

1. A woman was walking on a sidewalk next to a small bicycle factory when a metal pipe flew out of one of the factory's windows and struck the woman on the shoulder, causing physical injury. The woman brought a negligence lawsuit against the factory, but the woman's lawyer was not able to discover any specific information about who at the factory failed to act reasonably or what specific safety precautions the factory failed to take. If the woman nonetheless prevails in the lawsuit, what is the most likely reason?

- (A) The attractive nuisance doctrine required the factory to take reasonable precautions to avoid harm.
- (B) The doctrine of *res ipsa loquitur* permitted the woman to prove negligence.
- (C) The doctrine of assumption of risk permitted the woman to prove causation.
- (D) The case was handled under principles of strict liability rather than negligence because the defendant is a manufacturer.

2. A homeowner offered to sell his stamp collection to his neighbor for \$1,000. The homeowner's friend overheard the offer from the friend's backyard. The neighbor declined the offer because she thought the price was too high, but the friend called out, "I accept." Do the homeowner and the friend have a valid contract?

- (A) Yes, because the price was reasonable.
- (B) Yes, because the homeowner made a proposal with a definite price.
- (C) No, because the homeowner's proposal was directed to the neighbor.
- (D) No, because offerors may not make an offer to more than one person.

3. A retailer placed a newspaper advertisement stating that cargo pants were on sale for \$100 a pair. A buyer went to the retailer and saw the advertised pants displayed on a sales rack. The buyer picked out three pairs and placed them, along with \$300, on the checkout counter. The cashier took \$100 and placed one pair of cargo pants in a bag that he gave to the buyer. The cashier returned the remaining \$200 to the buyer and gave the remaining two pairs of pants to an assistant to return to the rack.

If the buyer sues the retailer for breach of contract for refusing to sell the buyer the other two pairs of pants, is the buyer likely to prevail?

- (A) Yes, because the newspaper advertisement was an offer that the buyer accepted when the buyer put three pairs of cargo pants on the checkout counter.
- (B) Yes, because a contract for the sale of three pairs of cargo pants was formed when the buyer took the three pairs of cargo pants from the rack.
- (C) No, because there was no express communication between the buyer and the cashier.
- (D) No, because there was a contract for the sale of one pair of cargo pants.

4. A juice manufacturing plant operated near a residential neighborhood. As part of its industrial manufacturing process, the plant used a certain highly compressed gas that was delivered to the plant by a shipping carrier. One shipment of such gas received by the plant was stored at the end of the plant's warehouse. The shipment exploded, breaking through the plant's walls and causing damage to a neighboring residential house. Credible evidence showed that the manufacturer and the shipping carrier took all reasonable precautions in handling the gas and that even taking all reasonable precautions could not have prevented the possibility of an explosion of compressed gas.

If the owner of the house sues the juice manufacturing plant for the damage to the house, what legal theory best supports the claim?

- (A) Strict liability, because manufacturers are strictly liable for injuries their products cause.
- (B) Strict liability, because storing a highly compressed gas in a residential neighborhood is an abnormally dangerous activity.
- (C) Negligence, because the plant was unreasonable in choosing to perform its industrial activities near a residential neighborhood.
- (D) Negligence, because the gas was within the plant's control and, under *res ipsa loquitur*, there is an inference that the plant breached its duty of care for the explosion to have occurred.

5. A landowner had an express easement granting him access to drive across his neighbor's paved driveway to reach a main road. The description of the easement provided that the driveway would be used only for "typical passenger vehicles" and would be limited to "normal usage for a family home in a residential area." After the landowner's children left for college, he decided to open a home business. The business resulted in frequent deliveries by suppliers driving large vans. Further, customers would regularly visit the landowner's home and parked their cars in the neighbor's driveway. After months of this behavior, the neighbor had a fence installed across the driveway. The fence prevented any access to the driveway. The landowner, through his lawyer, demanded removal of the fence. The landowner argued that the neighbor was violating the terms of the express easement. The relevant statute of limitations in this jurisdiction is five years.

What should the neighbor do?

- (A) Remove the fence, because the landowner is correct.
- (B) Remove the fence, because the landowner has a new implied easement.
- (C) Decline to remove the fence, because the neighbor has terminated the express easement.
- (D) Decline to remove the fence, because the landowner's actions are unreasonable.

6. A business executive had two tickets to see a musical. The executive promised the extra ticket to a coworker. The coworker accepted the extra ticket. The coworker was so grateful that she offered to take the executive to dinner before the show. The executive agreed.

Did the coworker form a contract with the executive to pay for dinner?

- (A) Yes, because the offer to pay for dinner was in exchange for the ticket to the musical.
- (B) Yes, because the coworker offered to pay for dinner and the executive accepted.
- (C) No, because the promise to pay for dinner was in exchange for past consideration.
- (D) No, because the cost of the dinner was nominal in relation to the price of the ticket.

7. A child received a skateboard for her 10th birthday. The next day, while riding the skateboard for the first time, the child lost control of it. The skateboard hit a pedestrian, causing physical injuries to the pedestrian. The pedestrian sued the child for negligence.

Is the pedestrian likely to prevail?

- (A) Yes, because the child did not behave as a reasonable person under the circumstances.
- (B) Yes, because the child was engaged in an adult activity.
- (C) No, because the child was acting reasonably for a 10-year-old with no skateboarding experience.
- (D) No, because minors cannot be liable for negligence.

8. A patient made a medical appointment to get a shot. After the patient arrived for the appointment, a nurse called the patient's name and led him to a room. The patient sat in a chair in the room and rolled his sleeve up. After the patient confirmed his name and date of birth, the nurse approached the patient. When the patient saw the needle, the patient decided he did not want the injection. The patient covered his exposed arm with his other hand and shook his head from side to side. The nurse moved the patient's hand away and stuck the needle in the patient's arm.

The patient sued the nurse for battery. Is the patient likely to prevail?

- (A) No, because the patient consented to the vaccination when he sat in the chair and rolled his sleeve up.
- (B) No, because the patient did not communicate to the nurse that he withdrew his consent.
- (C) Yes, because the patient withdrew his consent.
- (D) Yes, because the nurse recklessly made physical contact with the patient.

9. A man and a woman had been dating for four years when the woman broke off the relationship. Extremely distraught, the man decided to steal an expensive diamond necklace from the woman's home when she was out of town. The man purchased a quart of alcohol to drink to help him go through with his plan. The man consumed a large amount of alcohol and then entered the woman's home through a window that he knew was regularly left unlocked. Once the man entered the home, he was too drunk to continue and fell asleep on the floor. The next morning when the woman returned home, she found the man unconscious and called the police.

May the man be convicted of burglary under the common law?

- (A) Yes, because he formed the intent to commit the theft before becoming intoxicated.
- (B) Yes, because his intoxication was voluntary.
- (C) No, because he was intoxicated at the time he entered the home.
- (D) No, because he did not complete the theft.

10. A tenant in an apartment building cut her hand on the metal doorknob of the door leading to the building's mailbox room that held the mail for all tenants. The tenant sued the building's landlord, seeking damages for her injury. Evidence produced in discovery showed that the doorknob had been chipped by an employee of a delivery company and left in a dangerous state for about two weeks. Evidence also showed that the building's landlord had not been aware of the problem, despite complaints from tenants, because the landlord had not been checking his voicemail messages.

Is the tenant likely to prevail against the landlord?

- (A) No, because the tenant is a licensee in the building's common areas, and the duty to licensees is to fix or warn only about known dangers.
- (B) No, because the landlord did not cause the unsafe condition, and there is no duty to rescue others.
- (C) Yes, because the landlord is strictly liable for injuries resulting from the defective doorknob.
- (D) Yes, because the landlord has a duty to maintain the building's common areas for the tenants.

11. A town planned to create a scenic bicycle route necessitating widening some roads, moving some sidewalks, and using three feet of the front yards of some houses. The affected homeowners objected to losing a portion of their property for a bicycle route, arguing that most people in the town did not ride bicycles, and those who did could use the main roads rather than the planned scenic route.

Will the homeowners prevail if they challenge the town's plans as an unconstitutional taking?

- (A) Yes, because the government must demonstrate that the bicycle route will be a public use benefiting a majority of the public.
- (B) Yes, because the government must demonstrate that the bicycle route could not be created without infringement on private property.
- (C) No, because the bicycle route would only take a small amount of the homeowners' property.
- (D) No, because the bicycle route would be a public use even if not used by most of the public.

12. A blasting company used dynamite to demolish a defunct shopping mall. The company took all reasonable precautions for the blasting, including setting up a wide barricade around the mall to prevent pedestrians from entering any area where physical injury was likely. A pedestrian outside the barricade stopped to watch the demolition of the shopping mall. After the dynamite exploded, the pedestrian suffered a lasting ringing in her ears that caused the pedestrian significant distress, periodic hearing loss, and recurring nightmares. Doctors told the pedestrian that the injury resulted from the pedestrian's unusual sensitivity to loud sounds, which was a rare genetic condition.

If the pedestrian sues the blasting company in strict liability and loses, what is the most likely reason?

- (A) The pedestrian assumed the risk by voluntarily standing near the shopping mall while it was being demolished.
- (B) The pedestrian is an "eggshell plaintiff" because her injury resulted from an unusual medical condition.
- (C) The pedestrian's injury was not a foreseeable injury from the blasting.
- (D) The pedestrian was contributorily negligent.

13. A student was approached by a classmate, who told the student that the student had to participate in a convenience store robbery or else the student would be “taken out” by the classmate. The classmate then brandished a gun and pointed it at the student’s temple. Now scared for his life, the student drove the classmate to the convenience store. The classmate went inside and used the gun to rob the store. The classmate quickly returned to the student’s vehicle, and the two drove away. A police officer driving in a police cruiser spotted the vehicle and began following it, turning on the cruiser’s lights and sirens. The student sped up, going 80 miles per hour in a zone with a posted speed limit of 40 miles per hour. The high-speed chase ended when the student hit another car, instantly killing the other car’s driver. A statute in the jurisdiction defines first-degree murder as murder committed with premeditation and deliberation or in the course of the commission of an inherently dangerous felony. All other types of murder are considered second-degree murder.

What is the most serious homicide crime, if any, of which the student may be convicted?

- (A) First-degree murder.
- (B) Second-degree murder.
- (C) Voluntary manslaughter.
- (D) No homicide crime.

14. A homeowner, domiciled in State A, brought suit in federal court against a contractor, a citizen of State B, who was hired to remodel the homeowner’s house. The homeowner claimed that the contractor violated federal law in disposing of waste from the remodeling job, part of which had been subcontracted to a subcontractor, a citizen of State A. The contractor sought leave of court and was granted permission to join the subcontractor as a third-party defendant, claiming that the subcontractor is liable to the contractor for the homeowner’s claims of improperly disposing of remodeling waste. With leave of court, the homeowner then amended the complaint to assert a claim directly against the subcontractor for improper waste disposal under federal law. The subcontractor has moved to dismiss the homeowner’s claim against the subcontractor.

How should the court rule on the subcontractor’s motion?

- (A) Deny the motion, because the homeowner’s claim is supported by federal question jurisdiction.
- (B) Deny the motion, because the homeowner’s claim is supported by diversity of citizenship jurisdiction.
- (C) Grant the motion, because the homeowner’s claim is improperly joined under Rule 14.
- (D) Grant the motion, because the homeowner’s claim is not supported by supplemental jurisdiction.

15. A law student decided to celebrate the end of the semester by holding a party in his apartment. The student provided all the alcohol for the party, which the attendees consumed in large quantities. Two of the attendees were especially inebriated and began arguing. One struck the other with a glass beer bottle, causing severe injuries.

May the student holding the party be convicted of battery?

- (A) Yes, because the student facilitated the battery by providing large quantities of alcohol.
- (B) Yes, because the student had an obligation to protect the attendees in his apartment.
- (C) No, because the student did not have the requisite mens rea to be considered an accomplice.
- (D) No, because the attendee's commission of a battery was unforeseeable.

16. An amusement park owner spoke with a friend who was a renowned landscape artist. The park owner offered to hire the landscape artist to completely redo the amusement park's landscaping and to create a new garden maze for the park. The landscape artist agreed to do the work for the landscape artist's standard rate. The parties further agreed that the landscape artist would start work when the park closed for the season in three months, and that all work would be completed within one year of the start of the work. The parties shook hands on the arrangement. The landscape artist visited the park several times while it was open to get a sense of the layout and began working up plans for the maze. When the landscape artist showed up after the close of the season to begin work, the amusement park owner told the landscape artist that the deal was off because there was no written contract.

If the landscape artist sues for breach of contract, which of the following statements accurately describes the enforceability of the oral contract?

- (A) The oral contract is enforceable because it was to be fully performed within one year of the beginning of the landscape artist's performance.
- (B) The oral contract is enforceable because it could possibly be fully performed within one year of when the agreement was made.
- (C) The oral contract is enforceable because the landscape artist's partial performance permits enforcement of the contract.
- (D) The oral contract is not enforceable.

17. A plaintiff filed suit in federal court against a defendant and served the defendant with process. Ten days later, the defendant moved to dismiss the plaintiff's complaint for failure to state a claim upon which relief can be granted. Twenty days later, the court denied the defendant's motion and informed the defendant of the court's order. Another 20 days later, the plaintiff applied for a default judgment. The court set the hearing for three days later and notified the defendant of the hearing. The defendant appeared at the hearing and opposed the application for default judgment.

Which of the following would be a valid argument in opposition to a default judgment?

- (A) The defendant's motion to dismiss is a sufficient response to preclude a default judgment.
- (B) The court lacks personal jurisdiction over the defendant.
- (C) The court is an improper venue for the plaintiff's claims against the defendant.
- (D) The court failed to notify the defendant at least seven days before the hearing for default judgment.

18. A city ordinance requires dogs to be on a leash whenever they are on public property. A woman with arthritis walked a dog on a public sidewalk in the city without putting the dog on a leash. A neighbor stopped to greet the woman and the dog. When the neighbor bent over to pet the dog, a switchblade fell out of his coat pocket and impaled his shoe. The neighbor suffered a severe cut on his toe. The neighbor sued the woman and asserted negligence per se.

What is the woman's best defense?

- (A) The woman was not negligent because she was within sight of the dog.
- (B) The injury that the neighbor suffered is not the type of harm that the ordinance is meant to prevent.
- (C) The neighbor is not in the class of potential victims that the ordinance is meant to protect.
- (D) The woman's noncompliance with the statute was justified by necessity because of her arthritis.

19. A driver of a car ran a red light and collided with a motorcycle in the intersection. Because of a problem with the way the car was manufactured, the car caught fire moments after the accident. The fire injured a nearby pedestrian.

If the pedestrian sues the manufacturer of the car, will the pedestrian prevail?

- (A) No, because the pedestrian and the manufacturer are not in privity with each other.
- (B) No, because the driver was at fault for the accident.
- (C) Yes, because cars are abnormally dangerous instrumentalities.
- (D) Yes, because manufacturers are strictly liable to bystanders for injuries resulting from defective products.

20. A homeowner nearing bankruptcy was unable to pay his home mortgage. The homeowner decided to set fire to his house and collect the insurance proceeds for the damage, which would allow him to pay his other bills and avoid financial ruin. The day before the homeowner intended to start the fire, he accidentally left his gas fireplace running all night. The fireplace overheated and started a fire, which quickly destroyed the entire house. The homeowner was relieved and filed an insurance claim for the loss. Assume that the jurisdiction has adopted the Model Penal Code.

Is the homeowner guilty of arson?

- (A) No, because the fire was in the homeowner's own dwelling.
- (B) No, because the homeowner did not purposely set the fire.
- (C) Yes, because the homeowner was reckless in leaving his fireplace running all night.
- (D) Yes, because the homeowner planned to set fire to his house to receive insurance proceeds.

21. A corporation was incorporated in State A, with its principal place of business in State B. The corporation sued its contracting partner, a limited liability company (LLC), in federal court in State A for breach of contract, seeking \$1 million in damages. The LLC was formed in State A with its only office in State B. The LLC was comprised of two members: an individual domiciled in State C, and a second corporation that was incorporated in State C with its principal place of business in State D. The LLC has moved to dismiss the first corporation's complaint against the LLC for lack of subject-matter jurisdiction.

How should the court rule?

- (A) Grant the motion, because the LLC is a citizen of State B because its only place of business is in State B.
- (B) Grant the motion, because the LLC is a citizen of State A because it was formed in State A.
- (C) Deny the motion, because the LLC is not a citizen of the forum state.
- (D) Deny the motion, because the LLC is a citizen of State C and State D by virtue of the citizenship of its members.

22. A road construction company called a manufacturer to place an order for 1,000 orange traffic cones for a total price of \$10,000. The manufacturer accepted the order during the phone call. The next day, the company confirmed its purchase via a signed email that said, "This is to confirm our agreement to buy 1,000 traffic cones from you. Delivery to be within 30 days." The manufacturer received the email but did not respond. Two weeks later, a sales representative from the manufacturer called to inform the company that the order had to be canceled because the manufacturer was behind on production. Unable to find replacement cones for less than twice the price as agreed with the manufacturer, the company sued for breach of contract. In its defense, the manufacturer argued that the oral agreement was unenforceable.

Can the company enforce the agreement?

- (A) No, because the company's confirmation did not include the price of the traffic cones.
- (B) No, because the manufacturer did not sign a writing confirming the agreement.
- (C) Yes, because the company's confirmation was sufficient to make the agreement enforceable.
- (D) Yes, because contracts between merchants need not be in writing.

23. A city passed an ordinance prohibiting unrelated persons from living together in the same dwelling. The ordinance defined "related" narrowly, to include only spouses, children, parents, and siblings (by whole, half, or adoption). An aunt and her niece, excluded by the ordinance's definition, filed suit to challenge the constitutionality of the ordinance.

Will the aunt and her niece likely prevail in their legal challenge?

- (A) No, because cities have an inherent and absolute police power to regulate zoning.
- (B) No, because cities have an inherent police power to regulate zoning for the public good, which includes the preservation of the traditional family unit.
- (C) Yes, because there is a recognized fundamental right for family members to live together, and the ordinance would violate the due process clause of the 14th Amendment.
- (D) Yes, because there is a recognized fundamental right for family members to live together, and the ordinance would violate the privileges or immunities clause of the 14th Amendment.

24. A city condemned several properties in a blighted area of its downtown, compensated the owners with the fair market value of the property, and transferred title of the condemned land to a private developer to construct a modern business area that would be leased to private businesses.

What is the best argument that the city's actions are unconstitutional?

- (A) The city's plan violates the takings clause of the Fifth Amendment because the presence of a blighted area is not compelling justification to condemn land.
- (B) Owners of residential property that is being converted to private property are entitled to receive more than the fair market value of the property.
- (C) The planned use is not a public use.
- (D) The city's plan violates the takings clause of the Fifth Amendment because the landowners must agree when title is transferred.

25. A woman was walking down the street using a cane to assist her. A man and his son were walking behind her. The man was giving advice to his son, which the woman did not agree with. Accordingly, as they passed her, she extended the arm that was holding her cane and tripped the man. He fell to the sidewalk and suffered minor injuries.

Is the woman liable for battery?

- (A) No because her body didn't touch his body.
- (B) No because it was justified.
- (C) Yes because she intended to come into harmful contact with the man.
- (D) Yes because the man was injured.

26. A soldier learned through a reliable source that his wife was having an affair with a friend. The soldier immediately began drinking a large amount of alcohol. Later that day, when the soldier was intoxicated, the friend went to the soldier's home to talk to the soldier about the affair. The soldier answered the door and, seeing the friend, took out a knife that was in his pocket and stabbed the friend in the chest. The friend was seriously injured and died within minutes. A statute in the jurisdiction defines first-degree murder as murder committed with premeditation and deliberation or in the course of the commission of an inherently dangerous felony. All other types of murder are considered second-degree murder.

What is the most serious homicide crime, if any, of which the soldier may be convicted?

- (A) First-degree murder.
- (B) Second-degree murder.
- (C) Voluntary manslaughter.
- (D) No homicide crime.

27. While driving on a highway, the owner of a new car engaged the car's cruise control above the speed limit. The car's computer subsystem managing the cruise control froze, causing the car to skid sharply to a halt and injure the owner. An investigation determined that the way in which the factory installed the computer on the owner's particular car created a high risk of an electrical malfunction that could cause the cruise control on the car to freeze. The investigation further determined that by making a small, cost-neutral adjustment to the installation process, the manufacturer could have significantly reduced the risk of that malfunction. The owner sued the manufacturer for her injuries under a theory of product defect.

Is the owner likely to prevail in the lawsuit?

- (A) No, because the owner engaged the cruise control at a rate of speed in excess of the legal limit.
- (B) No, because the computer operated properly.
- (C) Yes, because the intended design made the car unsafe for its intended and foreseeable uses.
- (D) Yes, because the manner of production rendered the car more dangerous than usual.

28. A hotel guest, a citizen of State A, filed suit against a hotel in federal court in State A, seeking \$100,000 for the loss or theft of the guest's jewelry from the hotel's safe in breach of the parties' bailment agreement. The hotel was incorporated in State B and also maintained its principal place of business there. A state statute of State B limited the liability of hotels for bailments to the actual value of the item or \$500, whichever is less. The hotel moved to dismiss the complaint for lack of subject-matter jurisdiction.

How is the court likely to rule?

- (A) Grant the motion, because the hotel is not a citizen of the forum state.
- (B) Grant the motion, because the amount in controversy is not satisfied.
- (C) Deny the motion, because the parties are completely diverse.
- (D) Deny the motion, because the guest is a citizen of the forum state.

29. A seller emailed a buyer, offering to sell a car to the buyer for \$5,000. The buyer immediately mailed a check for \$5,000 along with a note saying the buyer accepted. The next day, before hearing from the buyer, the seller decided she did not want to sell the car and emailed the buyer stating that she had changed her mind.

Do the seller and the buyer have a valid contract?

- (A) No, because the seller revoked the offer before receiving the buyer's note and check.
- (B) No, because the buyer did not accept the offer in the proper manner.
- (C) Yes, because the seller did not revoke the offer in the proper manner.
- (D) Yes, because the buyer accepted the offer before the seller's attempted revocation.

30. A nurse wanted to gift his homemade chocolate to his colleagues in small decorative boxes. On October 1, the nurse, who had never purchased boxes for his chocolates in the past, sent a purchase order form to a wholesaler to order 100 small boxes. The form indicated that the price was \$0.25 per box. The wholesaler returned a copy of the purchase order to the nurse with an addendum that read, "There is a custom packaging surcharge of \$19.99 for orders of less than 1,000 boxes. Thank you for your purchase!" Three weeks later, the wholesaler shipped the boxes along with an invoice that included the \$19.99 surcharge. The nurse complained and refused to pay the surcharge.

Was the custom packaging surcharge part of the contract?

- (A) No, because the wholesaler may not add terms that were not included in the original purchase order form.
- (B) No, because the nurse did not agree to the surcharge term.
- (C) Yes, because the wholesaler is a merchant.
- (D) Yes, because the nurse did not object within a reasonable time.

31. A state prison inmate brought an action against a physician employed by the prison for failure to treat the inmate's serious medical condition in violation of the inmate's Eighth Amendment rights. The physician moved to dismiss the complaint on the grounds that the physician is an independent contractor who works at the state prison on a part-time basis.

Should the court grant the physician's motion to dismiss?

- (A) Yes, because an independent contractor working for the state is never a state actor.
- (B) Yes, because providing medical care to prison inmates is not a traditional government function.
- (C) No, because all physicians are licensed by the state in which they practice and are therefore state actors.
- (D) No, because the physician's actions in treating the inmate are fairly attributable to the prison so as to constitute state action.

32. A consumer sued a utility company, alleging that the company deprived her of her constitutional rights when it terminated her service without the opportunity for a hearing. The utility company, a private corporation operating in several states and granted monopoly status in some localities, moved to dismiss the action.

Should the court grant the utility company's motion to dismiss?

- (A) Yes, because the utility company's termination of services does not require notice, an opportunity to be heard, or a hearing.
- (B) Yes, because the utility company's termination of services is not a state action subject to the Constitution.
- (C) No, because the utility company is a monopoly.
- (D) No, because the utility company provides essential services.

33. A man owned a tract of land located adjacent to a large valley. Ten years ago, he divided the land into two parcels, then sold the parcel that was immediately adjacent to the valley to a buyer and retained the other parcel for himself. To access the main road, the buyer had to cut through the man's property. For eight years, the buyer used the man's property to access the main road. Two years ago, the local government built a dirt road in the valley that connects with the main road. While the new dirt road in the valley was usable by the buyer, the buyer nonetheless continued to use the easement across the man's land because it was substantially more convenient. The man decided he no longer wanted to allow the buyer to cut through the property and sought the advice of an attorney about the situation. The relevant statute of limitations in this jurisdiction is five years.

What should the attorney advise the man?

- (A) When the local government built the dirt road, the necessity ended, terminating the easement.
- (B) An easement by necessity can only terminate through a release by the dominant estate holder.
- (C) An easement by prescription was created after the easement by necessity.
- (D) No easement by necessity ever existed.

34. A woman owned one third of a beach house as a joint tenant. The other joint tenants were two brothers. The woman left all her interest in the beach house to her son by will. The son predeceased the woman. He died intestate, and all the son's property passed to his wife.

When the woman died, who took her interest in the beach house, and by what kind of tenancy did the taker or takers hold the interest?

- (A) The son's wife, who became a joint tenant with the two brothers.
- (B) The son's wife, who became a tenant in common with the two brothers.
- (C) The two brothers, who became tenants in common.
- (D) The two brothers, who remain joint tenants.

35. The plaintiff and the defendant both resided in State A when they were involved in an automobile accident in State A. The plaintiff alleged the defendant ran a stop sign and struck the plaintiff, causing severe injuries. The plaintiff decided to sue the defendant. After the accident but before filing the complaint, the plaintiff moved to State B with the intent to remain in State B. The plaintiff sued the defendant in state court in State B on a state law tort claim seeking \$250,000 in damages. The state court in State B had jurisdiction over the proceeding. Once served, the defendant removed the suit to the federal court in State B that covered the district in which the plaintiff initially filed the lawsuit in state court.

If the plaintiff moves to remand the case for lack of subject-matter jurisdiction, how should the federal court rule?

- (A) Deny the motion, because the parties are diverse and the amount in controversy is met.
- (B) Deny the motion, because the claim is based in state law and the federal court to which a proceeding is removed will apply the state court's subject-matter jurisdiction laws.
- (C) Grant the motion, because the plaintiff and the defendant were citizens of the same state at the time the accident occurred.
- (D) Grant the motion, because none of the events giving rise to the claim occurred in State B.

36. Two siblings, a brother and sister, purchased a tract of farmland in fee simple as joint tenants with a right of survivorship. While the sister was away on a month-long business trip, the brother discovered valuable mineral deposits within the farmland tract. The brother then conveyed his interest in the farmland to his wife who immediately reconveyed that interest back to the brother. The brother then drafted a will devising all his property interests to his wife. A week after the sister returned from her business trip, the brother died. The brother's wife then informed the sister of the brother's duly probated will. Thereafter, the sister brought an action seeking a declaratory judgment that the sister was the sole owner of the farmland property.

Who will prevail in the action?

- (A) The sister, because the wife's reconveyance to the brother restored the joint tenancy.
- (B) The sister, because her right of survivorship survived the brother's death.
- (C) The wife, because the brother severed the joint tenancy when he conveyed his interest to her.
- (D) The wife, because the brother's intestate death severed the joint tenancy.

37. Two high school teachers entered into an oral contract to sell the seller's customized 1928 roadster to the buyer for \$25,000. The buyer sent the seller a written signed confirmation the next day, but the seller did not respond. The seller subsequently refused to perform, and the buyer sued for breach of contract.

If the seller raises the statute of frauds as a defense, is the seller likely to prevail on that defense?

- (A) No, because the statute of frauds applies only to merchants.
- (B) No, because the buyer sent a written confirmation within a reasonable time and the seller never responded.
- (C) Yes, because the oral contract is unenforceable.
- (D) Yes, because the terms are too uncertain for the contract to be enforced.

38. A homeowner hired a painter to paint the main exterior and exterior trim of her house for \$2,000, which is the typical price charged in the locality for homes of similar size. The painter accidentally swapped the paint colors that were to be used, using the bright trim color for the main exterior and the muted main exterior color for the trim. The homeowner asked the painter to repaint the house with the correct colors, but the painter refused because it would cost \$500 for the painting materials and result in a loss of the painter's usual \$1,500 profit for the job. The market value of the house is the same regardless of the paint color mistake. The homeowner sued the painter for breach of contract.

If the homeowner's suit seeks specific performance, what is the most likely result?

- (A) The court will order the painter to repaint the house using the correct color scheme, because that is what the parties agreed to.
- (B) The court will order the painter to repaint the house using the correct color scheme, because monetary damages are too difficult to calculate.
- (C) The court will not award specific performance, because monetary damages are adequate in this situation.
- (D) The court will not award specific performance, because the agreement is not a contract for the sale of goods.

39. A landlord leased an apartment to a tenant for a one-year term, starting January 1. Two weeks later, the tenant got a job in another city. The landlord agreed to an assignment of the remainder of the term to the tenant's friend. The friend decided to go to the Caribbean and rented the property to his coworker for the summer, with the landlord's consent. The friend intended to return to the apartment after the summer and for the remainder of the lease. Neither the friend nor the coworker signed any contract with the landlord. The coworker did not make a summer rental payment.

Whom may the landlord sue to recover the rent?

- (A) The landlord may sue the tenant or the friend, but not the coworker.
- (B) The landlord may sue the tenant or the coworker, but not the friend.
- (C) The landlord may sue only the friend.
- (D) The landlord may sue only the tenant.

40. An owner leased the first floor of his building to a shopkeeper for his bookstore. A student leased the second floor from the owner as her residential apartment. The entire building was served by one heating system. During a particularly cold spell, the heating system failed. The student notified the owner of the failed heating system. A month later, the heating system still had not been repaired.

What rights do the shopkeeper and the student have against the owner?

- (A) The shopkeeper may vacate his leased space and withhold rent; the student may remain in her leased space and withhold rent.
- (B) The shopkeeper and the student may remain in their respective leased spaces and withhold rent.
- (C) The shopkeeper may remain in his leased space and withhold rent; the student may vacate her leased space and withhold rent.
- (D) The shopkeeper and the student may remain in their respective leased spaces, withhold rent, and use the rental money to pay to fix the failed heating system.

41. A pedestrian was injured when one car that was speeding and another car that ran a red light hit each other and then veered into the pedestrian's path on the sidewalk. In the pedestrian's negligence case against the two drivers, the jury determined that the pedestrian's damages are \$100,000. The jury also determined that the speeding driver was 20% responsible for the injury, and the driver who ran the red light was 80% responsible for the injury. The driver who ran the red light, however, is uninsured and has no assets available to satisfy a judgment.

In a jurisdiction that has adopted joint and several liability, what is the maximum amount the pedestrian may recover from the speeding driver?

- (A) \$20,000
- (B) \$50,000
- (C) \$80,000
- (D) \$100,000

42. A brother and a sister inherited equal shares of their family home when their parents died. The sister moved into the house with her family. Upon learning about the sister's move, the brother asked if he could also move into the house. The sister refused. The brother then sued the sister, arguing that she must pay him rent. How should the court rule?

- (A) The sister must pay the brother rent because she denied him access to the house.
- (B) The sister is not obligated to pay the brother rent because she has the right to use and enjoy the full property.
- (C) The sister must pay the brother rent if the house is held in a tenancy in common.
- (D) The sister must pay the brother rent if the house is held in a joint tenancy.

43. A buyer, a citizen of State A, purchased a car from a seller, a corporation formed under State B law with its principal place of business in State C. The car was designed and built by a manufacturer in State D. The manufacturer is a corporation formed under State B law with its principal place of business in State E. The buyer bought the car in State F and drove it home to State A. While in route to State A, the buyer was involved in a collision in State G and was injured there. The buyer sued the seller and the manufacturer in federal court in State B, serving each corporation's registered agent for service of process in State B. The complaint claimed that the buyer's injuries were the result of a defectively designed vehicle. The defendants moved to dismiss the complaint for lack of personal jurisdiction.

How is the court likely to rule?

- (A) Grant the motion, because the lawsuit does not arise out of or relate to the defendant's in-forum conduct.
- (B) Grant the motion, because State G, the place of injury, is the only state with personal jurisdiction over the defendants.
- (C) Deny the motion, because both defendants are essentially at home in State B.
- (D) Deny the motion, because both defendants were served with process in State B.

44. A resident and her roommate had a heated argument. The roommate indicated that she wanted to leave the apartment, but the resident wanted the two to talk through their differences. As the roommate approached the door, the resident locked the door and stood in front of it. The roommate begged the resident to move, but the resident remained firm and told the roommate to “sit down on the couch or else be prepared for something bad to happen.” Severely frightened for her safety, the roommate complied, and the two talked for several hours before the resident finally unlocked the door.

May the resident be convicted of kidnapping?

- (A) Yes, because the resident made a showing of force that caused the roommate to be restrained.
- (B) Yes, because the roommate suffered psychological trauma as a result of the resident’s conduct.
- (C) No, because a person cannot be kidnapped in a person’s own dwelling.
- (D) No, because the resident did not transport or conceal the roommate.

45. A landowner granted her neighbor an express easement to cross over the landowner’s property to access the beach. The neighbor’s property was adjacent to the landowner’s property, but only the landowner’s property was on the beach. Over time, the neighbor built a wood-plank walkway over the landowner’s property. After 12 years, the neighbor decided to move overseas and sold his property to the landowner. For six years, the landowner lived on both properties. After six years, the neighbor moved back to the United States and the landowner agreed to sell the neighbor’s previous property back to him. The deed from the landowner to the neighbor did not mention the prior easement. After moving back, the neighbor asked to cross the landowner’s property to get to the beach. Assume the relevant statute of limitations is 10 years.

If the landowner refuses, does the neighbor have a right to cross the landowner’s property to go to the beach?

- (A) No, because the neighbor expressly released the prior easement.
- (B) No, because of the merger doctrine.
- (C) Yes, because the neighbor has an easement by prescription.
- (D) Yes, because the neighbor has an easement by estoppel.

46. A man and a woman are acquaintances who grew up in the same town in State A. After attending college in State A, each was hired by a different business across the country, in State C. To reduce their travel expenses to State C, the man and the woman agreed to drive there together. On the way to State C, they were in a car accident in State B. The man, who was driving, was badly injured. He returned to State A to recuperate after his employer in State C agreed to give him additional time before reporting for work. The woman suffered only minor injuries in the car accident and continued on to State C, where she began her new job. State B has a nonresident motor vehicle statute, which provides that anyone who is operating a motor vehicle on State B roads is assumed to have consented to personal jurisdiction in State B for any cases arising out of the operation of that motor vehicle. The woman decides to sue the man for damages arising out of the accident.

In which states would the exercise of personal jurisdiction over the man comport with due process?

- (A) Only in State B.
- (B) In State A or State B.
- (C) In State B or State C.
- (D) In State A, State B, or State C.

47. Motivated by a longstanding grudge, a blogger made an on line post containing "facts" about a competitor's involvement in a nationally known financial scandal that the blogger knew were false. The competitor's supervisor read the blogger's post and fired the competitor based upon the supervisor's belief that the "facts" in the post were true. Due to being fired, the competitor suffered from anxiety and depression.

If the competitor sues the blogger for defamation, is it likely that the competitor could recover damages for emotional distress?

- (A) Yes, because emotional distress is a presumed damage in defamation cases.
- (B) Yes, because the emotional distress was an actual damage from the defamatory statement.
- (C) No, because emotional distress is not recoverable in defamation cases.
- (D) No, because on line posting does not constitute "publication" under defamation law.

48. A plaintiff sued a defendant in federal court pursuant to diversity jurisdiction, alleging that the defendant failed to provide payments under a contract. The defendant did not raise lack of subject-matter jurisdiction as a defense at any time during the proceedings. The matter went to trial, and the jury awarded the plaintiff \$100,000 in damages. On appeal, the defendant alleges for the first time that the district court did not have subject-matter jurisdiction over the claim.

Should the appellate court consider the defendant's claim of lack of subject-matter jurisdiction?

- (A) No, because the defendant waived the objection by failing to raise it as a defense.
- (B) No, because the trial court entered a final judgment.
- (C) Yes, because an appellate court may review any procedural defenses, even those not raised by a party.
- (D) Yes, because subject-matter jurisdiction is required.

49. A parent's child was injured when the child swallowed a piece of a plastic toy plane that unexpectedly came apart. The parent and the child are citizens of State A. The toy was a gift from the child's grandparents who are citizens of State B and who bought the toy in State B. The toy was manufactured by a toy company that is incorporated in and has its headquarters in State C. The toy company sells the toy plane nationwide and advertises extensively in print and on billboards in State A and State B. The toy company also has a website, but the website does not support on line sales. The website merely advertises the toy company's products and directs consumers to buy from their local toy store. The parent sues the toy company in federal court in State A, alleging the toy plane was defective. The toy company moves to dismiss the complaint for lack of personal jurisdiction. Assume State A's long-arm statute allows the state to exercise jurisdiction to the maximum extent allowed by the U.S. Constitution.

Is the toy company's motion to dismiss for lack of personal jurisdiction likely to succeed?

- (A) Yes, because the toy was purchased in State B.
- (B) Yes, because the toy was manufactured in State C.
- (C) No, because the toy company has a website that is viewable in State A.
- (D) No, because the toy company placed its product into the stream of commerce and actively advertises in State A.

50. A father owned residential property, which he leased to a tenant in a month-to-month lease. Eighteen months into the lease, the father, seeking to retire, gifted the property to his daughter and assigned her the lease. Assume the lease had no relevant provisions concerning the assignment.

Upon the assignment, what is the status of the lease?

- (A) The daughter takes the property free of the lease, and the tenant has no rights because the lease terminated upon the sale of the property.
- (B) The daughter takes the property free of the lease because a transferee of real property is not obligated to follow the terms of a tenancy at will.
- (C) The daughter takes the property free of the lease because the father cannot assign his rights under a periodic tenancy lease.
- (D) The daughter is now the landlord and is obligated under the terms of the lease.