer’s daughter succeeded to the farmer’s title in fee simple in the farm by a deed that made no mention of a right-of-way or driveway. At the time the farmer’s daughter took title, there existed, across the vacant lot, a driveway that showed evidence that it had been used regularly to travel between a highway and the farm. The farm did have frontage on another public road, but this means of access was seldom used because it was not as convenient to the dwelling situated on the farm as was the highway. The driveway originally was established by the farmer. The farmer’s daughter has regularly used the driveway since acquiring title. The period of time required to acquire rights by prescription in the jurisdiction is ten years. Six months ago the investor notified the farmer’s daughter that he planned to develop a portion of the vacant lot as a residential subdivision and that she should cease any use of the driveway.

After some negotiations, the investor offered to pay for this offer on the ground that travel from the lot to the main road would be more circuitous. The farmer’s daughter brought an appropriate action against the investor to obtain a definitive adjudication of their respective rights. In such lawsuit the investor relied upon the defense that the location of the easement created by the original grant was governed by reasonableness and that the investor’s proposed solution was reasonable. The investor’s defense should

(A) fail, because the location had been established by the acts of the original owners of the land.
(B) fail, because the location of the easement had been fixed by prescription.
(C) prevail, because the reasonableness of the investor’s proposal was established by the farmer’s daughter’s refusal to suggest any alternative location.
(D) prevail, because the servient owner is entitled to select the location of a right-of-way if the grant fails to identify its location.

Question 29
A grantor, who owned a parcel in fee simple, conveyed the parcel to a grantee by warranty deed. An adjoining owner asserted title to the parcel and brought an appropriate action against the grantee to quiet title to the parcel. The grantee demanded that the grantor defend her title under the deed’s covenant of warranty, but the grantor refused. The grantee then successfully defended at her own expense.

The grantee brought an appropriate action against the grantor to recover her expenses incurred in defending against the adjoining owner’s action to quiet title to the parcel. In this action, the court should decide for

(A) the grantee, because in effect it was the grantor’s title that was challenged.
(B) the grantee, because the grantor’s deed to her included the covenant of warranty.
(C) the grantor, because the title he conveyed was not defective.
(D) the grantor, because the adjoining owner may elect which of the grantor or the grantee to sue.
Question 30
At a time when a landowner held a lot in a subdivision in fee simple, a seller executed a warranty deed that recited that the seller conveyed the lot to a buyer. The deed was promptly and duly recorded.

After the recording of the deed from the seller to the buyer, the landowner conveyed the lot to the seller by a warranty deed that was promptly and duly recorded. Later, the seller conveyed the property to a different buyer by warranty deed and the deed was promptly and duly recorded. The later buyer paid the fair market value of the lot and had no knowledge of any claim of the earlier buyer. In an appropriate action, the two buyers contest title to the lot. In this action, judgment should be for

(A) the earlier buyer, because his deed is senior to the later buyer's.
(B) the later buyer, because he paid value without notice to the earlier buyer's claim.
(C) the earlier buyer or the later buyer, depending on whether a subsequent grantee is bound, at common law, by the doctrine of estoppel by deed.
(D) the earlier buyer or the later buyer, depending on whether the buyer's deed is deemed recorded in the later buyer's chain of title.

Question 31
An owner owned a single-family residence. Fifteen years ago, the owner conveyed a life estate in the house to a landlord.

Fourteen years ago, the landlord, who had taken possession of the house, leased the house to a tenant for a term of 15 years at the monthly rental of $500. Eleven years ago, the landlord died intestate leaving her son as her sole heir. The tenant regularly paid rent to the landlord and, after the landlord's death, to her son until last month. The period in which to acquire title by adverse possession in the jurisdiction is ten years. In an appropriate action, the tenant, the owner, and the landlord's son each asserted ownership of the house. The court should hold that title in fee simple is in

(A) the owner, because the owner held a reversion and the landlord has died.
(B) the landlord's son, because the landlord asserted a claim adverse to the owner when the landlord executed a lease to the tenant.
(C) the landlord's son, because the tenant's occupation was attributable to her son, and the landlord died 11 years ago.
(D) the tenant, because of the tenant's physical occupancy and because the tenant's term ended with the landlord's death.

Question 32
A brother and sister owned a large farm in fee simple as tenants in common, each owning an undivided one-half interest. For five years the brother occupied the farm and conducted farming operations. The brother never accounted to the sister for any income but he did pay all real estate taxes when the taxes were due and kept the buildings located on the farm insured against loss from fire, storm, and flood. His sister lived in a distant city and was interested only in realizing a profit from the sale of the land when market conditions produced the price the sister wanted.

The brother died intestate survived by his grandson, his sole heir. Thereafter the grandson occupied the farm but was inexperienced in farming operations. The result was a financial disaster. The grandson failed to pay real estate taxes for two years. The appropriate governmental authority held a tax sale to recover the taxes due. At such sale the sister was the only bidder and obtained a conveyance from the appropriate governmental authority upon payment of an amount sufficient to discharge the amounts due for taxes, plus interest and penalties, and the costs of holding the tax sale. The amount paid was one-third of the reasonable market value of the farm. Thereafter the sister instituted an appropriate action against the grandson to quiet title and to recover possession of the farm. The grandson asserted all defenses available to him. Except for the statutes related to real estate taxes and tax sales, there is no applicable statute. In this lawsuit, the sister is entitled to a decree quieting title so that she is the sole owner in fee simple of the farm

(A) because she survived her brother.
(B) because the grandson defaulted in the obligations undertaken by the brother.
(C) unless the grandson pays her one-half of the reasonable market value of the farm.
(D) unless the grandson pays her one-half of the amount she paid for the tax deed.

Question 33
A man and a woman, who were cousins, acquired title in fee simple to a lot, as equal tenants in common, by inheritance from their aunt. During the last 15 years of her lifetime, their aunt allowed the man to occupy an apartment in the house on the lot, to rent the other apartment in the house to various tenants, and to retain the rent. The man made no payments to his aunt; and since her death seven years ago, he has made no payments to the woman. For those 22 years, the man has paid the real estate taxes on the lot, kept the building on the lot insured, and maintained the building. At all times, the woman has lived in a distant city and has never had anything to do with her aunt, her cousin, or the lot.
Recently, the woman needed money for the operation of her business and demanded that the man join her in selling the lot. He refused. The period of time to acquire title by adverse possession in the jurisdiction is ten years. There is no other applicable statute. The woman brought an appropriate action against the man for partition. The man asserted all available defenses and counterclaims. In that action, the court should

(A) deny partition and find that title has vested in the man by adverse possession.

(B) deny partition, confirm the tenancy in common, but require an accounting to determine if either the woman or the man is indebted to the other on account of the rental payment, taxes, insurance premiums, and maintenance costs.

(C) grant partition and require, as an adjustment, an accounting to determine if either the woman or the man is indebted to the other on account of the rental payments, taxes, insurance premiums, and maintenance costs.

(D) grant partition to the woman and the man as equal owners, but without an accounting.

**Question 34**

A seller agreed to sell and a purchaser agreed to buy a described lot on which a single-family residence had been built. Under the contract, the seller agreed to convey marketable title subject only to conditions, covenants, and restrictions of record and all applicable zoning laws and ordinances. The lot was subject to a 10-foot side-line setback originally set forth in the developer’s duly recorded subdivision plot. The applicable zoning ordinance zones the property for single-family units and requires an 8.5-foot side-line setback.

Prior to closing, a survey of the property was made. It revealed that a portion of the seller’s house was 8.4 feet from the side line. The purchaser refused to consummate the transaction on the ground that the seller’s title is not marketable. In an appropriate action, the seller seeks specific performance. Who will prevail in such an action?

(A) The seller, because any suit against the purchaser concerning the setback would be frivolous.

(B) The seller, because the setback violation falls within the doctrine *de minimis non curat lex*.

(C) The purchaser, because any variation, however small, amounts to a breach of contract.

(D) The purchaser, because the fact that the purchaser may be exposed to litigation is sufficient to make the title unmarketable.

**Question 35**

A businessman owned in fee simple a lot in a properly approved subdivision, designed and zoned for industrial use. A contractor owned the adjoining lot in the same subdivision. The plat of the subdivision was recorded as authorized by statute.

Twelve years ago, the businessman erected an industrial building wholly situated on his lot but with one wall along the boundary common with the contractor’s lot. The construction was done as authorized by a building permit, validly obtained under applicable statutes, ordinances, and regulations. Further, the construction was regularly inspected and passed as being in compliance with all building code requirements. The contractor’s lot remained vacant until six months ago, when the contractor began excavation pursuant to a building permit authorizing the erection of an industrial building situated on her lot but with one wall along the boundary common with the businessman’s lot. The excavation caused subsidence of a portion of the businessman’s lot that resulted in injury to his building. The excavation was not done negligently or with any malicious intent to injure. In the jurisdiction, the time to acquire title by adverse possession or rights by prescription is ten years. The businessman brought an appropriate action against the contractor to recover damages resulting from the injuries to his building. In such lawsuit, judgment should be for

(A) the businessman, if, but only if, the subsidence would have occurred without the weight of the building on his lot.

(B) the businessman, because a right for support, appurtenant to his lot, had been acquired by adverse possession or prescription.

(C) the contractor, because the lots are urban land, as distinguished from rural land and, therefore, under the circumstances the businessman had the duty to protect any improvements on his lot.

(D) the contractor, because the construction and the use to be made of the building were both authorized by the applicable law.

**Question 36**

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

Next, a creditor (who had no knowledge of the contract or the deed) obtained a substantial money judgment against the corporation. Then, the buyer recorded the deed from the corporation. Thereafter, the creditor properly filed the judgment against the corporation. A statute of the jurisdiction provides: ‘Any judgment properly filed shall, for ten
Question 37

A landowner had title to a lot in fee simple. Without the landowner's knowledge, a rancher entered the lot in 1990 and constructed an earthen dam across a watercourse. The earthen dam trapped water that the rancher used to water a herd of cattle he owned. After 12 years of possession of the lot, the rancher gave possession of the lot to a buyer.

At the same time, the rancher also purported to transfer his cattle and all his interests in the dam and water to the buyer by a document that was sufficient as a bill of sale to transfer personal property but was insufficient as a deed to transfer real property. One year later, the buyer entered into a lease with the landowner to lease the lot for a period of five years. After the end of the five-year term of the lease, the buyer remained on the lot for an additional three years and then left the lot. At that time the landowner conveyed the lot by a quitclaim deed to a farmer. The period of time to acquire title by adverse possession in the jurisdiction is ten years. After the landowner's conveyance to the farmer, title to the lot was in

(A) the rancher.
(B) the landowner.
(C) the buyer.
(D) the farmer.

Question 38

A niece inherited vacant land from her uncle. She lived in a distant state and decided to sell the land to a colleague who was interested in purchasing the land as an investment. They orally agreed upon a price, and, at the colleague's insistence, the niece agreed to provide him with a warranty deed without any exceptions. The price was paid, the warranty deed was delivered, and the deed was promptly and properly recorded. Neither the niece nor the colleague had, at that point, ever seen the land.

After recording the deed, the colleague visited the land for the first time and discovered that it had no access to any public right-of-way and that none of the surrounding lands had ever been held in common ownership with any previous owner of the tract of land. The colleague sued the niece for damages. For whom will the court find?

(A) the developer, because the creditor's judgment was obtained before the buyer recorded the deed from the corporation.
(B) the developer, because even though the corporation's deed to the buyer prevented the creditor's judgment from being a lien on the parcel, the creditor's filed judgment poses a threat of litigation.
(C) the buyer, because the buyer recorded her deed before the creditor filed his judgment.
(D) the buyer, because the buyer received the deed from the corporation before the creditor filed his judgment.

Question 39

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

The tenant decided that the house needed, and she paid cash to have installed, standard-sized combination screen/storm windows, a freestanding refrigerator to fit a kitchen alcove built for that purpose, a built-in electric stove and oven to fit a kitchen counter opening left for that purpose, and carpeting to cover the plywood living room floor. Last month, by legal description of the land, the man conveyed the lot to a purchaser for $100,000. The purchaser knew of the tenant's soon-expiring tenancy, but did not examine the written lease. As the lease expiration date approached, the purchaser learned that the tenant planned to vacate on schedule, and learned for the first time that the tenant claimed and planned to remove all of the above-listed items that she had installed. The purchaser promptly brought an appropriate action to enjoin the tenant from removing those items. The court should decide that the tenant may remove

(A) none of the items.
(B) only the refrigerator.
(C) all items except the carpet.
(D) all of the items.
Question 40
A landowner owned a tract of land in fee simple. The landowner and a purchaser entered into a written agreement under which the purchaser agreed to buy the tract for $100,000, its fair market value. The agreement contained all the essential terms of a real estate contract to sell and buy, including a date for closing. The required $50,000 down payment was made. The contract provided that in the event of the purchaser’s breach, the landowner could retain the $50,000 deposit as liquidated damages.

Before the date set for the closing in the contract, the purchaser died. On the date that the administratrix of the purchaser’s estate was duly qualified, which was after the closing date, she made demand for return of the $50,000 deposit. The landowner responded by stating that he took such demand to be a declaration that the administratrix did not intend to complete the contract and that the landowner considered the contract at an end. The landowner further asserted that the landowner was entitled to retain, as liquidated damages, the $50,000. The reasonable market value of the tract had increased to $110,000 at that time. The administratrix brought an appropriate action against the landowner to recover the $50,000. In answer, the landowner made no affirmative claim but asserted that he was entitled to retain the $50,000 as liquidated damages as provided in the contract. In such lawsuit, judgment should be for

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

[START OF FUTURE INTERESTS QUESTIONS]

Question 41
A woman died testate. In her will, she devised a farm she owned to her husband for life, remainder to her niece. Her will did not specify the duties of the husband and the niece with regard to maintenance and expenses related to the farm. The husband took sole possession of the farm, did not farm the land, and did not rent the land to a third person, although the fair rental value was substantial.

For two years in a row after the woman died, the county assessor sent the tax bills to the niece, but the niece did not pay the bills, because she and the husband could not agree on who should pay them. Finally, the niece paid the taxes to avoid a tax foreclosure sale.

The niece then sued the husband for reimbursement for the two years’ worth of property taxes.
There is no applicable statute.
Is the niece likely to prevail?

(A) No, because remaindermen are solely responsible for the payment of property taxes.
(B) No, because the county assessor sent the bills to the niece.
(C) No, because the woman’s will was silent on responsibility for payment of property taxes.
(D) Yes, because the niece paid an obligation that was the sole responsibility of the husband.

Question 42
Under the terms of his duly probated will, a testator devised his house to his “grandchildren in fee simple” and the residue of his estate to his brother. The testator had had two children, a son and a daughter, but only the daughter survived the testator. At the time of the testator’s death, the daughter was 30 years old and had two minor children (grandchildren of the testator) who also survived the testator.

A third grandchild of the testator, who was the child of the testator’s predeceased son, had been alive when the testator executed the will, but had predeceased the testator. Under the applicable intestate succession laws, the deceased grandchild’s sole heir was his mother.

A statute of the jurisdiction provides as follows: “If a devisee, including a devisee of a class gift, who is a grandparent or a lineal descendant of a grandparent of the testator is dead at the time of execution of the will or fails to survive the testator, the issue of such deceased devisee shall take the deceased’s share under the will, unless the will expressly provides that this statute shall not apply. For this purpose, words of survivorship, such as ‘if he survives me,’ are a sufficient expression that the statute shall not apply.”

Who now owns the house?

(A) The testator’s brother.
(B) The testator’s two surviving grandchildren.
(C) The testator’s two surviving grandchildren and all other grandchildren who are born to the testator’s daughter.
(D) The testator’s two surviving grandchildren and the deceased grandchild’s mother.

Question 43
The following facts concern a tract of land in a state that follows general U.S. law. Each instrument is in proper form, recorded, marital property rights were waived when necessary, and each person named was adult and competent at the time of the named transaction.
1. In 1970 the owner of a tract conveyed his interest in fee simple to his “two brothers, their heirs and assigns as joint tenants with right of survivorship.”

2. In 1980 the older brother died, devising his interest to his only child “for life, and then to his grandson for life, and then to his grandson’s children, their heirs and assigns.”

3. In 2000 the younger brother died, devising his interest to “his friend, his heirs and assigns.”

4. In 2002 the friend conveyed his quitclaim deed to a purchaser, “his heirs and assigns whatever right, title and interest I own.”

The purchaser has never married and has contracted to convey marketable record title in the land. Can the purchaser do so?

(A) Yes, without joinder of any other person in the conveyance.

(B) Yes, if the older brother’s son, his grandson, and his grandson’s only child (age 25) will join in the conveyance.

(C) No, regardless of who joins in the conveyance, because the older brother’s grandson may have additional children whose interests cannot be defeated.

(D) No, regardless of who joins in the conveyance, because a title acquired by quitclaim deed is impliedly unmerchantable.

Question 44

A landowner owned a tract of land in fee simple. He conveyed it to a purchaser, “his heirs and assigns; but if my friend shall be living 30 years from the date of this deed, then to my friend, his heirs and assigns.” The limitation “to the friend, his heirs and assigns” is

(A) valid, because the friend’s interest is a reversion.

(B) valid, because the interest will vest, if at all, within a life in being.

(C) valid, because the friend’s interest is vested subject to divestment.

(D) invalid.

Question 45

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

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

The wife failed to pay the real estate taxes due for the two lots. To prevent a tax sale of the fee simple, the daughter paid the taxes and demanded that the wife reimburse her for same. When she refused, the daughter brought an appropriate action against the wife to recover the amount paid. In such action, the daughter should recover

(A) the amount paid, because a life tenant has the duty to pay current charges.

(B) the present value of the interest that the amount paid would earn during the wife’s lifetime.

(C) nothing, because the wife’s sole possession gave the right to decide whether or not taxes should be paid.

(D) nothing, because the wife never received any income from the lots.

Question 46

A man owned a farm in fee simple. By his will, he devised as follows: “my farm to such of my grandchildren who shall reach the age of 21; and by this provision I intend to include all grandchildren whenever born.” At the time of his death, the man had three children and two grandchildren.

Courts hold such a devise valid under the common-law Rule Against Perpetuities. What is the best explanation of that determination?

(A) All of the man’s children would be measuring lives.

(B) The Rule of Convenience closes the class of beneficiaries when any grandchild reaches the age of 21.

(C) There is a presumption that the man intended to include only those grandchildren born prior to his death.

(D) There is a subsidiary rule of construction that disposi
tive instruments are to be interpreted so as to uphold interests rather than to invalidate them under the Rule Against Perpetuities.

Question 47

In 1995 the owner of a tract of land executed and delivered a deed by which he conveyed the tract “[t]o my cousin and his heirs and assigns; but if my friend shall be living 30 years from the date of this deed, then to my friend, his heirs and assigns.” In 2000 the owner died leaving a valid will by which he devised all his real estate to his brother. The will had no residuary clause. The owner was survived by his brother and by his daughter, who was the owner’s sole heir.

Assume that the common law Rule Against Perpetuities applies in the state where the land is located and that the state also has a statute providing that “[a]ll future estates and interests are alienable, descendible, and devisable in the same manner as possessory estates and interests.” In 2005, the owner’s cousin and daughter entered into a contract with a purchaser whereby they contracted to sell
the tract to the purchaser in fee simple. After examining title, the purchaser refused to perform on the ground that the cousin and the daughter could not give good title. The cousin and the daughter joined in an action against the purchaser for specific performance. Prayer for specific performance will be

(A) granted, because the cousin and the daughter together own a fee simple absolute in the tract.

(B) granted, because the cousin alone owns the entire fee simple in the tract.

(C) denied, because the brother has a valid interest in the tract.

(D) denied, because the charity has a valid interest in the tract.

Question 48

A landowner died, validly devising his land to his wife "for life or until remarriage, then to" their daughter. Shortly after the landowner's death, his daughter executed an instrument in the proper form of a deed, purporting to convey the land to her friend. A year later, the daughter died intestate, with her mother, the original landowner's wife, as her sole heir. The following month, the wife remarried. She then executed an instrument in the proper form of a deed, purporting to convey the land to her new husband as a wedding gift.

Who now owns what interest in the land?

(A) The daughter's friend in fee simple.

(B) The wife owns the fee simple.

(C) The wife's new husband has a life estate in the land for the wife's life, with the remainder to the daughter's friend.

(D) The wife's new husband owns in fee simple.

Question 49

A woman conveyed her one-family residence, to "my son for life, remainder to my daughter, her heirs and assigns, subject, however, to the mortgage thereon." There was an unpaid balance on the mortgage of $10,000, which is payable in $1,000 annual installments plus interest at 6 percent on the unpaid balance, with the next payment due on July 1. The woman's son is now occupying the residence. The reasonable rental value of the property exceeds the sum necessary to meet all current charges. There is no applicable statute.

Under the rules governing contributions between life tenants and remaindermen, how should the burden for payment be allocated?

(A) The daughter must pay the principal payment, but the son must pay the interest.

(B) The daughter must pay both the principal and the interest payments.

(C) The son must pay both the principal and interest payments.

(D) The son must pay the principal payment, but the daughter must pay the interest.

Question 50

A grantor conveyed her only parcel of land to a grantee by a duly executed and delivered warranty deed, which provided: "To have and to hold the described tract of land in fee simple, subject to the understanding that within one year from the date of the instrument said grantee shall construct and thereafter maintain and operate on said premises a public health center."

The grantee constructed a public health center on the tract within the time specified and operated it for five years. At the end of this period, the grantee converted the structure into a senior citizens' recreational facility. It is conceded by all parties in interest that a senior citizens' recreational facility is not a public health center. In an appropriate action, the grantor seeks a declaration that the change in the use of the facility has caused the land and structure to revert to her. In this action, the grantor should

(A) win, because the language of the deed created a determinable fee, which leaves a possibility of reverter in the grantor.

(B) win, because the language of the deed created a fee subject to a condition subsequent, which leaves a right of entry or power of termination in the grantor.

(C) lose, because the language of the deed created only a contractual obligation and did not provide for retention of property interest by the grantor.

(D) lose, because an equitable charge is enforceable only in equity.

Question 51

In 1995, a man executed his will, which in pertinent part provided, "I hereby give, devise, and bequeath my house to my surviving widow for life, remainder to such of my children as shall live to attain the age of 30 years, but if any child dies under the age of 30 years survived by a child or children, such child or children shall take and receive the share which his, her, or their parent would have received had such parent lived to attain the age of 30 years."

At the date of writing his will, the man and his wife had two children, a son and a daughter. The man's wife died in 2000 and he then married his second wife in 2002. At his death in 2010, the man was survived by his second wife and three children, the two from his first marriage, and a son, born in 2004, with his second wife. In a jurisdiction
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that recognizes the common-law Rule Against Perpetuities unmodified by statute, the result of the application of the rule is that the

(A) remainder to the children and to the grandchildren is void because the man could have subsequently married a person who was unborn at the time he executed his will.

(B) remainder to the children is valid, but the substitutionary gift to the grandchildren is void because the man could have subsequently married a person who was unborn at the time he executed his will.

(C) gift in remainder to the man's children from his first marriage or their children is valid, but the gift to his son from his second marriage or his children is void.

(D) remainder to the children and the substitutionary gift to the grandchildren are valid.

Question 52
For a valuable consideration, a widow who owned a tract of land, signed and gave her niece a duly executed instrument that provided as follows: "The grantor may or may not sell the tract during her lifetime, but at her death, or if she earlier decides to sell, the property will be offered to the grantee at $500 per acre. The grantee shall exercise this right, if at all, within sixty days of receipt of said offer to sell." The friend recorded the instrument. The instrument was not valid as a will. Is the niece's right under the instrument valid?

(A) Yes, because the instrument is recorded.

(B) Yes, because the niece's right to purchase will vest or fail within the period prescribed by the Rule Against Perpetuities.

(C) No, because the niece's right to purchase is a restraint on the owner's power to make a testamentary disposition.

(D) No, because the niece's right to purchase is an unreasonable restraint on alienation.

Question 53
Three years ago a landowner conveyed the tract to a grantee for $50,000 by a deed that provided: "By accepting this deed, the grantee covenants for herself, her heirs and assigns, that the premises herein conveyed shall be used solely for residential purposes and, if the premises are used for nonresidential purposes, the landowner, his heirs and assigns, shall have the right to repurchase the premises for the sum of one thousand dollars ($1,000)." In order to pay the $50,000 purchase price for the tract, the grantee obtained a $35,000 mortgage loan from a bank. The landowner had full knowledge of the mortgage transaction. The deed and mortgage were promptly and properly recorded in proper sequence. The mortgage, however, made no reference to the quoted language in the deed.

Two years ago the grantee converted her use of the tract from residential to commercial without the knowledge or consent of the landowner or of the bank. The grantee's commercial venture failed, and the grantee defaulted on her mortgage payments to the bank. The tract now has a fair market value of $25,000. The bank began appropriate foreclosure proceedings against the grantee. The landowner properly intervened, tendered $1,000, and sought judgment that the grantee and the bank be ordered to convey the tract to the landowner, free and clear of the mortgage. The common-law Rule Against Perpetuities is unmodified by statute. If the court rules against the landowner, it will be because

(A) the provision quoted from the deed violates the Rule Against Perpetuities.

(B) the bank had no actual knowledge of, and did not consent to, the violation of the covenant.

(C) the rights reserved by the landowner were subordinated, by necessary implication, to the rights of the bank as the lender of the purchase money.

(D) the consideration of $1,000 was inadequate.

Question 54
A landowner owned a farm in fee simple and by his will specifically devised the farm as follows: "To my daughter, her heirs and assigns, but if she dies survived by a husband and a child or children, then to her husband during his lifetime with remainder to her children, their heirs and assigns. Specifically provided, however, that if my daughter dies survived by a husband and no child, the farm is specifically devised to my nephew, his heirs and assigns."

While the landowner's will was in probate, his nephew quitclaimed all interest in the farm to the landowner's daughter's husband. Three years later, the daughter died, survived by her husband but no children. She left a will devising her interest in the farm to her husband. The only applicable statute provides that any interest in land is freely alienable. The landowner's nephew instituted an appropriate action against the husband to establish title to the farm. Judgment should be for

(A) the nephew, because his quitclaim deed did not transfer his after acquired title.

(B) the nephew, because the daughter's husband took nothing under the landowner's will.

(C) the daughter's husband, because the nephew had effectively conveyed his interest in the farm.

(D) the daughter's husband, because the doctrine of after-acquired title applies to a devise by will.