

SIMULATED
MULTIPLE-CHOICE
EXAMINATION

Time - 3 hours

Directions: Each of the questions or incomplete statements below is followed by four suggested answer or completions. You are to choose the *best* of the four stated alternatives. Unless the instructions on the back cover of this booklet or the instructions on a specific question ask for a different rule, answer all questions according to legal theories and principles of general application.

Questions 1-5 are based on the following fact situation.

Charles and Helen entered into a valid written contract under which Charles agreed to build a house on Helen's lot. Helen agreed to pay \$150,000 for the house. The contract stated: "Helen's duty to pay shall not arise unless and until the house is constructed in full compliance with the attached specifications."

1. Assume that shortly after commencing performance Charles called Helen and said that the 1/2 inch rods for the foundation required in the specifications were in short supply, but that 1/4 inch rods were readily available. Helen replied: "Go ahead and use the 1/4 inch." One day later, before Charles had bought or installed the rods, Helen called and stated that Charles must use the 1/2 inch rods. Charles refused to do so.

The best analysis of the parties' legal rights is

- (A) Helen waived her right to have 1/2 inch steel and her waiver cannot be retracted.
- (B) Helen and Charles modified their contract and Charles may use 1/4 inch rods.
- (C) Helen waived her right to have 1/2 inch rods, but she has retracted the waiver so that Charles must use 1/2 inch rods.
- (D) Helen's statement, "Go ahead and use the 1/4 inch," is not effective either as a modification or a waiver because Helen did not expressly agree to modify or waive.

2. Assume that during her vacation, Helen voluntarily spent two days helping Charles construct the house. At the end of the second day, Charles mentioned the fact that he had an antique weathervane and Helen said she would like to buy it. Charles stated: "You've already done enough for me. I'll give the weathervane to you and install it tomorrow." Helen said: "Thanks a lot." When Charles refused to deliver or install the weathervane, Helen sued.

The principal question for the court is whether

- (A) Helen's voluntary work was sufficient consideration for Charles' promise to give Helen the weathervane.
- (B) Charles' statement about the weathervane is enforceable as an oral modification of a written contract.

- (C) the parole evidence rules bars admission of evidence of the promise to give Helen the weathervane.
- (D) Charles' statement about the weathervane constituted a promise.

3. Assume that neither the written agreement nor the specifications mentioned the size of the water heater to be installed. Charles installed a 20 gallon heater. The size of the house reasonably required one of at least 40 gallons. After the house was completed, Helen noticed the size of the water heater and said he would not pay the contract price.

Charles is now entitled to recover from Helen

- (A) nothing because his breach allows Helen to
- (B) the full contract price because the agreement did not specify the size of the water heater.
- (C) the full contract price because he substantially performed the contract.
- (D) the full contract price minus Helen's damages for breach of Charles' implied obligation to install a heater of the size reasonably required.

4. Assume that the contract provided that Helen's payment for the house would be due upon receipt of the architect's certification that the house was built in accordance with the specifications. The architect refused to issue such certification "because the fireplace was not constructed in a workmanlike manner as required by the specifications." Helen refused to pay the contract price.

If Charles insists that the fireplace was constructed in a workmanlike manner and sues for the full contract price, who will prevail?

- (A) Helen, unless Charles proves that other architects would have been satisfied with the fireplace.
- (B) Helen, if Helen proved the architect's refusal was in good faith.
- (C) Charles, unless Helen proves the architect's refusal to certify was both reasonable and in good faith.
- (D) Charles, if Charles proves that the fireplace was constructed in a workmanlike manner.

Assume that the day after entering into the contract with Helen, Charles borrowed \$150,000 from Brandon and assigned to Brandon Charles' rights against Helen. Brandon promptly notified Helen of the assignment. Charles performed 75% of the work and then abandoned the job.

Which of the following is the most accurate statement of the rights of Brandon and Helen?

- (A) Brandon has no rights against Helen because construction contracts are not assignable.
- (B) Brandon, having accepted the assignment from Charles, must arrange for completion of the contract and cannot recover anything until the work is completed.
- (C) Brandon may recover the reasonable value of the work performed by Charles minus damages to Helen caused by Charles' failure to complete the work.
- (D) Brandon can recover the contract price minus the cost of completion of the contract.

Question 6.

One night Peter and Devon were having a heated argument in Peter's office on the 40th floor of an office building. Devon became angry and left, violently slamming the office door behind him. The force of Damon's slamming the door caused the lock to jam and Peter was unable to open the door or to leave his office until a locksmith came the next day.

If Peter asserts a claim against Damon based on false imprisonment, will Peter prevail?

- (A) Yes, because Damon's act caused Peter to be confined.
- (B) Yes, if Damon was negligent in slamming the door.
- (C) No, because Peter was in his own office.
- (D) No, if Damon did not intend to jam the lock.

Questions 7-8 are based on the following fact situation.

Henry and his wife Wilma were staying at Moonlite Motel, which had a large swimming pool. A state statute required that owners of hotel and motel pools must, during the time that the pool was open for use and no lifeguard was present, post in a prominent place by the pool a sign of specified size stating, "Warning - No Lifeguard Present." Moonlite Motel did not provide a lifeguard and did not post the required sign.

One afternoon, Wilma went sightseeing and Henry remained at Moonlite Motel. When Wilma returned, she learned that Henry had been seen swimming in the pool and was later found drowned. There were no witnesses to the drowning.

Wilma suffered severe emotional shock when she learned of Henry's death and had to be hospitalized, under the care of a physician, for several days.

- 7. If Wilma asserts a claim for damages for the wrongful death of Henry, the basis on which Moonlite Motel is most likely to prevail is
 - (A) Henry assumed the risk because the absence of the sign and lifeguard was obvious.
 - (B) Henry was contributorily negligent in swimming in the pool when no lifeguard was present.
 - (C) the absence of a warning sign was not a cause-in-fact of Henry's drowning.
 - (D) the statute imposed only criminal penalties for its violation.
- 8. If Wilma asserts a claim for damages against Moonlite Motel based on her emotional distress, will Wilma prevail?
 - (A) Yes, because Wilma sustained demonstrable emotional distress.
 - (B) Yes, because Moonlite Motel violated a criminal statute.
 - (C) No, because Wilma was not present when Henry drowned.
 - (D) No, because Wilma did not suffer any physical impact.

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Questions 9-11 are based on the following fact situation.

Fancy threatened Becky with a physical beating unless Becky personally wrote, signed and mailed a letter to the President of the United States threatening the President's life. Becky complied. A statute makes it a felony "knowingly to mail to any person a letter that threatens the life of the President of the United States."

9. Is Becky guilty of violating that statute?
- (A) No, because she did not intend to take the President's life.
 - (B) No, because of the defense of duress.
 - (C) Yes, because duress is not a defense to such a crime.
 - (D) Yes, because Becky was not threatened with loss of her life.
10. If Fancy and Becky are prosecuted for violating the statute and Becky is acquitted, may Fancy be convicted?
- (A) Yes, under the doctrine of transferred intent.
 - (B) Yes, because a person can commit a crime through an innocent agent.
 - (C) No, because Fancy did not write or mail the letter.
 - (D) No, because Fancy can only be vicariously liable for Becky's act.
11. If Fancy and Becky are charged with the crime of conspiring to violate the statute, they will most likely be found
- (A) not guilty, because the conspiracy was merged in the completed crime
 - (B) not guilty, because Becky was not a willing participant
 - (C) guilty, because Becky participated in the commission of the crime
 - (D) guilty, because Becky complied with Fancy's threat

Question 12.

Anthony wrote Gary saying: "Please ship 175 Model A Hearing Aids per catalog price... " Gary shipped 175 Model B Hearing Aids, which are superficially similar to Model A and can be distinguished only by taking them apart. Model B is an obsolete model with no market demand. On tender of delivery, Anthony discovered the discrepancy and demanded that Gary deliver Model A Hearing Aids. Gary refused.

If Anthony sues for breach of contract, what result?

- (A) Gary wins, because there was no meeting of the minds.
- (B) Gary wins, because his shipment was only a counteroffer which Anthony rejected.
- (C) Anthony wins, because the offeror is master of his offer.
- (D) Anthony wins, because Gary's shipment of Model B Hearing Aids constituted an acceptance of Anthony's offer to buy Model A hearing aids.

Question 13.

Oscar owned a house in Crossville. A storm sewer, owned and operated by Crossville, ran under part of Oscar's house. Water from the sewer main escaped into the basement of Oscar's house, flooding the basement and causing substantial damage. The jurisdiction in which Crossville is located has abolished governmental tort immunity.

If Oscar asserts a claim against Crossville, the basis on which Oscar is most likely to prevail is

- (A) negligence, if the sewer main was improperly constructed or maintained.
- (B) strict liability, because the water escaped from Crossville's sewer main.
- (C) strict liability in tort, if the sewer main was defective.
- (D) nuisance, because Oscar's use and enjoyment of his house was interfered with.

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Question 14.

David owned a restored "classic" automobile made in 1922. To discourage tampering with the car, David installed an electrical device designed to give a mild shock, enough to warn but not to harm persons touching the car. Colton, a heart patient with a pacemaker, saw David's car and attempted to open the door. Colton received a mild shock which would not have harmed an ordinary individual but which caused his pacemaker to malfunction, resulting in a fatal heart attack.

If Colton's estate asserts a claim against David for the wrongful death of Colton, will the estate prevail?

- (A) No, if David was not using excessive force to protect his car.
- (B) No, because Colton was a trespasser.
- (C) Yes, because David's act was a substantial factor in causing Colton's death.
- (D) Yes, if Colton had no reason to suspect the presence of the electrical device.

Question 15.

Brandy borrowed a television set from Linda to watch a football game on Sunday afternoon. Brandy promised Linda that she would return the set to Linda by 7:00 Sunday night because Linda wanted to watch a program at 10:00 that night. When Brandy had not returned the set by 9:00, Linda went to Brandy's house. Brandy was not at home, and Linda forced open a window, climbed in, took her television set and walked out with it.

Did Linda commit burglary?

- (A) Yes, because Linda broke and entered Brandy's dwelling at night.
- (B) Yes, because Brandy had lawfully obtained possession of the television set from Linda.
- (C) No, because Brandy was not at home when Linda went to her house.
- (D) No, because Linda entered for the purpose of recovering her own television set.

Question 16.

TU Financial had a substantial increase in the number of robberies at its main office. TU Financial hired Ace, an expert rifleman, and placed him at a position where he could observe the entire floor of the bank through an opening in the ceiling of the bank. Ace was instructed to shoot if he believed that it was necessary to prevent a robbery.

Several days after Ace had been hired, Raul entered the bank, pointed a gun at a cashier and demanded money. When Ace saw Raul point a gun at a cashier, Ace fired at and killed Raul.

What criminal offense, if any, did Ace commit?

- (A) None, if Ace reasonably believed his act was necessary to prevent a dangerous felony.
- (B) Voluntary manslaughter, because Ace used deadly force to protect private property.
- (C) Voluntary manslaughter, because Ace did not first warn Raul.
- (D) Murder, if Ace deliberately aimed to kill Raul.

Question 17.

Moe was employed as a salesman in Lawrence's store. Lawrence owned a beautiful clock which Moe had often admired. The clock needed repairs and Lawrence asked Moe to take it with him on his way home and leave it at a repair shop. When asked to do this, Moe decided to keep the clock for himself. Moe took the clock, did not deliver it to the shop, and did not return to work for Lawrence.

Did Moe commit larceny?

- (A) Yes, because after he received the clock, Moe did not take it to the repair shop.
- (B) Yes, because when he received the clock from Lawrence, Moe had a secret intention to keep it.
- (C) No, because Moe was Lawrence's servant when Lawrence gave Moe the clock.
- (D) No, because Lawrence transferred possession to Moe without any act or inducement on Moe's part.

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Questions 18-22 are based on the following fact situation.

On December 20, 2010, Cathy, owner of Cathy's Coffee Shop, entered into a written contract with Drew, owner of Drew's Doughnut Factory, under which Cathy agreed to purchase her doughnut requirements for the calendar year 2011. The contract provided that "Cathy shall have no obligation to receive any specified quantity of doughnuts, but only her daily requirements" and that Drew "agrees to supply such requirements" at the fixed price per dozen specified in the contract, "cash on delivery." During 2010, Cathy's requirements of doughnuts for her coffee shop averaged approximately 50 dozen per week.

18. Early in 2011, Drew experienced a rise in his costs and decided he could no longer afford to supply Cathy's requirements at the price fixed in their agreement.

If Drew asserts that the agreement is not binding upon him because of lack of consideration will Drew prevail?

- (A) Yes, because requirements contracts lack mutuality of obligation.
 - (B) Yes, because the provision that Cathy had no obligation to receive any specified quantity made the contract illusory.
 - (C) No, because requirements contracts do not need consideration to be enforceable.
 - (D) No, because Cathy's agreement to buy her requirements was sufficient consideration for Drew's agreement to supply those requirements.
19. Assume that on May 1, 2011, Cathy opened "Cathy's Coffee Shop #2" in a new office building. During the first four months of 2011, Cathy had ordered an average of 50 dozen doughnuts per week from Drew. The first week in May she ordered 75 dozen doughnuts, explaining that she needed the larger quantity because of the opening of Cathy's Coffee Shop #2. Drew refused to supply any more than 50 dozen at the price fixed in the agreement.

Is Drew justified in his refusal?

- (A) Yes, if the normal requirements of the original coffee shop are approximately 50 dozen per week.
- (B) Yes, because the opening of Cathy's Coffee Shop #2 was an unanticipated occurrence which excused Drew from his contract with Cathy.

- (C) No, because the agreement provided that Drew would supply Cathy's requirements of doughnuts at the fixed price.
- (D) No, if in opening Cathy's Coffee Shop #2, Cathy relied on her requirements contract with Drew.

20. Assume that in May Cathy decided the price fixed in her contract with Drew was too high since Cathy was making a profit of only five cents per doughnut. Cathy asked Drew to agree to charge a lower price, but Drew refused. Cathy thereupon stopped selling doughnuts in her coffee shop and switch to other pastries. If Drew sues Cathy for breach of contract, who will prevail?

- (A) Drew, because the elimination by Cathy of her requirements of doughnuts did not occur good faith.
- (B) Drew, because under the agreement Cathy has an absolute obligation to have requirement of approximately 50 dozen doughnuts per week.
- (C) Cathy, because the inadequate profit on doughnut sales was a permissible reason for Cathy eliminating her requirements of doughnuts.
- (D) Cathy, because a buyer under a requirement contract may properly eliminate her requirements for any reason.

21. Assume that in May Cathy sold Cathy's Coffee Shop to Edwin, assigning her rights and delegating her duties under the contract with Drew to Edwin. Edwin decided to continue using the name "Cathy's Coffee Shop" When Drew was notified of the sale, he refused to supply doughnuts to Edwin for Cathy's Coffee Shop.

What are Edwin's rights, if any, against Drew for the balance of the year 2011?

- (A) Edwin has no rights against Drew.
- (B) Edwin is entitled to have Drew supply Edwin's requirements of doughnuts for Cathy's Coffee Shop, but not in a quantity unreasonably disproportionate to Cathy's normal requirements before she sold to Edwin.
- (C) Edwin is entitled to have Drew supply whatever quantity of doughnuts Edwin might order for Cathy's Coffee Shop, but Edwin is free to buy doughnuts elsewhere.
- (D) Edwin is entitled to have Drew supply what ever requirements of doughnuts Edwin might have for Cathy's Coffee Shop.

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22. Assume the same facts as in question 21, except that upon being notified of the sale to Edwin, Drew agreed with Edwin and Cathy that Edwin should be substituted for Cathy in the agreement between Drew and Cathy. In June, Edwin started buying his requirements of doughnuts for Cathy's Coffee Shop from a supplier other than Drew.

Does Drew have any rights against Cathy?

- (A) Yes, because a party who delegates her duties under a contract to a third party remains liable for breach of those duties.
- (B) Yes, because Drew was a third party beneficiary of the agreement between Cathy and Edwin.
- (C) No, because Cathy's delegation of her duties to Edwin discharged Cathy from any further duty to Drew.
- (D) No, because the arrangement between Cathy, Edwin and Drew was a novation.

Questions 23-26 are based on the following fact situation.

For Sonia's seventh birthday, Francisco bought Sonia a small bicycle at FloorMart. The bicycle was manufactured by Hiffy.

A week later, Sonia's sister, Sissy, age 17, returned home from college for Thanksgiving vacation. Sonia asked Sissy to get out her new bicycle so she could show her how well she could ride it. Sissy went to the garage, sat on the bicycle seat and began to "walk" the bicycle between the two family cars and out of the garage.

As Sissy neared the doorway of the garage, the rod on which the seat was mounted snapped, causing Sissy to fall backward over the bicycle and to suffer severe injuries. Janet, standing a few feet from Sissy, was horrified and sickened as she saw what happened to Sissy, but suffered no other harm.

Most bicycle manufacturers make the supporting rods for seats from a metal which is much stronger for that purpose than the metal used by Hiffy. The use of the stronger metal increases the cost of manufacture by about \$1.50 a bicycle.

23. If Sissy asserts a claim against Hiffy based on strict liability in tort the likely result is Sissy will
- (A) recover, if use such as hers was foreseeable.
 - (B) recover, because Hiffy can spread the risk of loss.
 - (C) not recover, if the bicycle was intended for use by small children.
 - (D) not recover, because the bicycle was purchased for Sonia.

24. If Sissy asserts a claim against FloorMart based on negligence, is it likely that Sissy will prevail?
- (A) Yes, if the bicycle was defective.
 - (B) Yes, if the bicycle was defective and FloorMart could have discovered the defect by a reasonable inspection.
 - (C) No, because Sissy was not an intended user of the bicycle.
 - (D) No, because Sissy was not riding the bicycle in a normal manner.
25. If Sissy asserts a claim against FloorMart based on strict liability in tort, is it likely that Sissy will prevail?
- (A) Yes, if the bicycle was defective.
 - (B) Yes, but only if FloorMart could have discovered a defect by a reasonable inspection.
 - (C) No, because FloorMart sold the bicycle in exactly the same condition as that in which it was received.
 - (D) No, because Sissy was not in privity with FloorMart.
26. If Janet asserts a claim against Hiffy based on strict liability in tort, is it likely that Janet will prevail?
- (A) Yes, if the bicycle was inherently dangerous.
 - (B) Yes, because Janet was within a few feet of Sissy when she was injured.
 - (C) No, because Janet was not using the product when the accident occurred.
 - (D) No, because Janet was horrified and sickened, but suffered no other harm.

Questions 27-29 are based on the following fact situation.

Albert arranged with Brad to have Brad kill Vince by shooting him. Brad, in turn, paid Tim to do the killing. Tim went to Vince's home late one evening. Vince had gone to bed and had left his bedroom window open. Tim found a long stick and set fire to the end of it. He inserted the stick through the open bedroom window and started a smoldering fire in the covering on Vince's bed. Vince died of smoke inhalation, but the fire was discovered and extinguished by Vince's son. The only damage to the home was smoke discoloration to the walls next to the bed.

27. Did Albert commit the murder of Vince?
- (A) Yes, because Albert and Tim were co conspirators.
 - (B) Yes, because he arranged for the killing of Vince.
 - (C) No, because his arrangement was with Brad and not Tim.
 - (D) No, because Vince was killed in a different manner than Albert had contemplated.
28. Is Tim guilty of common law burglary of Vince's house?
- (A) Yes, because he committed a felony within the home of another during the nighttime.
 - (B) Yes, because he inserted the lighted stick through the open window.
 - (C) No, because he did not commit a breaking.
 - (D) No, because no part of his body entered the house.
29. Is Tim guilty of arson of Vince's house?
- (A) Yes, because there was smoke damage to the walls.
 - (B) Yes, because a burning occurred in the commission of an inherently dangerous felony.
 - (C) No, because arson is a specific intent crime.
 - (D) No, because there was no burning of any part of the house.

Question 30.

Edgar told Paul, an auto mechanic, that he had stolen a car and that the engine had to be rebuilt before it could be sold. Paul agreed to perform the work under the following terms: Paul would receive \$300 upon completion of the job, even though his normal fee was \$600 and he would receive an additional \$600 when Edgar sold the car. After rebuilding the engine, and before the car was sold, Paul and Edgar were arrested.

30. Did Paul commit the crime of conspiracy to sell the stolen car?
- (A) Yes, because he agreed to rebuild the engine, knowing the car was stolen.
 - (B) Yes, because of the profit he agreed to receive on the sale of the car.
 - (C) No, because Edgar was the person who was going to sell the car.
 - (D) No, because Paul's rebuilding of the engine was not *per se* illegal.

Questions 31-32 are based on the following fact situation.

Paxton was nine years old and a third-grade student in school. While playing in the school yard during the recess period, Paxton became involved in a fight with Dennis, ten years old and a student in the fourth grade. Dennis kicked Paxton in the leg during the fight and, as a result of the kick, Paxton suffered a fracture of a bone in the leg.

Paxton, through an appropriate legal representative, has asserted claims for damages against Dennis and against the school district.

31. Will Paxton prevail on his claim against Dennis?
- (A) Yes, because Dennis kicked Paxton.
 - (B) Yes, if Dennis started the fight.
 - (C) No, unless Dennis used excessive force.
 - (D) No, if Paxton's bones were unusually brittle.
32. Will Paxton prevail on his claim against the school district?
- (A) Yes, because the fight took place on school premises.
 - (B) Yes, because the fight took place during the recess period.
 - (C) No, if Paxton was the person who actually started the fight.
 - (D) No, unless the school failed to use reasonable care in supervising the school premises.

Questions 33-34 are based on the following fact situation.

Arthur, a well-known film star, was photographed by a freelance photographer, while sitting at a sidewalk cafe, drinking beer and with a bottle of Fizz Light Beer on the table in front of him. The picture was reproduced in Action!, a publication containing stories and articles about the film industry, in connection with a story about the eating and drinking tastes, of film stars. The label on the beer bottle was clearly visible in the picture.

The following month, advertisements for Fizz Light Beer appeared in other publications and carried a reproduction of the page from Action! on which Arthur's picture appeared, with the heading "Drink the beer that movie stars drink."

33. If Arthur asserts a claim against Action!, will Arthur prevail?
- (A) Yes, if Arthur had not authorized any use of the picture.
 - (B) Yes, because Action! was using Arthur's picture for its commercial purposes.
 - (C) No, because Arthur's picture was taken in a public place.
 - (D) No, if Arthur's career was advanced by the publicity.
34. If Arthur asserts a claim against Fizz Light Beer based on the advertisements in the other publications, will Arthur prevail?
- (A) Yes, if Arthur had not consented to having his picture taken.
 - (B) Yes, if Arthur had not consented to Fizz Light Beer using Arthur's picture for commercial purposes.
 - (C) No, because Arthur's picture had already appeared in Action!.
 - (D) No, if Arthur was already a public figure.

Question 35.

Vivian loaned Doug her car when Doug told Vivian that he needed the car in order to get some groceries. In fact Doug intended to drive 100 miles to apply for a job in Big City and return the same day. However, when Doug reached Big City and obtained a job he decided to remain in Big City permanently. Doug did not inform Vivian of where he was and he did not return the car to Vivian.

35. Did Doug commit larceny?
- (A) Yes, because Doug did not return the car to Vivian.
 - (B) Yes, because Doug unlawfully converted property to which he had lawfully obtained possession.
 - (C) No, because there was no concurrence of *actus reus* and *mens rea*.
 - (D) No, because Vivian voluntarily loaned Doug her car.

Questions 36-40 are based on the following fact situation.

Annette, the owner of a nightclub, booked Steven, a famous entertainer, for the week beginning Sunday, July 1. On June 20 Steven was stricken by appendicitis and according to his surgeon would not be able to perform until August 1. On June 21, Annette sent the following telegrams to Elizabeth and two other performers. The contents of all three telegrams were identical.

"Steven ill and unable to perform during the July 1 week. Desperately need replacement act. You must arrive no later than June 29 to give the band time to rehearse with you. Money no object as all performances already sold out. /s/ Annette."

36. Assume that Elizabeth received her wire on June 22 and immediately wired back: "On my way. Hope I get a better room than you provided last time. /s/ Elizabeth." After Elizabeth sent her wire, but before Annette received it, Annette learned from Steven's surgeon that Steven had recovered and could perform July 1. Annette immediately telephone Elizabeth and said that Elizabeth was not needed because Steven had recovered.

If Elizabeth asserts a claim against Annette and Annette defends on the ground that there was no effective acceptance of her offer, who will prevail?

- (A) Elizabeth, because her acceptance was dispatched prior to Annette's revocation of her offer.
- (B) Elizabeth, because Annette's revocation was not communicated in the Steven form as Annette's offer.
- (C) Annette, because Elizabeth's response failed to specify any salary.
- (D) Annette, because Elizabeth's response, added a term to the offer, which Annette was free to reject.

37. Assume the Steven facts as in question 36. Annette defends on the ground that her wire was not intended as an offer, since it was sent to three people and she needed only one replacement act. Will this defense succeed?

- (A) Yes, if Annette did not intend to be bound to more than one person.
- (B) Yes, because, as creator of the purported "offer," Annette's intent not to make an offer prevails.
- (C) No, if Elizabeth did not know that identical wires were sent to others.
- (D) No, because Annette would only be bound by the first acceptance she received.

38. Assume the Steven facts as in previous question 36. Annette defends on the ground that Steven's recovery was a changed circumstance that excused her

from liability on her contract with Elizabeth. Will this defense succeed?

- (A) Yes, because the risk of Steven's recovery was assumed by Elizabeth.
- (B) Yes, because illness in personal service contracts operates to excuse performance.
- (C) No, because Annette was unilaterally mistaken as to whether Steven would recover in time to perform.
- (D) No, because Annette did not condition her offer on Steven's continued incapacity and, therefore, the risk of his recovery was assumed by her.

39. Assume for this question that there was a valid contract between Elizabeth and Annette, and that Steven recovered. Assume further that Annette refused to allow Elizabeth to perform as the featured star, but offered to employ Elizabeth, at a salary of \$3,000 for the week, to perform in a less popular nightclub which Annette also owned. Elizabeth's usual salary for a one week engagement is \$5,000 and this is the sum she expected to receive from Annette. Elizabeth refused to perform in Annette's other nightclub and was unable to obtain another booking. Annette paid Steven \$10,000 for his one week performance.

How much is Elizabeth entitled to recover from Annette?

- (A) \$2,000.
- (B) \$5,000.
- (C) \$10,000.
- (D) Nothing.

40. Assume that Frank, another performer, received one of the three wires sent by Annette on June 2. Without communicating with Annette, Frank cancelled his existing booking for the week of July 1 and appeared at Annette's nightclub on June 29, stating: "Here I am. You knew you could count on me to help you out." Annette said that Steven had recovered and was going to perform and that Annette did not expect Frank since she had heard nothing from him.

If Frank sues Annette, who will prevail?

- (A) Frank, because he could reasonably interpret Annette's wire as an offer permitting acceptance either by performance or a return promise.
- (B) Frank, because he commenced performance prior to any attempted revocation by Annette.
- (C) Annette, because her wire should reasonably have been understood as an offer requiring a timely return promise.
- (D) Annette, because an offer can only be accepted by a return promise.

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Questions 41-42 are based on the following fact situation.

Alicia and Barb were patients in Hospital. Dr. Anderson was to operate on Alicia for a back problem. Dr. Benson was to perform an appendectomy on Barb. Each doctor was performing her first operation in Hospital. Neither was familiar with the location of the operating rooms. Through some unexplained mistake, employees of Hospital took Dr. Anderson to the operating room where Barb was awaiting her operation and took Dr. Benson to the operating room where Alicia was awaiting her operation. Each doctor commenced operating before the mistakes were discovered.

41. If Alicia asserts a claim against Dr. Benson, will Alicia prevail?
- (A) Yes, for battery.
 - (B) Yes, for negligence, relying on the doctrine of *res ipsa loquitur*.
 - (C) No, unless Alicia can establish that Dr. Benson was negligent in not discovering her identity.
 - (D) No, because Hospital's employee took Dr. Benson to the wrong operating room.
42. If Barb asserts a claim against Hospital will Barb prevail?
- (A) Yes, for battery.
 - (B) Yes, for negligence relying on the doctrine of *res ipsa loquitur*.
 - (C) No, unless Dr. Anderson was an employee of Hospital.
 - (D) No, because Hospital is not strictly liable for harm to patients.

Question 43.

Owen brought his television set to Remi for repair. Remi sold the set to Brandon. Brandon believed that Remi owned the set.

If Owen asserts a claim based on conversion against Remi and Brandon, Owen will prevail against

- (A) Remi but not Brandon, because Brandon was a good faith purchaser.
- (B) Both Remi and Brandon because each exercised dominion over the television set.
- (C) Brandon but not Remi because Remi no longer has possession of the television set.
- (D) Brandon but not Remi because Remi had lawful possession of the television set.

Question 44.

Ben owned a power boat which he was operating on Little Lake, a large body of water, on a clear calm day. He approached Samson whose sailboat was disabled by a broken rudder. Samson asked Ben to tow his sailboat to shore but Ben refused because he feared the tow might damage the paint on his power boat.

If Samson was unable to bring his sailboat in and became severely ill as a result of exposure before he was rescued, and Samson asserts a claim against Ben for damages based on Ben's refusal to provide assistance, will Samson prevail?

- (A) Yes, if Ben's failure to rescue made an ad situation worse.
- (B) Yes, if the probability of harm to Samson outweighed the probability of damage to Ben's property.
- (C) No, unless there was some special relationship between Samson and Ben.
- (D) No, if Ben reasonably believed that towing Samson's sailboat might damage the paint on Ben's power boat.

Question 45.

Dilbert is being tried on an indictment charging him with burglary. Dilbert has introduced evidence, that, at the time he broke and entered, he was so intoxicated that he could not have formed an intent to commit a felony.

On the issue of whether Dilbert was so intoxicated that his capacity to form the necessary intent was diminished, the jury should be instructed that the burden of proof is on the

- (A) defendant to establish by a preponderance of the evidence that his capacity to form the necessary intent was diminished.
- (B) defendant to establish by clear and convincing evidence that his capacity to form the necessary intent was diminished.
- (C) prosecution to establish by clear and convincing evidence that Dilbert had the capacity to form the necessary intent.
- (D) prosecution to establish beyond a reasonable doubt that Dilbert had the capacity to form the necessary intent.

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Questions 46-48 are based on the following fact situation.

On March 1, Sean and Brian entered into a written contract under which Sean agreed to sell his home to Brian, and Brian agreed to purchase the home for the sum of \$60,000. The contract specified July 1 as the closing day on which Sean was to deliver the deed and Brian was to pay the price.

46. Assume that on April 1, Sean conveyed his home to a third party. Brian learned of the sale the following day and wants to cancel his contract with Sean and buy another home. May he do so without any risk that he will be obliged to perform his contract obligation to Sean?
- (A) Yes, but only if he first demands assurance from Sean that Sean will perform on July 1, and Sean is unable to provide such assurance.
 - (B) Yes, if Sean, in connection with the sale to the third party, did nothing to preserve Brian's rights to acquire the property.
 - (C) No, because Sean's performance is not due until July 1 and Brian must remain in a position to perform his contract obligation up to that time.
 - (D) No, because there is a possibility that Sean could buy back the property and tender a deed to Brian on July 1.
47. Assume that on April 1 Sean tells Brian that he (Sean) has changed his mind and will not convey his home to Brian. May Brian immediately maintain an action for damages for breach of contract?
- (A) Yes, but only if Sean has sold or contracted to sell the home to another party.
 - (B) Yes, because Sean's statement constituted a repudiation, giving rise to an immediate cause of action for breach of contract.
 - (C) No, because Sean's performance is not due until July 1 and thus there can be no breach of contract until that date.
 - (D) No, because Sean might retract his repudiation before July 1.

48. Assume that on July 1 Sean fails to deliver or tender the deed. May Brian successfully maintain an immediate action against Sean for damages for breach of contract?
- (A) Yes, if Brian tendered payment on July 1.
 - (B) Yes, but only if Brian actually made the payment on July 1.
 - (C) Yes, whether or not Brian tendered payment or actually paid on July 1.
 - (D) Yes, because payment of the price by Brian was a condition subsequent to Sean's duty to tender the deed.

Questions 49-50 are based on the following fact situation

Dawson intended to kill Vernon. With that in mind, Dawson shot at Vernon but missed Vernon and hit Calvin. Calvin was wounded only slightly. Calvin turned, saw Vernon empty-handed standing nearby, but thought that Vernon had shot him. Calvin picked up an iron bar and beat Vernon repeatedly over the head.

49. Did Dawson commit the attempted murder of Calvin?
- (A) Yes, because Dawson attempted to kill Vernon.
 - (B) Yes, because Dawson acted with premeditation and malice towards Vernon.
 - (C) No, because Calvin was wounded only slightly.
 - (D) No, because Vernon did not intend to kill Calvin.
50. Did Calvin commit battery?
- (A) Yes, because Calvin intentionally beat Vernon.
 - (B) Yes, because Vernon had not committed an unlawful act.
 - (C) No, if Calvin acted in the heat of passion.
 - (D) No, if Calvin reasonably believed Vernon had shot at him.

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Questions 51-52 are based on the following fact situation.

Bernardo owed Lance \$5,000.00. Payment was overdue and Lance retained Money Inc., to collect the debt. Warren; the President of Money Inc., assigned Ludwig, an employee of Money Inc. to collect the account- At the time Warren assigned Ludwig to collect the debt, Warren intended to apply the funds in discharge of a debt to Lance for which Money Inc. and Warren were jointly liable. Ludwig collected the \$5,000.00. The amount collected, less Money Inc.'s fee, was remitted to Lance by Warren as a payment on the debt for which Money Inc. and Warren were jointly liable.

51. Did Warren commit a theft crime?

- (A) Yes, embezzlement, because Lance's money was entrusted to Money Inc.
- (B) Yes, obtaining by false pretenses from Bernardo, because at the time the funds were collected Warren intended to use them for his own benefit.
- (C) Yes, larceny, because at the time the funds were collected Warren intended to use them for his own benefit.
- (D) No, because Lance received all of the funds, less Money Inc.'s collection fee, that were collected from Bernardo.

52. If a crime was committed by Warren, could Money Inc. be convicted for the same offense?

- (A) Yes, because Warren was President of Money Inc.
- (B) No, unless Warren is also convicted for the same offense.
- (C) No, because a corporation can not be imprisoned.
- (D) No, if the crime involved requires a specific intent.

Question 53.

Jill obtained the services of a tax accountant to prepare her Federal Income Tax Return. The tax accountant told Jill that a certain expense she had incurred was deductible from income. The tax accountant knew the advice was erroneous. Jill signed and filed her Federal Income Tax Return, claiming the deduction.

If Jill is prosecuted for willful attempt to evade payment of taxes, does the tax accountant's advice constitute a valid defense?

- (A) No, because the tax accountant knew his advice was wrong.
- (B) No, because Jill signed and filed the Federal Income Tax Return.
- (C) Yes, because the tax accountant prepared the Federal Income Tax Return.
- (D) Yes, if Jill reasonably and in good faith relied on the tax accountant's advice.

Question 54.

Marvin saw David, apparently disabled by illness or injury, lying on the sidewalk late at night. Marvin drove to a service station across the street to use the pay phone. Tommy was using the phone and refused to hang up when Marvin explained the circumstances. There was no other phone in the vicinity. Marvin then drew a loaded revolver and threatened to shoot Tommy unless he hung up. Tommy then hung up and permitted Marvin to use the phone. Marvin is now being prosecuted for assault with a deadly weapon.

Did Marvin have a privilege to threaten Tommy with a revolver?

- (A) Yes, because Marvin was privileged to use deadly force if necessary to save David's life.
- (B) Yes, because Marvin was privileged to threaten the use of deadly force if reasonably necessary to save David's life.
- (C) No, unless there was a statute specifically granting such a privilege.
- (D) No, if Marvin did not know David.

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Questions 55-57 are based on the following fact situation.

Ted owned a hardware store in New York. Wishing to move to a warmer climate, he entered into a written contract to buy Ruben's hardware store in Florida. The contract stated that Ted would buy Ruben's store for \$125,000 "provided Ted finds a purchaser who will buy his present business for \$100,000 cash." Ruben rents the building in which his store is located, under a lease with one more year to run.

55. Assume Ruben repudiated the contract soon after signing it and before Ted had made any effort to find a Buyer for his present business.

Ted sued Ruben for breach of contract and Ruben defended on the ground that his promise to sell was unsupported by consideration. Will this defense succeed?

- (A) Yes, because Ted's promise to buy was subject to a condition within Ted's complete control and was therefore illusory.
 - (B) Yes, because Ted's promise to buy was still executory.
 - (C) No, because the court will interpret the condition of Ted's promise as requiring Ted to make a good faith effort to find a Buyer for his present business.
 - (D) No, because Ted's promise to sell his present business was consideration for Ruben's promise to sell his business to Ted.
56. Assume Ted made no effort to find a Buyer for his present business and refused to perform his promise to buy Ruben's business.

Ruben sued Ted and the evidence shows that Ted could have found a purchaser to buy his business for \$10,000 cash. What result?

- (A) Ruben wins, because the condition of Ted's promise was excused by Ted's failure to try to make it occur.
- (B) Ruben wins, because the stipulation about the sale of Ted's present business was a mere promise and not a condition.
- (C) Ted wins, because the condition of Ted's promise to buy Ruben's business did not occur.
- (D) Ted wins, because he made no promise to try to find a Buyer for his business.

57. Assume Ted refused to perform his promise to buy Ruben's business and Ruben sued. Ted defended on the ground that at the time the contract was signed the parties orally agreed that Ted's obligation to buy was conditioned upon Ted's obtaining a 5-year extension of Ruben's lease, and that Ted has been unsuccessful in his efforts to obtain such an extension from the landlord. No mention of the lease was made in the contract. Ruben objected to the admission of evidence to prove such a condition on the ground of the Parol Evidence Rule.

Which of the following arguments that Ted might make has any chance of avoiding the Parol Evidence Rule?

- (A) The evidence is offered to clear up an ambiguity in the writing.
- (B) The evidence is offered to show a modification of a written contract.
- (C) The writing was not an "integrated" written contract.
- (D) The Parol Evidence Rule does not bar evidence of the oral agreement because the evidence is offered to establish an oral condition of a promise contained in an "integrated" written contract.

Questions 58-59 are based on the following fact situation.

Matt lived in a home adjacent to a large stretch of open fields. One afternoon Matt took his dog, on leash, for a walk across the fields. Unknown to Matt, Gerry was engaging in target practice with a revolver that Gerry owned.

Gerry was hidden from Matt's view by a small clump of trees. As Matt, with his dog, passed the clump of trees, Gerry fired at a target that he had pinned up to one of the trees. The sound of the explosion frightened Matt's dog, which broke the leash and ran. The dog then bit Woody who was walking in the fields about 100 feet from Matt.

58. If Woody asserts a claim for damages against Matt, will Woody prevail?
- (A) Yes, because Matt owned the dog.
 - (B) Yes, because the dog escaped from Matt's control.
 - (C) No, unless the dog had previously bitten some other person.
 - (D) No, unless Matt was negligent in not restraining the dog.
59. If Woody asserts a claim against Gerry for damages for the dog bite, will Woody prevail?
- (A) Yes, because Gerry's firing the gun caused the dog to run away.
 - (B) Yes, because firing a gun is an abnormally dangerous activity.
 - (C) No, because injury to Woody from a dogbite was not a foreseeable consequence of Gerry's act.
 - (D) No, because the breaking of the leash was an independent, intervening force.

Question 60.

Stan and Ray saw a new automobile, owned by Juan, parked on a street. They decided to take the automobile for a joyride. Stan drove the automobile a few blocks before colliding with a truck. The collision totally destroyed Juan's automobile.

If Juan obtains a judgment against Stan based on conversion and Stan pays the judgment, may Stan compel Ray to reimburse him for any part of the amount paid to Juan?

- (A) Yes, on a theory of implied indemnity.
- (B) Yes, because Ray was a joint tort-feasor.
- (C) No, unless Juan had joined Ray as a party defendant in the action.
- (D) No, because Juan's judgment was based on conversion.

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Questions 61-64 are based on the following fact situation.

Chad is a teacher who is quite knowledgeable about coins and their value and his collection is worth thousands of dollars. Chad also buys and sells coins. Ralph, who had no prior experience with coins, had inherited a sizeable coin collection. Ralph opened "Coin Shop" in a local shopping center.

61. Assume that on June 1 Ralph advertised in the local newspaper as follows: "Special sale. Coins on sale at 10% over their face value." In response to this ad, Chad visited Ralph's shop and saw in a display case a fifty cent coin which Chad recognized as having a value of \$100. Chad tendered fifty-five cents to Ralph but Ralph refused to sell the coin. Ralph said that the coin had already been sold to Chris for \$100 prior to the start of the special sale and that Ralph had forgotten to remove it from the display case.

Chad sued Ralph for damages. What result?

- (A) Ralph wins because the ad was not an offer.
- (B) Ralph wins because fifty-five cents was not sufficient consideration for a coin worth \$100.
- (C) Chad wins because, in visiting Ralph's shop, Chad detrimentally relied on the ad.
- (D) Chad wins because Ralph's ad was an offer which Chad accepted when he tendered the fifty-five cents to purchase the coin.

62. Assume that Chad telephoned Ralph and learned that Ralph owned fifty 1937 silver dollars. Ralph agreed to sell them to Chad for \$1,000, which sum Chad agreed to pay in advance of shipment. Following the conversation, Ralph sent Chad this letter: "This confirms your purchase of the silver dollars. Upon receipt of your check for \$1,000 the coins will be shipped to you as agreed. /s/Ralph." Chad received the letter but did not respond to it and did not pay the \$1,000 a month. Ralph sues Chad, who asserts the Statute of Frauds as a defense. Will this defense succeed?

- (A) No, because the letter signed by Ralph satisfies the writing requirement against Chad.
- (B) No, because the face value of the coins is less than \$5,000.
- (C) Yes, because Chad is not a merchant and there is no writing signed by Chad.
- (D) Yes, because a memorandum signed after the contract is made does not satisfy the Statute of Frauds.

63. Assume the same facts as in question 62, but that Chad defends on the ground that there was no consideration for his promise to pay \$1,000. Will this defense succeed?

- (A) Yes, because a court will not enforce a promise to pay \$1,000 for coins with a face value of \$50.
- (B) Yes, because Ralph did not change his position in reliance on the promise of Chad to pay \$1,000.
- (C) No, because Ralph's promise to sell the coin was sufficient consideration.
- (D) No, because both Chad and Ralph are merchants and contracts between merchants do not require consideration.

64. Assume that Chad and Ralph had entered into an enforceable contract for the sale of fifty 1937 silver dollars but that before the coins were delivered to Chad, the government made the transfer of pre-1964 silver coins illegal.

Which of the following is a correct statement of the rights of Chad and Ralph?

- (A) The court will not enforce the agreement and will leave the parties as they are, enabling Ralph to keep the \$1,000.
- (B) Ralph is in breach and must pay damages, even though he is excused from delivering the
- (C) Ralph may keep the \$1,000 and need not deliver the coins, because merchants should anticipate changes in the law.
- (D) Ralph is excused from delivering the coins, and Chad is entitled to restitution of the \$1,000.

Question 65.

Aaron was an undercover police officer. Aaron received information from a reliable source that Dominic, recently released from prison after serving a sentence for selling narcotics, was again selling narcotics, but that he was being very cautious and would sell only to persons who knew a certain code word. Aaron's source told Aaron the current code word.

Aaron approached Dominic, offered to make a buy of narcotics and said the code word. Dominic agreed to the sale and to the time and place of delivery. When Dominic appeared with the narcotics he was arrested.

If Dominic claims that he was entrapped, will he prevail on this issue?

- (A) Yes, because Dominic would not have made the sale if Aaron had not said the code word.
- (B) Yes, because Aaron approached Dominic and offered to make a buy.
- (C) No, because Dominic was already predisposed to sell narcotics.
- (D) No, because Dominic had previously been convicted for selling narcotics.

Question 66.

Wesley parked his car in a garage operated by Rene. When Wesley returned several hours later and demanded his car, Rene could not produce the car because it had been stolen by a thief.

If Wesley asserts a claim against Rene based on conversion, will Wesley prevail?

- (A) Yes, because Rene could not produce Wesley's car.
- (B) Yes, unless Wesley recovers his car undamaged.
- (C) No, if Rene did not intentionally give custody of the car to the thief.
- (D) No, if Rene had taken reasonable security precautions to prevent theft of parked cars.

Question 67.

Romeo, while walking down a city street, found a wallet. Romeo picked up the wallet and examined it. He found a driver's license giving the owner's name and address. However, Romeo believed that the law was "finders keepers" and he took out the cash in the wallet, put it in his pocket and tossed the wallet into the trash can.

Did Romeo commit a theft crime?

- (A) Yes, larceny, because Romeo kept the money knowing the owner's identity.
- (B) Yes, embezzlement, because Romeo had rightful possession when he formed the intent to keep the money.
- (C) No, because Romeo did not commit a trespassory taking.
- (D) No, because, as a finder, he was entitled to keep the money.

Questions 68-71 are based on the following fact situation.

Lorenzo, a four year old boy, accompanied Summer to May Co.. While Summer was shopping in May Co., Lorenzo wandered away. Lorenzo's hand was caught in an opening between the floor and an escalator in May Co.. The escalator had been installed, designed and maintained by Up Down Inc.. When Lorenzo's hand was caught, he cried out and Jimmy, an employee of May Co., attempted to stop the escalator before Lorenzo was injured. Jimmy was unable to do so and, as a result, Lorenzo's hand was severely injured.

Lorenzo, by an appropriate legal representative, has asserted claims against May Co. and Up Down Inc..

68. If the escalator was properly installed, designed and maintained by Up Down Inc., will Lorenzo prevail against May Co.?
- (A) Yes, because May Co. had a non-delegable duty to make the escalator safe.
 - (B) Yes, if Lorenzo was a business invitee when he accompanied Summer in May Co..
 - (C) No, unless Jimmy failed to exercise reasonable care in rescuing Lorenzo.
 - (D) No, because Summer had the primary duty to supervise Lorenzo.
69. If Jimmy was unable to stop the escalator because the stop button was improperly designed, will Lorenzo prevail against Up Down Inc. on a claim based on
- I Negligence
 - II Strict liability for defective product
 - III Strict liability for abnormally dangerous
- (A) I only.
 - (B) I and II, but not III.
 - (C) II only.
 - (D) II and III, but not I.
70. If Lorenzo was a hemophiliac and either May Co. or Up Down Inc. is found liable, will Lorenzo recover for additional expenses incurred in the treatment of his injuries because of this condition?
- (A) Yes, if the additional expenses were reasonable in amount.
 - (B) Yes, unless the additional expenses were covered by a collateral source.
 - (C) No, because the hemophilia was a pre-existing condition
 - (D) No, if the liability of the defendants was based on strict liability in tort.

71. If Lorenzo obtains a judgment against both May Co. and Up Down Inc., and May Co. pays the judgment, may May Co. compel Up Down Inc. to reimburse it for any part of the amount paid Lorenzo?
- (A) Yes, because the manufacturer must bear the entire loss caused by its defective product.
 - (B) Yes, unless May Co. was actively negligent.
 - (C) No, unless the jurisdiction permits contribution among tort-feasors.
 - (D) No, because the plaintiff is entitled to recover against either party.

Question 72.

Jesse, Sheldon, and Nick, planned to rob the owner of a local liquor store. The understanding was that Jesse would supply the guns and ammunition and Sheldon and Nick would actually commit the robbery. Jesse told Sheldon and Nick that all he wanted was to be paid for the guns and ammunition, that he would have nothing to do with the actual robbery, and would not be present at the time or share in the proceeds. Jesse supplied Sheldon and Nick with guns and ammunition which they used to rob the owner of a liquor store.

Can Jesse be held criminally liable for the robbery of the owner of the liquor store as

- I a co-conspirator
 - II an accessory before the fact?
- (A) No, neither I nor II.
 - (B) Yes, I but not II.
 - (C) Yes, II but not I.
 - (D) Yes, both I and II.

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Question 73.

In order to get Zack in trouble, Ron and Steven threatened him at gunpoint and told him, "If you do not immediately go into the bank and hold it up we will kill you." Ron and Steven then positioned themselves so they could observe Zack's conduct of the robbery. They gave Zack a gun with one bullet. Zack entered the bank and pointed the gun at a teller. Before Zack received any money he saw that the bank guard was about to shoot him, and Zack dropped his gun and held up his hands in surrender.

Did Zack commit the crime of attempted robbery?

- (A) Yes, because Zack threatened the use of deadly force.
- (B) Yes, because he took a substantial step towards the completion of the robbery.
- (C) No, because he surrendered before the robbery was completed.
- (D) No, because Zack was threatened with the loss of his own life.

Question 74.

Taylor went to the bank to close his account. The balance in the account was \$50. Taylor handed his passbook to the teller. The teller, misreading the figure in the passbook and in a computer printout purporting to show the balance in Taylor's account, said "Your balance is \$500.00; here is the \$500.00." The teller gave Taylor five \$100.00 bills. Taylor was aware of the mistake but said nothing and left the bank with the \$500.00.

Did Taylor commit the crime of obtaining property by false pretenses?

- (A) Yes, because he had a duty to notify the teller of the mistake.
- (B) Yes, because his failure to notify the teller of the mistake amounted to a false misrepresentation of an existing fact.
- (C) No, because he made no misrepresentation.
- (D) No, because he did not get title to the money.

Question 75.

In 2001, Colton County enacted a valid ordinance requiring that within one year from the date of enactment, all billboards had to be removed from property not zoned for commercial use. The ordinance provided for compensation to owners of billboards that were removed. Ads Plus maintained billboards on property in a rural area zoned exclusively for home use. Henry purchased a lot in the area. One of Ads Plus' billboards blocked the view

of a nearby lake from Henry's lot. Henry anticipated that the billboard would soon be removed and made plans to erect a modern ranch house on his lot. At the expiration of the one-year period Ads Plus had not removed the billboard.

If Henry asserts a claim against Ads Plus, based on nuisance, will Henry prevail?

- (A) No, because Henry knew the billboard existed when he purchased his lot.
- (B) No, because only the public authorities can assert a claim based on violation of the ordinance.
- (C) Yes, because the continued maintenance of the billboard violates the ordinance.
- (D) Yes, because Henry will suffer special harm from the continued maintenance of the billboard.

Questions 76-77 are based on the following fact situation.

When Herbert saw his girlfriend Becky walking down the street holding hands with Alex, he was infuriated. Herbert drove to Becky's house, hid in the bushes and waited. A short time later, Herbert saw Alex and Becky sitting at the kitchen table drinking coffee. Still angry, Herbert went to his car and got a pistol. When he returned, Alex and Becky were still seated at the kitchen table. Intending to scare Alex by shooting in his direction, Herbert fired through the window.

76. If the bullet from Herbert's pistol missed Alex but struck the coffee cup Alex was holding, which of the following crimes did Herbert commit?
- I. Battery.
 - II. Assault with a deadly weapon.
 - III. Attempted murder.
- (A) I only.
 - (B) I and II but not III.
 - (C) II and III but not I.
 - (D) I, II and III.
77. If the bullet from Herbert's pistol struck and killed Alex, the most serious crime Herbert committed is:
- (A) murder, first degree.
 - (B) murder, second degree.
 - (C) voluntary manslaughter.
 - (D) involuntary manslaughter.

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Questions 78-81 are based on the following fact situation.

Kevin is a 17-year-old boy who has been buying and selling bicycles since he was eleven. Tim is a 25 year old bank teller who has never bought a bicycle before. Tim asked Kevin if he had a bicycle to sell. Kevin showed Tim a bicycle with a crack in the frame. Tim asked if the crack would impair the bicycle's utility, and Kevin said, "Not a bit." In fact, the crack would probably cause the frame to collapse under very little strain. Kevin knew this, but Tim did not. Tim said, "Very well, I'll pay you \$100 for the bicycle and pick it up tomorrow." They signed a writing, prepared by Kevin, that purported to memorialize the terms of their agreement. Later that day Tim learned that the crack would probably cause the frame to collapse under very little strain.

78. If Tim told Kevin he would not accept the bicycle and Kevin asserted a claim against Tim for damages for breach of contract, who will prevail?
- (A) Tim, because Kevin is a minor and lacks capacity to contract.
 - (B) Tim, because he relied on a material misrepresentation.
 - (C) Kevin, because the contract is voidable only at Kevin's election.
 - (D) Kevin, because Tim's reliance on Kevin's statement was not reasonable.
79. Assume that Tim had said to Kevin, "I know the crack can cause a problem, but that's all right. I can- have it welded and it will work well enough." If Tim then demands the bicycle, but Kevin refuses, saying he has changed his mind about selling, and Tim asserts a claim against Kevin for damages for refusing to deliver the bicycle, who will prevail?
- (A) Tim, because he has waived his right to avoid the agreement.
 - (B) Tim, because even a minor is responsible for his misrepresentations.
 - (C) Kevin, because as a minor he can avoid liability on an executory contract.
 - (D) Kevin, because Tim could not waive his right to avoid the agreement.
80. Assume the writing purported to describe the bicycle by serial number, but Kevin mistakenly inserted serial number 100B, the number of another bicycle in his possession, instead of number 100A, the number of the bicycle being sold. No one noticed the error until the time of delivery. The bicycle designated by serial number 100B is the same model as the one Tim agreed to buy, but does not have a cracked frame. Kevin delivered the bicycle with the cracked frame, serial number 100A, but Tim refused to accept it. Thereupon Kevin tendered the sound bicycle, serial number 100B, which Tim also refused to accept.
- If Kevin asserts a claim against Tim for damages for breach of contract to accept the bicycle with serial number 100B, who will prevail?
- (A) Kevin, because the parol evidence rule bars evidence that the bicycle identified in the writing is not the one Tim agreed to accept.
 - (B) Kevin, because the bicycle identified in the writing is a fair exchange for \$100, while the bicycle with the cracked frame was not.
 - (C) Tim, because parol evidence is admissible to show that he never agreed to accept the bicycle identified as 100B.
 - (D) Tim, because the writing was not a sufficient memorandum to satisfy the statute of frauds.
81. Assume the same facts as in the preceding item, except that at the time the writing was signed, Tim knew that the wrong serial number had been inserted in the writing. Tim demanded the bicycle identified in the writing as 100B, but Kevin refused to deliver it.
- If Tim asserts a claim against Kevin for damages for breach of contract for refusing to deliver the bicycle with serial number 100B, who will prevail?
- (A) Kevin, because there was a mutual mistake.
 - (B) Kevin, because there was no agreement to sell the bicycle identified in the writing as serial number 100B.
 - (C) Tim, because the mistake was unilateral on Kevin's part.
 - (D) Tim, because the parol evidence rule bars evidence that the bicycle identified in the writing as number 100B is not the one Kevin agreed to sell.

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Question 82.

William paid Howard \$50,000 for a deed to a parcel of land in reliance on Howard's statement that the land was free from encumbrances. Howard knew that the land was subject to a recorded and unsatisfied mortgage of \$15,000. The land, subject to the encumbrance, was worth \$55,000 and, if unencumbered, would have been worth \$70,000.

If William asserts a claim for damages against Howard, will William prevail?

- (A) Yes, because the land would have been worth \$70,000 if unencumbered.
- (B) Yes, unless a reasonable person in William's position could have discovered the mortgage before purchase.
- (C) No, because the land, subject to the mortgage, was worth more than purchaser paid for it.
- (D) No, if Howard is willing to return William's money and cancel the transaction.

Questions 83-86 are based on the following fact situation.

Duff was operating his auto at a negligently excessive speed. As a result, he lost control and hit Noah, a pedestrian on the sidewalk along the road. Maribel, age 13, arrived at the scene several minutes later. Maribel saw that Noah was in obvious need of medical attention, so she ran into the ground floor lobby of Homestead, a nearby apartment building owned by Realco, to telephone for help. There was no telephone in the lobby, so Maribel dashed through a door marked "Stairs" and up a concrete stairway leading to the second floor. She did not see a skateboard lying on the second-floor landing. She tripped over the skateboard, fell and fractured an ankle. Prior to the accident, neither Realco's resident manager nor the maintenance staff employed by Realco at Homestead had known that the skateboard was on the landing.

83. If Maribel asserts a claim against Duff based on negligence and Duff does not raise the issue of contributory negligence will Maribel prevail?

- (A) Yes, because Maribel's attempt to telephone for help was foreseeable.
- (B) Yes, because the skateboard was a "set stage."
- (C) No, because Maribel was not in the zone of impact danger.
- (D) No, because the presence of the skateboard on the landing was a superseding cause.

84. If Maribel asserts a claim against Duff based on negligence, and Duff claims Maribel was contributorily negligent, which of the following facts should be taken into account in determining whether Duff will prevail on that issue?

- I. Maribel was 13 years of age.
- II. Noah was in obvious need of medical attention.
- III. Maribel did not see the skateboard on the landing.

- (A) I, II and III.
- (B) I and II but not III.
- (C) I and III but not II.
- (D) II and III but not I.

85. If Maribel asserts a claim against Realco based on negligence and Realco does not raise the issue of assumption of risk, the likely result is Maribel will

- (A) prevail, because Realco's employees had a duty to discover and remove the skateboard.
- (B) prevail, because the risk created by Realco's failing to provide a public telephone in the lobby of Homestead outweighed the utility of such conduct.
- (C) not prevail, if a tenant of Homestead had left the skateboard on the landing just prior to Maribel's fall.
- (D) not prevail, because Maribel was a trespasser on Realco's property when she fell.

86. If Maribel asserts a claim against Realco based on negligence for failing to remove the skateboard and if Realco claims that Maribel assumed the risk, will Realco prevail on that issue?

- (A) Yes, because Maribel dashed up the stairway.
- (B) Yes, if Maribel should have seen the skateboard.
- (C) No, because Maribel was 13 years of age.
- (D) No, because Maribel did not see the skateboard.

Questions 87-90 are based on the following fact situation.

Shane wanted to punish Thomas, his enemy. Shane wrote a note, intended for Jon, reminding Jon he owed Shane a favor and asking him to administer a beating to Thomas, but cautioning him to be careful so as not to cause Thomas's death. Shane left the unaddressed note at Jon's apartment. Unknown to Shane, Jon was out of town. Jon's roommate, Mark, discovered the note and read it. Because Mark also owed Shane a favor, he thought the note was intended for him. He went out immediately to look for Thomas. In the meanwhile, Jon telephoned Shane from a distant city and Shane told Jon what he wanted done to Thomas. Jon agreed to administer the beating when he returned a month later. That same night Mark found Thomas and beat him viciously. The next day Thomas died from the beating.

87. Did Shane commit the crime of soliciting Mark to do an unlawful act?
- (A) Yes, because Shane asked that a beating be administered to Thomas.
 - (B) Yes, because Mark acted on the request in Shane's note.
 - (C) No, because Shane did not intend that Mark do the beating.
 - (D) No, unless Mark reasonably believed the note was intended for him.
88. Did Shane commit the crime of soliciting Jon to do an unlawful act?
- (A) Yes, because Shane's note was intended for Jon.
 - (B) Yes, because in the telephone conversation Shane told Jon what he wanted done.
 - (C) No, because at the time of the telephone conversation Jon was in a distant city.
 - (D) No, because Mark beat Thomas before Jon returned to the city.
89. Was there a conspiracy to assault Thomas?
- (A) Yes, between Shane and Jon.
 - (B) Yes, between Shane and Mark.
 - (C) Yes, among Shane, Jon and Mark.
 - (D) No.

90. Is Shane criminally liable for the death of Thomas?

- (A) Yes, because Shane is vicariously liable for Mark's acts.
- (B) Yes, because Shane's acts were the cause in fact of Mark's beating of Thomas.
- (C) No, because Shane did not intend that Mark administer the beating.
- (D) No, because Shane did not intend to cause Vics death.

Question 91.

Yolanda, a well-known literary critic, wrote a review of the latest book written by Mandy, a well-known author. In the review, Yolanda said that Mandy did not know how to use the English language and was dishonest in her expression of political and social views. Mandy has not suffered any pecuniary loss.

If Mandy asserts a claim against Yolanda based on defamation, Mandy will not recover

- (A) because Mandy is a well-known author.
- (B) because literary criticism is an expression of opinion.
- (C) unless Yolanda acted with reckless disregard of the truth.
- (D) if Mandy did not suffer any out-of-pocket loss.

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Question 92.

Peyton, who conducted an evening news broadcast on television, reported on one of his evening broadcasts that Travis, an instructor in a private school in the community, was being discharged for incompetence. The fact was that Travis was not being discharged for incompetence but was leaving to accept a better position at another school.

If Travis asserts a claim against Peyton based on defamation, Travis will not prevail if Peyton

- (A) used reasonable care to investigate the statement prior to his broadcast.
- (B) honestly believed the statement to be true at the time of his broadcast.
- (C) promptly retracted the statement upon learning of its falsity.
- (D) had no ill-will toward Travis.

Question 93.

Gabe parked his car in a parking lot owned and operated by Cecil. When Gabe returned to get his car, he found that it had been damaged.

If Gabe asserts a claim against Cecil for the damage to Gabe's car, Gabe will recover

- (A) because Cecil was a bailee for hire.
- (B) on the theory of trespass to chattel.
- (C) only if the car was damaged because of Cecil's negligence.
- (D) unless the damage was caused by the act of someone other than Cecil.

Questions 94-98 are based on the following fact situation.

Saul and Jeremy were involved in an automobile accident. Jeremy sued Saul for \$10,000 alleging that Saul was negligent. Saul's liability, depends on whether he had the green light at the time of the accident. Each party claims to have had the green light. Of the two other witnesses, one says that Jeremy had the green light. Before trial, Saul offered Jeremy \$5,000 to settle all claims arising from the accident. Jeremy accepted the offer.

94. Assume that before payment of the \$5,000 and before dismissal of the suit, Saul repudiates his promise to pay Jeremy \$5,000. Jeremy sues for \$5,000. What result?
- (A) Jeremy wins because the agreement was an enforceable compromise of a disputed claim.
 - (B) Jeremy wins because Saul's promise to pay \$5,000 was enforceable without consideration.
 - (C) Saul wins because his promise was a mere executory accord.
 - (D) Saul wins because his promise was void as against public policy.
95. Assume the same facts as in question 94 except that, instead of suing for \$5,000, Jeremy prosecuted his \$10,000 negligence action. Saul defended on the ground that his liability, if any, has been replaced by his obligation on his \$5,000 promise. What result on this defense?
- (A) Jeremy wins because the promise to pay \$5,000 was void from the outset.
 - (B) Jeremy wins because, after Saul repudiated his promise, Jeremy had the option to sue on that promise or on the original claim.
 - (C) Saul wins because his promise was made in compromise of a disputed claim.
 - (D) Saul wins because his promise to pay \$5,000 is enforceable without consideration.
96. Assume that after Saul promised to pay \$5,000, Jeremy dismissed the negligence suit. Jeremy's witness then admits to Saul that he lied, and that the traffic light was green in Saul's favor. Jeremy did not know that the witness had lied. Saul refused to pay Jeremy and Jeremy sued Saul for \$5,000. What result?
- (A) Saul wins because his promise was a mere executory accord.
 - (B) Saul wins because the new evidence shows there was no consideration for Saul's promise to pay \$5,000.
 - (C) Jeremy wins because the settlement was an accord and satisfaction.
 - (D) Jeremy wins because he did not know the witness was lying when he accepted Saul's offer.
97. Assume that after Saul promised to pay the \$5,000, Jeremy dismissed the negligence suit. Saul was unable to pay the \$5,000 and Jeremy threatened to sue Saul. Upon learning these facts, Miles told Jeremy: "Saul is an old friend of mine. If you will not sue him, I will pay you \$5,000." Jeremy said: "Okay," and did not file suit against Saul. A week later, Miles repudiated his promise to Jeremy. Jeremy sued Miles for \$5,000. What result?
- (A) Miles wins because there was no consideration for his promise.
 - (B) Miles wins because Jeremy must sue Saul before he can sue Miles.
 - (C) Jeremy wins because his agreement to forebear suing Saul is sufficient consideration for Miles's promise.
 - (D) Jeremy wins because Miles's friendship with Saul is sufficient consideration for Miles's promise.
98. Assume the same facts as in question 97, except that Miles defended on the ground of the Statute of Frauds. What result on this defense?
- (A) Miles wins because his promise was to pay an amount in excess of \$500 and was not evidenced by a writing signed by Miles.
 - (B) Miles wins because his promise was to pay the debt of another and was not evidenced by a writing signed by Miles.
 - (C) Jeremy wins because Miles's promise was not one required to be evidenced by a writing signed by Miles.
 - (D) Jeremy wins because his forbearance to sue Saul constituted part performance.

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

Tanner talked Madden into giving him, Tanner, \$200.00 to buy equipment to accomplish the burglary of a bakery and the theft of its receipts, in return for a one-quarter share of the proceeds. Tanner changed his mind after receiving the \$200.00 from Madden and never bought the equipment or committed the burglary.

99. Did Tanner commit the crime of conspiracy to commit burglary?
- (A) Yes, when Tanner asked Madden for the money.
 - (B) Yes, when Madden furnished the money to buy the equipment.
 - (C) No, because Madden did not agree to take part in the burglary.
 - (D) No, because Tanner never bought the equipment.
100. If Tanner did not return the \$200 to Madden, did he commit a crime?
- (A) No, because the parties were in *pari delictu*.
 - (B) Yes, larceny.
 - (C) Yes, embezzlement.
 - (D) Yes, obtaining by false pretenses.

END OF EXAMINATION.