

Question 1 is based on the following facts:

Sally Rich, age 22, told her parents that she would have their dining room wallpapered while they were on vacation. Sally hired Wally Hanger to put wallpaper on the walls in Sally's parents' house. When Sally hired Wally, the walls were unpapered, but tastefully painted.

Their written contract provided, in relevant part:

Hanger agrees to paper the walls of Mr. & Mrs. Rich's dining room to Sally Rich's satisfaction, using any paper Sally Rich selects from Hanger's sample book, for a total price of \$1,000.

In the event that the quality of Hanger's work does not meet Sally Rich's satisfaction, Hanger agrees, at its election, (i) to repair any defective paper and/or defectively installed paper at Hanger's own expense; (ii) to remove the defective paper and/or defectively installed paper and refinish and paint the walls, as they were prior to Hanger's work, at Hanger's own expense; or (iii) to refund the contract price, less the cost of all non defective paper and other materials. Alternatively, Sally Rich may demand that Hanger pay her liquidated damages in the amount of \$500, the payment of which by Hanger will discharge Hanger of any further liability.

Sally selected wallpaper with a rustic scene with dancing nymphs and satyrs. Wally promptly papered the dining room with paper like the sample. The paper and materials expended cost Wally \$900. There were no visible defects in any of the installed wallpaper.

When the room was done, Sally showed it to her father, who was shocked at the nude nymphs and satyrs. Sally then wrote to Wally, stating:

I am not satisfied with the wallpaper because it shocks my father and because some of the paper panels are out of alignment. I will not pay your bill unless and until you repaper the dining room to my satisfaction and at your expense.

In fact, some panels were out of alignment, but the problem could only be seen with a magnifying glass. It would cost Wally (1) \$500 to remove the "nymph and satyrs" wallpaper, (2) \$1,000 to install new wallpaper (which can be installed over the existing paper), (3) \$300 to refinish and repaint the walls the way they were once the wallpaper was removed, and (4) \$250 to repair those panels that are out of alignment. Uncertain whether Wally would comply with her demand, Sally solicited bids from other wallpaper companies to repaper the dining room and, in the alternative, to remove the paper and repaint the room as it was. The lowest bids she received from a reputable company were from Walleo, which bid (1) \$1,250 to remove the "nymph and satyrs" wallpaper and install replacement wallpaper and (2) \$900 to remove the "nymph and satyrs" wallpaper, then refinish and repaint the walls.

If Wally sued Sally for the payment she owes under their contract and Sally defended or countersued on the ground that Wally failed to perform their contract to her satisfaction, who should prevail?

- (A) Sally, because she is honestly dissatisfied with the quality of Wally's work.
- (B) Sally, because a reasonable person in her position would be dissatisfied with the quality of Wally's work.
- (C) Wally, because Sally is not honestly dissatisfied with the quality of Wally's work.
- (D) Wally, because a reasonable person in Sally's position would be satisfied with the quality of Wally's work.

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

Tresh purchased a new Buick Riviera convertible from Cummings Motors. After driving the car 2,000 miles, Tresh sold it to Boyer. Boyer loaned the auto to his friend, Ford. As Ford was operating the vehicle within the posted speed limit, the brakes suddenly failed. Unable to stop the car, Ford struck a taxi that was being driven by York. The colliding cars ended up on the sidewalk, injuring Cerv, a pedestrian. The collision was due solely to the defective brakes on Boyer's car. If Cerv asserts a strict liability action against Cummings Motors, the car dealer will most likely be

- (A) Liable, if the car was defective when it was sold to Tresh.
- (B) Liable, if Cummings failed to make a reasonable inspection of the car before selling it to Tresh.
- (C) Not liable, because Cerv was not the purchaser of the car.
- (D) Not liable, if Cerv had been exercising reasonable care, he could have avoided the accident.

3. If Cerv asserts a strict liability action against Tresh, the plaintiff will most likely

- (A) Prevail, if Tresh failed to make a reasonable inspection of the car before selling it to Boyer
- (B) Prevail, if the brakes were defective when Tresh sold the car to Boyer
- (C) Not prevail, because Tresh was not engaged in the business of selling automobiles

(D) Not prevail, because Ford's operation of the vehicle was an independent, intervening cause of Cerv's injuries

Question 4 is based on the following facts:

On May 1, 2002, Shaggy agreed to purchase Morbid Manor from Fred for \$50,000. Shaggy and Fred further agreed that Shaggy would pay Fred the full \$50,000 purchase price on or before July 1st, and that Fred would transfer title to Morbid Manor to Shaggy, upon receipt of the full purchase price.

Assuming that Fred and Shaggy formed an enforceable contract, which of the following statements by Shaggy on June 1st would have constituted an anticipatory repudiation of that contract?

(A) Shaggy told Fred, "I recently lost my job at The Malt Shoppe, and I am not sure I'll be able to pay you the entire \$50,000 by July 1st."

(B) Shaggy told his friend Velma, "I know Fred is planning to use the money I promised to pay him for Morbid Manor to travel to Europe with Daphne. I'm sick and tired of him ending up with the girl and me ending up with the dog. I'm not going to pay him anything. Morbid Manor is nothing but a rickety old house anyway."

(C) Shaggy told Fred, "I have thought this over, and I am not going to pay you the money I promised you. How about a 'Scooby Snack' instead?"

(D) Shaggy told Fred, "The more I think about it, the more I am convinced that you are asking too much for Morbid Manor. Would you agree to sell it to me for \$45,000, instead of \$50,000?"

Question 5 is based on the following facts:

Responding to merchant complaints about addicts congregating by fancy stores, the legislature passed a new law making it a crime "to be addicted to the use of illegal narcotics."

Walking on the public street, Dawn was seen by a police officer moving unsteadily. The officer approached Dawn and asked her, "Are you OK?" Dawn replied, "None of your business." The officer observed fresh needle marks on Dawn's arm while she said, "I really need my stuff, don't arrest me." Dawn was arrested and charged with violating the new law.

Can she be successfully prosecuted?

(A) Yes, the officer's observations are sufficient evidence to convict Dawn.

(B) Yes, the officer's observations, coupled with Dawn's statements, are ample evidence to convict.

(C) No, a conviction would violate Dawn's constitutional rights.

(D) No, Dawn's statement cannot be used against her.

Question 6 is based on the following fact situation.

Zeke was employed as a night security guard by Hercules Chemical Company (hereinafter referred to as Hercules) at its Wilmington warehouse. In the warehouse Hercules stored a multitude of flammable chemicals and explosives that were used to supply various industrial and national defense firms. Hercules used the most modern methods available in the storing and packaging of its materials.

One humid evening in late August a powerful electrical storm was illuminating the skies around Wilmington. A bolt of lightning hit the warehouse setting off an explosion that seriously injured Zeke. If Zeke asserts a claim against Hercules, he will most likely

(A) Prevail, because the accident occurred while Zeke was acting within the scope of employment.

(B) Prevail, because Hercules would be strictly liable.

(C) Not prevail, because the explosion occurred in an unforeseeable manner.

(D) Not prevail, because Zeke assumed the risk by working at the warehouse.

Question 7 is based on the following facts:

Romeo had been courting Juliet for several years. Finally, he decided to propose marriage. Romeo shopped around to find the best deal on the right ring. Romeo found the ring he sought at Old Will's Jewelers for \$10,000. Romeo was unable to pay the entire purchase price immediately. Old Will, the sole proprietor of Old Will's Jewelers, agreed to sell Romeo the ring for \$2,500 down and \$7,500 to be paid in 10 equal monthly installments. Romeo asked Old Will to hold the ring for him and promised to return the next day with the down payment.

Romeo returned to Old Will's the next afternoon with a check for \$2,500, drawn on Romeo's account at Padua Bank & Trust ("PB& T"). Old Will agreed to hold Romeo's check until Romeo picked up the ring the following morning. Later that afternoon, however, Old Will called PB& T to confirm that Romeo's account contained sufficient funds to cover the check. PB& T informed Old Will that the account balance was currently "less than \$500," and that, "over the past year, the balance in this account has

averaged less than \$1,000." Old Will then called the local credit bureau, which characterized Romeo as "a questionable credit risk" for any amount greater than \$500.

Old Will promptly called Romeo, chastised him for writing "a rubber check," and demanded that Romeo pay the entire purchase price in cash. Romeo told Old Will that he had transferred funds into his PB& T account to cover the check, but that, because he had done so after 3:00 p.m., his account balance would not reflect the additional funds until tomorrow. Romeo offered to bring \$2,500 cash when he came to pick up the ring. Old Will would not budge. He insisted that Romeo pay the full price in cash or the deal was off. Romeo refused, bought a ring of comparable size and quality from another jeweler for \$12,500, and proposed to Juliet. She accepted, and they lived happily ever after (at least, so far).

Assume that Romeo and Old Will had an enforceable contract, and that Romeo transferred sufficient funds into his PB& T account in time to cover the check if Old Will had deposited it the same day that Romeo was to pick up the ring.

Did Romeo anticipatorily repudiate his contract with Old Will by writing a check for more than the then-current balance in his checking account?

- (A) No, because Old Will promised to hold the check until the next day, by which time Romeo's account could have had sufficient funds in it.
- (B) No, because Old Will promised to hold the check until the next day, by which time Romeo's account would have had sufficient funds in it.
- (C) Yes, because Romeo should have accounted for the possibility that Old Will would at least inquire about the current balance in Romeo's bank account and might become reasonably insecure after discovering what the account balance was and what it had been.
- (D) Yes, because writing an insufficient check is illegal and any illegal behavior in preparing to perform, or in the course of performing, a contract is an anticipatory repudiation, as a matter of law.

Question 8 is based on the following facts:

Juan and Carlos were students at Culver Junior High School. In Latin class one morning, Carlos decided to play a practical joke on Juan. As Juan was about to sit down at his desk, Carlos pulled Juan's chair from behind. As a result, Juan fell on his rump. Although he was not injured, Juan was embarrassed by the incident. If Juan asserts a claim against Carlos, Juan will most likely;

- (A) Recover for assault.

- (B) Recover for battery.
- (C) Recover for intentional infliction of mental distress.
- (D) Recover for trespass to chattels.

Question 9 is based on the following facts:

Bert was driving home after a long day of work. As he was exiting the freeway, he saw a car that had not slowed down enough for the off ramp. The car had run into the freeway sound wall and the accident looked fairly serious. Certain that someone had already reported the accident, and anxious to get to the store before it closed, Bert did not stop and offer assistance. Unfortunately, no one reported the accident until several hours after Bert passed by and the driver died from internal bleeding before reaching the hospital. If the police learn that Bert drove by the accident, but did not intervene or call 911, can he be held criminally liable?

- (A) Yes. Given the seriousness of the accident, the victim was clearly in grave danger and Bert owed a duty to help the driver.
- (B) Yes. Because Bert may have been the last person able to call or intervene in time to prevent the driver from dying, he can be held liable for failing to do so.
- (C) No. Only medical professionals can be required to help the driver.
- (D) No. There is generally no duty for anyone to assist others.

Question 10 is based on the following facts:

On March 1, 2003, Gwyneth and Russell agreed that Gwyneth would pay Russell \$100 each for two tickets to the March 15th New York premiere of *The Orange Pumpernickel*. They further agreed that Russell would deliver the tickets to Gwyneth no later than March 14th. The New York premiere of Cameron Ridley's new movie, *The Orange Pumpernickel*, was scheduled for March 15th at the Radical City Musik Hall. That same night, the 41st Street Playhouse scheduled the premiere of a stage production of *The Orange Pumpernickel*, directed by David Marmoset.

On March 2nd, Russell purchased two tickets from the 41st Street Playhouse for \$75 each. On March 14th, when Russell delivered the tickets to Gwyneth, she refused to pay, claiming that Russell had agreed to sell her tickets to the movie, not the play. Russell did not have any tickets to the movie, and none were commercially available at that late date. Russell tried unsuccessfully to find another buyer for the play tickets and to obtain a

refund from the Playhouse. Unable to use them himself, he left the tickets with Gwyneth in case she changed her mind.

Gwyneth sued Russell for failing to provide her with the movie tickets. Russell countersued Gwyneth for failing to pay for the tickets he delivered to her.

Assuming that Russell knew that Gwyneth wanted tickets to the movie premiere, rather than tickets to the play premiere, but Russell bought her play tickets anyway, did Russell breach their contract, entitling Gwyneth to refuse to pay Russell?

(A) No, because Gwyneth was not sufficiently specific when she agreed to pay Russell \$200 for two tickets to the premiere of *The Orange Pumpernickel*.

(B) No, because Russell's performance, defective though it may have been, would unjustly enrich Gwyneth if she is excused from paying Russell for the tickets.

(C) No, because Russell substantially performed, entitling Gwyneth to sue Russell for damages, but not discharging Gwyneth's obligation to perform her part of the bargain.

(D) Yes, because Russell's breach was material and total, discharging Gwyneth's duty to pay Russell for the tickets.

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

Granny Goodridge, aged 72, was riding in an elevator at the World Trade Center in New York City. When the elevator stopped on the fifth floor, Smokey Robinson entered the elevator smoking a "Panama Red" cigar. Smokey was standing in front of Granny on the elevator when Granny tapped him on the shoulder. When Smokey turned around, Granny pointed to the "No Smoking" sign and said, "Excuse me, sir, would you mind putting that cigar out?" Smokey indignantly responded by inhaling heavily on his cigar, and then blowing a big puff of smoke into Granny's face. When the elevator stopped on the next floor, Smokey then departed.

11. If Smokey institutes a civil action against Granny, Smokey will most likely:

(A) Recover for battery

(B) Recover for negligence

(C) Not recover, since Smokey's prohibited conduct would preclude recovery as a matter of law

(D) Not recover, since Granny's conduct was customary and reasonably necessary under the circumstances

12. In a civil suit brought by Granny against Smokey, the plaintiff will have actions for:

(A) Assault since no actual body contact occurred.

(B) Battery even though no actual physical harm occurred.

(C) Intentional infliction of emotional distress because of the extreme and outrageous nature of Smokey's conduct.

(D) No cause of action.

Question 13 is based on the following facts:

On February 15, 2002, Wallace Williams and Bruce Roberts entered into a written contract whereby Wallace, a professional entertainer, would perform at Bruce's resort hotel the weeks of July 1-7, August 26-September 1, and October 14-20, 2002. Wallace agreed to perform eight shows (two on each Saturday) each of the three weeks. Bruce agreed to pay Wallace \$40,000 per week, plus 5% of net ticket sales per show. After a successful first week at Bruce's resort in the Berkshires, Wallace traveled to Vail, Colorado, where he was scheduled to perform several shows over the next six weeks at various locations in and around Vail. At his stay in Vail was reaching its end, Wallace was seriously injured in a freak hot tub accident. He required multiple surgeries to repair the damage and was put in traction for a minimum of six weeks. Wallace's agent, Angus "Catfish Buck" McKinney, called Bruce with the bad news: Wallace would still be in traction, and therefore unable to perform at Bruce's resort, during the week of August 26-September 1, although he was expected to fully recover in time for his scheduled October 14-20 performances.

After the week of August 26-September 1, did he breach his contract with Wallace?

(A) Yes, because Bruce could have recovered more quickly than anticipated, and Wallace must have allowed for that possibility by keeping Bruce's performance slot open for him.

(B) Yes, because Wallace had already substantially performed.

(C) No, because the contract between Wallace and Bruce was divisible.

(D) No, because Wallace had not yet substantially performed.

Question 14 is based on the following facts:

Betty drove two of her friend's home from work. On the drive, she lost control of the car and slammed into a big tree. The two friends were both killed. Apparently, while driving,

Betty lost consciousness and ran off the road. A later medical examination indicates that Betty had an undiagnosed brain disorder in the portion of her brain that regulated consciousness, and this disorder very likely caused her to become unconscious while driving. Can Betty be held criminally responsible for the deaths of her friends?

- (A) No, because the law only punishes people for voluntary acts and Betty did not act voluntarily.
- (B) No, because Betty was only offering assistance in driving the others and the law does not punish good Samaritans.
- (C) Yes, because Betty could still be convicted even without a voluntary act.
- (D) Yes, because Betty committed a voluntary act when she agreed to drive passengers.

Question 15 is based on the following fact situation.

Under a contract between Ball Sports Company and the Chris Evers Manufacturing Company, the latter manufactured a tennis ball practice machine with the name “Ball Sports” engraved on each machine. Ball Sports distributed the machines through wholesalers and retailers of sporting goods. In its sales brochure and advertising materials, Ball Sports referred to the machines as “Ball Sports Co. Tennis Machines.”

Thomas Jefferson High School purchased one of the machines from Ball Sports Co. Members of the “Tee Jay” Tennis Team regularly utilized the Ball Sports tennis machine during the course of their daily practice sessions.

One afternoon, Patsy, first substitute on the varsity tennis squad, was playing a practice match with her teammate Ellen, who had recently “nosed out” Patsy for a starting position on the team. After their match, while Ellen was bending over to retrieve her stray balls, Patsy turned on the tennis machine, aimed its "stroke" arm at Ellen, and it began releasing tennis balls at her. Patsy then tried to turn the machine off. However, the machine starter mechanism became stuck in the “on” position and continued to release tennis balls. When Ellen turned around, the next ball struck her on the side of her face. In a civil suit brought by Ellen against Patsy, the plaintiff is likely to recover for;

- (A) Assault only
- (B) Battery only
- (B) Assault and battery
- (D) False imprisonment

Question 16 is based on the following facts:

Tiffani wanted to lease space for her growing law practice in a building owned by Colt. However, Tiffani could not afford to pay rent on two places. On July 1, 2002, she signed a contract to lease 3,000 square feet of office space in Colt's building, for \$9.00 per sq. ft. per month, all utilities included, commencing September 1, 2002, subject to (1) Tiffani being released from her current lease by her current landlord LexCentre, or (2) Tiffani's lease with LexCentre expiring on December 31, 2002, whichever occurred first. Tiffani's lease contract with Colt also provided Tiffani an option to lease up to an additional 5,000 square feet, subject to availability, provided that she exercises that option, if at all, within one year of occupying the original 3,000 square feet. If she leases a total of 5,000 square feet or more, her monthly rent will fall to \$8.00 per square foot.

September 1st came and went without any word from Tiffani that she was ready to move in. Could Colt begin charging Tiffani rent as of September 1, 2002?

- (A) Yes, because Tiffani promised to pay rent to Colt starting September 1st.
- (B) Yes, because Tiffani promised to induce LexCentre to release her from her present lease and she has failed to do so.
- (C) Yes, because otherwise Colt, who could not arrange to lease the space to someone else if Tiffani was unable to move in by or shortly after September 1st, would suffer a forfeiture if the space went unleased until January 1, 2003.
- (D) No, because Tiffani's obligation to move in at any time prior to January 1, 2003 was conditioned on LexCentre releasing her from her current lease - an event the occurrence of which she could not meaningfully control.

Question 17 is based on the following fact situation.

Joseph and Herb were brothers. This summer nothing very exciting was happening in their lives because they were stuck inside their rented house studying for the bar exam. One day during their thirty-minute lunch break, however, they heard on the radio that the circus was in town and that an elephant had escaped. Since their house was located in the hills less than a mile north of the more densely populated circus grounds they decided to look out the back window. Only a few minutes later, to their sheer delight and surprise, there was the elephant walking right through the yard. Unfortunately the elephant trampled their landlord's flower garden before its exit from the property.

Herb called the circus and his quick action led to the eventual capture of the animal. Carol, the landlord, was upset at the prospect of having to replace the fine flower bed for which she had paid gardeners so much money to maintain. Joseph, remembering what he'd just learned in torts about wild animals, reassured Carol that she could recover if she sued the circus. If Carol brings suit against the circus to recover damages to her flower garden caused by the elephant, she will most likely

- (A) Recover, because the circus is strictly liable for the elephant's trespass

(B) Recover, but the circus is subject to liability for trespass only

(C) Recover, but the circus is subject to liability for nuisance only

(D) Recover, only if the circus failed to exercise the utmost care to confine the elephant or otherwise prevent it from escaping

Question 18 is based on the following facts:

For two years, Rick had been leaving his two young daughters in the care of his live-in girlfriend, Tamika. Though Tamika had a nasty temper, Rick loved her. The situation worked out well for him because he worked nights and the girls could remain at home with Tamika. One morning when he returned home from work, his oldest daughter was on the living room floor, crying, in obvious pain. Tamika claimed nothing odd had occurred the previous night, but after the girl's condition did not improve throughout the day, Rick grew concerned that she was very sick and brought her to the hospital. The emergency room doctor determined that the girl had been beaten in the abdomen and severely injured. Tamika fled and was never found. Rick was later charged with felony child abuse, for "knowingly subjecting a child to significant injury or neglect." If the state demonstrates that Rick's younger child had been treated for a similar injury while staying with Tamika several months before this incident, could Rick be convicted on this charge?

(A) No, because Rick had no way to know his girlfriend might be abusing his daughter.

(B) No, because it is unfair to hold Rick responsible for the actions of his girlfriend.

(C) Yes, because the previous incident - combined with his awareness of Tamika's temper - means that Rick knew his girlfriend could be violent and posed a serious risk to his daughters.

(D) No, because the evidence could not establish that Rick had knowledge of a serious risk.

Question 19 is based on the following facts:

All Things Greene ("ATG") is a commercial landscaper, doing business in Iowa City, Iowa. Its business was doing so well that its owner, Tom Greene, decided earlier this year to expand ATG's operations to neighboring states and to open up retail outlets in Iowa City, Peoria (Illinois), and Madison (Wisconsin), each of which will operate under the name "The Greene Thumb," but will be a subsidiary of ATG. Seeking to stock inventory for the new stores and obtain equipment needed for his landscaping operation, ATG mailed Basin Iron & Steel ("Basin"), a Missouri manufacturer of cast iron products, a written order for 20,000 hoedad collars. (A hoedad is a tool used for planting seedling trees. The hoedad collar secures the metal blade to a wooden handle.) ATG's order form

stated that the hoedad collars were to be delivered in installments by the dates stipulated in the purchase order. It also stated: "No modification of this contract shall be binding upon Buyer unless made in writing and signed by Buyer's authorized representative. Buyer shall have the right to make changes in the Order by a notice, in writing, to Seller." Basin accepted the purchase order in a written acknowledgment and commenced to manufacture the hoedad collars.

Basin was consistently late in tendering delivery. ATG, however, accepted the late deliveries without declaring a breach or invoking the written modification condition. However, after accepting 15,000 hoedad collars, ATG invoked the delivery schedule in the purchase order, cancelled the contract, and sued Basin for breach of contract for damages.

Assuming the "no modification" provision in ATG's purchase order is valid, is ATG barred from suing Basin for breach because ATG previously accepted late deliveries?

(A) No, the "no modification" clause should be taken at face value; such that ATG's prior failures to demand strict performance do not evidence his willingness to modify the terms of the contract.

(B) No, Basin is in breach of contract, and the parties have not explicitly agreed to waive each other's breaches of the contract.

(C) No, because ATG's contract with Basin required a writing to satisfy the statute of frauds; therefore, any attempt to modify the contract must also satisfy the statute of frauds.

(D) Yes, because, despite the lack of a writing satisfying the statute of frauds, ATG implicitly agreed to modify the contract by waiving Basin's prior failure to timely deliver.

Question 20 is based on the following fact situation.

Dugan, a heroin addict, needed money to support his drug habit. Armed with a pistol, Dugan decided to rob Conroy's Convenience Store. Dugan entered the store, pointed the pistol at a cashier and demanded money. The cashier reached into the cash register and nervously handed Dugan \$500. He then fled and ran down the street.

When he left the store, Dugan was pursued by Silver, a security guard employed by Conroy's, who witnessed the latter stages of the robbery. As he chased Dugan, Silver pulled out his own service revolver and shouted, "I've got a gun" stop or you're dead meat. Dugan paid no heed to this warning and continued running. Silver then fired his revolver at Dugan. The bullet missed Dugan but shattered the living room window in Howser's home. Howser, who heard the gunshot sound and saw her window break, became extremely frightened. Believing that someone was trying to kill her. Howser went into shock from fear, and, as a result, required hospitalization. Silver had been

instructed by Conroy's never to fire his gun at a fleeing suspect. If Howser asserts a claim against Conroy's, will the plaintiff prevail?

- (A) No, because Silver acted contrary to Conroy's instructions.
- (B) No, unless Silver was negligent in shooting at Dugan.
- (C) Yes, if any of the shattered glass touched Howser.
- (D) Yes, because a firearm is an inherently dangerous instrumentality.

Question 21 is based on the following facts:

Ellie, a very petite woman, went to the unofficial office happy hour after work. Although she was not generally a drinker, she frequently attended the nightly happy hour to get to know other people in the firm. During the course of her 45 minute stay, Ellie had one glass of white wine. On her short drive home, a police officer lawfully pulled her over. Suspecting Ellie was drunk, the officer conducted a field sobriety test. Ellie's blood alcohol was just above the legal limit. Which of the following arguments might successfully be put forth in her defense?

- (A) She did not know she was intoxicated.
- (B) She did not intend to drive while intoxicated.
- (C) Any reasonable person would have acted in the same manner, considering the circumstances.
- (D) None of the above.

Question 22 is based on the following facts:

Holly often visited her ailing uncle in prison. She was having a drink one afternoon and told the barkeep at the local pub that on Sundays she visited the penitentiary. The bartender asked if, while she was visiting, she would visit his uncle and give him the weather report. Holly thought this was a bit odd, but the bartender assured her that his uncle used to travel a lot and just liked to hear about the weather in cities he knew. The bartender promised to provide her the weather information every week if she would give his uncle the message. The weather reports Holly later conveyed seemed to make the bartender's uncle very happy. Holly was ultimately charged with "knowingly assisting organized crime." The government asserts that the weather reports were actually coded messages about the activities of a local crime syndicate. Holly claimed she did not know anything about any criminal activity, and the prosecution did not challenge her claim. If she truly did not know about the secret nature of the messages, could she be convicted?

(A) Yes, because she knew that she was delivering information, which in fact assisted the syndicate.

(B) Yes, because the knowledge requirement includes an objective evaluation, and a reasonable person would have known that these messages were not innocuous.

(C) No, because Holly did not in fact know that the weather reports were assisting the criminal activity.

(D) No, because Holly should only be held liable if she intended to assist the syndicate.

Question 23 is based on the following facts:

Greene wants to offer the finest in garden gnomes to ATG's landscaping clients and The Greene Thumb's retail customers, so ATG entered into a contract with Gromit's Gnomes, whose place of business is in Shropshire, England. England is not a party to the CISG. Therefore, ATG and Gromit's Gnomes agreed that Iowa law would govern their contract. Gromit's imports certain materials essential to its gnome manufacturing operations from Luxembourg. When Luxembourg suddenly, and without apparent provocation, declared war on and embargoed all imports from and exports to Great Britain (of which England is a part), Gromit's found itself without a reliable supply of several key ingredients for making its world-famous garden gnomes. Gromit's sales chief, Shaun, telephoned ATG to explain that Gromit's would be unable, due to the embargo, to fill ATG's recent order of 500 gnomes, which Shaun had confirmed by fax only a few days earlier.

Assuming the embargo was not reasonably foreseeable, and therefore not implicitly accounted for in the parties' contract, to what extent will the doctrine of commercial impracticability under UCC § 2-615 insulate Gromit's from liability to ATG?

(A) None, because the parties chose to make their contract subject to Iowa law, not the UCC.

(B) It will excuse Gromit's from performing its contract with ATG.

(C) It will suspend Gromit's duty to perform its contract with ATG for the duration of the embargo or until ATG cancels its order, whichever occurs first.

(D) It will suspend Gromit's duty to perform its contract with ATG for the duration of the embargo or until ATG cancels its order, whichever occurs first, but only if Gromit's provides prompt and adequate notice to ATG of the cause of its inability to perform as promised.

Question 24-25 are based on the following fact situation.

Tillie Taylor was a member of the Children of the Earth, a quasireligious communal organization dedicated to the spiritual rebirth of its members, who devote their lives to the preservation of the natural environment. During one of the organization's group encounter sessions, Raj Reel, the group's leader, who knew that Tillie was a paranoid schizophrenic, accused Tillie of being disloyal to her fellow "brothers and sisters." Tillie's "disloyalty" stemmed from the fact that she had telephoned her parents in disobedience of the group's Code of Conduct. Ostracized from the group, Tillie fled the commune and returned to her parents' home that evening.

After unsuccessfully trying to lure Tillie back to the group's movement, Raj decided to employ a "last ditch" effort to secure her return. Raj leased a billboard located across the street from Tillie's house. Raj had the billboard printed to read:

"TILLIE, THE CHILDREN OF THE EARTH COMMAND YOUR RETURN"

As a result of the billboard, Tillie suffered severe nervous shock and refused to leave her house, fearful that she would be abducted by her former "brothers and sisters."

24. As a result of the billboard, Tillie brings suit against Raj and the Children of the Earth for intentional infliction of emotional distress. Tillie will most likely

- (A) Succeed, since the billboard was the cause in fact of Tillie's mental suffering.
- (B) Succeed, since Raj was aware of Tillie's mental instability.
- (C) Not succeed, since the billboard itself would not be outrageous in character.
- (D) Not succeed, since the group only intended to secure Tillie's return.

25. In an action for false imprisonment against Raj and the Children of the Earth, Tillie will most probably

- (A) Recover, since Tillie's confinement resulted from the implicit threat on the billboard.
- (B) Not recover, since Tillie's confinement was self-imposed.
- (C) Not recover, since the defendants did not intend for her to be confined in her home.
- (D) Not recover, since Tillie was under no constraint to remain in her house.

Question 26 is based on the following facts:

On March 1, 2003, Gwyneth and Russell agreed that Gwyneth would pay Russell \$100 each for two tickets to the March 15th New York premiere of *The Orange Pumpernickel*. They further agreed that Russell would deliver the tickets to Gwyneth no later than March 14th. The New York premiere of Cameron Ridley's new movie, *The Orange Pumpernickel*, was scheduled for March 15th at the Radikal City Musik Hall. That same night, the 41st Street Playhouse scheduled the premiere of a stage production of *The Orange Pumpernickel*, directed by David Marmoset.

On March 2d, Russell purchased two tickets from the 41st Street Playhouse for \$75 each. On March 14th, when Russell delivered the tickets to Gwyneth, she refused to pay, claiming that Russell had agreed to sell her tickets to the movie, not the play. Russell did not have any tickets to the movie, and none were commercially available at that late date. Russell tried unsuccessfully to find another buyer for the play tickets and to obtain a refund from the Playhouse. Unable to use them himself, he left the tickets with Gwyneth in case she changed her mind. Gwyneth sued Russell for failing to provide her with tickets to the movie premiere.

If Russell bought Gwyneth tickets to the play because, despite his best efforts, he was unable to obtain any tickets to the movie premiere at any price, would he have a viable defense to Gwyneth's breach of contract claim?

- (A) Yes, Russell could defend on the grounds of failure of a condition precedent.
- (B) Yes, Russell could defend on the grounds of frustration of purpose.
- (C) Yes, Russell could defend on the grounds of impracticability.
- (D) No, Russell has no defense to his failure to purchase the tickets he promised Gwyneth.

Question 27 is based on the following facts:

Randy owned an alpaca farm. Because the alpacas were very valuable, Randy strung an electric wire along the top of his fence to prevent thefts. He placed a small sign next to the generator for the electric fence wire warning about possible electric shocks. Randy did not put up any other signs because he lived in the country and did not have any close neighbors. Some boy scouts were out hiking on adjacent land and one of the boys ran over to see the unusual looking alpacas. The boy climbed up on the fence to get a better look and grabbed the wire to steady himself. The electric shock caused him to fall off of the fence. He hit his head on a rock when he landed, causing injury. Can Randy be found guilty under a statute criminalizing "reckless behavior on one's property which results in an injury to others"?

- (A) Yes. Randy should have seen the inherent risk in installing an electric fence without putting up several warning signs.

(B) Yes. Randy's behavior created a substantial and unjustifiable risk.

(C) No. Although his behavior created an unjustifiable risk, Randy did not know that boy scouts frequented the area and was thus unaware of the risk.

(D) No. It is not clear that Randy's actions, as opposed to the inattentive troop leader's actions, led to the boy's injuries.

Question 28 is based on the following fact situation.

Alice is sitting on her front porch watching her husband Bruce, who is mowing the lawn. Carl hates Bruce but is a friend of Alice's. Knowing Alice is present; Carl draws a pistol and threatens to kill Bruce. Alice, who is pregnant, suffers severe emotional distress as a result of the trauma and soon afterwards has a miscarriage. In an action by Alice against Carl for mental anguish resulting in her miscarriage, Alice will:

(A) Lose, because Carl did not know that Alice was pregnant.

(B) Win, because it is highly probable that Carl's extreme and outrageous conduct would cause emotional distress to Alice.

(C) Lose, because Carl's actions were directed against Bruce, so only Bruce may recover for emotional distress.

(D) Win, because she is Bruce's wife

Question 29 is based on the following facts:

Miguel and Steven were two high school students eating lunch in the cafeteria. Their conversation was cut short when Carter, a hulking brute, began taunting a student at the next table about her clothing. Steven said to Miguel, "Somebody ought to give that guy what he deserves." Several days later, Miguel slashed Carter's tires. Is Steven guilty of the crime of solicitation?

(A) Yes, because Steven was the creative force behind the crime.

(B) Yes, because Steven encouraged Mike to commit the crime.

(C) No, because Miguel was the only one to commit an affirmative act toward the crime.

(D) No, because Steven did not intend for Miguel to slash Carter's tires.

Question 30 is based on the following fact situation.

On Thursday morning, May 14, two plain clothes Riverdale police officers were shot to death while trying to arrest a paraplegic bank robber who had failed to surrender to begin a 20- year prison term.

Following the killings, the Riverside police issued an "all-points-bulletin" for the arrest of Jack Franklin, a 40-year-old Caucasian, height: 6 feet, weight: 150-155 lbs., who had been paralyzed below the waist from a Riverdale bank robbery (that occurred 16 months earlier).

On Friday May 15, Bill Nelson, a security guard at a local department store, was walking down Main Street in Riverdale when he noticed a tall black man who fit Franklin's description walking with a slight limp. Nelson approached the person (and believing him to be Franklin), pulled a gun and arrested him. Nelson held the man in custody until the police arrived a short time later. The police officer informed Nelson that he had arrested the wrong person. The man had told Nelson that his name was Jones, not Franklin. Jones was humiliated by the false arrest. If Jones asserts a claim for assault against Nelson, he will

- (A) Succeed, if Jones saw Nelson pointing the gun at him
- (B) Succeed, if Nelson's mistaken belief was unreasonable
- (C) Not succeed, because Nelson didn't intend to injure Jones
- (D)Not succeed, because Jones didn't suffer any injury from Nelson's act

Question 31 is based on the following facts:

On several occasions, Samantha heard the new waiter at the restaurant where she worked talk about "doing drugs." She approached him and asked if he knew where she could obtain some marijuana. He responded that he wasn't sure, but he could ask around. Samantha thanked him and gave him some cash, saying, "This should cover the cost if you happen to locate any for me. If you can't find any, just give me the cash back. I'm sure you're good for it." However, the new waiter was actually a police officer conducting an undercover investigation of the restaurant's owners and would never have aided her. Can Samantha be convicted of solicitation?

- (A)Yes, because the person approached need not accept the request for the crime of solicitation to be complete.
- (B)Yes, because the person involved was a police officer.
- (C)No, because the police officer would have never accepted her request for assistance.

(D)No, because Samantha did not manifest the state of mind of intent by simply asking a question.

Question 32 is based on the following facts:

Sally Rich, age 22, told her parents that she would have their dining room wallpapered while they were on vacation. Sally hired Wally Hanger to put wallpaper on the walls in Sally's parents' house. When Sally hired Wally, the walls were unpapered, but tastefully painted.

Their written contract provided, in relevant part:

Hanger agrees to paper the walls of Mr. & Mrs. Rich's dining room to Sally Rich's satisfaction, using any paper Sally Rich selects from Hanger's sample book, for a total price of \$1,000.

In the event that the quality of Hanger's work does not meet Sally Rich's satisfaction, Hanger agrees, at its election, (i) to repair any defective paper and/or defectively installed paper at Hanger's own expense; (ii) to remove the defective paper and/or defectively installed paper and refinish and paint the walls, as they were prior to Hanger's work, at Hanger's own expense; or (iii) to refund the contract price, less the cost of all nondefective paper and other materials. Alternatively, Sally Rich may demand that Hanger pay her liquidated damages in the amount of \$500, the payment of which by Hanger will discharge Hanger of any further liability.

Sally selected wallpaper with a rustic scene with dancing nymphs and satyrs. Wally promptly papered the dining room with paper like the sample. The paper and materials expended cost Wally \$900. There were no visible defects in any of the installed wallpaper.

When the room was done, Sally showed it to her father, who was shocked at the nude nymphs and satyrs. Sally then wrote to Wally, stating:

I am not satisfied with the wallpaper because it shocks my father and because some of the paper panels are out of alignment. I will not pay your bill unless and until you repaper the dining room to my satisfaction and at your expense.

In fact, some panels were out of alignment, but the problem could only be seen with a magnifying glass. It would cost Wally (1) \$500 to remove the "nymph and satyrs" wallpaper, (2) \$1,000 to install new wallpaper (which can be installed over the existing paper), (3) \$300 to refinish and repaint the walls the way they were once the wallpaper was removed, and (4) \$250 to repair those panels that are out of alignment. Uncertain whether Wally would comply with her demand, Sally solicited bids from other wallpaper companies to repaper the dining room and, in the alternative, to remove the paper and repaint the room as it was. The lowest bids she received from a reputable company were from Wailea, which bid (1) \$1,250 to remove the "nymph and satyrs" wallpaper and

install replacement wallpaper and (2) \$900 to remove the "nymph and satyrs" wallpaper, then refinish and repaint the walls.

The market value of the house would be unchanged if the "nymph and satyrs" wallpaper remained, if it was replaced with new wallpaper, or if it was removed and the room repainted. It is clear that Mr. & Mrs. Rich's "enjoyment value" of the house will be less with the "nymph and satyrs" wallpaper than without it; however, it is not clear whether their "enjoyment value" will be any different depending on whether the walls are refinished and repainted or covered with different wallpaper.

Assuming that (1) Sally and Wally had an enforceable contract, (2) Sally was honestly or reasonably dissatisfied, and (3) Sally and Wally are rational actors, what amount of damages would Sally most likely recover if Wally refused Sally's demand to repaper the dining room to Sally's satisfaction at Wally's expense?

(A) \$250.

(B) \$350.

(C) \$500.

(D) \$1,250.

Question 33 is based on the following fact situation.

Carlos and Hymie were fourteen-year-old eighth graders at Paul Revere Junior High School. They were both members of the school's junior varsity football team. Carlos, who weighed 170 pounds, was stockily built and played center on the football team. Hymie was lanky, weighed about 145 pounds and was the team's quarterback. Carlos and Hymie often engaged in friendly tests of strength, such as arm wrestling and weight lifting contests, to see who was stronger.

One afternoon both youngsters were in the school gymnasium getting ready for football practice. As they were putting on their football uniforms, Carlos turned to Hymie and said, "Hey, weakling, why don't you punch me in the chest with your best shot?" Hymie replied, "No, I'm afraid I might hurt you." Carlos then said, "Are you kidding ... you can't hurt me. C'mon give me your best shot." Carlos stood up, stuck out his muscular chest, and prepared to have Hymie hit him. Hymie proceeded to cock his fist and then punched Carlos in the chest as hard as he could. Immediately thereafter, Carlos slumped to the floor, gasping for air. Realizing that Carlos was seriously hurt, Hymie tried to render assistance but to no avail.

Seconds later Carlos stopped breathing and died. Unknown to either Carlos or Hymie, Carlos had a defective heart and suffered a heart attack resulting from the blow to the chest. In a wrongful death action, Hymie will likely

- (A) Be held responsible, because he committed a battery by hitting Carlos in the chest
- (B) Be held responsible, because Carlos' consent was ineffective
- (C) Not be held responsible, because Carlos' consent was effective
- (D) Not be held responsible, unless Hymie delivered the punch with greater strength than Carlos anticipated

Question 34 is based on the following facts:

Sally found out, through the use of a private investigator, that her husband had been having an affair with her best friend since childhood, Kate. Furious with Kate and her husband, Sally decided to get back at both of them. Her plan was to tamper with her husband's car before he left work to go "bowling" (which, she had found out, was actually his cover-up for the times he went with Kate to a local motel), so that he and Kate would be involved in a fiery car crash. However, Sally knew nothing about cars. In order to prepare for her plan, she took a basic auto class through the local community college. She did not tell her husband about the class. One day she returned from class and found her husband holding up a tuition bill and a bill for the private investigator. Sally dissolved into tears and told him that she knew about the affair and about her plans to kill him and Kate. Sally's husband recorded the entire conversation and turned the recording into the police, along with the two bills. Can Sally be found guilty of attempted murder?

- (A) No. It is not clear that Sally really intended to murder her husband and Kate.
- (B) No. Sally had not yet completed the auto class and had plenty of time left to change her mind.
- (C) Yes. Sally had taken a substantial step towards her plan to kill the two by enrolling in the auto class.
- (D) Yes. Sally had a plan and took action by taking the auto class. In addition, there is no evidence to suggest that she would have aborted the plan if her husband had not confronted her with the two bills.

Question 35 is based on the following facts:

On July 14, 2003, Monica, a fruit merchant, mailed Chandler, a fruit stand operator, a written offer to sell up to 500 crates of mangoes (30 per crate) for \$6.00 per crate. By the terms of Monica's offer, Chandler had the exclusive right to accept or decline the offer until July 25th at 5:00 p.m. Chandler received Monica's written offer at 2:00 p.m. on July 16th. On July 17th, Monica wrote to Chandler revoking the offer. Monica promptly placed the letter in the mail, properly addressed and with adequate postage. Later that

same day, Monica sold all 500 crates of mangoes to Phoebe, a mango-loving vegetarian (or should it be "fruititarian"?), at a price of \$6.50 per crate.

On July 19th, Chandler wrote to Monica stating that he would purchase 1 00 crates of mangoes from Monica for \$6.00 per crate, provided that Monica deliver the mangoes no later than September 1st.

Monica received Chandler's letter on July 21st. Monica immediately sent a fax to Chandler informing him that she had revoked her offer and sold the mangoes to phoebe. Chandler received Monica's July 17th letter a few hours after receiving Monica's fax.

Assume that:

1. Monica's sale to Phoebe was a breach of her contract with Chandler;
2. Monica could acquire another 100 crates of mangoes in time to deliver them to Chandler by September 8th;
3. Chandler could purchase replacement mangoes for delivery on or before September 1st from another seller, Ross, for \$7.00 per crate (including delivery);
4. the market price of mangoes on July 21st was \$6.50 per crate;
5. the market price of mangoes on September 1st was \$7.00 per crate; and
6. Chandler sells 50 crates of mangoes per week to his customers at a price of 3 mangoes for \$ 1.

If Chandler sued on or after September 1st, what UCC Article 2 remedy would afford Chandler the most complete recovery against Monica?

- (A) Cover damages under UCC § 2-712.
- (B) Contract-market differential damages under UCC § 2-713.
- (C) Damages for nonconformity under UCC § 2-714.
- (D) Specific performance under UCC § 2-716.

Question 36 is based on the following facts:

Sybil and John agreed to kidnap the daughter of a local politician and hold her for ransom. Their plan succeeded, and they released the child after receiving the money. They were apprehended several days later. Under the majority rule, can each of them be

convicted of and sentenced for both kidnapping and conspiracy to commit the kidnapping?

(A) Yes, because conspiracy does not merge with the completed offense, so convictions for both the completed offense and conspiracy to commit that offense would be allowed.

(B) No. Because the conspiracy and the crime share the same objectives, merger of the two offenses is required.

(C) No. As with the other inchoate offenses of solicitation and attempt, conspiracy merges with the completed offense if the completed offense is a felony.

(D) No, because punishing Sybil and John for both crimes would violate the constitutional ban against double jeopardy.

Question 37 is based on the following situation.

On October 14, 2004, Dix purchased a new Toyota van from Sheridan Toyota Imports. Two weeks later, Dix was driving to work when the brakes suddenly failed. Dix tried to stop the van for a red light but the brakes failed to operate. As a consequence, Dix drove through the red light and collided with a car driven by Lorg.

Subsequently, Lorg asserted a claim against Dix to recover for the injuries she suffered in the accident. At the trial, the only evidence offered by the plaintiff concerning the cause of the accident was the testimony of Polk, an engineering expert. He testified that a manufacturing defect had caused the brakes to suddenly fail. Based on the facts stated above, a motion by Dix to dismiss at the end of Lorg's case should be

(A) Granted, because Lorg presented no evidence that Dix was negligent

(B) Granted, because Lorg was neither the user or consumer of the defective product

(C) Denied, because Dix had a non-delegable duty to maintain the brakes in a safe condition

(D) Denied, because Dix is strictly liable for injuries caused by a manufacturing defect in an auto which he had purchased

Question 38 is based on the following situation.

Methuselah was getting along in years and wanted to ensure that the chinchilla ranch he had inherited from his father, who had inherited it from his father, would stay in the family for many years to come. Methuselah's eldest son, Lamech, predeceased him, leaving Lamech's son (Methuselah's grandson) Noah next in line to inherit the ranch. (Methuselah, being about as "old school" as one could possibly be, strongly believed in

primogeniture.) Noah, who was only 16 years old at the time, had never done well in school, but he seemed to enjoy spending his free time at the ranch, helping out however he could. Methuselah was concerned that, while Noah might want to run the ranch when Methuselah retired or died, Noah might not be able to handle the ranch's business affairs.

Desiring to provide Noah with training that would enable him to take over the business, Methuselah entered into a contract with Adam Keynes, a business consultant who lived in a nearby city and had particular expertise in farm and ranch finances and management. The contract provided that Keynes would meet with Noah one afternoon a week during the school year, and twice a week during the summer, to tutor Noah in accounting, economics, finance, and management, for three years or until Noah took over day-to-day management of the ranch, whichever occurred first. The contract further provided that, when Noah assumed the reins of the family business, Keynes would make himself available, up to 10 hours per week for the first two years, to consult with Noah on matters related to the family's business and the family's and Noah's personal finances. Methuselah agreed to pay Keynes an annual retainer of \$10,000, plus \$100 per hour until Noah's 19th birthday, and \$200 per hour thereafter. Methuselah and Keynes put the essential terms of the contract in writing and signed it, and Methuselah paid Keynes one-half (\$5,000) of the first year's retainer, with a promise to pay the other \$5,000 within 90 days.

Assuming that Methuselah and Keynes formed an enforceable contract, what is Noah's status with respect to that contract?

- (A) Noah is an incidental creditor beneficiary.
- (B) Noah is an intended creditor beneficiary.
- (C) Noah is an incidental donee beneficiary.
- (D) Noah is an intended donee beneficiary.

Question 39 is based on the following situation.

One Sunday afternoon the Los Angeles Raiders and Denver Broncos were playing a professional football game at Mile High Stadium in Denver. During the game, Flores, a Raiders' fan, went to the men's room. There were four other men, including Tripuka, in the restroom when Flores entered. Flores, who was wearing a Raiders cap, was standing at the urinal when Tripuka approached from behind and said, "The Raiders really stink, man." Flores turned around and remarked, "Listen slimeball, you smell worse than the stench from this urinal." Tripuka then punched Flores in the mouth. A fight ensued. During the fracas someone hit Flores over the head with a bottle, which caused him to suffer a serious concussion. Flores does not know for certain who struck him with the bottle. If Flores asserts a claim against Tripuka and the other three men (who were in the restroom during the fight) to recover for the head injury, will Flores prevail against Tripuka?

- (A) Yes, because Tripuka was the instigator who struck the first blow that started the fracas.
- (B) Yes, if Tripuka and the other men were acting in concert.
- (C) No, if it is proved that Tripuka did not actually strike Flores with the bottle.
- (D) No, unless there is evidence that Tripuka struck Flores over the head with the bottle.

Question 40 is based on the following facts:

Reggie often hung out on the street in front of Karry's convenience store. Reggie occasionally came in for purchases when he had some money. One night, he came in with a group of teenagers and bought a large quantity of beer. He began to come in with the kids every week or so. Karry received a notice from the alcohol regulatory board that underage purchasers might be buying alcohol through other purchasers, pointing out that kids had been approaching people with little money to entice them into purchasing alcohol on their behalf. For the next few weeks, Reggie came in every few days and bought a large quantity of beer, each time with the teenagers next to him. One day, an undercover police officer was in the store, and after questioning the group, he determined that Reggie was purchasing alcohol for the teenagers. While Karry's license to sell alcoholic beverages will certainly be reviewed, could she also face criminal liability for conspiracy?

- (A) No, because there is no evidence that Karry had an agreement with Reggie.
- (B) No, because Karry committed no crime in selling the alcohol to Reggie, as he is of legal age.
- (C) No, because the crime of conspiracy requires a criminal intent.
- (D) Yes, because an agreement to commit a crime could be inferred from her relationship with Reggie.

Question 41 is based on the following facts:

In preparation of his grandson Noah assuming control of the family business, Methuselah wanted to make some provision for the rest of his children and grandchildren. Methuselah telephoned Jimmy Mack, the local agent for Good Hands Insurance ("GHI"), and discussed life insurance and other estate planning options. He then called Doc Epstein who (his nickname notwithstanding) had provided legal advice and representation to Methuselah for many years, to get Doc's counsel on the various options Methuselah had discussed with Mack. A couple of days later, Methuselah met with Jimmy Mack and purchased four \$500,000 term life insurance policies. Each policy named one of his

daughters - Esther, Ruth, Susanna, and Judith - as the primary beneficiary of 50% of the face value of the policy, and each daughter's children as the primary beneficiaries of equal shares of the other 50% of each policy and secondary beneficiaries of their respective mother's 50%. When Methuselah purchased the policies, Esther had two children (Samuel and Micah), Ruth had three (Jonah, Joel, and Sarah), and Judith two (Daniel and Mary). Susanna was six months pregnant with her first child, Adam, who was born, as was his younger sister, Eve, before Methuselah died. The beneficiary designations on each life insurance policy listed Methuselah's daughter by name, but identified each daughter's children as, simply, "her natural or adopted children."

Suppose that Methuselah and Susanna had a falling out several months before he died, and Methuselah stopped paying the monthly premiums on the insurance policy of which she and her children were the beneficiaries. After Methuselah died, GHI refused to pay Susanna and her children the proceeds of that policy. Shortly thereafter, Susanna, whose grief following her father's death was compounded when she learned that he had left her nothing to provide for herself or her children took her own life.

If Adam and Eve (through their legal guardian) sued GHI to recover the proceeds of the policy naming Susanna and her natural or adopted children as the beneficiaries, which of the following defenses could GHI successfully assert to avoid liability?

- (A) Adam and Eve were not intended beneficiaries of the policy because they were unborn when Methuselah purchased the policy.
- (B) Methuselah and GHI mutually rescinded the policy when Methuselah ceased making premium payments.
- (C) Methuselah's failure to make premium payments when due was a breach of the policy terms, relieving GHI from any obligation to pay benefits on Methuselah's death.
- (D) Susanna's suicide voided GHI's obligation to pay Adam and Eve the 50% of the policy benefits on which Susanna was designated as the primary beneficiary and "her natural or adopted children" as secondary beneficiaries.

Question 42 is based on the following facts:

While shopping one day, Bill came across a black leather jacket that he had to have. Unfortunately, it was out of his price range. Bill slipped off his own inexpensive coat and put on the jacket. He went into the dressing room to try it on, where he also stopped to rip off the security sensor and the price tag. He continued to browse through the shop and made his way toward the exit, looking around him to be sure that nobody was observing him. A few steps out on the street, Bill was stopped by a security guard. He was subsequently arrested for larceny. Has Bill committed larceny?

- (A) Yes, because he intended to steal the jacket and left the premises.

- (B) No, because he intended to steal, but was unsuccessful.
- (C) No, because he was not trespassing.
- (D) No, because although he left the store, he was still in the vicinity of it.

Question 43 is based on the following fact situation.

Liz and her boyfriend, Lucus, were having dinner at the Golden Dragon Chinese restaurant in Chinatown when she excused herself to go to the bathroom. The restaurant was owned and operated by Wong. As Liz was walking past a table where Elliot, another customer, was seated, she slipped and fell on an egg roll that was lying on the floor. When she fell, her head struck a serving tray, which was located in the aisle. The fall caused Liz to suffer a severe concussion. Elliot knew that the egg roll was on the floor and, although he could have done so, he did not warn Liz. If Liz asserts a claim against Wong for the injuries she suffered from the fall, she will most likely

- (A) Recover, because the egg roll on the floor constituted an unsafe condition of the premises
- (B) Recover, if the egg roll was on the floor for a substantial period of time before the accident
- (C) Not recover, unless Wong knew that the egg roll was on the floor
- (D) Not recover, if Elliot was responsible for knocking the egg roll off his table

Question 44 is based on the following facts:

Methuselah's front door, moments before a scheduled tutoring session with Noah, Keynes was stopped in his tracks by a loud thump. When he turned to see what it was, Keynes saw a large, jagged rock that had been kicked up by the riding mower (which was being operated by local handyman Enos Slater) crashing into and through the windshield of his car, knocking off the rear view mirror, and imbedding itself in the leather upholstery of the driver's seat. The riding mower was manufactured by Yubotah, and Methuselah had purchased it fairly recently from Jared's Lawn & Garden, which is a "certified Yubotah dealer." Assume that the damage to Keynes' car was due to a defect in the mower that pre-dated Methuselah's purchase of it, and the manufacturer's warranty that came with the riding mower disclaims all implied warranties in favor of the express warranty and disclaims liability to persons other than the purchaser of the riding mower for anything other than personal injury.

Against whom could Keynes bring a colorable claim for breach of warranty under UCC Article 2?

(A) Only Yubotah, because Jared cannot be held liable for defective products that he does not manufacture.

(B) Only Jared, because Methuselah purchased the riding mower from Jared, not from Yubotah.

(C) Either Yubotah or Jared (or both), because a manufacturer is liable for its defective products regardless of whether it sells them directly to the consumer or through a retailer (as in this case), and a seller is liable for any defective product it sells, whether it manufactured the product or not.

(D) Neither Yubotah nor Jared, because the only injury Keynes suffered was to his property, not his person, and the manufacturer's warranty disclaimed liability for non-personal injury to third parties.

Question 45 is based on the following facts:

Juanita was the manager of the flower store. As such, she had full responsibility for ordering and pricing goods, hiring and firing employees, and promoting the store generally. One day she took home a fancy plant, sold it to her friend and kept the money. What crime has she committed?

(A) Embezzlement

(B) Larceny

(C) False pretenses

(D) Robbery

Question 46 is based on the following fact situation.

Late one evening, Rudy Rum entered Pete's Pub, a bar owned by Pete Brandywine. Even though Rudy was already visibly intoxicated, Bob the bartender, served him five bourbons. Bob's actions were contrary to Pete's explicit directions to his bartenders, as well as in violation of a state statute making it a Class B misdemeanor to serve alcoholic beverages to any person who is visibly intoxicated. When Rudy left the Pub, he staggered to his auto, barely sober enough to get into the car and started driving home.

Rudy had driven only three blocks from the bar, weaving back and forth across the highway, when he collided with another car driven by Butch. As a result of the accident, Rudy suffered a broken nose and Butch received severe facial lacerations and bruises. Seeing the men lying on the edge of the highway bleeding profusely, a bystander summoned an ambulance that rushed Rudy and Butch to Holmdale Hospital.

After Rudy's nose was reset, he was transferred to a room in the west wing of the hospital. In extreme pain, Rudy asked Nurse Nancy for a painkiller. Without seeking the doctor's approval, Nancy administered an injection of morphine, which she should have known to be an excessive dosage. Rudy died an hour after the injection; the cause of Rudy's death was morphine poisoning.

After Butch was treated for his facial wounds, an examination indicated that he was suffering from a hernia. Taking advantage of his hospitalization, Butch decided to undergo a hernia operation. As a result of a surgical error, Steve, the surgeon, performed the routine hernia operation unsuccessfully. Thus, following the surgery, Butch suffered an aggravation of the hernia condition. In a wrongful death action by the executors of Rudy's estate against Bob the bartender, the strongest argument on Bob's behalf would be that

- (A) Under the doctrine of respondeat superior, Pete would be vicariously liable for Rudy's death
- (B) Nurse Nancy's injection of the morphine constituted a superseding cause that relieved Bob of liability
- (C) It was unforeseeable that Rudy would die as result of his automobile injuries
- (D) Bob's liability for Rudy's injuries terminated after Rudy's operation to reset his broken nose

Question 47 is based on the following facts:

Girkin, the local City Councilman, owns a fast-food restaurant at 1st and Meridian. Because of his special position, he learns the Mayor and the Governor are making the final arrangements to move the state hockey team, the "Knuckleheads," to City. The ten-acre proposed site is very close to 1st and Meridian. Various general contractors are submitting bids to construct the sports complex. Girkin spends a large amount of money hiring marketing consultants and improving the restaurant at 1st and Meridian. After spending nearly all his savings, Girkin is invited to the Governor's mansion. Very late into the evening, he notices the Governor and Mayor engaged in a serious discussion. Girkin gets within earshot to hear, "Well, now that the sport complex deal has been finalized, let's start our downtown renovation program." Girkin gets himself into the conversation and excitedly exclaims, "It's finally going to happen!" Both the Mayor and the Governor nod yes. GK, Inc., one of the general contractors, is awarded the contract to build the sports complex by Mayor. SK Enterprises is an electrical sub-contractor who provided a subcontracting bid upon which GK, Inc.'s bid is based.

If SK Enterprises fails to perform, can Mayor sue GK, Inc.?

- (A) No, because Mayor had no donative intent towards the SK Enterprises.

(B) No, because Mayor would be a creditor beneficiary if she had advanced salary to GK, Inc.

(C) Yes, because Mayor would be a creditor beneficiary.

(D) Yes, because Mayor would have vested rights in the contract between SK Enterprises and GK, Inc.

Question 48 is based on the following facts:

Eric's job involved marketing corporate contracts for a national cellular communications company. In the course of his job, he often provided free phones and discounted service, on a discretionary basis, to important people working for his corporate clients. As such, he usually had many expensive, advanced mobile phones in his possession and the ability to provide service discounts, with very little oversight from the telecommunications company. As a favor to a personal friend, Eric gave her a new phone for free and provided her with discounted service. When his supervisor discovered this favor, Eric was fired. Can Eric be found guilty of embezzlement?

(A) No. He did not intend to embezzle from the company.

(B) No. He was merely providing equipment to people, not taking money.

(C) Yes. The statute likely encompasses the taking or conversion of property as well as money.

(D) Yes. His company fired him for abusing his discretion.

Question 49 is based on the following facts:

Starling arranged to undergo surgery. Lecter, her surgeon, did not inform Starling that he was HIV-positive because he genuinely believed it to be a private matter that posed no risk to Starling. Lecter carefully avoided cutting himself during surgery, and the surgery was successful. Six months after the surgery, however, Starling learned of Lecter's HIV status. She became extremely apprehensive, and took an HIV test, which, fortunately, proved to be negative. Nevertheless, the anxiety she suffered was extremely severe, and led to significant weight loss and other physical illness. Starling has contacted an attorney to determine whether she has a legal basis on which to pursue Lecter. The attorney is considering filing a battery claim on Starling's behalf against Lecter. Which of the following statements is most likely correct?

(A) Because Starling was in need of, and consented to, the surgery, a battery claim will fail.

(B) Because Lecter did not expose Starling to the HIV virus, a battery claim will fail.

(C) Because Lecter has rights to privacy and self-determination, and because he still possesses a license to practice medicine, his decision not to inform Starling of his status would not be deemed unlawful. Thus, a battery claim will fail.

(D) Because Starling's consent was not fully informed, the surgery constituted an offensive touching for which Lecter might be held liable in battery.

Question 50 is based on the following facts:

Driver injured Ped in an auto accident. Ped hired Axel, an attorney, to represent him. Ped explained to Axel that he was poor and couldn't afford the needed medical treatment. Concerned for his client's health, Axel wrote into their contract that he would promise to "pay from any settlement with Driver, compensation to any physicians who treated Ped for his recently sustained injuries." The contract also stated that Axel's duties were non-assignable. Suit was then filed against Driver. Ped sought medical treatment from Doctor. The total medical costs were \$1,500. Ped did not inform Doctor of Axel's promise.

When Doctor asked for payment, Ped told Doctor he was unable to pay and gave Doctor a copy of the contract he had with Axel. Axel then requested a release from his contract. He refers Ped to attorney "Grease." Ped agreed to the release and to representation by Grease. Grease negotiates a settlement with Driver on behalf of Ped, for \$1,500. Ped spends the \$1,500 paying old bills he owes. Ped does not make payments to Doctor. Ped remains penniless.

If Doctor brings an action against Ped to recover the \$1,500, what is Doctor's best theory of recovery?

- (A) Doctor provided necessary health services
- (B) Doctor has a valid claim based upon an implied-in-fact contract
- (C) Doctor is a creditor beneficiary
- (D) Doctor is a donee beneficiary

Question 51 is based on the following facts:

Sara was at home and turned on the TV to watch a program at 8 p.m. She heard someone on her porch. Thinking it was her boyfriend, she opened the front door. On her porch was a strange man who demanded she let him in the house. When she refused, he pulled out a knife. Sara, fearful for her life, let him in. Once inside, he searched the house for valuables, took her engagement ring and cash from a drawer and then left the house. Under the common law definition, has this man committed burglary?

- (A) Yes, because he constructively met all of the requirements for burglary.
- (B) Yes, because he robbed her in her home.
- (C) No, because he did not commit a breaking to gain entry.
- (D) No, because the crime occurred early in the evening.

Question 52 is based on the following facts:

Joe contacted Ed's Marina concerning the purchase of a motorboat. Joe indicated that he needed to use the boat at a water ski show at Marine World, and that the boat would be pulling 10 skiers at a time, at 35 miles per hour.

Ed directed Joe to a used "Starcraft" boat with a 175 horsepower outboard motor. Ed stated, "This baby has a lot of power and you'll be able to pull 20 skiers at 35 miles per hour if you decide to increase the size of your show."

When Joe tried to pull more than 5 skiers, the boat could not muster more than 15 miles per hour. In addition, one week later the motor blew up. Joe contacted Ed about the problems, and was refused a refund. Joe sues Ed for breach of contract. What result?

- (A) Joe wins because Ed made an express warranty to Joe.
- (B) Joe wins because of Ed's implied warranty of merchantability, which accompanied the sale to Joe.
- (C) Joe will lose because he should have tried out the boat before his purchase.
- (D) Joe will lose because the UCC does not apply to used goods.

Question 53 is based on the following facts:

Sam and Rebecca, teenagers in love, were playing tag in the park. Rebecca was "it," and within a few minutes caught Sam. Rather than lightly tapping him, however, she hit him in the jaw with her fist, breaking one of his teeth. She had not intended to break a tooth, only to smack him in fun. Sam sues Rebecca for battery to recover for his broken tooth.

Which of the following statements is most accurate?

- (A) Sam will prevail because Rebecca, in exercising her right of self-defense, exceeded the force reasonably necessary to repel Sam's attack.

(B) Sam will prevail because Rebecca, by striking him so hard, exceeded the scope of his consent to a touching.

(C) Rebecca will prevail because, by agreeing to play the game, Sam consented to touches that would otherwise constitute batteries.

(D) Rebecca will prevail because she did not intend to break Sam's tooth.

Question 54 is based on the following facts:

Sam hated Keesha because she was more popular than he. One evening, he grabbed Keesha outside her house and threw her into his car. Sam drove to a remote location and shot Keesha. Amazingly, Keesha was found alive and taken to a hospital. Keesha lay in a coma as a result of the gunshot and died 395 days later. Under the common law, is Sam guilty of murder?

(A) Yes, because Sam had the intent to kill Keesha and she died as a result of his actions.

(B) No, because Keesha died too long after she was shot.

(C) No, because Sam only wanted to hurt Keesha, not kill her; he hoped that someone would find her.

(D) No, because Sam was clearly crazy; a sane person would not shoot another person in this situation.

Question 55 is based on the following facts:

Bill's Boats ("Bill's"), a boat supply store, sent a purchase order to Marine Wholesalers ("Marine") on July 7. Marine wholesales boat engines and parts. The purchase order stated, "Please send immediately two Viking outboard motors at your current list price of \$350 each."

Marine received the order on July 9. Since Marine only had one Viking motor in stock, it shipped one Viking motor and one Sputter motor to Bill's. The Sputter motor had comparable features to the Viking motor, but sold for \$100 less than the Viking. Was an enforceable contract formed upon Marine's shipment of the motors?

(A) Yes, because Marine's shipment constituted an acceptance.

(B) Yes, because Marine acted in good faith in shipping the motor.

(C) No, since Marine could only accept Bill's offer by a return promise.

(D) No, because Marine's shipment of non-conforming goods was not an acceptance, but a counter-offer.

Question 56 is based on the following facts:

College student Cindy uses an old laptop computer with an archaic operating system. Despite some teasing from her social circle, she is content with this laptop. One of her friends, Francine, could not imagine how any laptop user could tolerate such low speed, poor screen resolution, and frequent system failures. One day when she knew Cindy was in class and not using the laptop, Francine went to Cindy's dormitory room. Francine told Cindy's roommate that she had come to upgrade Cindy's laptop. "About time," said the roommate, admitting Francine to the room. Francine remained there, installing the new system. She had it ready to go by the time Cindy returned from class. Much to Francine's disappointment, Cindy expressed displeasure about Francine's behavior. It turned out that Cindy had planned to enter her laptop in a competition called "The World's Greatest Clunker," which featured prizes in various categories for archaic computers. Cindy can prove that she probably would have won. Does Cindy have a tort claim against Francine?

(A) No, because any potential claim is eliminated by the roommate's consent.

(B) No, because Cindy experienced only benefit, and no detriment, from Francine's behavior.

(C) Yes, for trespass to chattels, if Francine's upgrade lowered the value of the laptop in the "World's Greatest Clunker" competition.

(D) Yes, for trespass to land, if Cindy can establish that the roommate did not have authority to approve entry to the dormitory room for this purpose.

Question 57 is based on the following facts:

Marie told William she was pregnant with his child. William was not pleased and decided to leave town. Five months later, William returned and attacked Marie. William punched Marie in the abdomen several times, saying he hoped the baby would die. Marie immediately went into premature labor and gave birth to a girl. In order to convict William of murder under the common law, does it matter if the baby was born alive and died minutes later, or if she was stillborn?

(A) No. In both cases William had the intent to kill and committed the act resulting in the baby's death.

(B) No. William cannot be found guilty of murder in either case because the act in both cases was committed before the baby's birth.

(C) No. In both cases there may have been other reasons why the baby died.

(D) Yes. A baby must be born alive for a defendant to be found guilty of murder, which involves the killing of a person.

Question 58 is based on the following facts:

On August 21, Canco, a vegetable canning company, sent the following letter to Grocer:

"Have 50 cases of canned corn available at \$10.50 per case. This offer will remain open for acceptance until October 1. Please reply if interested."

On September 1, Grocer sent a fax to Canco which stated:

"Please be advised that I accept your offer dated August 21. However, I would appreciate delivery of 25 cases in October and 25 cases in November, if possible."

According to the facts, could Canco revoke the offer before October 1?

(A) No, because Canco had given Grocer assurance that the offer would remain open.

(B) No, because both parties are merchants.

(C) Yes, because there was no consideration for keeping the offer open.

(D) Yes, since Grocer relied to its detriment.

Question 59 is based on the following facts:

After Emily nearly ran June down with her car, Emily pulled the car to the curb and got out. As she approached June, June moved toward her with her fists in the air, and yelled, "If you weren't bigger than me, I'd punch your lights out right now!" Emily believed June was going to hit her, and struck first, breaking June's nose. In fact, June only intended to argue with Emily, not to punch her. If June sues Emily for battery to recover for the broken nose, which of the following is most likely correct?

(A) Because June's words conveyed her intention not to punch Emily, the court should rule as a matter of law that Emily did not have a privilege to punch June first.

(B) Even though June's words conveyed her intention not to punch Emily, the court should permit the jury to decide whether Emily was privileged to punch June first.

(C) If, due to their difference in size, June did not have the apparent means to hurt Emily, Emily had no privilege to punch June first.

(D) If Emily intended to harm June, Emily will be liable as a matter of law.

Question 60 is based on the following facts:

James was seriously injured in a car accident when the driver of another car swerved into his lane. After being transported to the hospital, James's heart was still beating. Nonetheless, he was connected to a respirator, was being tube-fed, and exhibited no reflexes or brain stem activity. If the doctors disconnect him from life-support, is the driver of the car that hit James guilty of a homicide offense under modern statutes?

(A) No, because James's heart was beating at the time of the doctors' actions.

(B) No, because the doctors killed James when they turned off the life support.

(C) Yes, because James was brain dead.

(D) No, because a homicide offense cannot be based on a car accident.

Question 61 is based on the following facts:

Shoe Heaven ordered 1000 pairs of children's shoes in specified sizes and styles from Cobbler Distributing. Delivery was requested on May 1, with payment to be due 30 days from delivery. Cobbler found it could only fill the order to the extent of 900 pairs. Without communicating with Shoe Heaven, Cobbler shipped the 900 pairs of shoes. On receipt of the shoes on April 30, Shoe Heaven rejected the shipment. Assuming that Cobbler is now suing Shoe Heaven for breach of contract, which of the following is the most likely outcome?

(A) Judgment will be for Cobbler because he substantially performed.

(B) Judgment will be for Cobbler, but Shoe Heaven will be entitled to set off any damages attributable to the non-delivery of the 100 pairs of shoes.

(C) Judgment will be for Shoe Heaven because Cobbler had not filled the order according to its specified terms.

(D) Judgment will be for Shoe Heaven, but only because a 10% deficiency in the amount delivered would be considered a substantial failure of performance.

Question 62 is based on the following facts:

Editor Edsel printed a story in a daily newspaper, the Succotash Times that described state senator Burt Bumpkin as corrupt. The story relied on an extensive, tape-recorded interview with a grandfather figure of organized crime, Magoo, who recalled his illegal

contributions to Bumpkin's election campaign in the last year. Everything in the story that described Bumpkin's corruption was conveyed in quotations attributed to Magoo. Investigation has now revealed that Magoo suffers from senile dementia and in the interview had confused Bumpkin with another politician, long dead, whom he had bribed in decades past. His reminiscences about Bumpkin were false. Bumpkin brings an action against Edsel and the Succotash Times. Which of the following additional facts, if substantiated, would most strengthen Bumpkin's claim?

- (A) During the interview, Magoo frequently referred to Bumpkin by the wrong name and apparently had trouble finishing his sentences.
- (B) While admitting that he is a public figure, Bumpkin has asserted his "right to privacy" when reporters were investigating rumors of his marital infidelity.
- (C) Edsel is a close friend of Bumpkin's archrival in the state senate, and actively desires the downfall of Bumpkin's career.
- (D) The Succotash Times employs fact-checkers and prints a "Corrections" notice in each day's edition.

Question 63 is based on the following facts:

Abdul and Eric had never met before, but they were in the same cafe when a brawl started. Caught up in the mayhem, Abdul swung wildly and punched Eric in the face. Eric died from the injuries. Is Abdul guilty of murder?

- (A) No, because Abdul did not intend to kill Eric.
- (B) No, because Abdul did not have the necessary state of mind for murder.
- (C) Yes, because Abdul intended to commit serious bodily injury to Eric.
- (D) Yes, because Abdul acted recklessly.

Question 64 is based on the following facts:

Farmland is a three-acre dairy farm with a small residence upon it. Oliver, the owner of Farmland, entered into a written lease with Terry for the rental of Farmland on a month-to-month basis, at a rate of \$1,600 per month. After Terry had been in possession for several years, Terry and Oliver orally agreed that Terry would purchase Farmland for \$48,000 payable at a monthly rate of \$1,600 (which included principal and interest) for 30 years.

Further, it was agreed that Terry would pay all future property taxes and the expenses for insuring Farmland against fire loss. Oliver agreed that after receiving \$24,000 in payments, Oliver would tender the deed to Farmland to Terry, and Terry in exchange, would execute a note secured by a deed of trust for the balance of the unpaid purchase price.

Terry, now being a homeowner, made over \$2,000 in improvements on the property. When Terry had tendered \$24,000 to Oliver, Oliver, although not denying the oral agreement, refused to tender the deed to Farm- land. Terry brought an action against Oliver for specific performance.

If Oliver prevails, it is because:

- (A) Nothing Terry would have done would have overcome the agreement not being in writing.
- (B) The actions and payment of Terry are consistent with her being a tenant.
- (C) Oliver has not received any unconscionable benefit, and there- fore Terry is not entitled to equitable relief.
- (D) The Statute of Frauds controls.

Question 65 is based Oil the following facts:

Oil Company owns an oil refinery in a sparsely-populated area. Although the refinery is a "state of the art" operation, it occasionally releases noxious, but harmless, gas into the atmosphere.

Stan recently leased land adjoining Oil Company's refinery and occupies a home on the property. Stan complains that the gas released by the refinery sometimes makes him nauseous. If Stan sues Oil Company over the gas, his best theory of recovery will be for:

- (A) Strict liability for abnormally dangerous activities.
- (B) Private nuisance.
- (C) Public nuisance.
- (D) Negligence.

Question 66 is based on the following facts:

A man went into a high school and took an unattended backpack. As he was slowly driving his car out of the school parking lot, he accidentally hit and killed a student who ran out from behind a parked car. Is the man guilty of murder?

- (A) No, because the man did not intend to hit the student.
- (B) No, because larceny of a backpack is not an inherently dangerous felony.
- (C) Yes, because the man killed the student while leaving a crime scene.
- (D) Yes, because the man could not have hit a student without being grossly reckless.

Question 67 is based on the following facts:

Would the man be guilty of murder if, instead of stealing an unattended backpack, he took the backpack from its owner at gunpoint before accidentally hitting the student?

- (A) No, because it was an accident.
- (B) No, because the robbery was completed prior to killing the student.
- (C) Yes, because the student was killed during the commission of a violent felony.
- (D) Yes, because the student died as a result of being hit by the thief's car.

Question 68 is based on the following facts:

Coiner, a retail coin dealer, purchased a 1916 dime from Investor for \$500. The "D" stamped on the coin indicated it had originated at the Denver mint, making it a rare issue. Coiner's owner, Barry, examined the coin before the purchase. Coiner resold the rare coin to Denny, for \$750. Denny later found out that the coin was a counterfeit. Denny sued to rescind its purchase of the 1916 dime from Coiner. The court will:

- (A) Allow rescission of the contract because of a misrepresentation.
- (B) Allow rescission of the contract because there was mutual mistake.
- (C) Not allow the contract to be rescinded because there was no warranty made.
- (D) Not allow rescission of the contract because buyer assumed the risk upon purchase

Question 69 is based on the following facts:

In the course of conducting an audit for Brown Company, Accountant carelessly computed asset totals. As a result, the audit report stated that Brown Company was substantially stronger financially than it was. Federal Bank relied on the audit when it approved a \$1 million loan to Brown Company. Brown Company is now insolvent and unable to repay the \$1 million loan to Federal Bank. If Federal Bank decides to sue Accountant, its most promising cause of action is for:

- (A) Common law deceit.
- (B) Negligent misrepresentation.
- (C) Innocent misrepresentation.
- (D) None of the above.

Question 70 is based on the following facts:

Ray Rogers Jr. purchased an automobile from a car dealer, Auto, on August 15, 1992. On that date, Rogers was 17 years old and would be 18 on September 25, 1992. Ray executed a purchase money security agreement to finance \$4,724, the balance due on the purchase price of the automobile, payable in thirty installments of \$198.10 each. Auto subsequently assigned the purchase money agreement to Union Fed Bank.

After making 11 monthly payments, Rogers voluntarily returned the automobile to Auto, and defaulted on his payment obligations. Upon default, Union Fed Bank reassigned the purchase money security agreement to Auto. Auto sold the automobile at public auction for \$1,400, leaving a deficiency of over \$4,510.

Auto now brings suit against Rogers to recover the deficiency. Judgment will be for:

- (A) Auto, because Rogers affirmed the contract.
- (B) Auto, because a minor cannot disaffirm a contract after reaching the age of majority.
- (C) Rogers, because contracts entered into by minors are voidable.
- (D) Rogers, because by returning the car to Auto, Rogers properly disaffirmed the contract.

Question 71 is based on the following facts:

Arnold and Tina were at a party. They did not know each other. Tina was a petite woman, weighing just 105 pounds. Arnold was a bodybuilder and weighed well over 200 pounds. Tina drank more than she could handle and went to an upstairs bedroom for a nap. Arnold saw Tina go upstairs. Twenty minutes later, he went up and saw that she was asleep in the bed. He pulled down his pants and without saying anything, began to fondle Tina's body, and then laid on top of her. Tina awoke, looked at Arnold, but said and did nothing. She later testified that she did nothing because she was terrified that Arnold would harm her if she did. Arnold then inserted his penis inside Tina and ejaculated. Is Arnold guilty of the crime of rape?

- (A) No. Arnold did not realize that Tina did not wish to have intercourse with him.

- (B) No. Tina's silence, after opening her eyes, could be taken as consent to the act.
- (C) Yes. Tina did not consent to the act.
- (D) Yes. Tina did not expressly consent to the act.

Question 72 is based on the following facts:

Rhonda went to Clay's Cars to purchase a used car. Clay's salesman, Harry, showed Rhonda a 1985 Crevet. Harry stated that the Crevet was "a honey of a car, a one of a kind steal for the money." Rhonda relied on Harry's statements and purchased the vehicle from Clay's Cars "as is." The Crevet's engine failed soon after Rhonda purchased it. If Rhonda sues Clay's Cars for common law deceit, the result will be:

- (A) Rhonda will recover because Clay's Cars is vicariously liable for the fraud of Harry.
- (B) Rhonda will recover because it is fraud to sell a car "as is."
- (C) Rhonda will not recover because she could not justifiably rely on Harry's opinion.
- (D) Rhonda will not recover because the "as is" clause in the contract insulates Clay's Cars from liability for a deceit action.

Question 73 is based on the following facts:

Kemper submitted a bid to City to do piping work for a sewer project. The City requires that ten percent of the bid price be posted as a bond, in favor of the City, guaranteeing that the bidder would do the job for the bid price if awarded the contract. Kemper gave a bid at \$780,305. Three competing bids were \$1,049,592, \$1,183,000, and \$1,278,895. Kemper discovered a few hours later, after the bids were opened, that there was a \$301,769 error in his computations, in which he relied upon in making the bid. Kemper explained the error to City and withdrew his bid, but City accepted the bid anyway.

Kemper refuses to enter into a contract with City at the mistaken bid price. Kemper sued to rescind the bid. Kemper will:

- (A) Prevail, because Kemper made a material mistake.
- (B) Prevail, because City would be unjustly enriched if Kemper has to perform.
- (C) Not prevail, because City relied on the bid.
- (D) Not prevail, because once a bid is submitted, it cannot be withdrawn.

Question 74 is based on the following facts:

College student and athlete Ginny was studying late in a remote part of the library one night. Coach Bill saw her and sat down next to her and talked with her. He then put his hand on her knee and she pushed it away. Bill told her that she had to have intercourse with him and that if she refused, he would have her athletic scholarship revoked. Bill then had sexual intercourse with Ginny without any voiced objection by Ginny. In most jurisdictions, can Bill be convicted of the crime of rape?

- (A) No, because Bill did not use or threaten physical force.
- (B) No, because Ginny did not expressly object to the sexual act.
- (C) Yes, because rape is now understood to include coercive acts.
- (D) Yes, because Ginny demonstrated a clear lack of consent.

Question 75 is based on the following facts:

Brakeco is a manufacturer of hydraulic brake systems. Its chief competitor is Stopco. In an effort to cut into Stopco's sales, Brakeco distributed a brochure to potential Stopco customers in which Brakeco favorably compared its product to Stopco's. The brochure contained numerous false and derogatory statements of fact about Stopco's hydraulic brake systems. Six months after the brochure was distributed, Stopco began experiencing a drop in profits. If Stopco decides to sue Brakeco, the most appropriate cause of action would be for:

- (A) Libel.
- (B) Trade libel.
- (C) Trade slander.
- (D) Common law deceit.

Question 76 is based on the following facts:

Thompson's Dry Goods Store published the following advertisement in the Silver City Morning News on Monday, March 12, 2008:

"8 Brand New STETSON COWBOY HATS Beaver Felt, selling for \$72.50 ... out they go .. , Sat. March 17, Each ... \$5.00

1 Navajo Turquoise Necklace ... worth \$125.00, now selling for \$40.00 ...

"FIRST COME, FIRST SERVED"

On the following Saturday, Roy was the first person to arrive at the store and demanded the necklace. The store clerk refused to sell it to him because it was a "house rule" that the sale was intended for women only.

If Roy brings suit against Thompson's Dry Goods for its refusal to sell him the necklace, Roy will

- (A) Lose, since the advertisement was only intended as an invitation to make an offer.
- (B) Lose, since Roy did not notify the Store in writing that he intended to accept the offer.
- (C) Win, because the advertisement should be construed as a binding offer.
- (D) Win, even if Roy was not the first customer to appear at the store to purchase the necklace.

Question 77 is based on the following facts:

While walking toward the grocery store one evening, Maggie saw a stranger in the parking lot staring at her. Maggie, a petite woman 5'2" and 100 lbs realized that the stranger was significantly larger 6'5" and 250 lbs. She also noticed that he wore dark clothing and had his coat collar standing up, obscuring much of his face. Maggie completed her shopping and walked back out into the parking lot where she again saw the man, standing about 100 feet from her to her left. She began to walk briskly to her car, parked 100 feet to her right. When she arrived at her car, she looked in the reflection in the car window and noticed the man was moving quickly toward her. While opening the trunk of her car, Maggie could hear the man mumbling incoherently. As she placed the groceries in the trunk she recalled her son's baseball bat was in the trunk. She turned around and the man was now only 10 feet away, still walking toward her. When she saw him reach into his pocket, she grabbed the baseball bat and swung at him, striking him squarely on the side of his head. Should the court allow a jury instruction on self-defense?

- (A) No, because the man did not take any specific aggressive actions toward Maggie.
- (B) No, because Maggie was at her car and had a duty to retreat.
- (C) Yes, because the man was bigger than Maggie and was acting in a threatening manner.
- (D) Yes, because Maggie truly believed that she was in imminent danger.

Question 78 is based on the following facts

Laura, a famous diplomat, entered into a contract with X College in which she agreed to teach international relations for one year. Because of her special expertise, the contract provided a large salary. Under the contract's terms, Laura agreed she would not teach at another college in the same city during the contract term.

Y College, which is located in the same city as X College, learned about the contract and decided to offer Laura more money to teach the same courses. Laura decided to accept Y College's offer. When Y College made public the fact that Laura would be teaching there, enrollments at X College's international relations program dropped dramatically. If X College sues Y College for damages resulting from Y College's actions:

- (A) X College will not recover because Laura has the right to an efficient breach of the contract.
- (B) X College will not recover because Y College did not breach any agreement.
- (C) X College will recover, but only if Y College intentionally interfered with the contract between Laura and X College.
- (D) X College will recover, whether Y College acted intentionally or otherwise when it interfered with the contract between X College and Laura.

Question 79 is based on the following facts:

Debtrix owed Creditor \$750 on an old debt. On July 1 the debt was barred by the statute of limitations. On August 1 Debtrix ran into Creditor at a party and overheard him telling mutual friends that "Debtrix is a deadbeat." Feeling pangs of guilt, Debtrix approached Creditor and orally agreed to pay him the \$750 debt on September 1.

Assume that Debtrix refuses to pay Creditor the \$750 as promised on September 1. If Creditor sues Debtrix to recover the \$750 debt, which would provide the strongest grounds that Debtrix's oral promise was unenforceable?

- (A) It was not supported by new consideration.
- (B) It was violative of the statute of frauds.
- (C) The debt was already barred by the statute of limitations.
- (D) There was no mutuality of obligation.

Question 80 is based on the following facts:

Two uniformed police officers improperly stopped Jen as she walked home. They asked her what she was doing. She brushed past them, remarking that she was going home. The police officers stopped her again, and told Jen that they would like to talk with her. Jen told the officers that she had not done anything wrong, and she attempted to walk away again. The officers then stepped in front of Jen. She fought them, biting, scratching, and pulling the officers' hair. Ultimately, the officers got Jen into handcuffs and into a police car. Was Jen legally justified in her response to the officers?

- (A) No, because our system protects police officers from being endangered needlessly.
- (B) No, because Jen started the fight.
- (C) Yes, because citizens have a right to resist unlawful arrests.
- (D) Yes, because Jen was outnumbered by the two officers.

Question 81 is based on the following facts:

Logan and Adam were students in Professor Smith's Physics class. Much to Professor Smith's disgust, the students were conversing loudly during his lecture. Professor Smith decided to "get Logan's and Adam's attention" by throwing a pen over their heads. The students saw the pen coming toward them and ducked to avoid being hit by it. Unfortunately, the pen struck Davey, a student seated behind Logan. Davey suffered a serious eye injury as a result. If Logan and Adam sue Professor Smith, the most likely outcome will be:

- (A) Logan and Adam will recover for intentional infliction of emotional distress.
- (B) Logan and Adam will recover for assault.
- (C) Logan and Adam will not recover because the pen did not strike them.
- (D) Logan and Adam will not recover because Professor Smith did not intend to hit them with the pen.

Question 82 is based on the following facts:

On Friday, February 13, Orlando dispatched the following letter to Juan:
"Dear Juan,

My Volvo hasn't been running very well lately. I'll pay you \$275 if you will change the oil, replace the oil filter, and adjust the carburetors.

Orlando
{s}Orlando"

Juan received Orlando's letter on Monday, February 16. That same day, he telephoned Pep Boy's Auto Supply Co. and ordered the necessary materials to perform the repair

work. Two days later, however, Orlando met Juan at a party and this conversation took place:

Orlando: "Disregard the letter that I sent you last week:'

Juan: "No way, man, I ordered the materials on Monday from Pep Boys:'

Orlando: "Sorry, man, but I sold the Volvo yesterday to Leon, so forget the repair work:'

If Juan initiates suit for breach of contract, which of the following is Orlando's strongest argument that no enforceable contract was formed between him and Juan?

- (A) Juan had not completed performance before Orlando revoked his offer.
- (B) Orlando's offer could only be accepted by a return promise.
- (C) Since Orlando made his offer by letter, Juan could accept only in the same manner.
- (D) Although Juan was preparing to perform the repair work, he had not begun the requested acts of acceptance when Orlando revoked his offer.

Question 83 is based on the following facts:

Brad screamed obscenities at Jared. Jared turned and shoved Brad. The two exchanged shoves for a short while. Brad then pulled a knife and made stabbing motions toward Jared, inflicting Jared with several minor cuts. Can Brad claim self-defense for his use of the knife?

- (A) No, because Brad started the argument.
- (B) No, because Brad escalated the altercation.
- (C) Yes, because Jared started the fight.
- (D) Yes, because Jared was not hurt badly.

Question 84 is based on the following facts:

Heidi is schizophrenic. She often sees people and hears voices that are not there telling her to do things that she knows are wrong. One day she hears a voice tell her, "If you don't burn down that bank over there, you're going to die." Heidi cannot resist the voice, but waits until the bank closes so that at least no one will be killed. She throws a firebomb in the window and the building goes up in flames. A night watchman is trapped inside and dies.

Heidi will have an insanity defense in a jurisdiction governed by:

- I. *M'Naghten*
- II. Irresistible impulse
- III. MPC Substantial Capacity

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

Question 85 is based on the following facts:

Kirby Construction Co., in preparing its bid for the construction of a new hospital, received a quote of \$120,000 from Kat's Interior Inc to do the kitchen within the new hospital. This bid was \$30,000 lower than Kirby's next lowest bid for the kitchen work. As a result, Kirby used Kat's bid and lowered its bid by \$20,000 before submitting it to the hospital board. After Kirby was awarded the construction bid, Kat's president discovered that in his preparation of the quote, he had overlooked some subsidiary kitchen installments required by the plans.

Immediately thereafter, Kat's Interiors brings suit for rescission of the contract. It should

- (A) Succeed, because of Kat's unilateral mistake.
- (B) Succeed, because the mistake was an essential element of the bargain.
- (C) Not succeed, unless Kirby knew or should have known of Kat's error.
- (D) Not succeed, since the computation mistake was antecedent to acceptance of the bid.

Question 86 is based on the following facts:

Richard was walking to his car in a busy parking lot. He saw a man step out from behind another car and grab a child. The mother of the child began screaming, "he's got my baby!" The man had no visible weapon. Would Richard be justified in attacking the man?

- (A) No, because defense of others is limited to those with special relationships.
- (B) No, because Richard does not have all of the facts.
- (C) Yes, if Richard uses a reasonable amount of force based on a solid belief that a child was being abducted.

(D) Yes, Richard can act because the child would be justified in attacking the man.

Question 87 is based on the following fact situation:

Gasca stores and manufactures acid gas on its premises. Early one morning a leak developed in the connecting lines between the tanks. The leak was not the fault of Gasca. The escaping gas forms a greenish cloud. Before the greenish cloud of acid gas reached the point of dispersal it made contact with a cable repairman who was repairing a cable atop a telephone pole. The repairman did not see the cloud and he inhaled the gas, which caused him to black out and fall from the pole, sustaining severe injuries. In a suit by cable repairman against Gasco, which of the following legal theories should he base his cause of action?

- (A) Battery
- (B) Private nuisance
- (C) Strict liability
- (D) Negligence

Question 88 is based on the following facts:

On March 1, Homeowner and Painter entered into a written contract wherein Painter promised to paint the exterior of Homeowner's house and Homeowner promised to pay Painter the sum of \$3,000. According to their agreement, Homeowner was to pay the money to Graduate, Painter's son. Painter intended the \$3,000 to be a law school graduation present.

Prior to the signing of the contract, Homeowner and Painter orally agreed that their agreement would be null and void unless Homeowner was able to obtain a \$3,000 loan from National Bank before April 1. Graduate was not informed about the agreement between his father and Homeowner. On March 31, Homeowner was informed by the National Bank that his loan application had been rejected. The next day, Homeowner telephoned Painter and informed him that the deal was off.

If Painter brings an action for breach of contract against Homeowner, would the latter's inability to secure the loan provide him with a valid defense?

- (A) No, because Homeowner is estopped to deny the validity of the written contract.
- (B) No, because the agreement regarding the loan varied the express terms of the writing.
- (C) Yes, because the agreement regarding the loan constituted a valid modification of the writing.

(D) Yes, because the loan agreement was a condition precedent to the existence of the contract.

Question 89 is based on the following facts:

Melissa left her fancy, expensive car running in front of a store while she went inside to buy some milk. As she walked out of the store, she saw a stranger opening her car door. Melissa yelled and pulled a handgun from her purse. She told the stranger to move away from her vehicle. The stranger looked at Melissa and turned to climb into the car. Melissa shot and killed the would be thief. In response to a murder charge, can Melissa successfully claim defense of property?

(A) No, because shooting someone is never justified.

(B) No, because deadly force is not justified solely for the protection of property.

(C) Yes, because the use of force is permitted to prevent or stop the imminent theft of property.

(D) Yes, because the car was very expensive, the use of deadly force is warranted.

Question 90 is based on the following facts:

Otis is the owner of a small paint and hardware store. One of Otis' clerks had negligently stacked a number of rolled window shades behind the customer service counter. The area behind the customer service counter was not open to the public. Mrs. Patron entered the store one afternoon looking for some vinyl tile, accompanied by Martha, her 6-year-old daughter. Martha walked unseen behind the counter and tried to climb atop of the pile of rolled window shades. Because of how the window shades were stacked, they fell. Several of the heavy shades landed on Martha, causing serious injuries to her. In order for Martha to recover for her injuries, an appropriate action would be:

(A) Negligence.

(B) Doctrine of Respondeat Superior.

(C) Strict Liability.

(D) There is no appropriate action because Otis was not negligent.

Question 91 is based on the following facts:

On February 28, Foodtown Supermarket entered into a written contract with Citrus Produce Co. to purchase oranges. The contract contained a provision wherein Foodtown promised to purchase "as many oranges as required in shipments of about 100 bushels per

month, at a price of \$20 per bushel, until November 1. The agreement also provided that any modifications must had to be in writing.

On March 1, Citrus shipped Foodtown 70 bushels of oranges, which were accepted and paid for. On April 1, Citrus tendered 80 bushels of oranges, which Foodtown accepted and paid for. The next month, Citrus delivered 100 bushels of oranges to Foodtown. This shipment was accepted on May 1 and also promptly paid for.

On May 2, however, Perkins, the manager of Foodtown, became concerned because a Florida drought had resulted in a sharp increase in the price of oranges. The month before, the market price for oranges had risen to \$50 per bushel. Consequently, Perkins consulted Aarons, Foodtown's attorney, who advised him to demand adequate assurances that Citrus would perform its obligations under the terms of the contract. Heeding Aarons' advice, Perkins sent a letter to Citrus the next day expressing his concern and requesting an adequate assurance of due performance for the balance of the contract. This letter was received by Citrus on May 4. Twenty days have elapsed, and Citrus has not yet responded.

Which of the following best states Foodtown's legal rights against Citrus?

- (A) Foodtown can cancel the contract on June 1, cover immediately, and then sue for damages.
- (B) Foodtown can wait until the June 1st shipment; if Foodtown doesn't get the oranges, it can demand assurances again, and then sue for damages if it doesn't obtain them.
- (C) Foodtown can wait until November 1, and then sue for damages.
- (D) Foodtown can wait until June 4; if adequate assurances are not received, it can then cancel the contract, cover immediately, and sue for damages.

Question 92 is based on the following facts:

Santiago had just put his two young children to bed and was lying in bed reading a novel. He heard a garbage can topple over in his driveway and then heard a window in the kitchen shatter. On his way downstairs to investigate, he took a metal golf club out of his golf bag. Descending the stairs, he came face to face with a burglar standing at the foot of the stairs. Santiago swung the golf club overhead and landed a blow directly to the burglar's skull. Was Santiago justified in acting as he did?

- (A) No, because the burglar was not clearly going to injure Santiago.
- (B) No, because Santiago should have attempted non-violent methods of preventing the burglary.

(C) Yes, because the use of deadly force is permissible when one's home is invaded.

(D) Yes, because Santiago could reasonably have believed that attempting to stop the burglar with non-deadly force would have put his family in danger.

Question 93 is based on the following facts:

While Jogging down a crowded street, Jogger noticed a beautiful brunette ahead. At that moment, Jogger was not watching where he was going. He stepped in a pothole and lost his balance. In order to keep from falling, Jogger grabbed Brunette by the arm. If Brunette brings a cause of action, jogger will most likely be found:

(A) Not liable, because Brunette was not hurt

(B) Not liable, because jogger's conduct was acceptable under the circumstances

(C) Liable for battery

(D) Liable for assault

Question 94 is based on the following facts:

Assume for the purposes of this question only that on May 6, Bryant, Citrus's president, telephoned Perkins and told him that he was willing to make up for the past shortages and that all future shipments would be conforming. Realizing that the price of oranges had increased quite substantially, Perkins in return promised to pay Bryant \$30 per bushel for all future deliveries (including those covering the prior deficiencies). On June 1, Citrus shipped Foodtown 150 bushels of oranges (which included the 100 bushels for the June delivery, as well as 50 bushels covering the previous shortages). After accepting this shipment, Foodtown sent a check to Citrus in the amount of \$3,000. Thereafter, Citrus brought suit against Foodtown for \$1,500, claiming the contract price was \$30 per bushel, not \$20. Will Citrus succeed in this action?

(A) Yes, because the May 6 modification was enforceable even though it was not supported by new consideration.

(B) No, because there was no consideration to support the modification.

(C) Yes, because no writing was necessary under the circumstances.

(D) No, because the modification was not in writing, and was, therefore, unenforceable under the Uniform Commercial Code.

Question 95 is based on the following facts:

Mike and Rebecca were the two best sales persons at a local car dealership. As a reward for being named Sales Person of the Year, the dealership awarded one sales person a new car from the lot. The dealership selected Rebecca for this reward. Mike believed he should have received the award and became incensed when it was given to Rebecca. Deciding to claim what he believed was rightfully his, Mike went to Rebecca's home. Finding nobody home, Mike peered through the garage window and saw Rebecca's new car inside. Unable to open the garage door, he pried open the garage window and was half-way through when police officers out on a routine patrol saw him and yelled for him to halt. Mike climbed back out of the window and then began to walk toward the backyard of Rebecca's house. The police twice told him to stop moving. When Mike began to run, one officer fired her gun at Mike, striking him with two bullets in the back. Does the officer have a defense of "crime prevention" (or "law enforcement") in response to a criminal charge?

- (A) No, because police officers may not use deadly force in effectuating an arrest.
- (B) No, because Mike was fleeing but appeared unarmed.
- (C) Yes, because Mike just committed a felony.
- (D) Yes, because the officer knew that Mike would get away if she did not use force to stop him.

Question 96 is based on the following facts:

Two teenage girls went into the ABC department store. The security guard, who was always suspicious of teenage shoppers, asked the girls to remove their coats and to empty their purses. After about 10 minutes, the guard, convinced that the girls had not taken anything, apologized and let the girls leave. If the girls bring a cause of action for false imprisonment, the department store will most likely:

- (A) Win, since the store had a privilege to detain them.
- (B) Win, because the girls were, all times, free to leave.
- (C) Not win, since they took nothing
- (D) Not win, since the guard had no reasonable grounds for suspicion

Question 97 is based on the following facts:

Aaron Amesway, the noted author, was writing a screenplay, which he was adapting from his novel Quiet Winter. He assigned in writing 25 percent of any future royalties, when

and if the screenplay was made into either a movie or a stage play, to his friend Lady Buffington, who had subsidized him during his early years as a struggling writer. Shortly after the screenplay was completed, Amesway was killed in an auto accident. Seven Brothers Studio purchased the screenplay from the executors of Amesway's estate, and filmed the movie *Quiet Winter*, which was a great success.

In an action against the executors of Amesway's estate to recover her percentage of the movie royalties, Lady Buffington will most likely

- (A) Lose, since, under the circumstances, an assignment of future rights is unenforceable.
- (B) Lose, since the attempted gift of royalties failed for non-delivery.
- (C) Win, because she was an intended beneficiary,
- (D) Win, because the assignment of future rights is enforceable.

Question 98 is based on the following facts:

Gus, an undercover police officer, was having coffee in a diner at around 6 a.m. He was sitting at the counter when he heard a man and a woman, who were seated in a booth behind him, discussing how they had paid for their previous night's revelry by holding up two convenience stores. He heard the woman announce she needed to use the pay phone in the back, and then heard the man say that the woman should see if the diner's cash register was as helpful as the other registers they had encountered. Even though he had finished his coffee and needed to leave, Gus decided to see if the couple was serious or if he had misunderstood them. He saw the woman come from using the phone and approach the register. The woman then put her hand in her coat pocket as she began speaking to the diner's cashier. Gus, thinking the woman was about to pull a gun, rushed from his seat and tackled the woman. May Gus use the defense of crime prevention against a charge of battery?

- (A) No, the force used was too extreme.
- (B) No, because force may only be used to make an arrest after the completion of a crime, not to prevent a crime.
- (C) Yes, because Gus had reason to fear for his safety.
- (D) Yes, because use of force is permissible to prevent crimes.

Question 99 is based on the following facts:

Beth approached a man on a city sidewalk. She showed him a realistic looking toy gun she had concealed beneath her coat and demanded that he give her his travel bag and money. Fearful, the man quickly complied. Has Beth committed robbery?

- (A) Yes, because she stole his bag and money.
- (B) Yes, the fact that the gun was fake is no defense to the charge of robbery.
- (C) No, because Beth was unable to harm him with a gun.
- (D) No, because Beth committed no violence against the victim

Question 100 is based on the following facts:

On January 1st Barbara Buyer and Sarah Seller entered into a written contract to buy and sell 300 units of widgets on February 28th at \$5.00 per unit. On January 15th the market price rose to \$6.00 per unit. On February 1st the market price rose to \$7.00 per unit. Sarah then wrote to Barbara and stated, "I am not going to deliver the widgets due on February 28th." Barbara wrote back to Sarah and stated "I know you have repudiated your contract but hope you will reconsider before the due date of February 28". Sarah refused to reconsider and Barbara finally purchased substitute goods at \$9.00 per unit on February 28th. If Barbara brings suit on March 10th when the price was \$8.00 per unit, which of the following would constitute the market price of the widgets for purposes of computing damages would be:

- (A) \$5.00 per unit as of the contract date.
- (B) \$7.00 per unit as of the contract repudiation date.
- (C) \$8.00 per unit if Sarah did not respond to Barbara's request for her to reconsider the repudiation.
- (D) \$9.00 per unit as of the date the buyer purchased substitute equivalent goods.