

FORM A

CALIFORNIA
JUNE 1980
FIRST-YEAR LAW STUDENTS'
MULTIPLE-CHOICE
EXAMINATION

THE COMMITTEE OF BAR EXAMINERS
OF THE STATE BAR OF CALIFORNIA

Read the directions on the back cover.

*Do not break the seal
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THE STATE BAR OF CALIFORNIA

FIRST-YEAR LAW STUDENTS' MULTIPLE-CHOICE EXAMINATION

This document is a reprint of the June 1980 First-Year Law Students' Multiple-Choice Examination. A key to the test appears on the inside back cover.

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

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

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

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

The best analysis of the parties' legal rights is

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

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

The principal question for the court is whether

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

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

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

Carl is now entitled to recover from Homer

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

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

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

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

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

Which of the following is the most accurate statement of the rights of Bank and Homer?

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

Question 6.

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

If Paul asserts a claim against David based on false imprisonment, will Paul prevail?

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

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

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

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

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

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

GO ON TO THE NEXT PAGE.

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

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

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

Question 12.

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

If Axel sues for breach of contract, what result?

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

Question 13.

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

If Owner asserts a claim against City, the basis on which Owner is most likely to prevail is

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

Question 14.

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

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

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

Question 15.

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

Did Len commit burglary?

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

Question 16.

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

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

What criminal offense, if any, did Sharp commit?

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

Question 17.

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

Did Mike commit larceny?

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

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

On December 20, 1979, Carl, owner of Carl's Coffee Shop, entered into a written contract with Dan, owner of Dan's Doughnut Factory, under which Carl agreed to purchase his doughnut requirements for the calendar year 1980. The contract provided that "Carl shall have no obligation to receive any specified quantity of doughnuts, but only his daily requirements" and that Dan "agrees to supply such requirements" at the fixed price per dozen specified in the contract, "cash on delivery." During 1979, Carl's requirements of doughnuts for his coffee shop averaged approximately 50 dozen per week.

18. Early in 1980, Dan experienced a rise in his costs and decided he could no longer afford to supply Carl's requirements at the price fixed in their agreement.

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

- (A) Yes, because requirements contracts lack mutuality of obligation.
 - (B) Yes, because the provision that Carl had no obligation to receive any specified quantity made the contract illusory.
 - (C) No, because requirements contracts do not need consideration to be enforceable.
 - (D) No, because Carl's agreement to buy his requirements was sufficient consideration for Dan's agreement to supply those requirements.
19. Assume that on May 1, 1980, Carl opened "Carl's Coffee Shop #2" in a new office building. During the first four months of 1980, Carl had ordered an average of 50 dozen doughnuts per week from Dan. The first week in May he ordered 75 dozen doughnuts, explaining that he needed the larger quantity because of the opening of Carl's Coffee Shop #2. Dan refused to supply any more than 50 dozen at the price fixed in the agreement.
- Is Dan justified in his refusal?
- (A) Yes, if the normal requirements of the original coffee shop are approximately 50 dozen per week.
 - (B) Yes, because the opening of Carl's Coffee Shop #2 was an unanticipated occurrence which excused Dan from his contract with Carl.

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

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

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

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

What are Ed's rights, if any, against Dan for the balance of the year 1980?

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

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

Does Dan have any rights against Carl?

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

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

For Son's seventh birthday, Father bought Son a small bicycle at Hardware. The bicycle was manufactured by Bikeco.

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

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

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

23. If Sis asserts a claim against Bikeco based on strict liability in tort the likely result is Sis will
- (A) recover, if use such as hers was foreseeable.
 - (B) recover, because Bikeco can spread the risk of loss.
 - (C) not recover, if the bicycle was intended for use by small children.
 - (D) not recover, because the bicycle was purchased for Son.
24. If Sis asserts a claim against Hardware based on negligence, is it likely that Sis will prevail?
- (A) Yes, if the bicycle was defective.
 - (B) Yes, if the bicycle was defective and Hardware could have discovered the defect by a reasonable inspection.
 - (C) No, because Sis was not an intended user of the bicycle.
 - (D) No, because Sis was not riding the bicycle in a normal manner.
25. If Sis asserts a claim against Hardware based on strict liability in tort, is it likely that Sis will prevail?
- (A) Yes, if the bicycle was defective.
 - (B) Yes, but only if Hardware could have discovered a defect by a reasonable inspection.
 - (C) No, because Hardware sold the bicycle in exactly the same condition as that in which it was received.
 - (D) No, because Sis was not in privity with Hardware.
26. If Friend asserts a claim against Bikeco based on strict liability in tort, is it likely that Friend will prevail?
- (A) Yes, if the bicycle was inherently dangerous.
 - (B) Yes, because Friend was within a few feet of Sis when she was injured.
 - (C) No, because Friend was not using the product when the accident occurred.
 - (D) No, because Friend was horrified and sickened, but suffered no other harm.

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

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

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

Question 30.

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

Did Pete commit the crime of conspiracy to sell the stolen car?

- (A) Yes, because he agreed to rebuild the engine, knowing the car was stolen.
- (B) Yes, because of the profit he agreed to receive on the sale of the car.
- (C) No, because Ed was the person who was going to sell the car.
- (D) No, because Pete's rebuilding of the engine was not *per se* illegal.

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

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

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

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

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

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

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

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

Question 35.

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

Did Dan commit larceny?

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

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

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

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

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

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

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

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

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

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

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

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

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

How much is Ella entitled to recover from Anna?

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

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

If Frank sues Anna, who will prevail?

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

GO ON TO THE NEXT PAGE.

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

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

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

Question 43.

Owner brought his television set to Repairer for repair. Repairer sold the set to Buyer. Buyer believed that Repairer owned the set.

If Owner asserts a claim based on conversion against Repairer and Buyer, Owner will prevail against

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

Question 44.

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

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

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

Question 45.

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

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

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

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

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

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

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

Questions 49-50 are based on the following fact situation

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

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

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

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

51. Did Washington commit a theft crime?

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

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

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

Question 53.

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

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

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

Question 54.

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

Did Motorist have a privilege to threaten Tell with a revolver?

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

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

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

55. Assume Sampson repudiated the contract soon after signing it and before Barney had made any effort to find a buyer for his present business.

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

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

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

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

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

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

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

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

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

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

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

Question 60.

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

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

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

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

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

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

Tom sued Jim for damages. What result?

- (A) Jim wins because the ad was not an offer.
 - (B) Jim wins because fifty-five cents was not sufficient consideration for a coin worth \$100.
 - (C) Tom wins because, in visiting Jim's shop, Tom detrimentally relied on the ad.
 - (D) Tom wins because Jim's ad was an offer which Tom accepted when he tendered the fifty-five cents to purchase the coin.
62. Assume that Tom telephoned Jim and learned that Jim owned fifty 1937 silver dollars. Jim agreed to sell them to Tom for \$1,000, which sum Tom agreed to pay in advance of shipment. Following the conversation, Jim sent Tom this letter: "This confirms your purchase of the silver dollars. Upon receipt of your check for \$1,000 the coins will be shipped to you as agreed. /s/Jim." Tom received the letter but did not respond to it and did not pay the \$1,000 a month. Coyne sues Tom, who asserts the Statute of Frauds as a defense. Will this defense succeed?
- (A) No, because the letter signed by Coyne satisfies the writing requirement against Tom.
 - (B) No, because the face value of the coins is less than \$5,000.
 - (C) Yes, because Tom is not a merchant and there is no writing signed by Tom.
 - (D) Yes, because a memorandum signed after the contract is made does not satisfy the Statute of Frauds.

63. Assume the same facts as in question 62, but that Tom defends on the ground that there was no consideration for his promise to pay \$1,000. Will this defense succeed?
- (A) Yes, because a court will not enforce a promise to pay \$1,000 for coins with a face value of \$50.
 - (B) Yes, because Coyne did not change his position in reliance on the promise of Tom to pay \$1,000.
 - (C) No, because Coyne's promise to sell the coin was sufficient consideration.
 - (D) No, because both Tom and Coyne are merchants and contracts between merchants do not require consideration.
64. Assume that Tom and Coyne had entered into an enforceable contract for the sale of fifty 1937 silver dollars but that before the coins were delivered to Tom, the government made the transfer of pre-1964 silver coins illegal.

Which of the following is a correct statement of the rights of Tom and Coyne?

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

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Question 65.

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

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

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

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

Question 66.

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

If Pete asserts a claim against Dunn based on conversion, will Pete prevail?

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

Question 67.

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

Did Deft commit a theft crime?

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

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

Child, a four year old boy, accompanied Mother to Store. While Mother was shopping in Store, Child wandered away. Child's hand was caught in an opening between the floor and an escalator in Store. The escalator had been installed and designed and was maintained by Esco. When Child's hand was caught, he cried out and Walker, an employee of Store, attempted to stop the escalator before Child was injured. Walker was unable to do so and, as a result, Child's hand was severely injured.

Child, by an appropriate legal representative, has asserted claims against Store and Esco.

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

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

Question 72.

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

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

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

Question 73.

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

Did Art commit the crime of attempted robbery?

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

Question 74.

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

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

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

Question 75.

In 1979, County enacted a valid ordinance requiring that within one year from the date of enactment, all billboards had to be removed from property not zoned for commercial use. The ordinance provided for compensation to owners of billboards that were removed. Adco maintained billboards on property in a rural area zoned exclusively for home use. Paul purchased a lot in the area. One of Adco's billboards blocked the view

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

If Paul asserts a claim against Adco, based on nuisance, will Paul prevail?

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

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

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

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

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

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

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

Question 82.

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

If Purchaser asserts a claim for damages against Vendor, will Purchaser prevail?

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

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

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

83. If Pat asserts a claim against Driver based on negligence and Driver does not raise the issue of contributory negligence will Pat prevail?
- (A) Yes, because Pat's attempt to telephone for help was foreseeable.
 - (B) Yes, because the skateboard was a "set stage."
 - (C) No, because Pat was not in the zone of impact danger.
 - (D) No, because the presence of the skateboard on the landing was a superseding cause.

84. If Pat asserts a claim against Driver based on negligence, and Driver claims Pat was contributorily negligent, which of the following facts should be taken into account in determining whether Driver will prevail on that issue?
- I. Pat was 13 years of age.
 - II. Walker was in obvious need of medical attention.
 - III. Pat did not see the skateboard on the landing.
- (A) I, II and III.
 - (B) I and II but not III.
 - (C) I and III but not II.
 - (D) II and III but not I.
85. If Pat asserts a claim against Realty based on negligence and Realty does not raise the issue of assumption of risk, the likely result is Pat will
- (A) prevail, because Realty's employees had a duty to discover and remove the skateboard.
 - (B) prevail, because the risk created by Realty's failing to provide a public telephone in the lobby of Highrise outweighed the utility of such conduct.
 - (C) not prevail, if a tenant of Highrise had left the skateboard on the landing just prior to Pat's fall.
 - (D) not prevail, because Pat was a trespasser on Realty's property when she fell.
86. If Pat asserts a claim against Realty based on negligence for failing to remove the skateboard and if Realty claims that Pat assumed the risk, will Realty prevail on that issue?
- (A) Yes, because Pat dashed up the stairway.
 - (B) Yes, if Pat should have seen the skateboard.
 - (C) No, because Pat was 13 years of age.
 - (D) No, because Pat did not see the skateboard.

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

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

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

90. Is Wimp criminally liable for the death of Vic?

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

Question 91.

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

If Bessy asserts a claim against Alma based on defamation, Bessy will not recover

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

GO ON TO THE NEXT PAGE.

Question 92.

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

If Teacher asserts a claim against Caster based on defamation, Teacher will not prevail if Caster

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

Question 93.

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

If Owner asserts a claim against Parker for the damage to Owner's car, Owner will recover

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

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

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

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

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

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

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

END OF EXAMINATION.

THIS TEST BOOK AND THE ANSWER SHEET MUST BE HANDED IN SEPARATELY AS INSTRUCTED.

KEY TO MULTIPLE-CHOICE QUESTIONS

FORM A

JUNE 1980

FORM A

1.	C	26.	D	51.	A	76.	B
2.	A	27.	B	52.	A	77.	B
3.	D	28.	C	53.	D	78.	B
4.	B	29.	D	54.	B	79.	C
5.	C	30.	B	55.	C	80.	C
6.	D	31.	C	56.	A	81.	B
7.	C	32.	D	57.	C	82.	A
8.	C	33.	C	58.	D	83.	A
9.	B	34.	B	59.	C	84.	A
10.	B	35.	A	60.	D	85.	C
11.	B	36.	A	61.	A	86.	D
12.	D	37.	C	62.	A,B,C,D	87.	C
13.	A	38.	D	63.	A,B,C,D	88.	A
14.	A	39.	B	64.	A,B,C,D	89.	A
15.	D	40.	C	65.	C	90.	B
16.	A	41.	A	66.	A	91.	C
17.	B	42.	B	67.	A	92.	A
18.	D	43.	B	68.	C	93.	C
19.	A	44.	C	69.	B	94.	A
20.	A	45.	D	70.	A	95.	B
21.	B	46.	B	71.	B	96.	D
22.	D	47.	B	72.	D	97.	C
23.	A	48.	A	73.	D	98.	C
24.	B	49.	D	74.	C	99.	B
25.	A	50.	A	75.	D	100.	C