(149)

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.

Key: B

Explanation: Answer option B is correct. The doctrine of res ipsa loquitur permits plaintiffs to establish negligence, even without a specific showing of precautions that the defendant failed to take. Under the doctrine, a jury can draw an inference of breach if (1) the event that led to the injury was the type that would not ordinarily occur had there been no negligence; (2) the injury was caused, or was more likely than not caused, by an instrumentality solely within the defendant's control; and (3) the plaintiff's fault did not contribute to the injury. Here, injury caused by a metal pipe flying out of a factory window is the type of injury that would not ordinarily occur had there been no negligence, the metal pipe that flew from the factory's window was solely within the control of the factory at the time, and the woman's fault did not contribute to the injury. Answer option A is incorrect because the attractive nuisance doctrine governs a landowner's liability for harm suffered by child trespassers; it does not apply to these facts. Answer option C is incorrect because assumption of risk is a defense to a negligence cause of action; it does not aid a plaintiff in proving causation. Answer option D is incorrect because the facts state that the claim was for negligence, not strict liability, and because factories are strictly liable only when their defective products cause foreseeable injuries.

(84)

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.

Key: C

Explanation: Answer option C is correct. An offer creates the power of acceptance in the specific offeree to whom it is directed. Here, the offer was directed to the neighbor, not the friend. Only the neighbor could accept and form a contract. Because the friend's attempt to accept the offer was ineffective, no contract was formed. Answer options A and B are incorrect for these reasons. Answer option D is incorrect because an offeror may direct an offer to a group of people or even the public at large.

(85)

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.

Key: D

Explanation: Answer option D is correct. An advertisement generally does not constitute an offer, but rather an invitation to make an offer unless the advertisement identifies a particular person or class of persons who may accept the offer through performance. Because the advertisement here did not provide these details, it was not an offer. However, when the buyer went to the store and took three pairs of cargo pants to the cashier, the buyer made an offer. The cashier accepted the buyer's offer to buy one pair of cargo pants by removing two pairs of cargo pants and selling the buyer one pair of cargo pants. Answer options A and B are incorrect for these reasons. Answer option C is incorrect because express communication is not necessary to form a contract.

(64)

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 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.

Key: B

Explanation: Answer option B is correct. Strict liability permits recovery for abnormally dangerous activities, which are ordinarily understood as activities that are (1) uncommon in the area where they take place and (2) very likely to cause physical harm. Storing highly compressed gas for industrial purposes near a house fits these criteria and makes recovery for strict liability plausible. Answer option A is incorrect because although manufacturers are strictly liable for harm caused by defects in products they sell, that theory of liability does not fit these facts; the juice manufacturer did not cause the harm by selling a defective product. Answer options C and D are incorrect because if the plant took all reasonable precautions as the facts indicate, then it is not negligent. Answer option D is additionally incorrect because res ipsa loquitur applies only where (1) the event that led to the harm would not ordinarily occur absent negligence, (2) the instrumentality that caused the harm was solely within the defendant's control, and (3) the plaintiff's fault did not contribute to the harm. In this case, the first two elements are not met. Per the facts, highly compressed gas can explode even when all reasonable precautions are taken, and the gas at issue was not under the exclusive control of the plant (having been delivered and handled by the shipping carrier).

(600)

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.

Key: D

Explanation: Answer option D is correct. The scope of an easement may be expressly defined. However, if the scope is not expressly defined, then the scope of an easement is determined by (1) the intent of the parties and (2) the reasonableness of the use. It is expected that the dominant estate will undergo further development over time, consistent with the character of the property. Provided that such development is foreseeable at the time of the easement's creation, any increased use by virtue of the development will be deemed reasonable. If the development was unforeseeable, then the increased use will be deemed unreasonable. Here, the scope of the express easement was clearly set out to limit it to typical vehicles used by families in a residential neighborhood setting. When the landowner opened a home business, not only did the volume of vehicles increase, but the type shifted to heavy delivery vans. Further, customers began using the driveway for parking. This use is unreasonable, breaching the terms of the express easement. Answer option A is incorrect for the same reasons. Answer option B is incorrect because no implied easement was created. An implied easement is created when (1) there was common ownership (prior unity) in two parcels of land, (2) the prior use of the land was consistent with an easement, (3) the use was continuous and apparent at the time of sale of one of the parcels, and (4) the use is reasonably necessary to the use and enjoyment of the dominant estate. No facts show that the properties were previously owned by the same owner and subdivided. Answer option C is incorrect because an easement may be terminated by release, abandonment, merger, prescription, condemnation, estoppel, or destruction. Prescription is the closest to this fact scenario and is proven when the following are simultaneously true: (1) the dominant estate holder openly and notoriously uses the servient estate, (2) the use is hostile, (3) the use is continuous, and (4) the use is for the statutory period. Here, however, the facts provide that the landowner's heavy use of the driveway happened for "months," not the five years required by the statute of limitations.

(88)

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.

Key: C

Explanation: Answer option C is correct. This situation involves past consideration; the coworker offered the dinner in recognition of the executive's past gratuitous service. Generally, past consideration is not valid consideration. Here, although the coworker offered to pay for dinner, she did not offer to pay for dinner for the return promise of the extra ticket because she already had the extra ticket. No bargained-for exchange between the parties occurred. Answer options A and B are incorrect for these reasons. Answer option D is incorrect because, provided consideration is bargained for, it does not have to be of equal or commensurate value.

(7)

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.

Key: C

Explanation: Answer option C is correct. Generally, minors are held to the standard of care of a child of similar age, education, intelligence, and experience. However, when a child engages in an adult activity, like driving a car, the child is held to the standard of a reasonably prudent person (adult) in the same or similar circumstances. Here, the child was not involved in an adult activity, so child will be held to the standard of care of a child of similar age, education, intelligence, and experience (i.e., a 10-year-old with no skateboarding experience). Under this standard, the child was acting reasonably. Answer options A and B are necessarily incorrect for these reasons. Answer option D is incorrect because minors can be liable for negligence, as discussed.

(10)

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.

Key: C

Explanation: Answer option C is correct. A person who consents to an act cannot establish liability for that act, even if it would otherwise qualify as an intentional tort. Consent and revocation of consent may be express or implied. However, consent may be withdrawn at any time. Here, the patient initially gave consent but then withdrew his consent by covering up his arm and shaking his head, and the nurse committed battery by intentionally sticking him with the needle anyway. Answer option A is necessarily incorrect for this reason. Answer option B is incorrect because the man's conduct (covering up his arm and shaking his head) was an implied withdrawal of consent; words are not required. Answer option D is incorrect because recklessness is not an element to a battery claim.

(316)

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.

Key: A

Explanation: Answer option A is correct. Under the common law, burglary requires the breaking and entering of a dwelling house of another with the intent to commit a felony (e.g., larceny) therein. The breaking requirement is satisfied where there is an actual breaking in the structure itself, such as where a person breaks a window, forces a door open, or even opens a closed but unlocked door or window (as was done here). All the elements of burglary were satisfied when the man broke into the woman's home with the intent to commit a larceny. Although voluntary intoxication may be a defense to a specific-intent crime like burglary, it is not available as a defense to such a crime if the requisite mens rea to commit the crime was formed prior to becoming intoxicated. Here, the man was intoxicated when he entered the home, but he had formed the intent to commit the larceny beforehand. Answer option C is necessarily incorrect for the same reason. Answer option B is incorrect because it assumes that voluntary intoxication cannot be a defense to burglary. Voluntary intoxication can be a defense to a specific-intent crime such as burglary, but it is not a viable defense in this case because the man formed the intent to commit burglary before he became intoxicated. Answer option D is incorrect. The crime of burglary was committed at the time of entry; it does not matter whether the man committed the crime that was intended (larceny) at the time of entry.

(74)

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.

Key: D

Explanation: Answer option D is correct. A landlord has a duty to use reasonable efforts to maintain the common areas of a building, making reasonable repairs as needed. Thus, tenants in the building are effectively treated as invitees with respect to the common areas. In this case, leaving a doorknob in a state of disrepair that is sufficient to cut someone's hand for two weeks is unreasonably unsafe, and the building's landlord was unreasonable in ignoring or failing to discover complaints about the problem for such a long a period of time. Answer option A is incorrect because tenants in a building are treated like invitees, not licensees, with respect to the building's common areas. Answer option B is incorrect because while it is true that there generally is no "duty to rescue," that has no relevance here; landlords have a duty to fix problems in common areas with reasonable care even if they were not the immediate cause of those problems. Answer option C is incorrect because strict liability does not arise merely from installing a defective product; the landlord was not a reseller or manufacturer of the doorknob. Moreover, there are no facts suggesting that the doorknob was a defective product; it was simply damaged by a third party.

(548)

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.

Key: D

Explanation: Answer option D is correct. There is no requirement that a "public use" under the takings clause of the Fifth Amendment be one that will be used by a majority of the public. Answer option A is incorrect for this reason. Answer option B is incorrect because there is no requirement that a government demonstrate that it could accomplish its goals without taking private property. Answer option C is incorrect because a physical taking of a small portion of a person's property is a taking.

(48)

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.

Key: C

Explanation: Answer option C is correct. While abnormally dangerous activities like blasting dynamite do give rise to strict liability, such liability is for only foreseeable injuries. In this instance, the injury was a rare, unforeseeable injury that is not a typical consequence of the blasting that occurred here, and thus a strict liability claim by the pedestrian is likely to fail. Answer option A is incorrect because watching the demolition from what ordinarily would be a safe distance does not qualify as knowingly and voluntarily encountering a risk. Answer option B is incorrect because an "eggshell plaintiff" can in fact recover the full extent of the plaintiff's injuries as long as the defendant is liable for the plaintiff's initial injury, which, as discussed, the company here is not. Answer option D is incorrect because there is no indication that the pedestrian failed to exercise reasonable care; therefore, there is no reason to believe the pedestrian was contributorily negligent. Moreover, contributory negligence is no longer the law in the vast majority of jurisdictions, having been replaced by comparative negligence.

(317)

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.

Key: D

Explanation: Answer option D is correct. Because the student did not act with intent, premeditation, and deliberation in the killing of the driver, the student can be guilty only of first-degree murder in the jurisdiction if the killing occurred in the course of the commission of an inherently dangerous felony (felony murder). For purposes of felony murder, the felonies considered inherently dangerous at common law are burglary, arson, rape, robbery, and kidnapping. It can therefore be assumed that robbery is regarded as an inherently dangerous felony in the jurisdiction. Ordinarily, then, a person who participates in a robbery where a killing occurs may be convicted of first-degree murder in the jurisdiction. Here, however, the student can successfully raise a duress defense to the inherently dangerous felony, which will afford the student a defense both to the robbery and to the unintentional killing, negating a charge of felony murder. Duress requires that the defendant reasonably believed that he or another person faced an ongoing threat of death or serious bodily harm from a third person and that he could prevent the threatened harm only by carrying out the unlawful action with which he is charged. In this case, the classmate threatened the student's life if the student did not participate in the robbery, and the pointing of the gun would have led to a reasonable belief that the harm could be prevented only by carrying out the robbery. Therefore, the student may not be convicted of first-degree murder. The student may not be convicted of second-degree murder either. There are three types of second-degree murder: (1) intentional killing without premeditation and/or deliberation, (2) unintentional killing in which the defendant intended to inflict serious bodily harm, and (3) reckless killing that manifests extreme indifference to the value of human life ("depraved heart" murder). The student cannot be guilty of either of the first two types since he intended neither to kill nor to inflict serious bodily harm on the victim. Even if it could be argued that the facts show evidence of depraved heart murder, duress would serve as a defense because the killing was nonintentional. Voluntary manslaughter consists of a killing either done in the heat of passion (or extreme emotional disturbance) or resulting from the imperfect use of self-defense. Neither is relevant here. Answer options A, B, and C are incorrect for the same reasons.

(105)

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.

Key: A

Explanation: Answer option A is correct. A federal court has original subject-matter jurisdiction over claims that arise under federal law. Here, the homeowner sued the subcontractor directly for the same claim they asserted against the contractor, namely the failure to dispose of waste properly under federal law. Answer option B is incorrect because the parties are not diverse; the homeowner and the subcontractor are both citizens of State A, and there is no indication that the amount in controversy is satisfied. Answer option C is incorrect because the homeowner's claim against the subcontractor is the same claim as against the contractor; thus, the two claims are sufficiently related to satisfy proper joinder under Rule 14. Answer option D is incorrect because the claim is supported by federal question jurisdiction, which is original subject-matter jurisdiction and therefore supplemental jurisdiction is not required.

(318)

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.

Key: C

Explanation: Answer option C is correct. A battery is an unlawful harmful or offensive contact with another person. The student did not himself commit a battery, and thus the only way that he could be convicted of the crime is through accomplice liability. To be convicted of a crime as an accomplice, the prosecution must show that (1) a person purposely promoted criminal conduct and had the same mens rea as required for the crime; (2) the person provided aid, assistance, or encouragement to the perpetrator; and (3) that a crime was actually committed by the perpetrator. In this case, only the third requirement is met; therefore, the student would not be guilty of battery under an accomplice theory. Answer option A is incorrect because it does not account for the fact that the student did not have the requisite mens rea for the offense. Answer option B is incorrect because it is an erroneous statement of criminal law. Answer option D is incorrect because the commission of the battery may have been foreseeable, but the student will not be convicted of battery because he cannot be convicted as an accomplice.

(229)

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.

Key: B

Explanation: Answer option B is correct. Contracts that are incapable of being fully performed within one year of the formation of the contract must be in writing pursuant to the statute of frauds. If it is possible to fully perform the contract within one year of its execution, even if unlikely, the contract does not fall under the statute of frauds and need not be in writing. Here, the oral contract, per its terms, had to be finished within 15 months (one year from the start of work in three months), but there was no provision prohibiting the contract from being completed earlier. Because it is possible that the landscape artist could fully perform the work per the contract within one year of the date the contract was formed, the oral contract is not subject to the statute of frauds and is enforceable. Answer option D is necessarily incorrect for these reasons. Answer option A is incorrect because the relevant date for determining if the contract can be performed within a year is the date the contract was formed, not the date when performance begins. Answer option C is incorrect because part performance is not an exception to the statute of frauds for this type of contract under these circumstances.

(450)

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.

Key: D

Explanation: Answer option D is correct. Where a defendant has appeared in a lawsuit, the defendant must be notified of any hearing on an application for default judgment at least seven days before the hearing. Here, the court set the hearing too soon (three days) after the application, violating the seven-day rule. Answer option A is incorrect because although a Rule 12 pre-answer motion does constitute an appearance under Rule 12, it is not a sufficient response to preclude a default judgment. Answer options B and C are incorrect because a party that makes a motion under Rule 12 must not make another Rule 12 motion raising a defense or objection that was available to the party but omitted from its earlier motion unless the defense or objection is for lack of subject-matter jurisdiction, failure to state a claim upon which relief can be granted, failure to join a necessary party, or failure to state a legal defense to a claim. Thus, by filing a motion to dismiss for failure to state a claim upon which relief can be granted, the defendant waived the defenses of personal jurisdiction and venue.

(16)

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.

Key: B

Explanation: Answer option B is correct. Under the doctrine of negligence per se, violations of certain statutes, regulations, and ordinances can sometimes amount to negligence without proof that the defendant breached a duty of reasonable care. Negligence per se applies if (1) the defendant violated a safety law, (2) the plaintiff is in the class of people intended to be protected by the law, (3) the violated law was designed to prevent the type of harm the plaintiff suffered, and (4) there is no legitimate excuse for the defendant's noncompliance with the law. Here, the ordinance is not meant to prevent the type of injury the neighbor suffered, which was unrelated to the dog not being on a leash. Answer option A is incorrect because even if the woman thinks it is reasonable not to use a leash when she can see her dog, tort law treats the conduct as unreasonable because it violates the ordinance. Answer option C is incorrect because pedestrians are within the class of people that a law requiring dogs to be on a leash is designed to protect. Answer option D is incorrect because while necessity (i.e., preventing imminent significant dangers) can be a defense to tortious conduct, it does not apply to these facts.

(77)

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 another.

(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.

Key: D

Explanation: Answer option D is correct. The majority rule is that strict liability for manufacturing defects extends beyond the customer to all foreseeable parties who are injured by a defective product. These may include the customer, members of the customer's family or household, guests, and bystanders (like the pedestrian here). Here, the car was defective in catching fire, something that should not have happened even though the car was driven negligently. Cars that are not "crashworthy" in accidents are defective for their failure to respond safely to the accident, even if the accident was caused by someone else's negligence. Answer option B is incorrect for the same reasons. Answer option A is incorrect because modern strict products liability law does not require privity. Answer option C is incorrect because although there is a category of strict liability for abnormally dangerous activities, the mere dangerousness of a product does not determine the presence or absence of liability, and cars are not considered abnormally dangerous products for the purposes of that rule. Strict liability for defective cars arises because of strict products liability, not because cars are abnormally dangerous.

(319)

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.

Key: B

Explanation: Answer option B is correct. The common law and Model Penal Code (MPC) have several differences regarding the crime of arson. At common law, a person cannot commit arson of the person's own dwelling, but the MPC recognizes arson when a person purposely sets fire to his own house for the purpose of collecting insurance proceeds. Although the homeowner had intended to set fire to his house for that purpose, the fire here was not purposefully started. For that reason, the homeowner is not guilty of arson under the MPC. Answer option A is incorrect because the MPC does recognize arson of one's own house in limited circumstances. Answer option C is incorrect. Although the mens rea for arson under the common law is malice (i.e., intentional or reckless), the mens rea for arson under the MPC is purposefulness, which does not include recklessness (the MPC does have a lesser offense for reckless burning or exploding). Answer option D is incorrect because it fails to account for the fact that there was no concurrence between the actus reus (leaving the fireplace on) and the mens rea (purposefulness).

(108)

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.

Key: D

Explanation: Answer option D is correct. An unincorporated association such as an LLC is a citizen of the states where its constituent members are citizens. Therefore, the LLC here is a citizen of State C and State D. Because the first corporation is a citizen of State A and State B and the amount in controversy exceeds $75,000, there is diversity of citizenship jurisdiction. Answer options A and B are incorrect because the citizenship of unincorporated associations, unlike corporations, does not depend on the state of formation or the state where it has its principal place of business. Answer option C is incorrect because whether a party is a citizen of the forum state is irrelevant for purposes of subject-matter jurisdiction.

(225)

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.

Key: C

Explanation: Answer option C is correct. The traffic cones are goods, so the UCC governs a contract for their sale. Contracts for the sale of goods for a price of $500 or more generally must be in writing to satisfy the statute of frauds. However, there is an exception that may apply to a contract between two merchants, known as the confirmatory memorandum exception. If the party seeking enforcement of such a contract sent a written confirmation (i.e., a "confirmatory memorandum") to the other party, the other party had reason to know of its contents, and the other party did not object within 10 days of receipt, then the memorandum can qualify as a sufficient writing under the statute of frauds despite the lack of a signature by the party being charged. The confirmation must be signed and indicate the quantity of goods. Here, the company's confirmation meets these requirements, and the manufacturer did not object in writing within 10 days of receipt. Thus, per the confirmatory memorandum exception, the company may enforce the agreement. Answer option B is incorrect for the same reasons. Answer option A is incorrect because the UCC does not require that the confirmation include the price, although the quantity must be indicated (which it was here). Answer option D is incorrect because contracts between merchants for the sale of goods for $500 or more must be in writing to satisfy the statute of frauds, except when a recognized exception applies.

(533)

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.

Key: C

Explanation: Answer option C is correct. The Supreme Court has recognized a constitutional right for biological relatives to cohabitate and held that an ordinance prohibiting extended family members from living together violated the due process clause of the 14th Amendment. Answer options A and B are incorrect because although it is true that the state (and therefore a city) has an inherent police power to regulate zoning, the state may not violate constitutional rights. Answer option D is incorrect because the 14th Amendment's privileges or immunities clause protects rights of national citizenship. These rights are limited to the right to travel between states, and other rights such as access to government, the right to demand protection of the federal government on the high seas or abroad, the right of assembly, the privilege of habeas corpus, the right to use U.S. navigable waters, and rights secured by treaty.

(551)

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.

Key: C

Explanation: Answer option C is correct. The city must demonstrate that it is taking the property for a public use. If the taking is not for a public use but rather for a private use, then the government action does not implicate the takings clause but is likely unconstitutional on substantive due process or equal protection grounds. However, the fact that title is being transferred to a private company and the buildings would be leased to private businesses does not necessarily negate a finding of public use. Answer option A is incorrect because the city does not need a compelling justification to condemn the land under the takings clause (although there may be state law requirements). Answer option B is incorrect because the owners are entitled to the fair market value of the property under the takings clause. Answer option D is incorrect because the owners need not agree to the taking.

(643)

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.

Key: C

Explanation: Answer option C is correct. The woman met all of the elements of battery. She intended to cause harmful or offensive contact with the man, and harmful contact occurred. She had the intent because she had the conscious objective to trip the man. She had the conscious objective to cause harmful contact because tripping someone is likely to hurt them. At the very least tripping someone would be offensive because it would offend a person's reasonable sense of dignity, even if they did not get hurt. Finally, harmful or offensive contact did occur because the man was hit by the cane, he tripped and fell. The woman is permitted to use an instrumentality to conduct the battery, as she did here. Answer option A is incorrect because, although it is correct on the facts that the woman's body did not touch the man's body, it is incorrect on the law because using an instrumentality to cause harmful or offensive contact satisfies the rule for battery. Option B is incorrect because it is incorrect on the facts. There is no justification defense here. Although self-defense or defense of others can be used as a justification defense for the intentional tort of battery, there are no facts to suggest that either defense applies here. Option D is incorrect because it is too narrow. An injury alone is not sufficient to satisfy the rule of battery.

(320)

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.

Key: B

Explanation: Answer option B is correct. The soldier could be convicted of second-degree murder because he intended the killing (or at least intended serious injury) by stabbing the friend in the chest. Answer option A is incorrect because the statute allows for a conviction of first-degree murder only for felony murder and premeditated and deliberated murder. There is no inherently dangerous felony present in the facts to support a felony murder conviction, nor is there evidence of premeditation. A first-degree murder conviction is therefore not possible. Answer option C is incorrect because although under the common law murder may be mitigated to voluntary manslaughter if the killing is done in the heat of passion upon adequate provocation (such as learning of a spouse's affair), in this case there was a significant cooling-off period after the soldier learned of the adultery. Answer option D is incorrect because under the common law, voluntary intoxication generally is not a defense to a general-intent crime such as second-degree murder.

(178)

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.

Key: D

Explanation: Answer option D is correct. For the purposes of products liability, a product is defective if the defect makes it unreasonably dangerous. A product may be unreasonably dangerous due to a manufacturing defect, a design defect, or a failure-to-warn defect. A product is defective due to a manufacturing defect if an unintended manner of production renders the product more dangerous than usual. A product is defective due to a design defect if the intended design makes the product unsafe for the product's intended and foreseeable uses. Here, the manufacturer installed the computer in the owner's car in such a way that it created a high risk of electrical malfunction in that particular car. Thus, the owner likely would prevail in showing that the car was defective due to a manufacturing defect. Answer option A is incorrect because liability based on a manufacturing defect does not depend on the plaintiff's actions. Answer option B is incorrect because the proper operation of the computer would be relevant to whether there was a design defect, not a manufacturing defect. Answer option C is incorrect because the intended design of the computer did not make the owner's car unsafe; rather, the manufacturing process created the safety risk that caused the owner's injury.

(111)

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.

Key: B

Explanation: Answer option B is correct. The court will dismiss a suit where subject-matter jurisdiction is premised on diversity of citizenship if the court can determine, to a legal certainty, that the plaintiff cannot recover more than the minimum amount in controversy, i.e., more than $75,000, exclusive of interest and costs. Here, the $500 maximum liability limit that applies means that the plaintiff cannot recover more than $500, well below the minimum amount in controversy. Answer options A and D are incorrect because whether any party is a citizen of the forum state is irrelevant for diversity of citizenship subject-matter jurisdiction purposes. Answer option C is incorrect because even if the parties are diverse, the amount in controversy requirement must still be met.

(97)

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.

Key: D

Explanation: Answer option D is correct. The UCC governs this contract because it involves the sale of goods. Under the UCC, unless an offer specifies the method of acceptance, an offer may be accepted in any reasonable manner provided the offeree still has the power to accept it. Likewise, a revocation may be made in any manner, but it is not effective until the offeree receives notice of it. Here, the offer did not specify a manner of acceptance, and the buyer's method of acceptance by mail was reasonable. Under the mailbox rule, an acceptance is effective when it leaves the offeree's possession regardless of whether the offeror ever receives it. Answer option B is incorrect for these reasons. Answer option A is incorrect because the seller and buyer had a valid contract when the buyer placed the acceptance letter in the mail, which occurred before the buyer received the seller's revocation. Answer option C is incorrect because revocation may be made in any manner so long as the offeree receives notice of it before acceptance.

(221)

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.

Key: B

Explanation: Answer option B is correct. The contract is governed by the UCC because the boxes are goods. Under the UCC, an additional term in an acceptance is merely a proposal to be added to the contract if either or both parties to the contract are not merchants. In such a case, unless agreed to by the original offeror, the term does not become part of the contract. Here, although the wholesaler is a merchant, the nurse is not. Because the nurse did not agree to the surcharge term, it did not become part of the contract. Answer options C and D are necessarily incorrect for these reasons. Answer option A is incorrect because there are circumstances under which the additional term could have become part of the contract (e.g., if the nurse had agreed to the additional term). However, such circumstances did not occur here.

(520)

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.

Key: D

Explanation: Answer option D is correct. When it is unclear whether there has been state action, courts consider several factors to decide the question. These factors focus on the actor (the arguably "private" entity or person) and the act that forms the basis of the claim. Courts will consider whether (1) a private entity performed a public function, (2) a private entity took action with significant state involvement or entwinement, and (3) a private action was judicially enforced. "Significant state involvement or entwinement" is likely to be found where the governmental action appears to promote or endorse the activity or where there is a symbiotic relationship between the governmental and private actors. Here, the state hired the physician to provide medical services in its prison, and so there is a sufficiently close nexus between the state and the private physician's action such that the private physician's action could be deemed that of the state itself. In addition, the physician provided medical care in a state prison, and imprisonment is a traditional public function. Answer option A is incorrect because the formal employment status of the physician is not determinative. Answer option B is incorrect because although performing a traditional government function exclusively reserved by the state would indicate the presence of state action, it is not the only test that a court will use to answer this question. Here, the state hired the physician to work at a government prison facility where the government had a duty to provide medical care, which will suffice to create state action. Answer option C is incorrect because a licensing scheme, even an extensively regulated one, is not necessarily state involvement.

(521)

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.

Key: B

Explanation: Answer option B is correct. State action, also called "government action," is a threshold requirement for the assertion of most constitutional rights, including due process. Here, there are no facts that establish the utility company is a public or a government entity. Answer option A is incorrect because it does not consider the threshold issue of state action. The private corporation is not governed by procedural due process, although there may be regulations that do govern the utility. Answer options C and D are incorrect because although these might be factors considered when deciding whether a private actor will be deemed a state actor, neither monopoly status nor the provision of essential services is necessarily state involvement. This is especially true when the government is not involved in the specific act challenged as unconstitutional. The Supreme Court has not deemed utility companies state actors merely because they are subject to licensing requirements and may be heavily regulated.

(602)

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.

Key: A

Explanation: Answer option A is correct. An easement by necessity is created when (1) there was common ownership (prior unity) in two parcels of land, (2) the severance of the parcels created the necessity for the easement, and (3) the easement is strictly necessary. Strict necessity exists when a parcel is landlocked and there is no other way to access the property. Unlike other easements, when the necessity ends, the easement will be terminated. Here, the man previously owned both parcels. Because the buyer's parcel was landlocked, he had no other vehicle access. Therefore, the buyer had an easement by necessity over the man's land. When the new road in the valley was built, however, the necessity for the easement ended and the easement terminated. Answer option D is necessarily incorrect for the same reasons. Answer option B is incorrect because although release is one way of terminating an easement, it is not the only way. As mentioned previously, an easement by necessity terminates when the necessity ends. Answer option C is incorrect because no easement by prescription was created. An easement by prescription is created when the following are simultaneously true: (1) the dominant estate holder openly and notoriously uses the servient estate, (2) the use is hostile, (3) the use is continuous, and (4) the use is for the statutory period. The facts provide that after the easement by necessity ended, the buyer continued to use the easement for two years. Even if the continued use of the man's property after the termination of the easement by necessity met all the other elements of an easement by prescription (i.e., open, notorious, hostile, and continuous), the continued use is less than the five-year statute of limitations. Thus, no easement by prescription was created.

(307)

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.

Key: D

Explanation: Answer option D is correct. Because joint tenancies include a right of survivorship, when one of the joint tenants dies, the other joint tenants automatically receive the decedent's interest in the property. Although this right of survivorship may be severed during life (meaning that it is conveyable by one joint tenant or transforms to a tenancy in common upon divorce for tenancies by the entireties), it is not devisable or inheritable. Therefore, if a joint tenant or a tenant by the entirety attempts to devise her interest in the land via a will, that interest will not pass under the terms of the will but instead will pass to the other living cotenant(s) by operation of law. Here, when the woman died, the joint tenancy was not severed. Rather, her interest automatically transferred to the surviving joint tenants, the two brothers, who took the woman's interest and remain joint tenants. Answer option C is necessarily incorrect for these reasons. Answer options A and B are incorrect because the woman's interest was not devisable, so it could not pass by the woman's will.

(115)

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.

Key: A

Explanation: Answer option A is correct. The two primary sources of federal subject-matter jurisdiction are federal question jurisdiction and diversity jurisdiction. Because the claim at issue arises under state law, diversity jurisdiction is most likely implicated. Citizenship for diversity purposes is established at the time of filing and the amount in controversy is accepted if made in good faith and if it does not appear to a legal certainty that the plaintiff cannot recover at least the minimum amount under 28 U.S.C. § 1332. Answer option B is incorrect because federal courts are courts of limited jurisdiction and there must be at least one form of original subject-matter jurisdiction (federal question or diversity) before the federal court can hear a claim; the state court's subject-matter jurisdiction laws are irrelevant. Answer option C is incorrect because citizenship is examined at the time of filing the lawsuit. Answer option D is incorrect because it invokes the language of the venue standard, which plays no role in determining whether subject-matter jurisdiction is met.

(250)

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.

Key: A

Explanation: Answer option A is correct. Each cotenant has the right to possess all of the property, and a cotenant is not required to pay rent to another cotenant for the exclusive use of the property. However, if a cotenant in possession of the property refuses to grant a nonpossessing cotenant access, then the nonpossessing cotenant may bring an action for ouster. Upon showing ouster, the nonpossessing cotenant will be able to receive the fair rental value of the entire property at the time access became impossible. Here, ouster is not an option for the youngest sibling because she still lives in the house. Thus, the youngest sibling has not been denied access to the house. Answer option B is incorrect because the youngest sibling is a tenant in common and thus has a right to partition the property, a process that destroys the cotenancy so that each person holds a divided interest in the property or its proceeds. Answer options C and D are incorrect because a tenancy in common is alienable, devisable, and descendible, and thus, the youngest sibling has the right to sell her interest to anyone she chooses, including her siblings or a third party.

(203)

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.

Key: C

Explanation: Answer option C is correct. Because this contract involves the sale of goods (a car is a movable good), the UCC applies. Under the UCC's statute-of-frauds rule, a sale of goods for $500 or more must be in writing, signed by the person against whom enforcement is sought, and must include the quantity. In this case, the contract is for $25,000, so a writing signed by the seller is required to enforce the contract against the seller. Here, however, the contract was oral, and the only written manifestation of the agreement was signed only by the buyer. As a result, the statute of frauds is not satisfied, and the contract is not enforceable against the seller. Answer option A is incorrect because it is an erroneous statement of the law; the statute of frauds is not limited to merchants. Answer option B is incorrect because the "confirmatory memorandum" exception (under which a party receiving a written confirmation without objecting within a reasonable time does not need to have signed the writing) applies only to contracts between merchants (i.e., those who deal in goods of the kind involved).; it does not apply to this contract entered into by two high school teachers. Answer option D is incorrect because the terms are not too uncertain for a contract to be enforced; the important terms of the contract necessary for the court to fashion a remedy are all included. Rather, the contract is not enforceable under the statute of frauds because there is no valid writing.

(187)

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.

Key: C

Explanation: Answer option C is correct. A request for specific performance may not be granted where monetary damages are adequate to compensate the nonbreaching party. In this case, monetary damages would be adequate; the homeowner would be made whole if awarded damages of $2,000, the cost for repainting the house. Thus, the court may not award the homeowner specific performance. Answer option A is incorrect for the same reasons, and also because contracts for personal services (e.g., the painting of a house) are not enforceable by specific performance, because such an award would be tantamount to forcing the breaching party to work against his will. Answer option B is incorrect because the facts state that the typical cost for painting similar houses in the locality is $2,000 (which is what the painter charges). Answer option D is incorrect because it erroneously assumes that specific performance may be awarded only for breach of contracts for the sale of goods. While specific performance may be awarded for such contracts (in certain situations), it is not a remedy exclusive to such contracts. For instance, specific performance may be awarded for breach of land-sale contracts in certain situations.

(257)

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.

Key: A

Explanation: Answer option A is correct. Absent an agreement to the contrary, a tenant may transfer the tenant's interest in the leased premises to another tenant, either by sublease or by assignment. An assignment transfers the lessee's interest in the leased premises for the entire duration of the lease. Any transfer for less than the full duration of the lease is considered a sublease. A landlord may sue a party for breach only if the landlord is in privity of contract or privity of estate with that party. The original tenant will always remain in privity of contract with the landlord, unless there is a novation. Novation occurs when the landlord expressly agrees to release the original tenant from further liability. When a tenant sublets the premises to a subtenant, the tenant remains in privity of contract with the landlord. By contrast, the subtenant is not deemed to be in privity of contract or in privity of estate with the landlord. When a tenant "assigns" the tenant's interest in the lease to another, the subsequent tenant is said to be in privity of estate with the landlord. Here, nothing in the facts indicates that a novation has been signed. Thus, the tenant remains in privity of contract with the landlord, and the landlord may sue the tenant to recover the unpaid rent. Because the tenant transferred the full remaining duration of the lease to the friend, the transfer constituted an assignment. Thus, the friend is in privity of estate with the landlord, and the landlord may also sue the friend to recover the unpaid rent. However, the friend's transfer to the coworker was for a period less than the full duration of the lease (i.e., the summer). Thus, the transfer was a sublease. Accordingly, the coworker is not in privity of contract or privity of estate with the landlord, and the landlord may not sue the coworker to recover the unpaid rent. Answer options B, C, and D are therefore incorrect.

(262)

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.

Key: A

Explanation: Answer option A is correct. Under the implied warranty of habitability, which applies only to residential leases, a landlord has a duty to provide and maintain premises fit for human habitation. The landlord typically has a duty to maintain and repair the leased premises, including systems such as heating, cooling, plumbing, electricity, appliances, and other items deemed necessary for suitable housing. Further, if the landlord fails to repair the defect in a reasonable amount of time, the implied warranty of habitability provides the residential tenant with the option to terminate the lease, remain in possession and withhold rent, or repair and deduct the cost of the repair from future rent. The student is a residential tenant and may therefore remain on the premises and withhold rent. Constructive eviction is available to commercial tenants or residential tenants. Constructive eviction occurs when a tenant moves out because the landlord, or someone acting under the control of the landlord, has substantially interfered with the tenant's use and enjoyment of the premises. A tenant who has been constructively evicted may terminate the lease and withhold rent, provided that the tenant abandons the premises within a reasonable time. Here, the shopkeeper is a commercial tenant, so he may vacate the leased premises and withhold rent under the doctrine of constructive eviction. Answer options B, C, and D are incorrect because they include remedies under the implied warranty and these remedies are not available to the shopkeeper as a commercial tenant.

(159)

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

Key: D

Explanation: Answer option D is correct. Under joint and several liability, if more than one defendant is liable for a single injury, the plaintiff may recover the full amount of the damages from any of the defendants. A defendant who pays more than that defendant's own share of responsibility to the plaintiff may recover from other defendants in a claim for contribution, but that does not affect the plaintiff's direct recovery. Here, the pedestrian may recover

the full $100,000 in damages from the at-fault speeding driver, even though that driver's responsibility for the accident was only 20%. Answer options A, B, and C are necessarily incorrect for this reason.

(359)

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.

Key: A

Explanation: Answer option A is correct. Each cotenant has the right to possess all of the property. A cotenant is not required to pay rent to another cotenant for the exclusive use of the property. However, if a cotenant in possession of the property refuses to grant a nonpossessing cotenant access, then the nonpossessing cotenant may bring an action for ouster. Upon showing ouster, the nonpossessing cotenant will be able to receive the fair rental value of the entire property at the time access became impossible. Here, the sister is the cotenant in possession, but possession alone does not give rise to an obligation to pay rent. However, because the sister refused to grant her brother access to the property, the sister is obligated to pay him rent. Answer option B is incorrect because, although each cotenant has the right to possess all of the property, that right does not include the power to oust a nonpossessing cotenant. Answer options C and D are incorrect because the rule of ouster applies to all cotenancies and is not specific to a tenancy in common or a joint tenancy.

(112)

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.

Key: C

Explanation: Answer option C is correct. A defendant is subject to general personal jurisdiction in the courts located in a state in which the defendant is considered "at home." A corporation is considered to be at home in its state of incorporation and the state where it maintains its principal place of business. Here, both defendants are incorporated in State B. Answer option A is incorrect because general personal jurisdiction is not specific to any particular claim or activity; the claim asserted against a defendant subject to general personal jurisdiction need not bear any relationship to the defendant's activity in the forum state. Answer option B is incorrect because the place of injury may be one permissible location that can exercise personal jurisdiction, but it is not the exclusive place. Moreover, under these circumstances, it does not appear that a court in State G would have personal jurisdiction over either defendant, as neither defendant had contacts with State G nor is either considered at home there. Answer option D is incorrect because transient personal jurisdiction (i.e., when a court exercises personal jurisdiction over a nonresident individual defendant who is personally served with process while temporarily but voluntarily in the forum state) does not apply to corporations.

(331)

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.

Key: D

Explanation: Answer option D is correct. Historically, the crime of kidnapping required that the victim be transported a great distance. Although the definition has been loosened somewhat, most jurisdictions still require movement of the victim or confinement with the intent to conceal the person. Neither of those actions were taken here, and thus the resident would not be convicted of kidnapping. The resident could be convicted of false imprisonment, however, which requires an unlawful restraint of a person, but not movement or concealment. Answer option A is incorrect because it reflects the requirements for false imprisonment. Answer option B is incorrect because the existence of psychological trauma is not necessary or sufficient for a kidnapping conviction. Answer option C is incorrect because a person could be kidnapped in the person's own home (e.g., confinement with the purpose of concealment), but merely locking a door so a person cannot leave does not qualify as kidnapping.

(267)

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.

Key: B

Explanation: Answer option B is correct. A person cannot hold an easement on his own land. If a person holds title to the dominant estate and then later acquires the servient estate, the easement "merges" and is terminated, which is what occurred here when the neighbor sold his property to the landowner. After a merger, if the servient estate is later sold, the easement is not automatically revived; a new easement must be created. Thus, the express easement that the landowner granted to the neighbor terminated when the landowner purchased the neighbor's property. Answer option A is incorrect because termination of an easement by release requires an express agreement satisfying the statute of frauds and no facts here indicate such an agreement. Answer option C is incorrect because to obtain a prescriptive easement a party must prove (1) the dominant estate holder openly and notoriously used the servient estate, (2) the use was hostile, (3) the use was continuous, and (4) the use was for the statutory period. While the neighbor may have satisfied elements (1), (3), and (4), the easement was not hostile because the landowner permitted the action. Further, once the landowner purchased both properties, the easement terminated by merger. Answer option D is incorrect because an easement by estoppel occurs when there was permission to use the servient estate plus there was reasonable reliance on that permission to the party's detriment. The detrimental reliance must be such that it would be equitable under the circumstances for the court to recognize the existence of an easement. Here, no facts implicate any of these elements.

(145)

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.

Key: B

Explanation: Answer option B is correct. Personal jurisdiction can be either general or specific. General jurisdiction over an individual defendant is based on the individual's domicile and allows the individual to be sued in the individual's home state on any cause of action, irrespective of whether there is a connection between the defendant's activities or contacts in that state and the cause of action. For the court to exercise general jurisdiction, an individual must be considered "at home" in the forum state, which means being domiciled there. "Domicile" for these purposes means the one state where the individual has a permanent residence and to which the individual intends to return whenever absent. Once a domicile is established, it continues to be the person's domicile until a new domicile is shown to have been established by clear and convincing evidence. Although there is no minimum residency time requirement to establish domicile, courts will determine if a person has established a new domicile by considering (1) participation in political process (i.e., voting), (2) property ownership and licensure, (3) degree of involvement in community activities, and (4) declarations of permanent residence on official filings such as taxes. Here, the man grew up in and went to college in State A and therefore was a domiciliary of State A, and there is no clear and convincing evidence that the man's domicile had changed to State C by the time of the lawsuit. Thus, the man is subject to general personal jurisdiction in State A. The man also will be subject to personal jurisdiction in State B under its nonresident motor vehicle statute and because the cause of action for damages from the car accident arises out of or is related to the man's minimum contacts with State B (i.e., driving through State B). Answer options C and D are incorrect because the man would not be subject to either general or specific personal jurisdiction in State C. He is not yet domiciled in State C, as discussed, and his in-forum activities and contacts in State C did not give rise to the cause of action.

(65)

47. Motivated by a longstanding grudge, a blogger made an online 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 online posting does not constitute "publication" under defamation law.

Key: B

Explanation: Answer option B is correct. When a plaintiff in a defamation action is a private person and the false statement is a matter of public concern, the plaintiff must prove actual damages, which include emotional distress damages. Here, the blogger knowingly published a false statement concerning the competitor, a private person, and the false statement was a matter of public concern. Because the competitor was fired due to that false statement, the competitor could recover the actual emotional distress damages that resulted. Answer option C is necessarily incorrect for this reason. Answer option A is incorrect because emotional distress is not a presumed damage; it must be proven. Answer option D is incorrect because for purposes of defamation law publication includes any communication of the false information to third parties.

(129)

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.

Key: D

Explanation: Answer option D is correct. Federal courts are courts of limited subject-matter jurisdiction. Lack of subject-matter jurisdiction cannot be waived and may be raised at any time. If a claim is not supported by subject-matter jurisdiction, it may be dismissed at any time on a motion of any party or the court sua sponte, even on appeal. Answer options A and B are necessarily incorrect for these reasons. Answer option C is incorrect because it misstates the law. Some defenses, such as lack of personal jurisdiction and improper venue, are waivable defenses.

(133)

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 online 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.

Key: D

Explanation: Answer option D is correct. By placing the toy into a stream of commerce that went to State A and then advertising the product in State A, the toy company has minimum contacts with State A that involve the allegedly defective toy. Answer option A is incorrect because the minimum contacts necessary for specific jurisdiction may be established without the product being purchased in the forum. Similarly, answer option B is incorrect because minimum contacts may be established without the product being manufactured in the forum. Answer option C is not the best answer because the toy company's website is not interactive and does not support commercial activity. Thus, the website alone would not support minimum contacts.

(273)

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.

Key: D

Explanation: Answer option D is correct. There are four types of leases: (1) term of years, (2) periodic tenancy, (3) tenancy at will, and (4) tenancy at sufferance. The general rule is that a tenancy at will must be expressly created. Otherwise, a periodic tendency will be implied. With the exception of a tenancy at will, a landlord's transfer of the property to another will obligate the new owner to abide by the terms of an existing lease. This is true whether the landlord devises or conveys the property, or whether the landlord loses title as a result of a foreclosure sale. The new owner will take subject to the lease. The tenant should be notified of the assignment. Here, because there is no indication that the father and the tenant expressly created a tenancy at will, the tenant's month-to-month lease is a periodic tenancy. Thus, the daughter takes the property subject to the tenant's periodic lease and must abide by its terms. Answer option C is therefore incorrect. Answer option A is incorrect because a lease does not automatically terminate upon sale of the property. Answer option B is incorrect because while it is correct that a transferee of real property is not obligated to follow the terms of a tenancy at will, the facts here establish a periodic tenancy.