1) The law in the United States has been influenced by English, French, and Spanish law.

Answer: TRUE
Diff: 2
Topic: Pretrial Litigation Process

2) Many countries in Europe still follow the civil law system.

Answer: TRUE
Diff: 1
Topic: What is Law?

3) Businesses that are organized in the United States are subject to its laws, but not to the laws of other countries in which they do business.

Answer: TRUE
Diff: 2
Topic: What is Law?

4) Promoting social justice is not a function of the law.

Answer: FALSE
Diff: 2
Topic: What is Law?

5) According to the analytical school of thought, the law is formed by logic.

Answer: TRUE
Diff: 2
Topic: What is Law?

6) The U.S. Supreme Court has ruled that it is improper for a party to be convicted in a criminal case if another party involved in the same criminal activity has already been acquitted of that activity.

Answer: FALSE
Diff: 2
Topic: What is Law?
7) Shaping moral standards is not a function of the law.

Answer: FALSE
Diff: 2
Topic: What is Law?

8) The United States Supreme Court decision in *Brown v. Board of Education* demonstrates that the law's function is to maintain the status quo.

Answer: FALSE
Diff: 2
Topic: What is Law?

9) In the case of *Ashcroft, Attorney General v. The Free Speech Coalition*, the United States Supreme Court set aside portions of the Child Pornography Prevention Act, because the Act violated the First Amendment's free speech clause.

Answer: TRUE
Diff: 2
Topic: What is Law?

10) According to Anotole France, the law should apply equally to the rich and the poor.

Answer: TRUE
Diff: 1
Topic: What is Law?

11) The proponents of feminist legal theory argue that women should have superior rights to men in some circumstances due to past unequal treatment of women.

Answer: FALSE
Diff: 2
Topic: Schools of Jurisprudential Thought

12) The Natural Law School of jurisprudence believes that the law should be based on morality and ethics.

Answer: TRUE
Diff: 1
Topic: Schools of Jurisprudential Thought

13) The Historical School of jurisprudence believes that changes in societal norms are eventually shown in the law. Further, these scholars depend on precedent to solve modern problems.

Answer: TRUE
Diff: 2
Topic: Schools of Jurisprudential Thought
14) The Sociological School of jurisprudence does not emphasize following precedent.

Answer: TRUE  
Diff: 2  
Topic: Schools of Jurisprudential Thought

15) The Command School of jurisprudence believes that the law commands the ruling class; thus the law should not change when there is a change in the ruling class.

Answer: FALSE  
Diff: 1  
Topic: Schools of Jurisprudential Thought

16) Proponents of the Critical Legal Studies School of jurisprudence argue for great subjectivity in decisions made by judges.

Answer: TRUE  
Diff: 2  
Topic: Schools of Jurisprudential Thought

17) The Law and Economics School of jurisprudential thought holds that rights are not worth protecting if it is too costly from an economic viewpoint to do so.

Answer: TRUE  
Diff: 1  
Topic: Schools of Jurisprudential Thought

18) The Nineteenth Amendment to the United States Constitution gave women the right to vote.

Answer: TRUE  
Diff: 3  
Topic: Schools of Jurisprudential Thought

19) In the past the law did not allow married women in the United States to own property.

Answer: TRUE  
Diff: 3  
Topic: Schools of Jurisprudential Thought

20) The belief that the law is a way to form social behavior and reach sociological goals stems from the Historical School of jurisprudential thought.

Answer: FALSE  
Diff: 3  
Topic: Schools of Jurisprudential Thought
21) The English law courts could only award monetary damages.

Answer: TRUE
Diff: 2
Topic: History of American Law

22) The English law courts emphasized legal procedure over the merits of the individual case.

Answer: TRUE
Diff: 1
Topic: History of American Law

23) The English Chancery Courts were under the authority of the Lord Chancellor.

Answer: TRUE
Diff: 2
Topic: History of American Law

24) In most states today the law courts and equity courts remain separate so that both legal and equitable remedies can honor the tradition of the English common law court.

Answer: FALSE
Diff: 2
Topic: History of American Law

25) In general, the courts in a civil law system play a much larger role in making law than they do in a common law system.

Answer: FALSE
Diff: 1
Topic: History of American Law

26) The supreme law of the land in the United States of America is the Constitution.

Answer: TRUE
Diff: 2
Topic: Sources of Law in the United States

27) The federal government has all the powers that the states have not been given by the U.S. Constitution.

Answer: FALSE
Diff: 2
Topic: Sources of Law in the United States
28) Codes consist of statutes that have been organized by topic.

Answer: TRUE
Diff: 1
Topic: Sources of Law in the United States

29) A set of state or federal laws that describes conduct that must be followed by those the set of laws was designed to protect is known as a statute.

Answer: TRUE
Diff: 1
Topic: Sources of Law in the United States

30) The doctrine of *stare decisis* provides that each court decision is independent and should stand on its own.

Answer: FALSE
Diff: 1
Topic: Sources of Law in the United States

31) According to the text, what is the definition of "law?"
A) the list of actions a person must not perform
B) a body of rules of action or conduct prescribed by a controlling authority
C) the acts a person must perform in order to ensure fairness
D) optional rules for members of society to follow or ignore as they see fit

Answer: B
Diff: 2
Topic: What is Law?
Skill: Legal Concepts

32) Which of the following is not a general function of the law?
A) shaping moral standards
B) maintaining the status quo
C) encouraging individual justice
D) facilitating orderly change

Answer: C
Diff: 2
Topic: What is Law?
Skill: Legal Concepts
33) When statutes are passed only after considerable study, debate, and public input, this is an example of which function of the law?
   A) maintaining the status quo
   B) facilitating orderly change
   C) keeping the peace
   D) shaping moral standards
   E) encouraging individual justice

Answer: B
Diff: 2
Topic: What is Law?
Skill: Legal Concepts

34) What was the U.S. Supreme Court's reaction to a case in which a business executive was found guilty of aiding and abetting in the bribery of an Internal Revenue Service agent even though the Internal Revenue Service agent had been found not guilty of the bribery in a separate trial?
   A) Because one of the defendants had been found guilty, both should have been found guilty.
   B) Because one of the defendants had been found not guilty, they both should have been found not guilty.
   C) Because of the inconsistent outcomes, a third combined trial was ordered to reconcile the different outcomes.
   D) The decisions in both cases were thrown out, making it possible, though not mandatory, that one or both defendants would have to face another trial.
   E) This simply underscores the fact that there is always the possibility that different juries might reach different results in a given situation.

Answer: E
Diff: 2
Topic: What is Law?
Skill: Legal Concepts

35) According to Judge Jerome Frank, uncertainty in the law:
   A) is an unfortunate accident
   B) should be avoided whenever possible
   C) is of immense social value
   D) does not exist in the U.S. legal system

Answer: C
Diff: 3
Topic: What is Law?
Skill: Legal Concepts
36) The concept of flexibility in the law is best illustrated by:
   A) the use of precedent to decide similar cases in similar ways
   B) passing statutes that purposely do not address precisely how they would apply in all situations
   C) the use of appointed judges rather than elected judges
   D) imposing mandatory penalties for criminal violations
   E) setting a fixed amount of damages applicable to all wrongful death cases

Answer: B
Diff: 3
Topic: What is Law?
Skill: Legal Concepts

37) Which doctrine was overturned in the case of Brown v. Board of Education?
   A) the legality of poll taxes
   B) the permissibility of separate but equal facilities
   C) allowing only white males to vote
   D) the acceptability of paying women less than men for comparable work
   E) different working hours for male and female factory workers

Answer: B
Diff: 1
Topic: What is Law?
Skill: Legal Concepts

38) One of the goals of feminist legal theory is to:
   A) place as many women in legal decision-making roles as possible
   B) ensure that law schools graduate approximately equal numbers of men and women
   C) have the courts use a "reasonable woman" standard in evaluating the conduct of women
   D) usher in an era where women hold the bulk of the power in the legal system
   E) ensure that there are no areas in the law where women and men are treated differently

Answer: C
Diff: 3
Topic: Schools of Jurisprudential Thought
Skill: Legal Concepts

39) Documents such as the U.S. Constitution, the Magna Carta, and the United Nations Charter reflect what legal theory?
   A) the Natural Law school
   B) the Historical school
   C) the Sociological school
   D) the Analytical school

Answer: A
Diff: 2
Topic: Schools of Jurisprudential Thought
Skill: Legal Concepts
40) Persons who believe that law is "discovered" by men and women through the use of reasoning and choosing between good and evil adhere to which school of jurisprudential thought?
   A) the Natural Law school
   B) the Historical school
   C) the Analytical school
   D) the Command school
   E) the Sociological school

   Answer: A
   Diff: 1
   Topic: Schools of Jurisprudential Thought
   Skill: Legal Concepts

41) Proponents of which school(s) of jurisprudential thought are unlikely to adhere to precedent in making decisions?
   A) the Sociological school only
   B) the Critical Legal Studies school only
   C) both the Sociological school and the Critical Legal Studies school
   D) neither the Sociological school nor the Critical Legal Studies school

   Answer: C
   Diff: 3
   Topic: Schools of Jurisprudential Thought
   Skill: Legal Concepts

42) Someone who believes that law is a reflection of those in power believes in which school of jurisprudential thought?
   A) the Natural Law school
   B) the Historical school
   C) the Analytical school
   D) the Command school

   Answer: D
   Diff: 1
   Topic: Schools of Jurisprudential Thought
   Skill: Legal Concepts
43) Which of the following is most consistent with the Natural Law School of jurisprudence?
A) Law is based on moral and ethical principles of what are right, and it is the job of men and women, through study, to discover what these principles are.
B) The law is a reflection of society, thus the law must change naturally as society changes over time.
C) The laws of man are secondary to the laws of nature, and thus the laws of nature take precedence whenever the laws of man are in conflict with the laws of nature.
D) By applying the rules of logic to specific cases, the logical, or natural, result will be obtained.
E) Laws must first and foremost respect, preserve, and promote the preservation of the environment and life in all its forms.

Answer: A
Diff: 2
Topic: Schools of Jurisprudential Thought
Skill: Legal Concepts

44) The ________ school of jurisprudence believes that legal rules are unnecessary and used by the powerful to maintain the status quo, and that disputes should be resolved based on general notions of fairness.
   A) Historical
   B) Natural
   C) Command
   D) Critical Legal Studies

Answer: D
Diff: 2
Topic: Schools of Jurisprudential Thought
Skill: Legal Concepts

45) The Critical Legal Studies school of jurisprudence believes that:
   A) free market forces and market efficiency are the most important principles underlying the law
   B) past court decisions must be analyzed and criticized in developing new law
   C) subjective decision making by judges based on general notions of fairness is appropriate
   D) the purpose of law is to serve as an official voice of criticism of those in power
   E) judges should employ the same critical methods of analyzing cases in the courtroom that law schools use in teaching the law to students

Answer: C
Diff: 2
Topic: Schools of Jurisprudential Thought
Skill: Legal Concepts
46) The school of jurisprudence that believes that free market forces should determine the outcomes to lawsuits is:
   A) the Command school
   B) the Sociological school
   C) the Critical Legal Studies school
   D) the Law and Economics school

   Answer: D
   Diff: 2
   Topic: Schools of Jurisprudential Thought
   Skill: Legal Concepts

47) Which of the following is true about the Law and Economics school of jurisprudence?
   A) It is also known as the Chicago school.
   B) It promotes the use of economic principles in resolving cases, so long as the case is one involving business.
   C) It would say that a case that no lawyer would take on a contingent fee basis should be brought by an attorney who is paid by the state.
   D) It holds that antitrust cases should be vigorously prosecuted in order to protect the economic viability of smaller firms.

   Answer: A
   Diff: 2
   Topic: Schools of Jurisprudential Thought
   Skill: Legal Concepts

48) The following courts were common in England before the founding of the United States except:
   A) chancery courts
   B) bankruptcy courts
   C) merchant courts
   D) equity courts

   Answer: B
   Diff: 2
   Topic: History of American Law
   Skill: Legal Concepts

49) What was the only remedy (relief) available in the law courts of England?
   A) specific performance
   B) fines and imprisonment
   C) monetary awards for damages
   D) returning the parties to their positions before the dispute arose

   Answer: C
   Diff: 2
   Topic: History of American Law
   Skill: Legal Concepts
50) Which court was eventually combined with the regular court system?
   A) law courts
   B) equity courts
   C) criminal courts
   D) merchant courts

Answer: D
Diff: 2
Topic: History of American Law
Skill: Legal Concepts

51) What is an equity court's function?
   A) To deal with just the law of merchants.
   B) To issue opinions in cases that later set the precedent for similar cases.
   C) To investigate the merits of a case and base its decisions on fairness.
   D) To issue executive orders.
   E) To set state or federal laws between two or more nations.

Answer: C
Diff: 2
Topic: History of American Law
Skill: Legal Concepts

52) Which of the following is true about the creation of courts in England?
   A) The law courts were created in order to have broader jurisdiction than the merchant courts.
   B) The merchant courts were created in order to have more flexibility in fashioning remedies than the chancery courts.
   C) The equity courts were created to allow remedies that could not be granted by the law courts.
   D) The different types of courts were created in order to handle different types of cases, but the remedies available to the different courts were the same.
   E) Today, the Merchant Court remains a separate system of courts in England and the United States.

Answer: C
Diff: 2
Topic: History of American Law
Skill: Legal Concepts
53) Why was "common law" considered to be "common?"
A) It was the law that applied to the common people.
B) It was uniformly applied and was therefore common to the various jurisdictions in England.
C) It was the same in England and the United States, and thus common to the two nations.
D) It was the law that applied to common, everyday situations.

Answer: B
Diff: 3
Topic: History of American Law
Skill: Legal Concepts

54) Which of the following is a distinguishing feature of a common law legal system?
A) requiring guilt to be proven beyond a reasonable doubt
B) the sole source of law is a comprehensive civil code
C) the making of law by the judges and the following of precedent
D) having an appeal process
E) providing remedies to aggrieved parties

Answer: C
Diff: 2
Topic: History of American Law
Skill: Legal Concepts

55) Which of the following is true about United States law today?
A) The law of all states is based on English common law.
B) In several states, a portion of the law is based on civil law.
C) The law and equity courts remain separate in most states today.
D) The laws of the 50 states are essentially similar.

Answer: B
Diff: 2
Topic: History of American Law
Skill: Legal Concepts

56) A legal system that relies on extensive codes in which judicial decisions do not become law is known as what kind of legal system?
A) code law
B) equitable law
C) common law
D) civil law

Answer: D
Diff: 1
Topic: History of American Law
Skill: Legal Concepts
57) Influential Civil Codes include the following except:
   A) the Napoleonic Code
   B) the Roman *Corpus Juris Civilis*
   C) the Spanish Civil Code of 1898
   D) the German Civil Code of 1896

Answer: C
Diff: 2
Topic: History of American Law
Skill: Legal Concepts

58) In the United States, what is the supreme law of the land?
   A) the U.S. Constitution
   B) the statutes passed by Congress
   C) executive orders issued by the President
   D) state constitutions

Answer: A
Diff: 2
Topic: Sources of Law in the United States
Skill: Legal Concepts

59) Which branch of government has the authority to determine the validity of a law?
   A) executive
   B) administrative
   C) judicial
   D) legislative

Answer: C
Diff: 1
Topic: Sources of Law in the United States
Skill: Legal Concepts

60) Assume that there is a provision in the Colorado state constitution that is in conflict with a statute that was passed by the U.S. Congress and enacted into law. Which is true?
   A) The Colorado constitutional provision will control; the federal statute is invalid.
   B) The federal statute will control and make the state constitutional provision invalid.
   C) In Colorado, the Colorado constitutional provision will control over the statute passed by Congress, but the federal statute will apply in the other 49 states.
   D) Within Colorado, whichever was passed earlier will control over the other.
   E) Within Colorado, whichever was passed later will control over the other.

Answer: B
Diff: 3
Topic: Sources of Law in the United States
Skill: Legal Concepts
61) Which of the following statements is true about treaties?

A) Treaties are valid only if they do not conflict with a statute passed by Congress.
B) Treaties are valid only if they do not conflict with a statute passed by Congress or any of the state legislatures.
C) Treaties are the supreme law of the land, equal in priority with the U.S. Constitution.
D) Treaties are the supreme law of the land, and take priority over any inconsistent constitutional provision.

Answer: C
Diff: 2
Topic: Sources of Law in the United States
Skill: Legal Concepts

62) The Uniform Commercial Code is an example of what type of law?

A) statutory law
B) treaty
C) administrative law
D) judicial law
E) executive order

Answer: A
Diff: 2
Topic: Sources of Law in the United States
Skill: Legal Concepts

63) When statutes are organized by topic, the resulting compilation of law is known as:

A) a code
B) common law
C) civil law
D) precedent

Answer: A
Diff: 2
Topic: Sources of Law in the United States
Skill: Legal Concepts

64) The ability of Native American Indians to conduct gambling operations on Indian reservations:

A) is determined solely by the respective Indian tribe
B) is within the control of the federal government because of provisions in the U.S. Constitution
C) is determined solely by the state in which the reservation is located
D) has been found by the courts, in many instances, to have been improperly granted

Answer: B
Diff: 3
Topic: Sources of Law in the United States
Skill: Legal Concepts
65) Which of the following powers do administrative agencies typically have?
   A) rulemaking only
   B) statute interpretation only
   C) dispute adjudication only
   D) All of these are correct

Answer: D
Diff: 2
Topic: Sources of Law in the United States
Skill: Legal Concepts

66) The Federal Trade Commission is an example of:
   A) a federal agency created by Congress
   B) a corporation subsidized by the federal government
   C) a branch of the U.S. Supreme Court
   D) a temporary commission created by executive order that has become permanent
   E) a judicially created subdivision of the executive branch

Answer: A
Diff: 1
Topic: Sources of Law in the United States
Skill: Legal Concepts

67) The power of the president to issue executive orders:
   A) is expressly provided for in the U.S. Constitution
   B) was granted to the president in an early Supreme Court decision
   C) is implied, but not expressly stated in the U.S. Constitution
   D) is subject to a two-thirds approval of the Senate
   E) exists only because it has never been challenged

Answer: C
Diff: 2
Topic: Sources of Law in the United States
Skill: Legal Concepts

68) The export of software encryption technology from the United States is prohibited:
   A) by the U. S. Constitution
   B) by a federal statute passed by Congress
   C) by treaty
   D) by executive order

Answer: D
Diff: 2
Topic: Sources of Law in the United States
Skill: Legal Concepts
69) Stare decisis is the doctrine of:
   A) separation of powers so that decisions are not made by a single branch of government
   B) following precedent so that legal principles in earlier cases are followed in later cases
   C) constitutional principles applied when making any decision
   D) spending long periods of time looking at facts before making a decision

Answer: B
Diff: 3
Topic: Sources of Law in the United States
Skill: Legal Concepts

70) What use may a court of one state make of an earlier state court decision made in another state?
   A) If the earlier decision in the other state is relevant, it must be followed even though it is from another state, because all of the states are part of one legal system.
   B) The court deciding the case cannot take the decisions of other states into account.
   C) Earlier court decisions are equally relevant as precedent whether they were made in the same state or in a different state.
   D) The court of the state deciding a case can look to earlier court decisions in other states for guidance in deciding the case at hand, but is not required to follow them.

Answer: D
Diff: 3
Topic: Sources of Law in the United States
Skill: Legal Concepts

71) A woman was physically abused for years by her husband. The woman has limited education and never worked outside the home. One day, after being abused the previous evening, she plotted to kill her husband when he came home that night. The husband came home and the woman killed him. At the time of the crime, the husband was not making any threats. In the woman's trial, which of the following would be most consistent with feminist legal theory?
   A) Whether the killing was justified should be viewed from the standpoint of a reasonable woman, not from that of a reasonable man.
   B) Any abuse justifies the killing of the abuser.
   C) A woman should not be guilty of murder if the murder victim is a man who abused her.
   D) The jury should be composed only of women.

Answer: A
Diff: 3
Topic: What is Law?
Skill: Factual Application
72) John lives in a large city and desires to start an airport shuttle service. In order to do so, John must go through a complicated permit application and approval process. John believes that this process is in place in order to protect the persons already operating such services. John believes that these rules are arbitrary, and he should be allowed to start his business based on general notions of fairness. John's beliefs most closely correspond to which school of jurisprudence?
   A) Critical Legal Studies School
   B) Law and Economics School
   C) Natural Law School
   D) Historical School
   E) Sociological School

Answer: A
Diff: 2
Topic: Schools of Jurisprudential Thought
Skill: Factual Application

73) Betty believes that she has been discriminated against because of her sexual orientation. Although federal law does not prohibit this discrimination, Mary believes that the law should be changed in order to make the members of society more accepting of gay individuals. Mary's beliefs most closely correspond to which school of jurisprudence?
   A) Critical Legal Studies School
   B) Natural Law School
   C) Historical School
   D) Sociological School

Answer: D
Diff: 2
Topic: Schools of Jurisprudential Thought
Skill: Factual Application

74) Assume that Colorado passes a new law that provides "skiing and snowboarding at excessive speed within the boundaries of a commercially operated ski area shall result in a $1,000 fine." Charlie is convicted of violating this statute for skiing at 30 mph on a run at the Silver Peak ski area. Later, two skiers are separately charged with violating the same statute in conditions virtually identical to those when Charlie was skiing. Sam Swift was skiing at 25 mph and Barry Bomber was skiing at 35 mph. Based on the precedent established in the Standfer v. United States case, what would the juries in each case decide?
   A) Both would be found guilty because even 25 miles per hour is simply too fast.
   B) Sam would be found not guilty and Barry would be found guilty.
   C) Sam's case could be decided either way, but Barry would be found guilty.
   D) Either case could be decided either way because the prior case is separate from the two later cases.
   E) Sam would be found not guilty, but Barry's case could be decided either way.

Answer: D
Diff: 3
Topic: Sources of Law in the United States
Skill: Factual Application
75) Barry owns a small software development firm. Barry has an employee who needs special accommodations in order to be able to perform the functions of his job. These accommodations would cost $10,000, an amount that Barry believes is more than he should have to spend. The Americans with Disabilities Act provides that an employer is required to make "reasonable accommodations" for employees with a disability, but does not define what constitutes a "reasonable accommodation." Assume that size of the employer (by some measure) determines the maximum amount of money that would be considered reasonable for a particular employer to be required to spend. Under the principles of stare decisis, which of the following is true?

A) If a similar-size employer had been required to spend $15,000 in the past, then Barry would be required to spend the $10,000.
B) If a similar-size employer had been required to spend $15,000 in the past, this would not be relevant in Barry's case because it happened in the past.
C) If a similar-size employer had not been required to spend $15,000 in the past, then Barry would not be required to spend $10,000.
D) If a similar-size employer had not been required to spend $15,000 in the past, then Barry would be required to spend $10,000.

Answer: A

Diff: 3
Topic: Sources of Law in the United States
Skill: Factual Application

76) A number of the functions of the law can be viewed as contradictory. For example, one function is to maintain the status quo, whereas another is to facilitate orderly change. What other functions could be in conflict with one another? How can the law simultaneously have seemingly inconsistent functions?

Answer: The law has the function to keep the peace, yet also to maximize individual freedom. Likewise, the function of shaping moral standards can conflict with maximizing individual freedom. There are other examples of conflicting functions. This is reasonable because, although all are legitimate functions of the law, these functions will inevitably come into conflict in some circumstances. Thus, the law not only has these functions, but it must also determine which function takes precedence when there is a conflict. Thus, the law can have the function of maximizing individual freedoms, but that can be limited by the separate function of keeping the peace.

Diff: 2
Skill: Ethics and Policy
77) There has been much talk in recent years of eliminating the so-called "marriage penalty" in the tax code. This "penalty" actually consists of many different provisions, each of which results in a married couple paying greater taxes than the same two people would pay if both were single. How might the changing norms of society justify the elimination of these provisions, even though they have long been part of the tax code?

Answer: Because it is less expensive for two people to share a household than for those same two people to maintain separate households, the tax law incorporated numerous provisions providing smaller deductions or higher tax rates for married couples. One argument for eliminating the marriage penalty is that society has changed. In the past, very few couples would share a household without getting married, thus marital status was a determinant of whether people lived together and enjoyed the lower living expenses of living under one roof. In other words, if you were not married, then you must have been supporting a household with only one income. Because many couples living together today are not married, marital status is not as much of a determinant whether two persons are supporting one household or two, and thus, proponents say, not a justification for taxation differences. Thus today, many single people are living together as couples without getting married, and many people argue that a decision by these persons to marry should not increase their tax burden.

Diff: 3
Skill: Ethics and Policy

78) Evaluate the views of the Critical Legal Studies School of jurisprudence. What are the benefits and drawbacks of using broad notions of fairness in deciding cases?

Answer: An advantage is that decisions might be more flexible in fitting the situation of the case being decided. On the other hand, some judges might not use this discretion properly. Furthermore, by not relying on precedent, there would be much uncertainty in the law.

Diff: 2
Skill: Ethics and Policy

79) What are the good and bad aspects of relying on precedent to decide current cases? Give an example of precedent that either was not followed in the past, or should not be followed in the future. How much leeway do judges have in deciding whether to follow precedent? How much leeway should they have?

Answer: Precedent provides consistency in the law, but can lead to bad decisions when precedent becomes outdated or when the precedent-setting decision was wrong.

Diff: 2
Skill: Ethics and Policy
80) As courts decide cases involving the Internet and new kinds of issues not addressed previously, what role, if any, does precedent play? What role should it play? What difficulties could arise?

Answer: A court would first look to see if any applicable statutes apply to the situation. Beyond that, the court would consider whether or not there are any earlier relevant court decisions applicable to the case. The court might find a similar case, though one not involving the Internet, and extend its application to the Internet. Through this process, existing law can be extended to apply to new situations. Difficulties can arise if courts extend the application of an existing law to a new area where there are crucial differences that make the application of the old law improper.

Diff: 2
Skill: Ethics and Policy
1) General jurisdiction trial courts can be found in every state.
   
   Answer: TRUE  
   Diff: 2  
   Topic: The State Court Systems

2) An inferior court is also known as a limited jurisdiction trial court.
   
   Answer: TRUE  
   Diff: 1  
   Topic: The State Court Systems

3) In many situations, the parties in a small claims court cannot have a lawyer represent them.
   
   Answer: TRUE  
   Diff: 2  
   Topic: The State Court Systems

4) An intermediate appellate court does not allow the introduction of new testimony or evidence.
   
   Answer: TRUE  
   Diff: 1  
   Topic: The State Court Systems

5) Most states use specialized courts to handle commercial litigation.
   
   Answer: FALSE  
   Diff: 2  
   Topic: The State Court Systems

6) General jurisdiction trial courts hear evidence and testimony.
   
   Answer: TRUE  
   Diff: 1  
   Topic: The State Court Systems
7) Small claims courts are considered courts of record.
   Answer: FALSE
   Diff: 3
   Topic: The State Court Systems

8) Decisions of state supreme courts can always be appealed to the U.S. Supreme Court.
   Answer: FALSE
   Diff: 2
   Topic: The State Court Systems

9) In Delaware, the Chancery Court hears and decides business litigation.
   Answer: TRUE
   Diff: 2
   Topic: The State Court Systems

10) The majority of states have a supreme court.
    Answer: TRUE
    Diff: 1
    Topic: The State Court Systems

11) The U.S. courts of appeal were created by Congress rather than the U.S. Constitution.
    Answer: TRUE
    Diff: 2
    Topic: The Federal Court System

12) The United States District Court is the general jurisdiction trial court in the federal system.
    Answer: TRUE
    Diff: 1
    Topic: The Federal Court System

13) Each state has only one U.S. District Court.
    Answer: FALSE
    Diff: 1
    Topic: The Federal Court System

14) In the U.S. Circuit Courts of Appeals, a review *en banc* is an appeal heard by a three-judge panel.
    Answer: FALSE
    Diff: 2
    Topic: The Federal Court System
15) A majority decision of the U.S. Supreme Court that is not unanimous does not become precedent.

Answer: FALSE
Diff: 2
Topic: The Federal Court System

16) There is concurrent state and federal jurisdiction for diversity of citizenship cases so long as the minimum amount in controversy is met.

Answer: TRUE
Diff: 1
Topic: The Federal Court System

17) The Court of Appeals for the Federal Circuit was the thirteenth court of appeals that was created.

Answer: TRUE
Diff: 2
Topic: The Federal Court System

18) The Court of Appeals for the Federal Circuit may review the decisions made in the Patent and Trademark Office.

Answer: TRUE
Diff: 1
Topic: The Federal Court System

19) Appeals from the Court of International Trade are heard by the Court of Appeals for the Federal Circuit.

Answer: TRUE
Diff: 1
Topic: The Federal Court System

20) A federal question case brought in federal district court must meet the minimum dollar amount limit of $75,000.

Answer: FALSE
Diff: 2
Topic: The Jurisdiction of the Courts

21) The concept of standing requires that the plaintiff have a stake in the outcome of the case that is filed.

Answer: TRUE
Diff: 1
Topic: The Jurisdiction of the Courts
22) Subject matter jurisdiction is not necessary in a lawsuit where there is in rem jurisdiction.

Answer: FALSE
Diff: 2
Topic: The Jurisdiction of the Courts

23) Where a long-arm statute is present, a defendant need not have minimum contact with a state for that state's courts to have jurisdiction over the defendant.

Answer: FALSE
Diff: 2
Topic: The Jurisdiction of the Courts

24) A forum-selection clause forbids parties to a contract to designate and agree to the jurisdiction of a court that otherwise might not have personal jurisdiction.

Answer: FALSE
Diff: 2
Topic: The Jurisdiction of the Courts

25) Courts generally frown upon forum shopping.

Answer: TRUE
Diff: 1
Topic: The Jurisdiction of the Courts

26) The document filed to initiate a lawsuit is known as an allegation.

Answer: FALSE
Diff: 2
Topic: Pretrial Litigation Process

27) In an answer filed for a lawsuit, the defendant must present the defendant's version of the events described in the complaint.

Answer: FALSE
Diff: 2
Topic: Pretrial Litigation Process

28) A party must file a motion to consolidate in order to become a party to a preexisting lawsuit between other parties.

Answer: FALSE
Diff: 1
Topic: Pretrial Litigation Process
29) A statute of limitation limits what can or cannot be mentioned in a party's complaint.

Answer: FALSE  
Diff: 2  
Topic: Pretrial Litigation Process

30) In general, a party must wait until the trial to find out the facts of the other party's case.

Answer: FALSE  
Diff: 2  
Topic: Pretrial Litigation Process

31) For a trial to be conducted with a jury, both parties must request a jury trial.

Answer: FALSE  
Diff: 2  
Topic: The Trial

32) Potential jurors are selected to hear specific cases through the process of voir dire.

Answer: TRUE  
Diff: 1  
Topic: The Trial

33) An arbitrator's decision is generally known as a judgment.

Answer: FALSE  
Diff: 1  
Topic: Alternative Dispute Resolution

34) The Uniform Arbitration Act is a federal statute that applies to all states.

Answer: FALSE  
Diff: 1  
Topic: Alternative Dispute Resolution

35) The U.S. Supreme Court has upheld the use of arbitration to solve employment disputes.

Answer: TRUE  
Diff: 1  
Topic: Alternative Dispute Resolution
36) The following are examples of limited jurisdiction trial courts except:
   A) small claims court
   B) appellate court
   C) family law court
   D) traffic court
   E) probate court

Answer: B
Diff: 1
Topic: The State Court Systems
Skill: Legal Concepts

37) An inferior trial court is one that:
   A) can hear only matters involving relatively small dollar amounts
   B) has had a larger than normal portion of its decisions overturned on appeal
   C) has an appointed judge rather than an elected judge
   D) can only hear certain kinds of cases
   E) must have all of its decisions approved by a higher court before they become effective

Answer: D
Diff: 2
Topic: The State Court Systems
Skill: Legal Concepts

38) The United States Constitution states that the federal government's judicial power lies with:
   A) state superior court
   B) intermediate appellate court
   C) small claims court
   D) inferior trial court
   E) supreme Court

Answer: E
Diff: 2
Topic: The State Court Systems
Skill: Legal Concepts
39) Which of the following statements is generally **not** true about state intermediate appellate courts?

A) The appellate court reviews the record of the trial court.
B) The appellate court usually allows the parties to file briefs outlining support for their positions.
C) The appellate court allows the parties to make oral arguments outlining their position.
D) The appellate court allows the parties to introduce new evidence so long as it was not previously introduced at the original trial.
E) Appellate court decisions are final and further appeal is not possible.

Answer: D
Diff: 3
Topic: The State Court Systems
Skill: Legal Concepts

40) Which of the following is correct about litigating commercial disputes?

A) Nearly all states have specialized trial courts that hear commercial disputes.
B) Commercial disputes, because of their specialized nature, are first heard at the appellate court level.
C) A few states have established specialized trial courts for commercial disputes.
D) Businesses generally dislike the concept of specialized trial courts for commercial disputes because the large numbers of consumers who sue businesses in these courts have led the judges to become generally biased against business.
E) In all states, commercial disputes must be heard in a limited-jurisdiction court.

Answer: C
Diff: 3
Topic: The State Court Systems
Skill: Legal Concepts

41) The general jurisdiction trial court in the federal system is called the:

A) United States Trial Court
B) United States Circuit Court
C) United States General Court
D) United States District Court
E) Federal Chancery Court

Answer: D
Diff: 2
Topic: The Federal Court System
Skill: Legal Concepts
42) Which federal court or courts is directly established by the United States Constitution?
   A) The Supreme Court only
   B) Federal trial courts only
   C) The Supreme Court and federal trial courts
   D) The Supreme Court and federal courts of appeal
   E) The Supreme Court, federal courts of appeal, and federal trial courts

   Answer: A
   Diff: 2
   Topic: The Federal Court System
   Skill: Legal Concepts

43) How are judges for the federal courts selected?
   A) by nationwide election
   B) by election by the voters within the state where they preside
   C) by the President, subject to confirmation by the Senate
   D) by the Supreme Court justices
   E) by the sitting federal judges within the same circuit

   Answer: C
   Diff: 1
   Topic: The Federal Court System
   Skill: Legal Concepts

44) The U.S. claims court hears what kinds of cases?
   A) any case with claims involving more than one state
   B) civil cases where at least $75,000 is in dispute
   C) cases against the United States
   D) cases where counterclaims have been filed
   E) cases involving disputes in the way an earlier case was decided

   Answer: C
   Diff: 2
   Topic: The Federal Court System
   Skill: Legal Concepts

45) Most federal circuits of the federal appellate court system are determined based on:
   A) geography
   B) the subject matter of the case being appealed
   C) whether the case is criminal or civil
   D) the amount in controversy in the appeal
   E) whether the appeals come from state or federal courts

   Answer: A
   Diff: 1
   Topic: The Federal Court System
   Skill: Legal Concepts
46) Which of the following is generally true about federal appellate court proceedings?
   A) The appeals can come only from a U.S. district court.
   B) New evidence can be introduced, so long as it relates to the evidence introduced in the original trial.
   C) Appeals are usually heard by a three-judge panel rather than by all the judges of the court.
   D) To avoid being improperly influenced by the lower court decision, the appellate court must make its own decision on the case without knowing the outcome in the original trial.

   Answer: C
   Diff: 2
   Topic: The Federal Court System
   Skill: Legal Concepts

47) Which of the following is correct with regard to the Court of Appeals for the Federal District?
   A) It hears appeals of all federal district court cases.
   B) It hears its cases in New York City.
   C) It includes three Supreme Court justices on its panel of judges.
   D) It hears appeals only from within the District of Columbia.
   E) It reviews decisions of the Patent and Trademark Office.

   Answer: E
   Diff: 2
   Topic: The Federal Court System
   Skill: Legal Concepts

48) What happens if the U.S. Supreme Court reaches a tie in a decision?
   A) The case will be reconsidered in the following year.
   B) The decision will be held in abeyance until one of the justices decides to change his or her mind.
   C) The case will be returned to the Circuit Court of Appeals to reconsider the case in light of the tie decision by the Supreme Court.
   D) The lower court decision in the case is overturned.
   E) The lower court decision in the case is affirmed.

   Answer: E
   Diff: 2
   Topic: The Federal Court System
   Skill: Legal Concepts
49) The consequence of a plurality decision is that:
   A) the decision of the Circuit Court of Appeals is affirmed
   B) the case is not decided and will be reheard at a later date
   C) the case is decided but is not precedent for later cases
   D) the case is decided and becomes precedent for later cases
   E) the case is not decided, but the applicable legal reasoning becomes precedent for later cases

Answer: C  
Diff: 3  
Topic: The Federal Court System  
Skill: Legal Concepts

50) Which of the following is true with regard to the appellate process?
   A) Very important cases are usually initially tried in the U.S. Supreme Court.
   B) When a case is appealed, the appellate court usually holds a new trial.
   C) In the federal court system, there are usually two levels of appeal by right.
   D) The U.S. Supreme Court chooses to review only a small fraction of those cases that it is asked to review.
   E) The vote of only one justice is needed for the U.S. Supreme Court to hear a case.

Answer: D  
Diff: 3  
Topic: The Federal Court System  
Skill: Legal Concepts

51) Sam, who weighs 250 pounds, calls his 110-pound girlfriend, Alice, one morning while she is at work. He says, "You are to stay in your office until midnight. If you come to my house before midnight, I will make you sorry that you did." Assuming that Alice usually leaves her office at 5 p.m. but stays until midnight that night because of the threat, if Alice files a false imprisonment case against Sam, a court most likely will find which of the following?
   A) There was false imprisonment because Sam's threat forced Alice to stay in the office.
   B) There was no false imprisonment because Sam and Alice previously knew one another.
   C) There was no false imprisonment because Alice could have left the office and stayed away from Sam's house, and because the threat related to future harm.
   D) There was no false imprisonment because Alice's office was not a prison, even though it might feel like one to Alice.

Answer: C  
Diff: 2  
Topic: Intentional Torts Against Persons  
Skill: Factual Application
52) The power or authority of a court to hear a case is known as:
   A) voir dire
   B) appellate
   C) extradition
   D) forum-selection
   E) jurisdiction

Answer: E
Diff: 2
Topic: The Jurisdiction of the Courts
Skill: Legal Concepts

53) What are sellers responsible to provide for regarding the assembly of products they sell?
   A) rebates
   B) adequate instructions for safe assembly
   C) adequate instructions for use of the product
   D) A and B
   E) B and C

Answer: E
Diff: 1
Topic: The Concept of Defect
Skill: Legal Concepts

54) Which of the following kinds of jurisdiction would be necessary and sufficient for a court to hear a case?
   A) Subject matter and in personem and in rem.
   B) Subject matter or in personem or in rem.
   C) Subject matter and either in personem or in rem.
   D) In rem and either subject matter or in personam.

Answer: C
Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Legal Concepts

55) The term for jurisdiction based on the location of a piece of property is:
   A) long-arm jurisdiction
   B) in personam jurisdiction
   C) in rem jurisdiction
   D) subject matter jurisdiction
   E) de facto jurisdiction

Answer: C
Diff: 2
Topic: The Jurisdiction of the Courts
Skill: Legal Concepts
56) What does it mean if a court has "in personam jurisdiction?"
   A) It means the court has the power to make and enforce a judgment against a particular person.
   B) It means a party has a personal stake in the outcome of a particular case.
   C) It means the court must meet special requirements in nonbusiness cases involving individuals.
   D) It means the case has been filed at the correct location with the state.
   E) It means the court has personal jurisdiction but not subject matter jurisdiction.

   Answer: A
   Diff: 2
   Topic: The Jurisdiction of the Courts
   Skill: Legal Concepts

57) How are long-arm statutes and forum-selection clauses similar?
   A) They both eliminate the necessity for a court to have subject matter jurisdiction.
   B) They both eliminate any requirement that there be a connection between a state and a party over whom that state is attempting to exercise jurisdiction.
   C) They both can be factors in determining whether or not a state has personal jurisdiction over a defendant.
   D) They both eliminate the need to meet venue requirements in a case.

   Answer: C
   Diff: 3
   Topic: The Jurisdiction of the Courts
   Skill: Legal Concepts

58) How is a forum-selection clause related to questions of personal jurisdiction?
   A) The two are not related at all.
   B) The forum-selection clause will be valid only if it names a jurisdiction that would have personal jurisdiction over the parties to the contract even in the absence of the forum-selection clause.
   C) Forum-selection clauses are attempts by some parties to contracts to take away jurisdictional rights from the other party, and are generally found to be invalid.
   D) A forum-selection clause will specify which courts have personal jurisdiction over the parties to the contract, and for disputes related to the particular contract, the forum-selection clause will control over the general jurisdiction rules.
   E) Forum-selection clauses are usually enacted by one party to select a jurisdiction most favorable to that party, thus they are effective only if, after a lawsuit has been filed, the defendant in the action agrees to jurisdiction as provided in the clause.

   Answer: D
   Diff: 3
   Topic: The Jurisdiction of the Courts
   Skill: Legal Concepts
59) A motion for a change of venue would typically be granted where:
   A) a court does not have personal jurisdiction over the plaintiff
   B) selection of an impartial jury is unlikely at the original venue location
   C) the party losing a case would like a retrial in another location
   D) the judge committed errors in a trial
   E) the plaintiff but not the defendant requests it

Answer: B
Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Legal Concepts

60) Which of the following pleadings could typically be filed by a defendant in a lawsuit?
   A) answer and complaint
   B) complaint and cross-complaint
   C) motion to intervene and complaint
   D) answer and cross-complaint
   E) cross-complaint and reply

Answer: D
Diff: 3
Topic: Pretrial Litigation Process
Skill: Legal Concepts

61) Sandy lives on the top floor of a 10-story building in a big city. There is a 30-story apartment building under construction next door to her building. One morning while eating her corn flakes, a brand new toilet comes crashing through the roof of Sandy's apartment and injures her. She would like to sue the construction firm, but has no way of finding out or proving what persons were involved or exactly what happened. The doctrine that would most help Sandy is:
   A) last clear chance
   B) res ipsa loquitur
   C) strict liability
   D) comparative negligence
   E) negligence per se

Answer: B
Diff: 2
Topic: Special Negligence Doctrines
Skill: Factual Application
62) Someone who is not a party to a lawsuit but has an interest in the outcome and therefore wants to become a party to the suit must:
   A) await the outcome of this trial and then file a separate action
   B) assault
   C) counter-sue
   D) consolidate
   E) file a cross-complaint

Answer: B
Diff: 2
Topic: Pretrial Litigation Process
Skill: Legal Concepts

63) Which of the following is not a purpose of discovery?
   A) To eliminate surprise at trial.
   B) To save the time of the court.
   C) To promote the settlement of cases.
   D) To preserve evidence.
   E) To avoid the use of the evidence at trial.

Answer: E
Diff: 2
Topic: Pretrial Litigation Process
Skill: Legal Concepts

64) A motion asserting that there are no factual issues in dispute in a trial is known as a:
   A) motion for settlement
   B) motion for judgment on the pleadings
   C) motion for summary judgment
   D) motion to intervene
   E) motion for determination

Answer: C
Diff: 2
Topic: Pretrial Litigation Process
Skill: Legal Concepts

65) Forms of discovery include all but which one of the following?
   A) rational
   B) interrogatories
   C) physical examinations
   D) of any type
   E) voir dire

Answer: E
Diff: 2
Topic: Pretrial Litigation Process
Skill: Legal Concepts
66) A party who is making a motion for summary judgment is asserting that:
   A) most of the factual evidence is in its favor, so that the judge, rather than a jury, should decide the factual disputes
   B) the factual disputes are relatively simple and straightforward such that a full-detailed judgment is not necessary in the case
   C) the case can be decided solely on the information contained in the complaint and the answer
   D) a jury is not needed in deciding the case because there are no relevant facts that are in dispute

Answer: D
Diff: 3
Topic: Pretrial Litigation Process
Skill: Legal Concepts

67) What is "voir dire?"
   A) the jury deliberation process in a trial
   B) the U.S. Supreme Court's case selection process
   C) the jury selection process in a trial
   D) a discovery method to learn about the other party's case
   E) a motion to dismiss a case

Answer: C
Diff: 2
Topic: The Trial
Skill: Legal Concepts

68) Which of the following is true about cross examination of a plaintiff's witness in a trial?
   A) Cross examination is conducted by the plaintiff's attorney, and can cover any matters relevant to the case.
   B) Cross examination is conducted by the plaintiff's attorney, and can cover only matters that were brought up during the discovery process.
   C) Cross examination is conducted by the defendant's attorney, and can cover any matters relevant to the case.
   D) Cross examination is conducted by the defendant's attorney, and can cover only matters that were brought up in the direct examination.
   E) Cross examination is conducted by the defendant's attorney, and can cover only matters that were brought up during the discovery process.

Answer: D
Diff: 3
Topic: The Trial
Skill: Legal Concepts
69) In a civil case, which of the following is true about the order of the presentation of the case?
   A) The plaintiff is first to present, followed by the defendant.
   B) The defendant is first to present, followed by the plaintiff.
   C) The judge decides who goes first, which depends on the circumstances of the case.
   D) The order of presentation is determined by the flip of a coin or other random selection method.

Answer: A
Diff: 2
Topic: The Trial
Skill: Legal Concepts

70) Under what circumstances is it appropriate for a judge to issue a judgment n.o.v.?
   A) When there are no disputes as to the facts of the case.
   B) When the evidence cannot support the verdict of the jury.
   C) When the judge would have reached a different conclusion than the jury based on the evidence.
   D) When the judgment n.o.v. is issued pursuant to a fair and impartial pretrial hearing.

Answer: B
Diff: 3
Topic: The Trial
Skill: Legal Concepts

71) When an appellate court receives a case appealed to it, it will:
   A) retry the case with a new jury
   B) review the jury's verdict to see if the appellate court judges would have reached the same result
   C) retry the case with the appellate court judge acting as the jury
   D) review the record of the trial court to see if there were any errors of law made by the judge

Answer: D
Diff: 3
Topic: Appeal
Skill: Legal Concepts

72) In general, an appellate court might typically reverse which of the following?
   A) the trial court's findings of fact
   B) the trial court's conclusions of law
   C) both of these are correct
   D) neither of these are correct

Answer: B
Diff: 2
Topic: Appeal
Skill: Legal Concepts
73) Two friends, Mary and Dean, are hiking in the Colorado Mountains when a dog being walked by its owner, Wally, who is from Wyoming, bites Dean, causing injury. Mary wants Dean to sue Wally, but Dean does not want to incur the cost. Which of the following is true?
   A) Mary does not have standing to sue Wally, the owner of the dog.
   B) Mary will have standing only if she files the lawsuit in Wyoming.
   C) Whether Mary has standing depends on whether Mary files the suit in state or federal court.
   D) Mary has standing if Dean consents to Mary filing the suit.
   E) Mary's presence at the time of Dean's injury gives her standing to file suit.

Answer: A
Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Factual Application

74) Tammi Tenant was a university student in Ohio who rented a house from Loretta, who also lived in Ohio. Upon graduation, Tammi moved to Nebraska. Assuming that one party sued the other in connection with the lease after Tammi had moved to Nebraska, which of the following correctly describes the court(s) with jurisdiction over the defendant?

If Loretta sued, there would be personal jurisdiction over Tammi in:  
A) Ohio only  
B) Nebraska only  
C) Nebraska or Ohio  
D) Nebraska or Ohio  
E) Nebraska or Ohio 

If Tammi sued, there would be personal jurisdiction over Loretta in: 
A) Ohio only  
B) Nebraska only  
C) Nebraska or Ohio  
D) Nebraska or Ohio  
E) Nebraska or Ohio

Answer: E
Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Factual Application

75) Paul and Dan are involved in a traffic accident at an intersection where there is a traffic circle but no posted signs or traffic lights. They are in agreement as to everything that happened in the accident, including the locations of the two cars and the timing of events leading to the accident. Based on their pleadings and on information obtained during discovery, the only dispute they have is the interpretation of the state law affecting who had the right of way when they collided. The appropriate motion for one of the parties to file is:

A) motion for judgment on the pleadings  
B) motion for judgment n.o.v.  
C) A and B only  
D) motion for summary judgment

Answer: D
Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Factual Application
76) Mike, an 80-year-old resident of North Dakota, has long wanted to experience driving in New York City during rush hour. He realizes his goal, but gets into an accident with a taxi driver who has never been outside of New York City. The accident causes $24,000 in damage to Mike's Porsche Boxster. Mike wants to sue the taxi driver. Where can Mike file his lawsuit?

A) In state or federal court in either North Dakota or New York.
B) In state or federal court in New York only.
C) Only in state court in New York.
D) Only in federal court in New York.
E) In federal court in either New York or New Jersey.

Answer: C
Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Factual Application

77) The Double Diamond Dude Ranch is located in Montana and maintains a Web site on the Internet. Before the Internet, the ranch had relied exclusively on word-of-mouth advertising. The Web site simply provides some general information and lists the ranch's phone number for reservations, but reservations cannot be made online. The ranch has no other connections or presence outside of Montana. Bob lives in Ohio and learned of the ranch through its Web site. Bob then spent a week as a paying guest at the ranch, but was injured when he fell off a horse. Can Bob sue the dude ranch in an Ohio state court?

A) No, because the mere ability of an Ohio resident to view the ranch's Internet advertising does not amount to the minimum contacts necessary for personal jurisdiction over the ranch in Ohio.
B) No, because the minimum contacts standard simply cannot be met based on Internet activity.
C) No, because cases involving residents of two different states must be filed in federal, not state, court.
D) Yes, because Bob noticed the advertisement when he was in Ohio.
E) Yes, assuming that other Ohio residents had visited the ranch before Bob's visit.

Answer: A
Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Factual Application

78) Discuss foreseeability and resolution of contractual relationships.

Answer: Foreseeability is a way to put a limit on the chain of causation. If a defendant should ask what could reasonably be expected to happen if he/she engages in certain conduct, the defendant should only be responsible for the expected consequences of the conduct. There are situations where a party is injured but there is no one who is legally obligated to compensate the injured party.

Diff: 2
Skill: Ethics and Policy
79) Is it reasonable for appellate courts to not hear new evidence in an appeal? Should new available evidence be grounds for appeal? In many cases additional evidence is available by the time of the appeal. If this is the case, wouldn't justice be best served by allowing the appellate court to consider it? And even if there is no new evidence available, should the appellate court be able to reconsider the trial evidence and impose a different verdict from that of the jury?

Answer: If new evidence could support an appeal, no case would ever be final. The parties would always have to worry that the other side might find new evidence. The appellate court cannot hear new evidence because there are no juries at the appellate court level, and the evidence would likely involve factual matters. Lastly, if the appellate court could replace jury verdicts with its own fact finding, it would be usurping the role of the jury.

Diff: 3
Skill: Ethics and Policy

80) When the U.S. Constitution was written and established the Supreme Court, the population of the country was under 5 million. Today the population is more than 260 million. Because this means that there are far more lawsuits today than in the early days of our nation, the chances that the Supreme Court will accept a case is much smaller today than in the past. Should one or more additional "supreme" courts be established so that more cases are reviewed twice?

Answer: Even if several times as many cases could be accepted, it will nonetheless be a tiny fraction of the cases for which a petition for certiorari is filed. The Supreme Court has some ability to adjust the number of cases it hears by changing the number of judicial clerks that it hires to assist in researching and writing opinions.

Diff: 3
Skill: Ethics and Policy

81) If the discovery process results in learning about the other side's case, what is the purpose of having a trial? Wouldn't it be redundant to have the trial if both parties already know what is going to be said?

Answer: The purpose of discovery is to learn about the other party's case, not to have discovery take the place of the trial. It is still the jury's job to determine the facts of a case. Thus, even though both parties might know in advance the general evidence that will be presented, they often cannot predict how the jury will decide. Furthermore, the discovery process is not perfect, and there is often evidence at trial that did not come out during discovery.

Diff: 2
Skill: Ethics and Policy
82) Increasing numbers of consumer contracts contain arbitration clauses in which the consumer agrees in advance that any dispute related to the contract will be submitted to an arbitrator, often chosen by the other party to the contract. Agreements between consumers and insurance companies, as well as agreements between stockbrokers and their clients, are two areas where these clauses are increasingly common. What are the advantages and disadvantages to the consumer of such a clause? Should these clauses be effective to allow consumers to give up their rights to use the court system? Does it affect your analysis if you learn that many consumers are not aware of these provisions or do not understand them when they enter into these agreements? How enforceable should these mandatory arbitration clauses be?

Answer: Has the consumer knowingly consented to give up access to courts? There can be problems if the arbitrator(s) is biased, either individually or by virtue of being industry-sponsored; absent these problems, the courts generally enforce arbitration clauses. A related issue is the responsibility of a party to a contract to make sure the contract is understood.

Diff: 2
Skill: Ethics and Policy

83) Steve often purchases office supplies from Supplymax, a company with stores in many states, but none in Steve's home state of Missouri. Supplymax does, however, maintain a distribution center in Kansas City, Missouri. Supplymax does not advertise in Missouri except that it places a few advertisements in national magazines, some of which are sold in Missouri. Steve has an arrangement with its store in Chicago, and Steve will often contact the Chicago store and have it hold items for him to pick up when he is on one of his frequent business trips to Chicago. Last year, Steve purchased eight chairs from Supplymax to use with his conference table at his business. At a recent meeting with his local sales staff, one of the chairs collapsed, injuring Steve. Steve has sued Supplymax in state court in his hometown of St. Louis. Supplymax does not want to have this case heard in St. Louis, or anywhere in Missouri for that matter. But if it must be in Missouri, Supplymax demands that the case be heard in Kansas City. Discuss the issues and likely outcome of this situation.

Answer: Supplymax probably meets the minimum contacts requirement with the state of Missouri, given its distribution center and advertising in national publications that reach Missouri, thus Missouri would have personal jurisdiction. Because the lawsuit arises out of events in St. Louis and there are witnesses from St. Louis, proper venue would be in St. Louis. If the amount in controversy were more than $75,000, Supplymax could transfer the case to federal court.

Diff: 3
Topic: The Jurisdiction of the Courts
Skill: Factual Application
Susan is part owner of one of the best restaurants in a medium-sized city. This restaurant is operated as a partnership. In October, 2004, the local newspaper published a story about Bill, who is Susan's business partner in the restaurant. In this article it is stated that Bill's net worth is several million dollars. About 10 days later, Susan receives a summons notifying her that the restaurant is named as the defendant in a negligence case. The plaintiff in the case alleged that she slipped and fell to the floor inside the restaurant near the rear door late one night in December, 2002. According to the plaintiff, she slipped on water from snow that had been tracked in and had melted. The plaintiff also alleged that there were no employees or other customers in sight of the back door when the plaintiff slipped and fell, and that she was leaving the restaurant when the accident occurred. The plaintiff did not notify anyone at the restaurant when the accident occurred or anytime thereafter prior to the filing of the lawsuit. Although the majority of diners at this restaurant make reservations in advance, and pay with a credit card, the restaurant has no records of reservations or payment by the plaintiff. The plaintiff claims to have paid with cash. Susan and Bill have heard about alternative dispute resolution and would like to know more about how it works and about its advantages and disadvantages. If you were the attorney for Susan and Bill, what would you explain to them about mediation and arbitration, including their advantages and disadvantages. What would you recommend to them?

Answer: Mediation uses a neutral third party to assist the disputants in settling their case, but the mediator has no authority to create a binding outcome. With arbitration, the third-party arbitrator has the power to impose a binding decision on the parties. Either mediation or arbitration would likely save time and money, but a regular trial would be public and set precedent with regard to questions of law. They might choose to use normal litigation to show resolve to fight and discourage similar suits because the claims in this suit might appear to others to be questionable, whether or not the claims are, in fact, legitimate.

Diff: 3
Topic: Alternative Dispute Resolution
Skill: Factual Application
1) The process of bringing, maintaining and defending a lawsuit is called litigation.

Answer: TRUE
Diff: 1
Topic: Pretrial Litigation Process

2) A plaintiff must file an answer to the defendant's complaint.

Answer: FALSE
Diff: 1
Topic: Pretrial Litigation Process

3) A defendant who fails to answer the complaint will have a default judgment entered against him or her.

Answer: TRUE
Diff: 2
Topic: Pretrial Litigation Process

4) In a cross-complaint, the defendant sues the plaintiff.

Answer: TRUE
Diff: 1
Topic: Pretrial Litigation Process

5) A defendant may not answer and file a cross-complaint at the same time.

Answer: FALSE
Diff: 2
Topic: Pretrial Litigation Process

6) A plaintiff's response to a defendant's cross-complaint is called a reply or an answer.

Answer: TRUE
Diff: 1
Topic: Pretrial Litigation Process
7) A defendant's answer usually denies most allegations of a complaint.

Answer:  TRUE
Diff: 3
Topic:  Pretrial Litigation Process

8) Third parties who have an interest in a lawsuit between a plaintiff and a defendant may not become parties to that lawsuit.

Answer:  FALSE
Diff: 2
Topic:  Pretrial Litigation Process

9) Consolidation of cases involves combining two or more separate lawsuits into one lawsuit.

Answer:  TRUE
Diff: 2
Topic:  Pretrial Litigation Process

10) Despite the electronic age, electronic filings of pleadings, briefs, and other documents is not acceptable when handling a lawsuit.

Answer:  FALSE
Diff: 1
Topic:  Pretrial Litigation Process

11) The statute of limitations begins to run at the time the plaintiff first has the right to sue the defendant.

Answer:  TRUE
Diff: 2
Topic:  Pretrial Litigation Process

12) There is only one type of statute of limitations, and that is the one established by the federal government.

Answer:  FALSE
Diff: 1
Topic:  Pretrial Litigation Process

13) A deposition is written questions submitted by one party to a lawsuit to another party.

Answer:  FALSE
Diff: 1
Topic:  Pretrial Litigation Process
14) One party to a lawsuit may request that the other party produce all documents that are relevant to the case before trial.

Answer: TRUE  
Diff: 2  
Topic: Pretrial Litigation Process

15) Interrogatories are oral testimony given by a party or witness prior to trial.

Answer: FALSE  
Diff: 2  
Topic: Pretrial Litigation Process

16) If a plaintiff is injured in an auto accident and is seeking damages for physical injury, a court can order that party to submit to a physical examination to determine the extent of his or her injuries.

Answer: TRUE  
Diff: 1  
Topic: Pretrial Litigation Process

17) A motion for judgment on the pleadings may only be made by the plaintiff once the pleadings are complete.

Answer: FALSE  
Diff: 2  
Topic: Dismissals and Pretrial Judgments

18) The trier of fact determines factual issues.

Answer: TRUE  
Diff: 1  
Topic: Dismissals and Pretrial Judgments

19) Motions for summary judgment are supported by evidence outside of the pleadings.

Answer: TRUE  
Diff: 1  
Topic: Dismissals and Pretrial Judgments

20) A settlement conference is a pretrial hearing that is designed to facilitate the settlement of a case.

Answer: TRUE  
Diff: 1  
Topic: Settlement Conference
21) More than 90 percent of all cases are settled before they go to trial.

Answer: TRUE
Diff: 1
Topic: Settlement Conference

22) When deciding to bring a lawsuit, one should consider the unpredictability of the legal system and the possibility for error.

Answer: TRUE
Diff: 2
Topic: Settlement Conference

23) Each party must submit a trial brief at the time of trial that contains legal support for its side of the case.

Answer: TRUE
Diff: 1
Topic: Trial

24) Voir dire is a process of selecting individuals to hear specific cases.

Answer: TRUE
Diff: 2
Topic: Trial

25) A defendant presents his or her case before the plaintiff presents his or hers.

Answer: FALSE
Diff: 1
Topic: Trial

26) For a trial to be conducted with a jury, both parties must request a jury trial.

Answer: FALSE
Diff: 2
Topic: Trial

27) When the defendant calls additional witnesses and introduces other evidence to counter the plaintiff's rebuttal, this is known as rejoinder.

Answer: TRUE
Diff: 3
Topic: Trial
28) In a civil case, the judge may not reduce the amount of monetary damages awarded by the jury.

Answer: FALSE
Diff: 2
Topic: Trial

29) In a civil case, only the defendant may appeal the trial court's decision once a final judgment is entered.

Answer: FALSE
Diff: 1
Topic: Appeal

30) Another name for an appellant is the petitioner.

Answer: TRUE
Diff: 1
Topic: Appeal

31) An appellate court will not reverse a lower court decision if it finds an error of law in the record.

Answer: FALSE
Diff: 2
Topic: Appeal

32) The unique aspect about appeals is that notice of the appeal is not necessary so long as the appeal is filed within a reasonable time after judgment is entered.

Answer: FALSE
Diff: 1
Topic: Appeal

33) An arbitrator's decision is generally known as a judgment.

Answer: FALSE
Diff: 1
Topic: Alternative Dispute Resolution

34) The Uniform Arbitration Act is a federal statute that applies to all states.
Answer: FALSE
Diff: 1
Topic: Alternative Dispute Resolution
35) The U.S. Supreme Court has upheld the use of arbitration to solve employment disputes.

Answer: TRUE
Diff: 1
Topic: Alternative Dispute Resolution

36) The Federal Arbitration Act provides that arbitration agreements concerning commerce are valid, irrevocable, and enforceable contracts unless some grounds exist at law or equity to revoke them.

Answer: TRUE
Diff: 2
Topic: Alternative Dispute Resolution

37) In a mediation, the parties choose an interested third party to act as a mediator.

Answer: FALSE
Diff: 2
Topic: Alternative Dispute Resolution

38) A minitrial is a session whereby representatives of each side hear lawyers of each side present their case which is then followed by a meeting to negotiate a settlement.

Answer: TRUE
Diff: 2
Topic: Alternative Dispute Resolution

39) A judicial referee's decisions may act only as possible considerations for a case's outcome, not as a judgment of the court.

Answer: FALSE
Diff: 2
Topic: Alternative Dispute Resolution

40) In a civil case, the party whom the complaint is filed against is the:

A) defendant
B) district attorney
C) state
D) public defender
E) A, B, and C

Answer: A
Diff: 1
Topic: Pretrial Litigation Process
Skill: Legal Concepts
41) Once a complaint has been filed with the court, the court issues a:
   A) judgment  
   B) motion for summary judgment  
   C) summons  
   D) both A and D

Answer: C  
Diff: 2  
Topic: Pretrial Litigation Process  
Skill: Legal Concepts

42) The defendant's written response to the plaintiff's complaint that is filed with the court and served on the plaintiff is known as the:
   A) a licensee  
   B) appeal  
   C) answer  
   D) judgment  
   E) prayer for relief

Answer: C  
Diff: 2  
Topic: Pretrial Litigation Process  
Skill: Legal Concepts

43) A default judgment establishes the defendant's:
   A) an invitee  
   B) answer  
   C) defenses  
   D) liability  
   E) all of these are correct

Answer: D  
Diff: 3  
Topic: Pretrial Litigation Process  
Skill: Legal Concepts

44) A cross-complaint is usually brought by the defendant for the purpose of:
   A) an answer so that a default judgment will not be entered against the defendant  
   B) a trespasser  
   C) seeking damages or some remedy against the plaintiff  
   D) a guest

Answer: C  
Diff: 2  
Topic: Pretrial Litigation Process  
Skill: Legal Concepts
45) If the documents a party seeks are too voluminous to be moved, or are in permanent storage, the requesting party may be required to:
   A) examine the documents at the other party's premises
   B) request the documents by certified mail
   C) submit to a mental examination
   D) sign the request under oath

Answer: A
Diff: 1
Topic: Pretrial Litigation Process
Skill: Legal Concepts

46) Which of the following motions would allege that if all of the facts presented in the pleadings are taken as true, the party making the motion would win the lawsuit when the proper law is applied to these asserted facts?
   A) motion to suppress the evidence
   B) motion for production of documents
   C) judgment notwithstanding the verdict
   D) motion for judgment on the pleadings
   E) motion to dismiss

Answer: D
Diff: 2
Topic: Dismissals and Pretrial Judgments
Skill: Legal Concepts

47) What does a motion for summary judgment assert?
   A) That there are no factual disputes to be decided by the jury.
   B) That a judge may not apply law to undisputed facts.
   C) That these motions are not supported by affidavits.
   D) That the defendant has multiple grounds for appeal.

Answer: A
Diff: 2
Topic: Dismissals and Pretrial Judgments
Skill: Legal Concepts

48) Which of the following is one of the major purposes of a settlement conference?
   A) to try and make amends among the parties
   B) licensees only
   C) to facilitate the settlement of a case
   D) to contest the local court rules
   E) All of these are correct.

Answer: C
Diff: 1
Topic: Settlement Conference
Skill: Legal Concepts
49) Which amendment guarantees the right to a jury trial in a case in federal court?
   A) the fifth amendment
   B) the sixth amendment
   C) the seventh amendment
   D) the eleventh amendment
   E) the fourteenth amendment

   Answer: C
   Diff: 2
   Topic: Trial
   Skill: Legal Concepts

50) Which party bears the burden of proof to persuade the trier of fact on the merits of his or her case?
   A) the plaintiff
   B) the jury
   C) the offeror
   D) the judge
   E) A, B, and C

   Answer: A
   Diff: 1
   Topic: Trial
   Skill: Legal Concepts

51) The purpose of a closing argument is to allow an attorney to:
   A) call additional witnesses and introduce other evidence to counter a rebuttal
   B) render jury instructions to the judge
   C) convince the jury to render a verdict for their clients by pointing out the strengths in their client's case and the weaknesses in the other side's case
   D) summarize the main factual and legal issues of the case and tell why the attorney believes his or her client's position is valid

   Answer: C
   Diff: 2
   Topic: Trial
   Skill: Legal Concepts

52) What must the defendant's case do?
   A) rebut the plaintiff's evidence
   B) prove any affirmative defenses asserted by the defendant
   C) prove any allegations contained in the defendant's cross-complaint
   D) All of these are correct.

   Answer: D
   Diff: 2
   Topic: Trial
   Skill: Legal Concepts
53) When an appellate court receives a case appealed to it, it will:
   A) retry the case with a new jury
   B) review the jury's verdict to see if the appellate court judges would have reached the same result
   C) retry the case with the appellate court judge acting as the jury
   D) review the record of the trial court to see if there were any errors of law made by the judge

   Answer: D
   Diff: 3
   Topic: Appeal
   Skill: Legal Concepts

54) In general, an appellate court might typically reverse which of the following?
   A) the trial court's findings of fact
   B) the trial court's conclusions of law
   C) negligence
   D) both A and B

   Answer: B
   Diff: 2
   Topic: Appeal
   Skill: Legal Concepts

55) Which form of alternative dispute resolution occurs when the parties choose an impartial third party to hear and decide their dispute?
   A) arbitration
   B) mediation
   C) minitrial
   D) conciliation

   Answer: A
   Diff: 1
   Topic: Alternative Dispute Resolution
   Skill: Legal Concepts

56) Which of the following is true with regard to arbitration?
   A) Less formal evidentiary rules are applied at arbitration hearings.
   B) Arbitrators enter awards after reaching a decision.
   C) The parties often agree to be bound by the arbitrator's decision and award.
   D) All of these are correct.

   Answer: D
   Diff: 2
   Topic: Alternative Dispute Resolution
   Skill: Legal Concepts
57) Which of the following is true regarding mediation?
   A) A mediator often meets with both parties at the same time.
   B) A settlement agreement is never reached with a mediator.
   C) A mediator does not make a decision or an award.
   D) If a settlement agreement is not reached in mediation, then the parties hire a new mediator.

Answer: C
Diff: 2
Topic: Alternative Dispute Resolution
Skill: Legal Concepts

58) George has served Mary with a complaint alleging that she trespassed on his property. Mary has never been sued before and as such, she seeks your advice on what to do with the complaint. You advise that she:
   A) do not respond and maybe George will drop the lawsuit
   B) write a letter the to judge saying that George is mistaken
   C) answer George's complaint by admitting or denying the allegations George has asserted against her
   D) do not provide any affirmative defenses that George can use against Mary

Answer: C
Diff: 2
Topic: Pretrial Litigation Process
Skill: Factual Application

59) Which of the following would be examples of affirmative defenses Henry, a defendant, might assert in answering a complaint alleging personal injury being brought by Lisa?
   A) That he acted in self-defense.
   B) That Lisa's lawsuit is barred because of the statute of limitations.
   C) That Lisa contributed to her own injuries.
   D) All of these are correct.

Answer: D
Diff: 2
Topic: Pretrial Litigation Process
Skill: Factual Application
60) If Sam was on vacation in Mexico and forgot to serve the lawsuit he wanted to bring against Delia 1 month after the statute of limitations period, what is the most likely result?

A) Sam will lose his right to sue Delia.
B) Sam can still sue Delia as Mexico's law does not apply.
C) Sam can make a deal with Delia not to sue her for as much as he originally intended.
D) None of these are correct.

Answer: A
Diff: 1
Topic: Pretrial Litigation Process
Skill: Factual Application

61) Mable has balanced the cost against the benefit of bringing a lawsuit against Harvey. She has decided to sue him for monies owed to her as per a contract the two entered into. However, she would much rather settle her case at the pretrial hearing. If you were advising her about the statistics of cases that settle before they go to trial, what would you tell her?

A) That less than 10 percent of all cases settle.
B) That she is wasting her time as less than 5 percent of all cases settle.
C) That more than 90 percent of all cases settle.
D) That 50 percent of all cases go to trial.

Answer: D
Diff: 1
Topic: Settlement Conference
Skill: Factual Application

62) Is it reasonable for appellate courts to not hear new evidence in an appeal? Should new available evidence be grounds for appeal? In many cases additional evidence is available by the time of the appeal. If this is the case, wouldn't justice be best served by allowing the appellate court to consider it? And even if there is no new evidence available, should the appellate court be able to reconsider the trial evidence and impose a different verdict from that of the jury?

Answer: If new evidence could support an appeal, no case would ever be final. The parties would always have to worry that the other side might find new evidence. The appellate court cannot hear new evidence because there are no juries at the appellate court level, and the evidence would likely involve factual matters. Lastly, if the appellate court could replace jury verdicts with its own fact finding, it would be usurping the role of the jury.
Diff: 3
Skill: Ethics and Policy
63) If the discovery process results in learning about the other side's case, what is the purpose of having a trial? Wouldn't it be redundant to have the trial if both parties already know what is going to be said?

Answer: The purpose of discovery is to learn about the other party's case, not to have discovery take the place of the trial. It is still the jury's job to determine the facts of a case. Thus, even though both parties might know in advance the general evidence that will be presented, they often cannot predict how the jury will decide. Furthermore, the discovery process is not perfect, and there is often evidence at trial that did not come out during discovery.

Diff: 2
Skill: Ethics and Policy

64) Increasing numbers of consumer contracts contain arbitration clauses in which the consumer agrees in advance that any dispute related to the contract will be submitted to an arbitrator, often chosen by the other party to the contract. Agreements between consumers and insurance companies, as well as agreements between stockbrokers and their clients are two areas where these are increasingly common. What are the advantages and disadvantages to the consumer of such a clause? Should these clauses be effective to allow consumers to give up their rights to use the court system? Does it affect your analysis if you learn that many consumers are not aware of these provisions or do not understand them when they enter into these agreements? How enforceable should these mandatory arbitration clauses be?

Answer: Has the consumer knowingly consented to give up access to courts? There can be problems if the arbitrator(s) is biased, either individually or by virtue of being industry-sponsored; absent these problems, the courts generally enforce arbitration clauses. A related issue is the responsibility of a party to a contract to make sure the contract is understood.

Diff: 2
Skill: Ethics and Policy
Susan is part owner of one of the best restaurants in a medium-sized city. This restaurant is operated as a partnership. In October, 2004, the local newspaper published a story about Bill, who is Susan's business partner in the restaurant. In this article it is stated that Bill's net worth is several million dollars. About ten days later, Susan receives a summons notifying her that the restaurant is named as the defendant in a negligence case. The plaintiff in the case alleged that she slipped and fell to the floor inside the restaurant near the rear door late one night in December, 2002. According to the plaintiff, she slipped on water from snow that had been tracked in and had melted. The plaintiff also alleged that there were no employees or other customers in sight of the back door when the plaintiff slipped and fell, and that she was leaving the restaurant when the accident occurred. The plaintiff did not notify anyone at the restaurant when the accident occurred or at anytime thereafter prior to the filing of the lawsuit. Although the majority of diners at this restaurant make reservations in advance, and pay with a credit card, the restaurant has no records of reservations or payment by the plaintiff. The plaintiff claims to have paid with cash. Susan and Bill have heard about alternative dispute resolution and would like to know more about how it works and about its advantages and disadvantages. If you were the attorney for Susan and Bill, what would you explain to them about mediation and arbitration, including their advantages and disadvantages. What would you recommend to them?

Answer: Mediation uses a neutral third party to assist the disputants in settling their case, but the mediator has no authority to create a binding outcome. With arbitration, the third-party arbitrator has the power to impose a binding decision on the parties. Either mediation or arbitration would likely save time and money, but a regular trial would be public and set precedent with regard to questions of law. They might choose to use normal litigation to show resolve to fight and discourage similar suits because the claims in this suit might appear to others to be questionable, whether or not the claims are, in fact, legitimate.

Diff: 3
Topic: Alternative Dispute Resolution
Skill: Factual Application
1) The Articles of Confederation gave no power to the federal government to levy and collect taxes or to regulate commerce.

Answer: TRUE
Diff: 2
Topic: Basic Constitutional Concepts

2) Our country's form of government is known as federalism.

Answer: TRUE
Diff: 1
Topic: Basic Constitutional Concepts

3) The concept of federalism is that the states and the federal government share powers.

Answer: TRUE
Diff: 2
Topic: Basic Constitutional Concepts

4) Any powers not delegated to either the federal government or the states are shared by the federal and state governments.

Answer: FALSE
Diff: 1
Topic: Basic Constitutional Concepts

5) The existence of the Electoral College means that the president is not elected by the popular vote.

Answer: TRUE
Diff: 1
Topic: Basic Constitutional Concepts

6) The judicial branch has authority to examine the actions of both the legislative branch and the executive branch to determine whether these acts are constitutional.

Answer: TRUE
Diff: 1
Topic: Basic Constitutional Concepts
7) The legislative branch of the U.S. Government can enact statutes that change laws that have been made by the judicial branch.

Answer: TRUE
Diff: 2
Topic: Basic Constitutional Concepts

8) If the federal government preempts states from regulating in an area, the states may not continue to pass legislation that conflicts with federal statutes.

Answer: TRUE
Diff: 2
Topic: Supremacy Clause

9) In most subject matter areas the federal government and state governments have concurrent jurisdiction to regulate activity.

Answer: TRUE
Diff: 2
Topic: Supremacy Clause

10) The Commerce Clause of the U.S. Constitution gives Congress the power to regulate interstate commerce, as well as commerce with foreign nations and with Indian tribes.

Answer: TRUE
Diff: 2
Topic: Commerce Clause

11) Hunting, fishing, and gathering rights in Minnesota granted to the Chippewa Indians in 1837 were found to be invalid today even though the State of Minnesota has since been admitted to the Union.

Answer: FALSE
Diff: 2
Topic: Commerce Clause

12) Congress has the authority to regulate an activity that does not itself involve interstate commerce if the activity does have an effect on interstate commerce.

Answer: TRUE
Diff: 2
Topic: Commerce Clause
13) The U.S. Supreme Court has determined that gender-motivated crimes of violence do not fall within the definition of commerce under the U.S. Constitution.

Answer: TRUE
Diff: 1
Topic: Commerce Clause

14) The police power of a state gives the state much general authority to regulate business.

Answer: TRUE
Diff: 1
Topic: Commerce Clause

15) A state can regulate in areas affecting interstate commerce where the federal government has chosen not to regulate if the state law does not place an undue burden on interstate commerce.

Answer: TRUE
Diff: 2
Topic: Commerce Clause

16) The U.S. Supreme Court has ruled that garbage that is transported across state lines does not involve interstate commerce, as the garbage does not have any economic value.

Answer: FALSE
Diff: 2
Topic: Commerce Clause

17) The first 10 amendments that were added to the U.S. Constitution are known as the Bill of Rights.

Answer: TRUE
Diff: 2
Topic: Bill of Rights

18) Since their creation, the protections in the Bill of Rights have generally been applicable to state and local governments as well as the federal government.

Answer: FALSE
Diff: 1
Topic: Bill of Rights

19) The First Amendment protects symbolic speech as well as actual spoken or written speech.

Answer: TRUE
Diff: 1
Topic: Bill of Rights
20) The Due Process Clause of the Fourteenth Amendment made most of the guarantees contained in the Bill of Rights applicable to the federal government.

Answer: FALSE
Diff: 2
Topic: Bill of Rights

21) Commercial speech and offensive speech both receive full protection under the U.S. Constitution.

Answer: FALSE
Diff: 2
Topic: Bill of Rights

22) Because of the First Amendment, a city could not prohibit billboards along its highways for safety and aesthetic reasons.

Answer: FALSE
Diff: 2
Topic: Bill of Rights

23) The Federal Communications Commission (FCC) can regulate the use of offensive language on television even though the First Amendment applies to such speech.

Answer: TRUE
Diff: 2
Topic: Bill of Rights

24) The Establishment Clause of the U.S. Constitution allows the federal government to establish which religions are entitled to protection.

Answer: FALSE
Diff: 2
Topic: Bill of Rights

25) The Equal Protection Clause generally requires that businesses, both private and public, treat similarly situated persons similarly.

Answer: FALSE
Diff: 2
Topic: Bill of Rights

26) The Establishment Clause prohibits the government from establishing a government-sponsored religion but not from promoting one religion over other religions.

Answer: FALSE
Diff: 2
Topic: Bill of Rights
27) The level of scrutiny in equal protection cases refers to how difficult it is for alleged equal protection violations to be justified.

Answer: TRUE
Diff: 2
Topic: Bill of Rights

28) Substantive due process generally addresses the issue of whether or not a law is reasonably clear.

Answer: FALSE
Diff: 2
Topic: Bill of Rights

29) The Privileges and Immunities Clause protects individuals, but not corporations.

Answer: TRUE
Diff: 2
Topic: Bill of Rights

30) The strict scrutiny test is used in Equal Protection Clause cases involving a suspect class such as race.

Answer: TRUE
Diff: 2
Topic: Bill of Rights

31) The reason the Articles of Confederation were weak was because:
   A) it gave limited power to the federal government
   B) it did not provide Congress with the power to levy and collect taxes
   C) it did not provide Congress with the power to regulate interstate commerce among the states
   D) All of these are correct.

Answer: D
Diff: 1
Topic: Basic Constitutional Concepts
Skill: Legal Concepts
32) Since declaring independence, the current U.S. Constitution is the ________ document to set out the general operations of the government.
   A) first
   B) second
   C) third
   D) fourth

Answer: B
Diff: 2
Topic: Basic Constitutional Concepts
Skill: Legal Concepts

33) The Constitutional Convention was convened in 1787 for what purpose?
   A) to add a Bill of Rights to the Constitution
   B) to create a court system
   C) to ratify the First Amendment
   D) to strengthen the federal government

Answer: D
Diff: 1
Topic: Basic Constitutional Concepts
Skill: Legal Concepts

34) Which of the following is not a main function of the U.S. Constitution?
   A) to create the three branches of government
   B) to allocate powers to the three branches of government
   C) to protect individual rights
   D) to limit the government's ability to restrict individual rights
   E) to create additional branches of government as Congress sees fit

Answer: D
Diff: 2
Topic: Basic Constitutional Concepts
Skill: Legal Concepts

35) Powers that are not specifically delegated to the federal government by the United States Constitution:
   A) are held both by the states and by the federal government
   B) last clear chance
   C) are reserved to the federal government
   D) can be delegated by the U.S. Supreme Court to either the states or the federal government
   E) cannot be exercised by either the states or the federal government

Answer: B
Diff: 2
Topic: Basic Constitutional Concepts
Skill: Legal Concepts
36) The number of ________ to which a state is entitled can change over time.
   A) Senators
   B) Representatives
   C) both Senators and representatives
   D) Supreme Court justices

Answer: B
Diff: 1
Topic: Basic Constitutional Concepts
Skill: Legal Concepts

37) The legislative branch of government is referred to as ________ as it is comprised of the Senate and the House of Representatives.
   A) bicameral
   B) parliament
   C) electoral
   D) fully represented
   E) bipartisan

Answer: A
Diff: 1
Topic: Basic Constitutional Concepts
Skill: Legal Concepts

38) The president is elected by
   A) congress
   B) the electoral college
   C) the Supreme Court
   D) popular vote
   E) lottery

Answer: B
Diff: 1
Topic: Basic Constitutional Concepts
Skill: Legal Concepts
39) Under the Supremacy Clause of the U.S. Constitution, when Congress chooses to regulate in an area, which of the following is true?

A) It will automatically have exclusive jurisdiction to regulate in that area.
B) States will always remain able to freely regulate in that area.
C) States will always be able to regulate in that area so long as the state law does not directly and substantially conflict with the federal law.
D) Whether the state has any authority to regulate in the area will depend on whether Congress provides that the federal government has exclusive authority to regulate in that area.
E) The state will be able to regulate in that area only with prior permission of the U.S. Supreme Court.

Answer: D
Diff: 2
Topic: Supremacy Clause
Skill: Legal Concepts

40) Which of the following would take precedence over a state constitution under the Supremacy Clause of the U.S. Constitution?

A) the U.S. Constitution only
B) the U.S. Constitution and treaties with foreign nations
C) the U.S. Constitution and federal statutes
D) the U.S. Constitution, federal statutes, and federal regulations
E) the U.S. Constitution, federal statutes, federal regulations, and treaties with foreign nations

Answer: E
Diff: 2
Topic: Supremacy Clause
Skill: Legal Concepts

41) What is the result of the "effects on interstate commerce" test?

A) The federal government can regulate all interstate commerce that actually crosses state lines.
B) Prior to enacting laws, states are required to identify any effects that the law might have on interstate commerce.
C) The federal government can regulate a business activity that takes place within a single state if the activity has an effect on interstate commerce even though the regulated activity does not itself involve interstate commerce.
D) Commercial speech protections apply only to speech that has an effect on interstate commerce.

Answer: C
Diff: 3
Topic: Commerce Clause
Skill: Legal Concepts
42) What was the outcome when the U.S. Supreme Court ruled on the constitutionality of the Violence Against Women Act of 1994?
   A) The statute was viewed as a legitimate exercise of the federal police power.
   B) The statute violated the Equal Protection Clause because it treated women differently than men.
   C) The statute was found to infringe on some kinds of symbolic speech.
   D) The statute was found to be invalid because it did not involve interstate commerce.

Answer: D
Diff: 2
Topic: Commerce Clause
Skill: Legal Concepts

43) With regard to the Commerce Clause of the United States Constitution, which of the following is correct?
   A) States have no power to regulate interstate commerce.
   B) Commerce must actually cross state lines to be considered "interstate commerce."
   C) The police power of the states gives the states the power to regulate intrastate and much interstate business within their borders.
   D) Although a state cannot regulate interstate commerce within its borders, it has full power to prevent interstate business activities within its borders.
   E) Cases involving interstate commerce are decided under strict scrutiny.

Answer: C
Diff: 3
Topic: Commerce Clause
Skill: Legal Concepts

44) If there is an area of interstate commerce that the federal government has chosen not to regulate, the states can:
   A) regulate without restriction in that area
   B) regulate in that area so long as the state law does not unduly burden interstate commerce
   C) regulate in that area so long as it first gets the requisite approval from Congress
   D) not regulate in that area because states cannot pass laws affecting interstate commerce
   E) not regulate in that area because the federal government's decision to not regulate in an area implies that there is to be no regulation in that area at any level

Answer: B
Diff: 3
Topic: Commerce Clause
Skill: Legal Concepts
45) Under what circumstances can a state impose a tax on goods that are imported from other nations?
   A) negligence per se
   B) if the tax does not conflict with any valid federal law
   C) if the amount of the tax is reasonable
   D) if the tax also applied equally to the same type(s) of goods produced domestically
   E) in no circumstance

   Answer: D
   Diff: 2
   Topic: Commerce Clause
   Skill: Legal Concepts

46) The Bill of Rights is another name for:
   A) the Articles of Confederation
   B) the U.S. Constitution
   C) the document that explains the U.S. Constitution
   D) the first ten amendments to the U.S. Constitution
   E) the first seven articles of the U.S. Constitution

   Answer: D
   Diff: 1
   Topic: Bill of Rights
   Skill: Legal Concepts

47) The Bill of Rights applies to:
   A) the federal government only
   B) state governments only
   C) natural persons and artificial persons
   D) the legislative and executive branches of the federal government, but not to state and local governments
   E) the federal government and businesses that operate across state lines

   Answer: C
   Diff: 2
   Topic: Bill of Rights
   Skill: Legal Concepts

48) What did the Fourteenth Amendment of the U.S. Constitution do?
   A) It established prohibition.
   B) It granted the power to regulate interstate commerce to Congress.
   C) It gave Congress the power to place reasonable restrictions on commercial speech.
   D) It made the protections in the Bill of Rights applicable to actions by state governments.

   Answer: D
   Diff: 2
   Topic: Bill of Rights
   Skill: Legal Concepts
49) What sorts of things do the additional 17 Constitutional amendments cover?
   A) the abolition of slavery
   B) federal income tax
   C) women's right to vote
   D) prohibition of discrimination
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Bill of Rights
Skill: Legal Concepts

50) Which of the following is correct with respect to freedom of speech?
   A) All speech receives the same degree of Constitutional protection.
   B) Some speech is not protected.
   C) Commercial speech receives no protection due to its profit motive.
   D) Most speech critical of the government can be restricted because such speech can be destabilizing.

Answer: B
Diff: 3
Topic: Freedom of Speech
Skill: Legal Concepts

51) Which of the following is not correct with regard to commercial speech?
   A) The government cannot regulate commercial speech.
   B) The government can regulate the time of commercial speech, but cannot prevent it.
   C) The government can regulate the place of commercial speech, but cannot prevent it.
   D) The government can regulate the manner of commercial speech, but cannot prevent it.

Answer: A
Diff: 2
Topic: Freedom of Speech
Skill: Legal Concepts

52) Which of the following is true regarding obscene speech?
   A) It cannot be prevented, but can be subject to time, place, or manner restrictions.
   B) Because the definition of obscene is so subjective, it cannot be restricted or prevented.
   C) Even though the definition of obscene speech is subjective, if speech is determined to be obscene, it loses all constitutional protection.
   D) Obscene speech and offensive speech receive the same degree of protection.
   E) The U.S. Supreme Court has set out a clear definition of what speech is defined as obscene and therefore unprotected.

Answer: C
Diff: 2
Topic: Freedom of Speech
Skill: Legal Concepts
53) Which of the following is considered to be fully protected speech under the U.S. Constitution?
   A) political speech only
   B) political speech and commercial speech
   C) offensive speech and commercial speech
   D) commercial speech only
   E) political speech, commercial speech, and offensive speech

Answer: A
Diff: 1
Topic: Freedom of Speech
Skill: Legal Concepts

54) Which of the following receives at least some protection under the U.S. Constitution?
   A) political speech only
   B) political speech and commercial speech
   C) offensive speech and commercial speech
   D) commercial speech only
   E) political speech, commercial speech, and offensive speech

Answer: E
Diff: 1
Topic: Freedom of Speech
Skill: Legal Concepts

55) Which of the following does not receive protection under the U.S. Constitution?
   A) obscene speech
   B) offensive speech
   C) both obscene speech and offensive speech
   D) neither obscene speech nor offensive speech

Answer: A
Diff: 2
Topic: Freedom of Speech
Skill: Legal Concepts

56) What type of commercial speech did the U.S. Supreme Court say was protected in the Great
Greater New Orleans Broadcasting Association, Inc. v. United States case?
   A) information on gambling and lotteries
   B) obscene speech
   C) information about child pornography
   D) information on how to build a bomb

Answer: A
Diff: 1
Topic: Freedom of Speech
Skill: Legal Concepts
57) In responding to a constitutional challenge to the Computer Decency Act, the U.S. Supreme Court ruled which of the following about the Act?
   A) Computers and the Internet were not covered by the free speech provisions of the U.S. Constitution because they did not exist when the Constitution was drafted.
   B) The Act was constitutional because obscene speech receives no protection.
   C) Obscene materials could not be available between 6:00 a.m. and 10:00 p.m. local time.
   D) The Act was unconstitutional because its provisions were too vague to define.
   E) The Internet was similar to television and that restrictions similar to those on television programming were appropriate.

Answer: D
Diff: 2
Topic: Freedom of Speech
Skill: Legal Concepts

58) Which of the following is correct regarding freedom of religion under the U.S. Constitution?
   A) It comes from the Establishment Clause as well as the Free Exercise Clause.
   B) It applies only to those religions in existence on the date the Constitution became effective.
   C) It gives practitioners of any religion absolute rights to take part in actions that are based on that religion.
   D) It allows the government to establish an official religion or religions so long as citizens remain free to practice any other religion they choose.

Answer: A
Diff: 2
Topic: Freedom of Speech
Skill: Legal Concepts

59) Which of the following would likely violate the freedom of religion protections in the U.S. Constitution?
   A) the government promoting one religion as better than other religions
   B) the government preventing the practice of unpopular or fringe religions
   C) the government establishing a time in school for persons to practice the religion of their choice
   D) A and B only.
   E) A, B, and C.

Answer: E
Diff: 2
Topic: Freedom of Religion
Skill: Legal Concepts
60) An equal protection challenge to a statute that treats adults of different ages differently would be decided by using what standard?
   A) intermediate scrutiny
   B) majority scrutiny
   C) strict scrutiny
   D) rational basis scrutiny
   E) limited scrutiny

Answer: A
Diff: 1
Topic: Equal Protection Clause
Skill: Legal Concepts

61) Which of the following is true about how courts address equal protection cases?
   A) If a law treats different groups differently, the court determines whether the difference in treatment is justified using one of three different levels of scrutiny.
   B) If a law treats different groups differently, the law will be invalidated.
   C) If a law treats different groups differently, it will be acceptable so long as there is adequate notice to the persons affected.
   D) Laws that affect persons differently based on race, gender, or age will be invalidated; laws that affect persons differently based on other factors will be deemed acceptable.
   E) If a law treats a particular group more favorably than others, it will be acceptable, but if a law treats a particular group less favorably than others, it will be invalidated.

Answer: A
Diff: 3
Topic: Equal Protection Clause
Skill: Legal Concepts

62) Substantive due process requires that:
   A) a notice and hearing be given before one is deprived of life, liberty, or property
   B) a criminal defendant has an attorney present at all times
   C) res ipsa loquitur takes place
   D) a law is sufficiently clear that a reasonable person can understand it in order to comply with it
   E) a defendant not be tried twice for the same crime

Answer: D
Diff: 2
Topic: Due Process Clause
Skill: Legal Concepts
63) The Privileges and Immunities Clause provides which of the following?
A) It is a privilege to be granted immunity from a criminal prosecution.
B) States must generally treat nonresidents as favorably as residents.
C) Corporations receive most of the same constitutional protections as individuals.
D) The government is not subject to being sued unless the constitutional matter is a right rather than a privilege.
E) An individual has the privilege of practicing any religion, and is immune from any government interference with that right.

Answer: B
Diff: 1
Topic: Privileges and Immunities Clause
Skill: Legal Concepts

64) There are extensive federal regulations covering airplanes and pilots. Assume that the state of Missouri passes a statute containing numerous requirements, some conflicting with the federal rules, covering the licensing of airplane pilots and the operation of aircraft. A pilot's constitutional challenge to this statute would most likely succeed on the basis of:
A) the preemption doctrine
B) strict liability
C) substantive due process
D) the state police power

Answer: A
Diff: 2
Topic: Supremacy Clause
Skill: Factual Application

65) Assume that the state of Tennessee passes a statute that grants all residents who purchase a brand new Saturn automobile made in Tennessee a $2,000 state income tax credit. Which of the following is most likely true?
A) An equal protection claim would be evaluated using strict scrutiny.
B) Because the statute gives the tax credit only to Tennessee residents who purchase a car made in Tennessee, there is no violation of the commerce clause.
C) There is a procedural due process violation.
D) This statute probably violates the commerce clause.

Answer: D
Diff: 3
Topic: Commerce Clause
Skill: Factual Application
66) Assume that the state of Kansas passes a law requiring all inline skates sold in Kansas to have disc brakes. Assume that there are no federal regulations covering inline skate design. Assume also, that the required disc brakes would make inline skates easier to stop and thus safer, but that they would add considerably to the cost of the skates and require extensive changes in design to meet the Kansas requirements. Which of the following is most likely true?

A) Even though there are no federal regulations on the design of inline skates, the Kansas statute would probably be considered a burden on interstate commerce and thus unconstitutional.
B) Because the required modification is a better design, the law would be constitutional.
C) Because the statute does not conflict with a federal statute or regulation, it could not be found to be unconstitutional.
D) If all manufacturers of inline skates stopped selling them in Kansas, there could be no constitutional violation because interstate commerce would not be involved.

Answer: A
Diff: 3
Topic: Commerce Clause
Skill: Factual Application

67) Assume that Congress passes a statute that bans the use of personal watercraft on any body of water before 8:00 a.m. and after 9:00 p.m. Congress bases its passage of the law on its authority to regulate interstate commerce because it believes that fewer persons will buy personal watercraft because of this law. In a constitutional challenge, which of the following is most likely to occur?

A) The law will be found constitutional only if it does not conflict with a valid state law.
B) The law will be found to violate the Equal Protection Clause because it applies on water but not on land.
C) The law will be constitutional because of the federal government's police power.
D) The law will be found unconstitutional because any effect on interstate commerce is too remote for this to be a valid exercise of federal power.

Answer: D
Diff: 3
Topic: Commerce Clause
Skill: Factual Application
68) Assume that a federal regulation is adopted that requires bicycle manufacturers to disclose the weight of the largest frame size, fully equipped for riding, when they advertise the weight of a bicycle. If this requirement is challenged under freedom of speech, which of the following is most likely to occur?
   A) It would be found to be an acceptable regulation of commercial speech.
   B) It would be found to be an unacceptable prohibition of commercial speech.
   C) The court would not consider the case because this advertising is not political speech.
   D) The court would evaluate the restriction using strict scrutiny.
   E) There would be no violation because this does not prohibit speech, but requires it in certain circumstances.

Answer: A
Diff: 2
Topic: Bill of Rights
Skill: Factual Application

69) Assume that a state passes a statute that prevents the disclosure of the horsepower of automobile engines. The purpose of this law is to prevent the car companies from trying to market cars with more horsepower than those of their competitors. This statute would most likely be found to:
   A) be constitutional under state police power
   B) be viewed as an unconstitutional restriction of commercial speech
   C) violate the Equal Protection Clause under intermediate scrutiny
   D) be found to violate substantive due process
   E) be found to violate procedural due process

Answer: B
Diff: 3
Topic: Bill of Rights
Skill: Factual Application

70) Assume that a law is passed that establishes airline security screening requirements for male passengers that differ from the requirements for female passengers. In evaluating an equal protection challenge to this law, a court would use:
   A) strict scrutiny
   B) intermediate scrutiny
   C) limited scrutiny
   D) the rational basis test

Answer: B
Diff: 2
Topic: Bill of Rights
Skill: Factual Application
71) A state enacts a statute that permits one minute of mediation or voluntary prayer at the beginning of the school day. Does the law violate the Constitution?
   A) No; participation is voluntary.
   B) Yes; the Act violates the Establishment Clause.
   C) Yes; the Act violates the Free Exercise Clause.
   D) Yes; the Act violates the Equal Protection Clause.

   Answer: B
   Diff: 2

72) To what extent should "speech" over the Internet be regulated? Should the Internet be treated like television, or should different standards apply? Or is the Internet more like print media such as books or newspapers? Give reasons for your positions.

   Answer: There are many opinions possible on this issue. Compared to regulating broadcast media, the Internet raises many additional issues. For example, unlike television, the Internet can be used for two-way communication. Furthermore, communications on the Internet can not only be aimed at a mass market, but can be directed to a focused group or single individual. Perhaps different rules, if any, should apply to these individualized communications. On the other hand, it is less likely for someone to be accidentally exposed to material on the Internet compared to television, although this is changing as the Internet evolves.
   Diff: 2
   Skill: Ethics and Policy

73) Following the events of September 11, 2001, the government took many actions directed at preventing acts of terrorism. One of the first and most visible was increased intensity of searches at airports. When government personnel do the screening, they are subject to the Equal Protection Clause. Should government screeners be able to search members of certain groups more rigorously than others? Is it constitutional to do so?

   Answer: There has been considerable controversy over elderly women and young mothers being randomly selected for more intensive searches and screening. One might argue that if it is known that terrorists most often come from certain groups, it might be reasonable to subject members of these groups to more thorough searches. Such conduct might or might not be constitutional because unequal treatment is balanced against the purpose of the law. It might be fairly easy to justify such a policy constitutionally given that the consequence of the unequal treatment (a few more minutes to get through security screening) is relatively minor compared to the purposes advanced by the law.
   Diff: 3
   Skill: Ethics and Policy
74) In the late 1990s, bicycle helmets became subject to federal regulation for the first time. Prior to the adoption of federal standards, manufacturers of bicycle helmets could get their helmets safety-certified by several private organizations. Manufacturers were not required to use any of these organizations, but most used at least one as part of their marketing. Assume that someone who is injured while wearing a bike helmet believes that a defect in the helmet's design contributed to the injuries sustained. Under what circumstances can this person bring a tort claim under state law?

Answer: Prior to the passage of the federal regulations, there would be no restrictions on the ability to bring the claim. Whether or not the helmet had been certified (and whether it actually met the certification test) could be introduced as evidence in court, but the existence of the private party certification does not affect the ability to bring a claim. Once the federal standards have been adopted, the state law tort claim would probably be preempted by the federal standards. The plaintiff could allege that the helmet did not meet the federal standards, but if the helmet did meet the standards, the plaintiff would not be able to raise a claim that the helmet was unsafe under state law.

Diff: 2
Topic: Supremacy Clause
Skill: Factual Application

75) Assume that there are numerous Internet service providers in a large city. Because of fierce competition, these businesses advertise heavily. One of the features that some of them provide and advertise is streamlined access to pornography sites as well as proprietary pornography sites that can be accessed only by those who subscribe with that particular service provider. This city passes an ordinance that prohibits any advertising about being able to access pornography over the Internet. One of the service providers challenges the constitutionality of this statute. Discuss how the case would turn out.

Answer: The most likely challenge would be on the basis of freedom of speech. The speech in question is commercial speech. Commercial speech can be subjected to reasonable time, place, and manner restrictions, but cannot be prohibited. This ordinance is probably an impermissible prohibition of this advertising. Note that the speech in question is the advertising of the access to the pornography, not the pornography itself. Assuming that accessing the pornography is legal, the city is limited in how it can restrict the advertising. Also note that not all pornography is considered to be unprotected obscene speech. The city would have much greater latitude in regulating advertising of an illegal activity, such as child pornography.

Diff: 2
Topic: Bill of Rights
Skill: Factual Application
76) Assume that a city passes an ordinance that prohibits all smoking in restaurants and bars, except in outdoor seating areas. Evaluate an equal protection challenge to this ordinance.

Answer: Although this ordinance might seem to treat "smokers" differently than "nonsmokers," individuals are not inherently smokers or nonsmokers. This ordinance prohibits anyone from smoking regardless of whether that person is a smoker or non-smoker. Restaurant and bar owners, however, might be able to raise an equal protection challenge because those two kinds of businesses are being singled out under the ordinance. Because the distinction is based on the type of business (and not race, age, or gender) the validity of the distinction would be evaluated under rational basis, and thus likely be constitutional.

Diff: 3
Topic: Bill of Rights
Skill: Factual Application
1) Injuries suffered as a result of a tort may include past and future medical expenses.

Answer: TRUE
Diff: 2
Topic: Intentional Torts Against Persons

2) Punitive damages can be recovered in strict liability and intentional tort cases.

Answer: TRUE
Diff: 2
Topic: Intentional Torts Against Persons

3) Physical contact is not necessary to be liable for the tort of assault.

Answer: TRUE
Diff: 2
Topic: Intentional Torts Against Persons

4) Transferred intent occurs when someone attempts to injure someone but actually injures someone else.

Answer: TRUE
Diff: 1
Topic: Intentional Torts Against Persons

5) In all defamation of character cases, the plaintiff must prove that the defendant knew that the statement was false.

Answer: FALSE
Diff: 2
Topic: Intentional Torts Against Persons

6) Truth is an absolute defense in a cause of action for defamation.

Answer: TRUE
Diff: 2
Topic: Intentional Torts Against Persons
7) Taking pictures on an all-phone camera in a men's or women's locker room of a celebrity and then selling them may give rise to a cause of action based on appropriation.

Answer: TRUE
Diff: 2
Topic: Intentional Torts Against Persons

8) True statements can be the basis for commission of the tort of invasion of the right to privacy.

Answer: TRUE
Diff: 1
Topic: Intentional Torts Against Persons

9) Intentional infliction of emotional distress requires that the conduct be outrageous.

Answer: TRUE
Diff: 1
Topic: Intentional Torts Against Persons

10) Trespass to land occurs only if there is an interference with an owner's right to possession of his or her land.

Answer: TRUE
Diff: 2
Topic: Intentional Torts Against Property

11) Conversion occurs when someone deprives the rightful owner of personal property of the use and enjoyment of that property by treating it as his/her own.

Answer: TRUE
Diff: 2
Topic: Intentional Torts Against Property

12) A homeowner does not owe any duty to those who trespass on his or her property.

Answer: FALSE
Diff: 1
Topic: Unintentional Torts (Negligence)

13) The reasonable person standard is used in determining the duty of care in a negligence case.

Answer: TRUE
Diff: 1
Topic: Unintentional Torts (Negligence)
14) Once a duty and a breach of that duty is shown, all that need be proven to prevail in a negligence cause of action is that the defendant was the proximate cause of a plaintiff's injuries.

Answer: FALSE  
Diff: 3  
Topic: Unintentional Torts (Negligence)

15) A plaintiff can generally recover for negligent infliction of emotional distress for any unintentional conduct of the defendant that causes the plaintiff to suffer emotional distress.

Answer: FALSE  
Diff: 2  
Topic: Unintentional Torts (Negligence)

16) The violation of a statute that proximately causes an injury is negligence per se.

Answer: TRUE  
Diff: 2  
Topic: Special Negligence Doctrines

17) Good Samaritan laws do not generally protect persons who are not medical professionals and who have not had training in CPR.

Answer: TRUE  
Diff: 2  
Topic: Special Negligence Doctrines

18) Ansil pays Dwaine five dollars for a ride home. Dwaine gets into an accident from not paying attention to the curve in the road, which in turn causes injury to Ansil's wrist and head. Under the guest statute, Dwaine will not be liable.

Answer: FALSE  
Diff: 1  
Topic: Special Negligence Doctrines

19) A landowner owes a duty even to trespassers.

Answer: TRUE  
Diff: 2  
Topic: Special Negligence Doctrines

20) Assumption of the risk, if present, prevents a plaintiff from recovering for negligence even if the plaintiff has proven all the required elements of negligence.

Answer: TRUE  
Diff: 2  
Topic: Defenses Against Negligence
21) Comparative negligence bars all recovery to a plaintiff who is even 10 percent at fault.

Answer: FALSE
Diff: 2
Topic: Defenses Against Negligence

22) A tort claim of unfair competition seldom succeeds because of the policy of encouraging open and vigorous competition.

Answer: FALSE
Diff: 2
Topic: Business Torts

23) Intent is required for a product disparagement claim.

Answer: TRUE
Diff: 1
Topic: Business Torts

24) In order to be liable for intentional interference with contractual relations, the defendant must have breached a valid existing contract.

Answer: FALSE
Diff: 2
Topic: Business Torts

25) Strict liability is liability without fault.

Answer: TRUE
Diff: 1
Topic: Strict Liability

26) Which of the following is not one of the general categories of torts?
   A) strict liability
   B) rational
   C) negligence
   D) intentional

Answer: B
Diff: 1
Topic: Intentional Torts Against Persons
Skill: Legal Concepts
27) What is the definition of a tort?
A) any violation of an ethical duty
B) any crime or misdemeanor
C) any action done in violation of a prior agreement that allows the victim to recover damages
D) any civil wrong that allows the injured person to recover damages
E) any conduct by one party that is objected to by another

Answer: D
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Legal Concepts

28) Damages intended to punish a defendant and deter the defendant from engaging in the same tortuous conduct in the future are called:
A) penalty damages
B) retribution damages
C) punitive damages
D) preventative damages
E) nominal damages

Answer: C
Diff: 1
Topic: Intentional Torts Against Persons
Skill: Legal Concepts

29) The tort of assault differs from the tort of battery in which of the following ways?
A) Assault is an intentional tort and battery relates to negligence.
B) Assault is a strict liability tort.
C) Assault requires the plaintiff to show that he or she was aware of the immediate danger.
D) Assault requires proof of each of the separate elements of negligence.
E) Assault claims may be brought on future threats, whereas battery claims may not.

Answer: C
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Legal Concepts
30) The doctrine applied when someone intends to cause injury to a certain person, but instead actually causes that injury to a different person is:
   A) transferred intent
   B) innocent bystander
   C) multiple victim
   D) misplaced consequence
   E) res ipsa loquitur

Answer: A
Diff: 1
Topic: Intentional Torts Against Persons
Skill: Legal Concepts

31) How is false imprisonment defined?
   A) being held in jail when no formal charges have been filed
   B) the intentional confinement or restraint of another without authority of justification and without that person's consent
   C) the holding in prison of one who was convicted of a crime that the person did not commit
   D) a confinement caused when one accidentally causes another to be confined without that person's consent

Answer: B
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Legal Concepts

32) Assuming that statutory requirements are met, what is protected under merchant protection statutes?
   A) Merchants are protected from the intentional torts of their customers.
   B) Merchants are protected from product disparagement claims of their competitors.
   C) Merchants are protected from product disparagement claims of their suppliers.
   D) Merchants are protected from false imprisonment claims of persons detained on suspicion of shoplifting.
   E) Customers are protected from the negligent conduct of merchants.

Answer: D
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Legal Concepts
33) What differs in a defamation suit when the plaintiff is a public figure, as opposed to when the plaintiff is not a public figure?
   A) Punitive damages are available.
   B) The plaintiff need not prove actual injury to the reputation.
   C) The plaintiff can recover even when the statement is a mere opinion.
   D) The plaintiff must prove that the statement was made with malice.
   E) The plaintiff must prove that the statement was made in writing.

   Answer: D
   Diff: 2
   Topic: Intentional Torts Against Persons
   Skill: Legal Concepts

34) A nonpublic figure in a defamation case must prove the following except that:
   A) there was an untrue statement
   B) the statement contained a factual assertion
   C) the statement was communicated by the defendant to at least one person other than the plaintiff
   D) the defendant knew the statement was false
   E) the statement caused an injury to the plaintiff's reputation

   Answer: D
   Diff: 3
   Topic: Intentional Torts Against Persons
   Skill: Legal Concepts

35) Which of the following is true?
   A) Slander and libel are two kinds of defamation.
   B) Defamation and slander are two kinds of libel.
   C) Defamation and libel are two kinds of slander.
   D) Slander and libel are two terms for the same tort, and defamation is a different tort altogether.
   E) Slander, libel, and defamation are three terms with the same meaning.

   Answer: A
   Diff: 2
   Topic: Intentional Torts Against Persons
   Skill: Legal Concepts
36) Which of the following is the best description of misappropriation of the right to publicity?
   A) claiming credit for the accomplishments of another
   B) publishing the creative work of another and claiming that it is yours
   C) publicly claiming to have accomplished something that you have not accomplished
   D) attempting to use another living person's name or identity for commercial purposes without that person's consent
   E) publicizing private information about someone without that person's consent

Answer: D
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Legal Concepts

37) Which of the following is true about the tort of invasion of the right to privacy?
   A) The tort is actionable only by public figures.
   B) True statements or facts that are disclosed can support a claim for the invasion of the right to privacy.
   C) Once a fact has become public, its disclosure cannot thereafter support a claim for the invasion of the right to privacy.
   D) The tort requires that the defendant entered the plaintiff's home or place of business to acquire the information that was disclosed.

Answer: B
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Legal Concepts

38) Which of the following is true about intentional infliction of emotional distress?
   A) Recovery is allowed anytime there is a measurable amount of mental distress.
   B) There must be some physical contact with the plaintiff.
   C) The defendant's conduct must go beyond all possible bounds of decency and be regarded as atrocious and utterly intolerable in a civilized society.
   D) The plaintiff must have witnessed severe physical injury to a relative or other significant person in the plaintiff's life.

Answer: C
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Legal Concepts
39) For which of the following torts are the general requirements for the plaintiff's case dependent on whether or not the plaintiff is a public figure?
   A) defamation
   B) invasion of the right to privacy
   C) intentional infliction of emotional distress
   D) both A and B
   E) A, B, and C

   Answer: A
   Diff: 2
   Topic: Intentional Torts Against Persons
   Skill: Legal Concepts

40) Which is true regarding the tort of trespass to land?
   A) A person who enters another's land without permission is liable to the landowner even if the landowner was not using the land at the time and there was no damage to the land.
   B) A person cannot be liable for trespass to land if that person was not told, either directly by the owner or by means of a sign, to stay off the property.
   C) So long as a person stays away from the portions of land that the owner is currently using, there can be no trespass to land.
   D) So long as a person originally entered the land of another with the permission of the owner, there can be no trespass to land if the nonowner stays beyond the period of permission granted by the owner.

   Answer: A
   Diff: 3
   Topic: Intentional Torts Against Property
   Skill: Legal Concepts

41) How does the tort of conversion of personal property differ from trespass to personal property?
   A) In conversion, the true owner is denied use and enjoyment of the property.
   B) In conversion, the true owner can recover damages for the denial of use of the property.
   C) In conversion, the tortfeasor treats the property as if it is his/her own.
   D) In conversion, the plaintiff is entitled to recover punitive damages.
   E) In conversion, the defendant must have published his/her use of the property to another.

   Answer: C
   Diff: 3
   Topic: Intentional Torts Against Property
   Skill: Legal Concepts
42) Which of the following is true about a malicious prosecution case?
   A) The claim must be against a government agency for wrongfully bringing a criminal action.
   B) Most victorious defendants are able to prove the elements of a malicious prosecution claim.
   C) The plaintiff must prove that there were false statements made by the other party at the original trial that injured the plaintiff's reputation.
   D) The plaintiff must prove that the original lawsuit was brought with malice.
   E) The plaintiff must prove that there were statements made by the other party at the original trial that invaded the plaintiff's privacy.

   Answer: D
   Diff: 3
   Topic: Intentional Torts Against Property
   Skill: Legal Concepts

43) The best statement of the test applied in determining if a defendant was the proximate cause of the plaintiff's injuries is:
   A) Was it foreseeable to the plaintiff that the defendant would engage in this conduct?
   B) Given this particular injury to the plaintiff, was it foreseeable that the defendant was the cause?
   C) Should it have been foreseeable to the defendant that the defendant's conduct could lead to this kind of injury?
   D) Was the injury foreseeable to the plaintiff prior to the injury's occurrence?
   E) Was it foreseeable to the plaintiff that this kind of injury could occur under the particular conditions that the injury did occur?

   Answer: C
   Diff: 3
   Topic: Unintentional Torts (Negligence)
   Skill: Legal Concepts

44) A medical doctor who amputates the wrong arm may be held liable for which of the following?
   A) medical malpractice
   B) an intentional tort
   C) strict liability
   D) wrongful amputation
   E) breach of contract

   Answer: A
   Diff: 1
   Topic: Unintentional Torts (Negligence)
   Skill: Legal Concepts
45) A medical doctor who commits medical malpractice has committed what tort?
   A) defamation of character
   B) intentional infliction of emotional distress
   C) trespass
   D) negligence

Answer: D
Diff: 1
Topic: Unintentional Torts (Negligence)
Skill: Legal Concepts

46) The doctrine that is applied when a defendant violates an existing statute intended to prevent the injury in question to persons of a class that includes the plaintiff is:
   A) negligence per se
   B) res ipsa loquitur
   C) proximate cause statute
   D) concurrent statutory violation

Answer: A
Diff: 2
Topic: Special Negligence Doctrines
Skill: Legal Concepts

47) The doctrine that shifts the burden of proof from the plaintiff to the defendant is:
   A) negligence per se
   B) res ipsa loquitur
   C) apparent negligence
   D) Good Samaritan

Answer: B
Diff: 2
Topic: Special Negligence Doctrines
Skill: Legal Concepts

48) What does a guest statute provide?
   A) that a driver who has voluntarily given a ride to a passenger without compensation is not liable to the passenger for ordinary negligence
   B) that someone serving alcohol to guests in the home is liable if the alcohol causes the guest to become intoxicated and injure another person while intoxicated
   C) that tavern owners are strictly liable for alcohol related injuries caused by tavern guests who were served alcohol at the tavern
   D) that homeowners cannot be sued by their social guests for injuries incurred while the guests were in the homeowner's home with permission

Answer: A
Diff: 2
Topic: Special Negligence Doctrines
Skill: Legal Concepts
49) What is a dram shop?
   A) a house of ill repute
   B) a factory that illegally uses child labor
   C) a bar or tavern
   D) a pharmacy
   E) a seller of second hand goods

   Answer: C

50) Which of the following best describes the effect of Good Samaritan laws?
   A) Medical professionals are obligated to stop and assist persons in need.
   B) Medical professionals have a lower duty of care to strangers than to their regular patients.
   C) Medical professionals cannot be held liable if they cause injury to someone they provide medical care to in an emergency.
   D) Someone injured by a medical professional who is providing emergency medical care at the scene of an accident cannot recover if the injury was due to ordinary negligence.

   Answer: D

51) A landowner owes a duty of ordinary care to:
   A) licensees only
   B) invitees only
   C) trespassers only
   D) licensees and invitees
   E) licensees, invitees, and trespassers

   Answer: D

52) The customer of a store who is at the store for purposes of doing business would be classified as what type of visitor while on the store's premises?
   A) a licensee
   B) an invitee
   C) a trespasser
   D) a guest

   Answer: B
53) The legal effect of the presence of a superseding event is that:
   A) the defendant is not liable even if the plaintiff has proved all the elements of negligence
   B) the plaintiff and defendant will share liability
   C) the burden of proof shifts from the plaintiff to the defendant
   D) intent must be proven in addition to the elements of negligence

   Answer: A
   Diff: 2
   Topic: Defenses Against Negligence
   Skill: Legal Concepts

54) Which best describes assumption of the risk in a negligence case?
   A) The plaintiff knowingly and willingly subjected herself to a risk, and by doing so, is not able to collect from a defendant even if all of the elements of negligence are present.
   B) The defendant gave advance warning to the plaintiff that an injury would occur.
   C) The plaintiff is more at fault than the defendant in causing the accident.
   D) The plaintiff was involved in an abnormally dangerous activity.
   E) The defendant knew that the conduct was risky, but nonetheless chose to engage in it.

   Answer: A
   Diff: 2
   Topic: Defenses Against Negligence
   Skill: Legal Concepts

55) A plaintiff wants to sue on a negligence tort, but knows that he was partly at fault. Which of the following is true?
   A) A state applying contributory negligence will allow the plaintiff to recover so long as his fault is minor.
   B) The plaintiff will have to elect whether to sue under comparative or contributory negligence.
   C) Because the plaintiff is partly at fault, he will not be able to recover under either comparative or contributory negligence.
   D) If the plaintiff's fault is only 5 percent, his recovery will be the same under either pure or partial comparative negligence.
   E) In all circumstances the plaintiff will recover more under pure comparative negligence than under partial comparative negligence.

   Answer: D
   Diff: 3
   Topic: Defenses Against Negligence
   Skill: Legal Concepts
56) Which of the following is true about comparative negligence and contributory negligence?
   A) Most states that once used comparative negligence now apply contributory negligence instead.
   B) They are two names for the same defense.
   C) In order to avoid liability for an unintentional tort, the defendant must prove the presence of both defenses.
   D) Comparative negligence is used with intentional torts and contributory negligence is used with unintentional torts.
   E) Comparative negligence allows the plaintiff to make a partial recovery whereas contributory negligence does not.

   Answer: E
   Diff: 3
   Topic: Defenses Against Negligence
   Skill: Legal Concepts

57) If a plaintiff voluntarily enters into or participates in a risky activity that results in injury, what is the most likely defense that he or she may use in response to a defendant's claim that the plaintiff assumed the risk?
   A) contributory negligence
   B) comparative negligence
   C) plaintiff had no knowledge of the danger involved when he or she participated in the activity
   D) defendant was negligent per se
   E) defendant assumed the risk under the "danger invites rescue" doctrine

   Answer: E
   Diff: 1
   Topic: Defenses Against Negligence
   Skill: Legal Concepts

58) The tort of palming off involves:
   A) knowingly selling goods that are defective
   B) blaming another for one's own actions and communicating that blame to at least one other person
   C) failing to credit another for that other person's legal accomplishments
   D) making false statements about the goods of another
   E) representing one's own goods to be those of a competitor

   Answer: E
   Diff: 2
   Topic: Business Torts
   Skill: Legal Concepts
59) Product disparagement differs from defamation of a nonpublic figure in that:
   A) intent is required for the disparagement case, but not in the defamation case
   B) intent is required for the defamation case, but not in the disparagement case
   C) publication to a third party is required in the disparagement case, but not in the defamation case
   D) publication to a third party is required in the defamation case, but not in the disparagement case
   E) both A and D

   Answer: A
   Diff: 3
   Topic: Business Torts
   Skill: Legal Concepts

60) The tort of intentional interference with contractual relations requires the following except:
   A) a valid, enforceable contract between the contracting parties
   B) third-party knowledge of this contract
   C) third-party inducement to breach the contract
   D) a new contract involving the third party who induced the breach

   Answer: D
   Diff: 2
   Topic: Business Torts
   Skill: Legal Concepts

61) Persons who engage in abnormally dangerous activities such as crop dusting or blasting:
   A) are liable only if all the elements of negligence are proven against them
   B) are liable only if they intended to cause a particular injury
   C) are generally not liable for the injuries they cause because otherwise no one would undertake these activities
   D) are liable to persons they injure even if they are not at fault

   Answer: D
   Diff: 2
   Topic: Strict Liability
   Skill: Legal Concepts
62) Sam, who weighs 250 pounds, calls his 110-pound girlfriend, Alice, one morning while she is at work. He says, "You are to stay in your office until midnight. If you come to my house before midnight, I will make you sorry that you did." Assuming that Alice usually leaves her office at 5 p.m. but stays until midnight that night because of the threat, if Alice files a false imprisonment case against Sam, a court most likely will find which of the following?

A) There was false imprisonment because Sam's threat forced Alice to stay in the office.
B) There was no false imprisonment because Sam and Alice previously knew one another.
C) There was no false imprisonment because Alice could have left the office and stayed away from Sam's house, and because the threat related to future harm.
D) There was no false imprisonment because Alice's office was not a prison, even though it might feel like one to Alice.

Answer: C
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Factual Application

63) While Jack is attending a baseball game cheering for the home team, a fan of the other team sneaks up behind him and hits Jack on the head with a hard piece of pizza crust, injuring Jack. Jack has no idea he is about to be hit and is severely embarrassed when his friends see that he was injured by a pizza crust. Which of the following torts has the fan committed?

A) assault
B) battery
C) assault and battery
D) battery and negligent infliction of emotional distress
E) assault, battery, and negligent infliction of emotional distress

Answer: B
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Factual Application

64) Cathy helps save Sean and Marcia from their burning apartment building, and in turn becomes injured herself. Which of the following are true? Which of the following are true?

A) Cathy may sue Sean and Marcia for defamation.
B) Cathy may not sue anyone as she gave help out of her own kindness and love of people.
C) Under the "danger invites rescue doctrine," Cathy may sue the person(s) responsible for setting the fire.
D) Both A and B.
E) Neither A, B, nor C.

Answer: C
Diff: 2
Topic: Intentional Torts Against Persons
Skill: Factual Application
65) Bob's fraternity brother lent Bob his car for a weekend trip to Las Vegas. While there, he hit a couple of substantial payoffs in the casinos and decided that it was time for a new life. He decided to move to Venice Beach in California. He did not bother to tell anyone of this change in life plans, including his fraternity brother back in Utah who lent him the car. "After all," thought Bob, "if there's anything to this brotherhood thing, he shouldn't mind at all. And if he comes for it, I'll certainly let him have it back." Bob moved to Venice Beach. Is Bob liable for conversion of personal property?

   A) no, because the friend originally gave him the car with permission  
   B) no, as long as he has not damaged the car  
   C) yes, because he did not return the car when agreed  
   D) no, because he was willing to return the car if asked to  
   E) yes, because he took the car to a different state

Answer: C
Diff: 3
Topic: Intentional Torts Against Property
Skill: Factual Application

66) Which of the following is true about the case against McDonald's for serving very hot coffee?

   A) The plaintiff was burned while driving her car.  
   B) McDonald's coffee was found to be the same temperature as that served by its competitors.  
   C) McDonald's had turned down a pretrial offer of settlement which was much lower than the amount awarded by the jury.  
   D) McDonald's paid the amount to the plaintiff that the jury awarded.

Answer: C
Diff: 2
Topic: Negligence
Skill: Factual Application

67) In the Palsgraf case, foreseeability was an issue. The question addressed by the court was:

   A) Was it foreseeable to the plaintiff (Ms. Palsgraf) that the scales would fall?  
   B) Was it foreseeable to the plaintiff (Ms. Palsgraf) that someone in the train station would be carrying explosive fireworks?  
   C) Was it foreseeable to the passenger carrying the fireworks that they might explode and injure someone?  
   D) Was it foreseeable to the railroad employee helping the passenger onto the train that doing so might lead to injury to Ms. Palsgraf or another bystander?  
   E) Was it foreseeable to Ms. Palsgraf that her injury would have been caused by an explosion?

Answer: D
Diff: 3
Topic: Negligence
Skill: Factual Application
68) The proximate cause requirement for a negligence tort is most likely not met where:
   A) a customer becomes ill from food that is carelessly packed at a processing plant
   B) a patient becomes sick from a doctor carelessly prescribing the wrong medicine
   C) a customer in a building supply store carelessly drops a small can of paint that breaks open and is ignited from a spark caused when the metal can hits the concrete floor
   D) a driver injures a pedestrian when rounding a curve at twice the legal speed limit
   E) the victim of an accident was aware, prior to the actual accident, that the accident was likely to occur

Answer: C
Diff: 2
Topic: Negligence
Skill: Factual Application

69) Mary, a 68-year-old widow, hired an electrician to make some wiring repairs to her home. The electrician accidentally started a fire that destroyed her house. Mary was not injured, but watched her house burn along with all her possessions. It was emotionally devastating to watch as she lost a whole life's worth of memories. Can she recover for negligent infliction of emotional distress?
   A) yes, because the electrician was the cause of her emotional distress through his outrageous conduct of starting the fire
   B) yes, because her distress was genuine
   C) no, because her situation does not meet all the elements necessary to recover for negligent infliction of emotional distress
   D) no, because she assumed the risk by having someone do electrical work in her home

Answer: C
Diff: 2
Topic: Negligence
Skill: Factual Application

70) Sandy lives on the top floor of a 10-story building in a big city. There is a 30-story apartment building under construction next door to her building. One morning while eating her corn flakes, a brand new toilet comes crashing through the roof of Sandy's apartment and injures her. She would like to sue the construction firm, but has no way of finding out or proving what persons were involved or exactly what happened. The doctrine that would most help Sandy is:
   A) last clear chance
   B) res ipsa loquitur
   C) strict liability
   D) comparative negligence
   E) negligence per se

Answer: B
Diff: 2
Topic: Special Negligence Doctrines
Skill: Factual Application
71) Patti Passenger is riding with her friend, Danetta Driver, up to the mountains to ski for the day. Patti is happy that Danetta is giving her a ride, not even asking Patti to share the cost of gas. On the way home that evening, Danetta suddenly remembers that she is late to a meeting she had that night. Danetta immediately passes a car on a blind curve and gets into an accident. Which of the following is true in Patti's negligence suit against Danetta?

A) Patti can recover from Danetta under the doctrine of *res ipsa loquitur*.
B) Patti can recover because Danetta was negligent per se.
C) Patti can recover because the injury was a foreseeable consequence of Danetta's actions.
D) Patti cannot recover because Danetta was a Good Samaritan in taking Patti skiing without charging her for a portion of the gas cost.
E) Patti cannot recover assuming that there is a guest statute in her state.

Answer: E
Diff: 2
Topic: Special Negligence Doctrines
Skill: Factual Application

72) A driver stopped at a convenience store to run inside briefly. The driver left the engine running and forgot to set the parking brake. The car suddenly started rolling toward two small children, and Vicki, a bystander, pulled the two children out of the way of the rolling car. Vicki is injured in the process. Can Vicki recover from the driver of the car?

A) yes, because of the Good Samaritan rule
B) no, because of an intervening event
C) no, because of assumption of the risk
D) yes, because the driver set up the dangerous situation

Answer: D
Diff: 3
Topic: Special Negligence Doctrines
Skill: Factual Application

73) Sam had just finished a great day of skiing as he walked toward the parking lot with his skis over his shoulders. While waiting to cross at a crosswalk, a car's horn honks down the street. He suddenly turns to see where the sound came from, and in doing so his skis swing around and hit Pam in the head, injuring her. Which of the following, if true, would give Sam the best chance of avoiding liability to Pam?

A) Sam did not intend to harm anyone when he turned to see the source of the sound.
B) The driver of the car violated an anti-noise ordinance in blowing the horn.
C) Pam had planned to cross the crosswalk as soon as traffic allowed, rather than wait for the "walk" light to indicate that it was safe to do so.
D) Pam had been walking behind Sam for several hundred yards and had observed that Sam, on several occasions, had nearly struck other persons as he carried his skis.

Answer: D
Diff: 3
Topic: Defenses Against Negligence
Skill: Factual Application
74) Cindy was riding her bicycle on a paved bike path and had an accident with another cyclist. Cindy's $1,000 bicycle was destroyed in the accident. If the jury determined that Cindy was 60 percent at fault and the other cyclist 40 percent at fault, under which doctrines would Cindy be entitled to recover $400 from the other cyclist?

A) contributory negligence only
B) pure comparative negligence only
C) partial comparative negligence only
D) either form of comparative negligence, but not contributory negligence
E) either form of comparative negligence as well as under contributory negligence

Answer: B
Diff: 3
Topic: Defenses Against Negligence
Skill: Factual Application

75) Burger Prince is one of the largest hamburger chains in the nation, and fiercely competitive with the well-known chain of Captain Hook Seafood House restaurants. Captain Hook has recently introduced a new line of hamburgers in order to expand beyond seafood. Burger Prince received information that it believed was reliable indicating that the Captain Hook's burgers contained substantial amounts of filler. Burger Prince then ran advertisements saying that its pure beef burgers were better than the Captain Hook's burgers that used filler. Which of the following is true?

A) Burger Prince is liable for product disparagement because the statement about the use of filler was false.
B) Burger Prince would be liable for invasion of privacy if the formula for Captain Hook's burgers was not publicly available.
C) This is a case of palming off.
D) Captain Hook will not be able to win a product disparagement case here.
E) This is an example of intentional interference with contractual relations.

Answer: D
Diff: 2
Topic: Business Torts
Skill: Factual Application
76) Jeff was in a department store standing near a clothing rack. Store security felt that he was acting suspiciously because he was standing close to the clothing rack and looking around. Soon after, store security notices that he quickly attempts to leave the store. Does store security have a right to stop and search Jeff according to these facts?

A) Yes; shopkeepers have a privilege to protect against theft and loss. In this case, the store security would have reasonable grounds for a stop and search.
B) No; shopkeepers have no right to stop and search a suspected thief, absent any video evidence.
C) No; the facts of this situation do not provide reasonable grounds for a stop and search. Any attempt to do so by store security could result in a claim of false imprisonment.
D) No; the facts of this situation do not provide reasonable grounds for a stop and search. Any attempt to do so by store security could result in a claim of battery.

Answer: C
Diff: 2
Skill: Factual Application

77) A reporter appears on television and reports that a collegiate athlete is currently using steroids. The reporter has a sincere belief that the information is true. Subsequently, it is determined that the information is false and inaccurate. If the athlete files a lawsuit, most courts would find which of the following?

A) The reporter is not liable for the statements because of the sincerely held belief on behalf of the reporter.
B) The reporter is not liable because the athlete is considered a public figure.
C) The reporter is liable for a claim of slander.
D) The reporter is liable for a claim of libel.

Answer: D
Diff: 2
Skill: Factual Application

78) A reporter appears on television and declares that the head coach of a professional sports team is "the worst coach in the history of sports." The coach subsequently files a lawsuit against the reporter. A court would most likely determine which of the following?

A) The reporter is liable for a claim of slander.
B) The reporter is liable for a claim of libel.
C) The reporter is not liable because truth is an absolute defense.
D) The reporter is not liable because the statement is an expression of opinion.

Answer: D
Diff: 2
Skill: Factual Application
79) In what circumstances should persons be liable for materials put on Internet Web sites? For example, should persons who post bomb-making information be responsible to the victims of someone who acts on this information? Should persons be liable who call for someone to be killed, but take no action themselves toward accomplishing this other than to call for others to do the killing? What if someone makes extremely derogatory comments about another person or corporation and widely distributes them? In this circumstance, should the defamation requirement that the statements be fact, and not opinion, apply?

Answer: The Internet has made it easier to distribute information. In many cases this is information that has long been available, though more difficult to locate. In the case of bomb-making information, courts have been reluctant to impose liability for posting information that is available elsewhere. Possibly defamatory statements raise other issues due to the ease to which they can be distributed to others, and the ability in many cases for them to be made anonymously.

Diff: 2
Skill: Ethics and Policy

80) resolution of contractual relationships

Answer: Foreseeability is a way to put a limit on the chain of causation. If a defendant should ask what could reasonably be expected to happen if he/she engages in certain conduct, the defendant should only be responsible for the expected consequences of the conduct. There are situations where a party is injured but there is no one who is legally obligated to compensate the injured party.

Diff: 2
Skill: Ethics and Policy

81) Powdersurf is a manufacturer of snowboards. Powdersurf is an aggressive marketer, and new to this product line. Powdersurf has adopted several strategies to help it rapidly build market share. One approach was to make the designs and graphics of some of its snowboards nearly identical to those of the industry leader's snowboards. In addition, Powdersurf has begun an advertising campaign that criticizes its competitor's products. For example, it has made several claims, known to be false, about the materials used in the competitor's boards. It has also made claims about a tendency of one competitor's boards to break during use. This was based on an independent lab's report that later proved to be false. Lastly, Powdersurf made several allegations about the president of the leading competitor, primarily claiming that this well-known snowboarding pioneer had not accomplished all that he claimed. Powdersurf believed that its allegations were correct, but it turned out that they were wrong. Discuss any tort claims that might be brought against Powdersurf and their likely resolution.
Answer: If Powdersurf were trying to pass its snowboards off as those of a competitor, it could face liability for palming off. It could face liability for the false statements about the competitor's products that were knowingly false. It would not be liable for those that it honestly believed were true. Liability for the statements about the competitor's president would depend on whether or not the president would be considered a public figure because Powdersurf believed the statements to be true. Powdersurf could face civil liability to any injured party for false advertising under the Lanham Act.

Diff: 2

Topic: Unintentional Torts (Negligence)
Skill: Factual Application

82) Ray and Rayetta were on a camping vacation in Maine. They had reservations for themselves and their car on a ferry from Bar Harbor, Maine to Nova Scotia. Because they had their two mountain bikes mounted upright on a roof rack on their car, they had to use a special line including motor homes, vans, and other high vehicles. Upon loading onto the ferry, all of these high-profile vehicles used the rightmost of the six parallel lanes on the auto deck of the ferry. When the drivers returned to their cars upon reaching Nova Scotia, they were directed off the ferry by ferry employees. The driver of the motor home immediately in front of their car had not returned by the time all of the cars from other lanes had exited. After waiting for another 10 minutes, one of the ferry employees motioned Ray and Rayetta to turn to the left into the next lane rather than wait for the motor home to move. Ray and Rayetta followed the employee's hand signals, but unfortunately their bikes struck a low clearance pipe and the frames of both bikes were destroyed. Discuss the issues and outcome of their lawsuit against the ferry company.

Answer: They could fairly easily prove the five elements of negligence against the ferry company. The crucial part of the case would be whether the ferry company could prove any defenses. Most would likely be contributory or comparative negligence. One factor would be how visible this pipe was from the driver's seat. Even with this defense, Ray and Rayetta might prevail if they could prove that the ferry employee had the last clear chance to avoid the accident.

Diff: 2

Topic: Unintentional Torts (Negligence)
Skill: Factual Application
Sam is a business executive who flies often in connection with work. After the September, 2001 terrorists' destruction in New York and Washington, Sam flew less frequently. In response to the attacks, new federal regulations made the federal government responsible for all airport security personnel. In most cases, including at Sam's home airport, the government met the obligation by hiring private contractors to provide the security services. These firms were heavily regulated and controlled by the government. Also, in the new regulations were profiling guidelines that required additional security screenings for persons meeting such guidelines. These guidelines were partly secret, but it was known that members of certain races were much more likely to fall within them. In addition, on average, six times as many males as females met the guidelines. Shortly after these regulations were in place, Sam went to his airport and found extremely long lines at the security checkpoint. He waited in line nearly 3 hours. As he was about 10 people away from being screened, an irate passenger, Marvin, came running through the line screaming that he was about to miss his flight. Marvin accidentally hit Sam forcefully, breaking Sam's arm. In addition, Sam had his pet ferret (a small animal, an exotic pet) in his coat pocket. The impact caused the ferret to die. Marvin said that the slowness and incompetence of the security personnel had caused him to "lose it." When Sam reached the security checkpoint, he was pulled aside for additional screening. This involved waiting in an additional line for 30 minutes longer. Sam learned that he had to go through the additional security because he was returning home on the same day, had no checked baggage, and was male. Sam has sued both the security screening company and Marvin for his injuries and the loss of his ferret, and emotional distress related to these. Discuss Sam's claims, any defenses and their likely resolution.

Answer: Sam's claims would not prevail against the security screening company because they did not breach a duty and because Marvin's actions would likely be viewed as a superseding event. Sam could prove all the elements of negligence against Marvin for his physical injuries, but the presence of a ferret in his pocket would likely make that consequence unforeseeable. Sam would not be able to recover for emotional distress because his pet would not be considered a relative. Therefore, he would prevail in the negligence claim except that he would not prevail for the claim related to the ferret. Note: Students could also be asked to discuss an equal protection claim (from Chapter 3) against the screening company for its conduct and the government for the regulations.

Diff: 3
Topic: Unintentional Torts (Negligence)
Skill: Factual Application
6  STRICT LIABILITY AND PRODUCT LIABILITY

1) The failure of the manufacturer of a product to warn users of the dangerous propensities of a product can be negligence.

Answer: TRUE  
Diff: 1  
Topic: Tort Liability Based on Fault

2) In a negligence action, all parties in the product's chain of distribution are liable for the injury, even if only one party was negligent.

Answer: FALSE  
Diff: 2  
Topic: Tort Liability Based on Fault

3) Negligence is a possible theory under which to recover for injuries caused by products.

Answer: TRUE  
Diff: 1  
Topic: Tort Liability Based on Fault

4) To be successful in a negligence cause of action, the plaintiff must prove that the defendant breached a duty of care that caused the plaintiff's injuries.

Answer: TRUE  
Diff: 1  
Topic: Tort Liability Based on Fault

5) A seller who conceals a defect in a product, but who does not affirmatively misrepresent the quality of the product, cannot be sued for intentional misrepresentation.

Answer: FALSE  
Diff: 2  
Topic: Tort Liability Based on Fault

6) Greenman v. Yuba Power Products, Inc. is a landmark case that adopted the doctrine of strict liability in tort as a basis for product liability actions.

Answer: TRUE  
Diff: 2  
Topic: Tort Liability Based on Fault
7) The defendant generally bears the burden of proving his or her negligence.

Answer: FALSE
Diff: 1
Topic: Tort Liability Based on Fault

8) Fraud is often used as the basis for product liability actions.

Answer: FALSE
Diff: 2
Topic: Tort Liability Based on Fault

9) Strict liability does not require the injured person to prove that the defendant breached a duty of care.

Answer: TRUE
Diff: 1
Topic: The Doctrine of Strict Liability

10) All parties in the chain of distribution of a defective product are not strictly liable for injuries caused by the product.

Answer: FALSE
Diff: 2
Topic: The Doctrine of Strict Liability

11) Because strict liability is a tort doctrine, privity does not apply, so that even bystanders can recover under strict liability.

Answer: TRUE
Diff: 1
Topic: The Doctrine of Strict Liability

12) The most widely recognized articulation of the doctrine of strict liability is found in Section 402A of the Restatement (Second of Torts).

Answer: TRUE
Diff: 1
Topic: The Doctrine of Strict Liability

13) The doctrine of strict liability applies to sellers and lessors of products.

Answer: TRUE
Diff: 1
Topic: The Doctrine of Strict Liability
14) Strict liability applies only to products, not services.

Answer: TRUE
Diff: 1
Topic: The Doctrine of Strict Liability

15) Strict liability would not apply to the sale of blood required for a blood transfusion.

Answer: TRUE
Diff: 1
Topic: The Doctrine of Strict Liability

16) A homeowner not in the business of selling products could be sued for the sale of a defective product at a garage sale.

Answer: FALSE
Diff: 1
Topic: The Doctrine of Strict Liability

17) The manufacturer of a subcomponent of a product cannot be sued if the product is defective and causes an injury.

Answer: FALSE
Diff: 1
Topic: The Doctrine of Strict Liability

18) Damages recoverable in a strict liability action are uniform throughout the United States.

Answer: FALSE
Diff: 2
Topic: The Doctrine of Strict Liability

19) Strict liability for products liability requires that the plaintiff show there was a defect in the product causing the injury.

Answer: TRUE
Diff: 1
Topic: The Concept of Defect

20) In a product liability action based on strict liability, the plaintiff must prove the existence of a defect and who caused the defect.

Answer: FALSE
Diff: 2
Topic: The Concept of Defect
21) The injured party must prove who caused the product to become defective.
Answer:  FALSE  
Diff: 2 
Topic: The Concept of Defect

22) The failure of a manufacturer to properly test a product can be a defect in manufacture.
Answer:  TRUE  
Diff: 2 
Topic: Defect in Manufacture

23) The crashworthiness doctrine requires that vehicles be designed to take into account the possibility of a second collision.
Answer:  FALSE  
Diff: 2 
Topic: Defect in Design

24) In evaluating the adequacy of a product's design, the courts apply a risk-utility analysis.
Answer:  TRUE  
Diff: 1 
Topic: Defect in Design

25) A household appliance that works fine but that is designed without proper safeguards would be defective in terms of product liability law.
Answer:  TRUE  
Diff: 1 
Topic: Defect in Design

26) A toy for a child under 3 years of age that contains parts small enough for the child to swallow is defective in terms of product liability law.
Answer:  TRUE  
Diff: 1 
Topic: Defect in Design

27) Drug manufacturers have a duty to place their products in containers that cannot be opened by children.
Answer:  TRUE  
Diff: 1 
Topic: Defect in Packaging
28) Failure to warn about a product's dangers can make an otherwise safe product defective.

Answer: TRUE
Diff: 2
Topic: Failure to Warn

29) A proper and conspicuous warning placed on a product protects the manufacturer from strict liability.

Answer: TRUE
Diff: 1
Topic: Failure to Warn

30) Manufacturers of over-the-counter drugs such as aspirin must warn consumers of possible side effects of the drug or they can be sued for selling a defective product.

Answer: TRUE
Diff: 1
Topic: Failure to Warn

31) Failure to provide adequate instructions for the safe assembly of a product is a defect.

Answer: TRUE
Diff: 2
Topic: Other Product Defects

32) The concept of "defect" is expanding in the law.

Answer: TRUE
Diff: 1
Topic: Other Product Defects

33) The original seller of the product is liable for an injury caused by a modification of the product even if the modification occurred after it left the seller's possession.

Answer: FALSE
Diff: 2
Topic: Defenses to Product Liability

34) A statute of repose sets a limited time after an injury occurs in which a product liability suit can be brought.

Answer: FALSE
Diff: 2
Topic: Defenses to Product Liability
35) The maker of a product is required to warn about all dangers associated with using the product including dangers that are generally known.

Answer: FALSE
Diff: 2
Topic: Defenses to Product Liability

36) Contributory negligence is a defense to negligence actions but not generally in strict liability actions.

Answer: TRUE
Diff: 2
Topic: Contributory and Comparative Negligence

37) Comparative negligence is more widely recognized as a defense in product liability actions than contributory negligence.

Answer: TRUE
Diff: 2
Topic: Contributory and Comparative Negligence

38) Under comparative negligence, if a plaintiff is found by the jury to be 25 percent negligent and the damages are $100,000, the plaintiff would only recover $25,000.

Answer: FALSE
Diff: 2
Topic: Contributory and Comparative Negligence

39) Under comparative negligence, if a plaintiff is found by the jury to be 25 percent negligent and the damages are $400,000, the plaintiff would only recover $300,000.

Answer: TRUE
Diff: 2
Topic: Contributory and Comparative Negligence

40) The doctrine that imposes liability on a seller of a product only if the seller sold the defective product directly to the injured party is known as:
   A) privity of contract
   B) resolution of contractual relationships
   C) doctrine of direct commercial contacts
   D) doctrine of merchants' liability limitations

Answer: A
Diff: 2
Topic: Tort Liability Based on Fault
Skill: Legal Concepts
41) Under the judicial philosophies developed in the area of product liability:
   A) it does not pay to sue because of the high cost of legal expenses
   B) the doctrine of privity of contract will prevent liability
   C) the doctrine of privity of contract has been greatly reduced in importance
   D) most consumers cannot recover because the UCC has been written to protect merchants

Answer: C  
Diff: 2  
Topic: Tort Liability Based on Fault  
Skill: Legal Concepts

42) Someone who is injured by a product that he/she purchased new could recover on the basis of:
   A) breach of warranty
   B) breach of warranty or negligence
   C) breach of warranty or strict liability
   D) negligence or strict liability
   E) breach of warranty, negligence, or strict liability

Answer: E  
Diff: 1  
Topic: Tort Liability Based on Fault  
Skill: Legal Concepts

43) Which of the following is true in a products liability case?
   A) The plaintiff must prove the existence of a duty.
   B) The plaintiff must have purchased the product from the defendant.
   C) The plaintiff must prove her case with a preponderance of the evidence.
   D) The plaintiff will lose if she cannot prove proximate causation.

Answer: C  
Diff: 3  
Topic: The Doctrine of Strict Liability  
Skill: Legal Concepts

44) In order to recover in a products liability case based on strict liability, the plaintiff must prove that the product had a defect:
   A) that was caused by the defendant
   B) of any type
   C) that made the product unreasonably dangerous
   D) that affected the value of the product
   E) that the defendant knew existed

Answer: C  
Diff: 2  
Topic: The Doctrine of Strict Liability  
Skill: Legal Concepts
45) A public policy reason for imposing strict product liability on all in the chain of distribution is which of the following?
   A) These parties are able to insure against product liability costs.
   B) These parties should be punished for putting dangerous products on the market.
   C) Consumers should be able to choose dangerous products if they want to.
   D) Negligence was making it too easy for plaintiffs to recover.

Answer: A
Diff: 2
Topic: The Doctrine of Strict Liability
Skill: Legal Concepts

46) If a manufacturer produces a defective product, sells it to a wholesaler, who sells it to a retailer, who sells it to a consumer, who is injured, which parties in the chain of distribution are potentially liable under strict liability?
   A) only the manufacturer
   B) only the manufacturer and wholesaler
   C) the manufacturer, wholesaler, and retailer
   D) only the party at fault

Answer: C
Diff: 1
Topic: The Doctrine of Strict Liability
Skill: Legal Concepts

47) Who can recover for their injuries under product liability law?
   A) someone who purchases a product new
   B) someone who uses a product with the owner's permission
   C) a nonuser such as a bystander
   D) A and B only
   E) A, B, and C

Answer: E
Diff: 1
Topic: The Doctrine of Strict Liability
Skill: Legal Concepts

48) What are sellers responsible to provide for regarding the assembly of products they sell?
   A) rebates
   B) adequate instructions for safe assembly
   C) adequate instructions for use of the product
   D) A and B
   E) B and C

Answer: E
Diff: 1
Topic: The Concept of Defect
Skill: Legal Concepts
49) What is the significance of a "defect" in a products liability case based on strict liability?
   A) It is not necessary, but can be used to eliminate the need to prove that there was an injury.
   B) It is a required element in the proof of such a case.
   C) Its presence would allow punitive damages to be awarded.
   D) Its presence would eliminate liability for the defendant.
   E) The party who caused the defect is the only one who can be held liable.
   Answer: B
   Diff: 2
   Topic: The Concept of Defect
   Skill: Legal Concepts

50) Carl wants to recover in a products liability lawsuit because of a couch that he bought. He must prove the following except:
   A) that the product caused the injury
   B) that he in fact was injured
   C) that he had a contractual relationship with the manufacturer
   D) that the injury resulted from a defect in the product
   Answer: C
   Diff: 2
   Topic: The Concept of Defect
   Skill: Legal Concepts

51) Which of the following is not a defect in manufacture?
   A) failure to properly assemble the product
   B) failure to properly package the product
   C) failure to properly test the product
   D) failure to properly check the quality of the product
   Answer: B
   Diff: 2
   Topic: Defect in Manufacture
   Skill: Legal Concepts
52) In considering whether a product contains a defective design, the courts will consider the following except:
   A) the degree of danger posed by the design
   B) the profitability of the product
   C) the likelihood of injury
   D) the social utility of the product
   E) the cost of producing a safer design

Answer: B
Diff: 2
Topic: Defect in Design
Skill: Legal Concepts

53) Which of the following is correct with regard to the crashworthiness doctrine?
   A) Car manufacturers should make cars with a minimal chance of being involved in an accident.
   B) Car manufacturers should make cars that are designed so that the risk of injury arising from striking the interior of the car in an accident is minimized.
   C) Car dealers should train car buyers in order to minimize their chances of being involved in an accident.
   D) Car manufacturers should design cars to minimize their repair costs in the event of an accident.

Answer: B
Diff: 2
Topic: Defect in Design
Skill: Legal Concepts

54) Which of the following best describes a defect in packaging under products liability?
   A) The packaging of a product, such as a bottle or can, causes an injury to the user.
   B) The packaging of a product is such that it allows the product to spoil.
   C) The packaging of a product contains misleading or deceptive information about the product contained inside.
   D) The packaging of a product fails to contain necessary warnings about the dangers associated with a product.
   E) The packaging of a product allows children to access a product, such as drugs or poisons, that is generally safe when used as directed, but can be harmful if not used properly.

Answer: E
Diff: 2
Topic: Defect in Packaging
Skill: Legal Concepts
55) When a product is found to be defective because of a failure to warn, it means:
   A) that the manufacturer made an unreasonably dangerous product about which consumers
      should have been told
   B) that the product would not have been unreasonably dangerous if consumers had been
      warned about certain dangers of the product
   C) a state of the art design is accepted so long as consumers are warned that there are no
      safer designs available
   D) that the manufacturer did not meet its duty to warn against all possible dangers that might
      exist in connection with a product

Answer: B
Diff: 2
Topic: Failure to Warn
Skill: Legal Concepts

56) A wholesale distributor who is named in a product liability suit based on strict liability could
    avoid liability if:
   A) the plaintiff had not purchased the product causing the injury
   B) the distributor exercised reasonable care in all ways with respect to the product causing
      the injury
   C) this product had been used for many years by other users without injury
   D) this defect which caused the injury occurred after the product left the distributor
   E) the product has been redesigned to eliminate the problem which caused the injury in this
      case

Answer: D
Diff: 3
Topic: Defenses to Product Liability
Skill: Legal Concepts

57) In order for the government contractor defense to apply, the following must be present
    except:
   A) the government set precise specifications for the product
   B) the product conformed to the government specification
   C) the contractor warned the government of any known defects or dangers
   D) the contractor presented the government with a proposed safer design for the product
   E) all four of the above must be proven in order for the defense to apply

Answer: D
Diff: 2
Topic: Defenses to Product Liability
Skill: Legal Concepts
58) Which of the following best describes the defense of correction of a defect?
   A) The defense applies if a product is redesigned such that future production does not contain the defect.
   B) The defense applies only if the particular sample of the item was repaired, thus fixing the defect.
   C) The defense applies in a situation where a user received a recall notice to correct the defect but did not comply with the notice.
   D) It applies only if the manufacturer replaces the defective product at no additional charge to the owner.

Answer: C
Diff: 2
Topic: Defenses to Product Liability
Skill: Legal Concepts

59) Based on the law of products liability, which of the following is correct?
   A) A manufacturer should design its products to take into account foreseeable misuse.
   B) A manufacturer should design its products to take into account all possible misuse.
   C) A manufacturer should design its products to take into account all possible misuse by the initial purchaser, but need not worry about misuse by other users.
   D) A manufacturer need only take into account the intended use of its products.

Answer: A
Diff: 2
Topic: Defenses to Product Liability
Skill: Legal Concepts

60) Which of the following is true about statutes of limitation and statutes of repose?
   A) Statutes of limitation, but not statutes of repose, set time limits on bringing legal actions.
   B) Neither type of statute applies in the event of serious injuries.
   C) These statutes are federal law and apply nationwide even to state law actions.
   D) A statute of repose requires that a claim be brought within the specified number of years that the product was originally sold.

Answer: D
Diff: 2
Topic: Defenses to Product Liability
Skill: Legal Concepts
61) Which of the following is **not** a commonly recognized defense in product liability?
   A) government contractor defense
   B) state of the art design
   C) correction of the defect
   D) assumption of the risk
   E) unforeseeable misuse of the product

Answer:  B  
Diff: 2  
Topic:  Defenses to Product Liability  
Skill:  Legal Concepts

62) Irma bought a new Zenith car from the Zenith dealership. As Irma was driving it, one of the wheels fell off, causing the car to crash and Irma to be injured. It can be shown that the manufacturer negligently attached the wheel to the axle. Irma wants to sue the Zenith manufacturer. Under which of the following causes of action can Irma sue the dealership?
   A) breach of warranty of merchantability
   B) negligence
   C) strict liability
   D) A, B, and C
   E) A and C only

Answer:  E  
Diff: 2  
Topic:  Tort Liability Based on Fault  
Skill:  Factual Application

63) Which of the following could not give rise to a strict liability in tort action for products liability?
   A) buying a new car from a Genard Motors dealer
   B) buying food at a Joke-in-the-Box restaurant
   C) buying a prescription which was filled in a drug store
   D) buying legal services for the drafting of a will

Answer:  D  
Diff: 2  
Topic:  The Doctrine of Strict Liability  
Skill:  Factual Application
64) Paul purchased a deluxe motor home from Wide Open Spaces Motor Homes. In a products liability suit against Wide Open Spaces Motor Homes Corporation, Paul must show which of the following in order to recover?
   A) Wide Open Spaces was the manufacturer of the motor home, and not just a dealer.
   B) The negligence of Wide Open Spaces led to Paul's injury.
   C) A "defect" made the motor home unreasonably dangerous, leading to an injury.
   D) Paul was not misusing the motor home when the injury occurred.
   E) The motor home was new when Paul purchased it.

Answer: C  
Diff: 3  
Topic: The Doctrine of Strict Liability  
Skill: Factual Application

65) Little Bobby, 5 years old, finds his older brother's "Extendo Sword," which is a toy sword about a foot long which springs out to 5 feet long when a button is pushed on the handle. His mother tells him to put it down because he will hurt someone if he's not careful. Bobby pushes the button when the sword is pointed toward his face and, just as all properly functioning "Extendo Swords" do, the sword shoots out. Bobby is injured and, under products liability, sues the toy store which sold the toy. Bobby will most likely:
   A) lose because of contributory negligence by playing with the sword after being told not to
   B) lose if he cannot prove negligence on the part of the toy store
   C) win on the basis of a manufacturing defect
   D) win on the basis of a design defect
   E) lose if the defendant can show that the sword was a state-of-the-art design

Answer: D  
Diff: 3  
Topic: Defect in Design  
Skill: Factual Application

66) As Betty is riding her new "LogLeaper XRTSHX 10,000 GTI" mountain bike, the front axle breaks and she is injured. She decides to sue Generalized, the maker of the bike, after learning that all LogLeapers have this problem. She would most likely sue on the basis of:
   A) negligence in assembly
   B) failure to warn
   C) manufacturing defect
   D) design defect
   E) defect in packaging

Answer: D  
Diff: 2  
Topic: Defect in Design  
Skill: Factual Application
67) Justin buys a computer from a retailer and his son is injured when the glass on the monitor shatters while he is using it. He sues the wholesaler only and the jury determines that this was a manufacturing defect that existed when the computer left the factory and caused the son’s injury. The jury determined that the wholesaler was only 5-percent responsible, the retailer 20-percent, and the manufacturer 75-percent. Justin can:

A) recover the full amount of his damages from the wholesaler
B) recover only 5 percent of his damages from the wholesaler
C) recover 20 percent from the retailer, but none from the parties he did not deal with
D) not recover because he (the son) was not the one who bought the computer

Answer: A
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application

68) Pat is pledging at the Delta Upsilon Delta (DUD) fraternity in order to become a member. As part of his initiation, he must eat a piece of cheese that is on a mousetrap that has been set to trap a mouse. He tries, but the trap slams shut on his nose, injuring him. Pat files a products liability suit against the hardware store which sold the mousetrap to the fraternity members. Which of the following, if true, would allow the hardware store to avoid liability?

A) The store exercised reasonable care in selling the mousetrap.
B) It was an unforeseeable misuse for anyone to use a mousetrap in this way.
C) Any defect in the mousetrap was caused by the manufacturer, not the hardware store.
D) Pat was not the purchaser from the hardware store.

Answer: B
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application

69) A seller is being sued by a buyer under a strict liability theory for having sold a defective widget. Which of the following facts would not be beneficial to the seller's defense?

A) The seller was not engaged in the business of selling widgets.
B) The widget had been altered after the seller sold it.
C) The seller had taken all steps possible to ensure a safe product.
D) The product was not unreasonably dangerous.

Answer: C
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application
70) Dangerous Products, Inc. is currently the defendant in several products liability cases. Which of the following situations would provide the weakest defense for the manufacturer?

A) The plaintiff had received a recall notice addressing the defect which caused the injury, but did not respond to the recall and continued to use the product.
B) The plaintiff was misusing the product, an electric sander, to remove the outer layer of his facial skin in order to improve his facial complexion.
C) The plaintiff had taken one of the company's lawn mowers and modified it to be a ceiling fan which he attached to his bedroom ceiling.
D) The injury occurred when a boy used a drill to drill a hole in his younger brother's arm because the younger brother had broken the older brother's toy car.
E) The plaintiff was misusing an electric wood saw because the owner's manual said to only use it to cut with (along) the grain of the wood and the plaintiff was using it to cut across the grain, causing it to kick up and injure the plaintiff.

Answer: E
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application

71) Barry buys a new sports car. The car sits low to the ground and because of the styling, visibility, to the rear is limited. About a month after Barry has the car he backs over his pet poodle as he is leaving for work. In his strict liability suit against the car manufacturer, Barry will:

A) win because driving a sports car is an inherently dangerous activity
B) win on the basis of design defect
C) win on the basis of packaging defect because the car could have been packaged in a differently styled body
D) lose because he assumed the risk of backing up in a car when he could not see to the rear
E) lose because he is not in privity of contract with the car manufacturer.

Answer: D
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application
72) Power Tool Company manufactures table saws. These saws have several safety devices including a permanent blade guard. This guard keeps the user's hands from touching the blade while it is moving. Ralph buys a Power table saw, but he takes off the blade guard because it inhibits the type of work he wants to do. Later, Ralph is injured while using the saw. If the blade guard had been left on, Ralph would not have been injured. Ralph sues Power Tool Co. under a strict liability theory. The best defense that Power could raise based on these facts is:

A) supervening event
B) assumption of risk
C) generally known dangers
D) state of the art
E) misuse of the product

Answer: A
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application

73) JKL, Inc. manufactures small appliances, including toasters. JKL learns that its toasters are defective and might cause serious harm to a user. Which of the following statements is not true?

A) JKL must make a reasonable effort to notify purchasers and users of this defect.
B) JKL must correct the defect.
C) If a user gets a notice of the defect, but continues to use the product without having it repaired or replaced, and is subsequently injured, JKL is probably still liable for the injury.
D) One reasonable way to notify purchasers of the defect is by mail.

Answer: C
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application

74) Which of the following would be a supervening event from the standpoint of a car manufacturer that has been sued in strict liability for an injury caused by one of its cars?

A) A redesign of the particular model car such that the ones being currently manufactured do not have the defect which led to the injury.
B) A recall notice sent to the car owner which was ignored.
C) An enactment, after the date of the injury, of a new safety regulation that would have prevented the injury.
D) The fact that the defect was caused by the car dealer when the car dealer was installing accessories for the purchaser.

Answer: D
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application
75) Sean has a 6-year-old car which he bought 2 years ago directly from its original owner. Eight months ago he received a recall notice about a safety problem with the brakes. He never responded to the notice. Yesterday Sean was driving when the brakes failed and caused him to strike and injure a pedestrian. Which of the following is true in lawsuits against the car's manufacturer?

A) The pedestrian cannot recover due to the fact that the pedestrian was not using the car.
B) Sean can recover despite having received the recall notice.
C) The pedestrian cannot recover because the correction of a defect defense will apply even though Sean did not take the car in for the repair.
D) Neither party can recover if Sean's car was one of only a few of these cars that actually had a brake defect.
E) The pedestrian could not recover due to assumption of the risk.

Answer: C
Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application

76) Should plaintiffs be able to recover from cigarette manufacturers for smoking-related illnesses? Are there variables that should affect the manufacturers' liability? What are they? What effect should the warnings on cigarette packages have on the outcome?

Answer: Some of the cases have been based on smokers who began smoking before the warning labels were used. Another issue that has been raised is that the decision to start smoking is often made at a young age and that the warnings were not understood; by the time the smoker was old enough to understand the warnings, he or she was addicted.
Diff: 2
Skill: Ethics and Policy

77) Decisions in product liability cases sometimes make headlines, with much of the public outraged over what seems to be an excessive recovery for action seen to be the fault of the plaintiff. Is it too easy to recover in product liability? Why has the law changed over the past several decades to eliminate the need to prove negligence? Who wins and who loses as a result of these changes? What changes would you make if you could?

Answer: Many persons believe that strict liability has led to safer products overall. The headline cases represent a small fraction of product liability cases. Among the general reasons for the imposition of strict liability are the increasing complexity of products (making it harder for consumers to judge their safety) and the multi-layer distribution system whereby a privity requirement or the necessity to prove negligence would often work an injustice.
Diff: 2
Skill: Ethics and Policy
78) In 1995, Congress passed a law affecting products liability actions relating to single-engine airplanes. Among other provisions, this law sets an 18-year statute of repose. In 1996, Cessna resumed production of several models of single-engine airplanes which had been stopped several years earlier, in part because of products liability exposure. Is this law ethical? Was this needed legislation, or was this a special favor given to one industry that makes a product known to lead to death and injury? How does the fact that flight training schools were unable to replace the single-engine planes they were using for training with newer ones affect your analysis?

Answer: Pilots are generally aware of the risks of general aviation and can decide whether to fly a single-engine plane based on those risks. This is generally less true for passengers. To the extent that the law has resulted in new single-engine planes being manufactured, overall safety is likely increased. Furthermore, many would argue that the liability exposure for 18 years of a plane's life is sufficient incentive for the manufacturers to make safe planes.
Diff: 2
Skill: Ethics and Policy

79) In the case where General Motors was found liable for defective design of the fuel tank in a Chevrolet Malibu from the late 1970s, General Motors was not allowed to introduce evidence at the trial about the car's safety history or that the driver was intoxicated when the accident occurred. Should this evidence have been able to be introduced?

Answer: Because there will probably be some accidents that lead to fuel tank fires or explosions with any fuel tank design, perhaps the overall safety record would have some bearing on the safety of this design relative to others. The driver's intoxication would probably be viewed as a foreseeable misuse and should not affect whether the design of the fuel tank was defective.
Diff: 3
Skill: Ethics and Policy

80) Smith purchased the latest kitchen counter top appliance, the Wonderslicer. It was designed to slice any type of dry food with amazing speed in a variety of settings. In the owner's manual that came with the Wonderslicer it clearly warned that it should not be used on wet food. The Wonderslicer itself contained a warning to read the owner's manual. Smith's 10-year-old daughter used the Wonderslicer to slice some oranges. In the process, she received a severe electrical shock which caused burns to her hand.

Answer: There is both a design defect (because most food is wet to some degree) and failure to warn because such a warning should be on the product itself. Any misuse here is foreseeable.
Diff: 2
Topic: Defect in Design
Skill: Factual Application
81) It is a hot summer afternoon so Rob takes his brand new Rocketski (a personal watercraft similar to a Jet Ski) out to a local park at a reservoir to try it out. The Rocketski has a built-in CD stereo sound system, with speakers, but also with a headphone jack. The owner's manual contains a warning that the headphones should only be used in light traffic areas and with extreme caution. Rob takes the Rocketski out on the water and puts the headphones on with his new CD, the greatest hits of the Ultradeath Slashers and Destroyers. He takes the machine out to the open area of the reservoir and tries it out. He's never done this before, is having lots of fun, and then wants to show his friends back on shore how fast the Rocketski can go. He comes close to shore at full speed where there are many swimmers and sailboarders in the water. Several swimmers are yelling at him to stop, but he doesn't hear anyone because he's listening to his favorite song, "Destroy Me Bad, My Love," at full volume on the headphones. He is rapidly approaching Sally on her sailboard, but doesn't see her because he's looking for his friends on shore. He would have missed Sally (just barely), but just as he got near her the engine on the Rocketski suddenly failed, causing the machine to lurch to the left and into Sally and her sailboard. Sally suffers severe injuries and sues Rocketski, Inc. Discuss the likely basis of the suit, claims raised, possible defenses, and likely outcome, assuming that the engine defect occurred in the manufacture of the Rocketski.

Answer: Even with the warning, the headphone jack was likely a design defect because of the likelihood of misuse. The warning likely should have been on the Rocketski itself, not merely in the owner's manual. Rocketski will probably lose despite the negligence (which might be looked at as an intervening event) of Rob because engine failure (most likely a defect in manufacture) was a cause of the injury.

Diff: 3
Topic: Defect in Design
Skill: Factual Application

82) Barbara purchases a Radartel cellular phone. One of the reasons she bought this was for security because she lives alone and often travels alone. After using the phone for about a week, she noticed that the rechargeable batteries (supplied in the phone by the maker) lasted a shorter time than claimed by the manufacturer. One evening a few days later, Barbara was in bed, but not yet asleep, and heard someone in her living room. She picked up the cellular phone from beside her bed and attempted to make an emergency call to 911, but the batteries were dead. She panicked and stayed in her bed motionless. About 5 minutes later, the burglar came into her bedroom, at which point she screamed. As he then tried to climb out the bedroom window she hit him with a lamp, but he kicked it back at her and injured her. The burglar got away and was never caught. Barbara sues Radartel, the maker of the phone. Prior to the lawsuit she returned the phone to the store where she bought it and learned that the batteries were defective, at which point she was provided with new batteries which have worked properly since then. Discuss the likely basis for Barbara's suit, the defenses that Radartel might raise, and the likely outcome.
Answer: The defect here was not the cause of the injury, and Barbara assumed any risk of continuing to use the phone knowing of the problem with the batteries. The intruder, and Barbara's hitting him with the lamp as he tried to flee, would likely be viewed as intervening events. Radartel would not be able to use the correction of the defect defense because the correction was not made prior to the injury claimed in this case.

Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application

83) Bob is at the Boston Biceps Bodybuilding Club riding an exercise bike. Bob wants to change the channel on the television that is mounted high on a nearby wall. He reaches for the remote control device and finds that another member has accidentally taken the remote control and left behind a cellular phone. Bob drags the exercise bike over to the television. He stands on the seat of the exercise bike in order to reach the television, but the seat post breaks and Bob falls to the floor. Bob is injured and cannot control his temper. He puts his entire 170 pounds into destroying the bike and throws it across the room against the wall, breaking off several pieces, with the handlebars landing on the running track. Half an hour later, another patron, Randy, trips over the handlebars as he is running on the track and is injured. Randy and Bob both sue the manufacturer and the health club under products liability for their injuries. Discuss their cases.

Answer: Although Bob misused the bike, it is probably foreseeable that persons might stand on the seat of an exercise bike. Furthermore, the seat should have been strong enough to support Bob's 170 pounds. This is either a design or manufacturing defect, although the outcome of the case would be the same regardless of which type of defect this is. Bob would likely be able to recover. Randy would have difficulty proving that the defect caused his injury. The manufacturer could defend on the basis of intervening events, such as Bob's throwing the bike, the gym's failure to clean up the track, and possibly Randy's role in not seeing the handlebars on the track.

Note: This question can be expanded by asking about suits by Randy against Bob and the club for negligence. He could easily prove the elements of a negligence case against Bob, and likely also against the club, because of their failure to clean up the track in a reasonable time. Both defendants could defend on either contributory and comparative negligence or assumption of the risk.

Diff: 3
Topic: Defenses to Product Liability
Skill: Factual Application
George bought a power handsaw from a local hardware store. The manufacturer had made the saw with a blade guard, which surrounds the blade, helping to prevent blade contact with the user. The manufacturer sold the saw to a wholesaler, which sold it to the hardware store. The hardware store removed the blade guard from the saw, but put it in the box that contained the saw. When George got home, he noticed that the blade guard was off. He could have reattached it, or he could have taken it back to the store, but George was in a hurry, so he used it the way it was. While sawing, he hit a knot in the wood, the saw kicked back, and the blade hit George's hand, seriously injuring it. Kickbacks are a relatively common occurrence, but if the blade guard had been installed, George would not have been injured. George wants to sue everyone in the chain of distribution under a strict liability theory. Discuss the potential liability of each member in the chain of distribution, and any possible defenses that may be raised.

Answer: The manufacturer and wholesaler are not liable because the defect existed when the saw left their hands, enabling them to use the supervening event defense. The hardware store could assert assumption of risk or generally known danger.

Diff: 2
Topic: Defenses to Product Liability
Skill: Factual Application
1) Customer lists and compilations of data are among items considered to be trade secrets.

Answer: TRUE
Diff: 2
Topic: Trade Secrets

2) If an owner fails to take all reasonable precautions in preventing a trade secret from being discovered, the secret is no longer protected under state unfair competition laws.

Answer: TRUE
Diff: 2
Topic: Trade Secrets

3) For trade secrets to be protected, a business owner only needs to take a single action to prevent his or her trade secret from being discovered.

Answer: FALSE
Diff: 1
Topic: Trade Secrets

4) The victim of stolen trade secrets can recover any profits made by someone from the stolen trade secret.

Answer: TRUE
Diff: 1
Topic: Trade Secrets

5) The Economic Espionage Act includes software programs within its definition of trade secrets.

Answer: TRUE
Diff: 2
Topic: Trade Secrets

6) Prior to passage of the Economic Espionage Act of 1996, there was no federal statute that directly addressed the stealing of trade secrets.

Answer: TRUE
Diff: 1
Topic: Trade Secrets

Answer: TRUE
Diff: 1
Topic: Trade Secrets

8) Under the U.S. Constitution, patent law is federal law.

Answer: TRUE
Diff: 1
Topic: Patenting an Invention

9) The granting of a patent terminates the ability to challenge its validity.

Answer: FALSE
Diff: 2
Topic: Patenting an Invention

10) Patents for inventions are valid for 20 years.

Answer: TRUE
Diff: 1
Topic: Patenting an Invention

11) Patents are renewable for an unlimited period of time.

Answer: FALSE
Diff: 1
Topic: Patenting an Invention

12) Improvements to previously patented machines can be patented.

Answer: TRUE
Diff: 2
Topic: Patenting an Invention

13) The United States still follows the first-to-file rule, which means the first person to file an item or process is given protection over another who was the first to invent an item or process.

Answer: FALSE
Diff: 2
Topic: Patenting an Invention
14) Life forms may be patented under U.S. patent law.
Answer: TRUE
Diff: 2
Topic: Patenting an Invention

15) In the United States, if two people independently develop the same invention, the patent will be granted to the first to file for the patent, not the first to invent the invention.
Answer: FALSE
Diff: 2
Topic: Patenting an Invention

16) Business models used for commerce on the Internet can be patented.
Answer: TRUE
Diff: 1
Topic: Patenting an Invention

17) The American Inventors Protection Act requires the U.S Patent and Trademark Office to take action on a patent application within 3 years in most cases.
Answer: TRUE
Diff: 1
Topic: Patenting an Invention

18) A patent holder may recover damages and receive an injunction against an infringer in a patent infringement action.
Answer: TRUE
Diff: 1
Topic: Patent Infringement

19) It is easy and inexpensive to pursue a patent infringement case.
Answer: FALSE
Diff: 1
Topic: Patent Infringement

20) A patent cannot be acquired for an invention that has been in public use for more than 1 year at the time of application.
Answer: TRUE
Diff: 2
Topic: Patent Infringement
21) Honeywell successfully pursued a patent infringement case involving autofocus camera technology against Minolta and several other camera manufacturers.

Answer: TRUE  
Diff: 2  
Topic: Patent Infringement

22) U.S. patent law allows cyber business plans to be patented.

Answer: TRUE  
Diff: 2  
Topic: E-Commerce and Information Technology

23) Because Amazon.com's 1-click ordering system failed to meet the "nonobvious" requirement in the patent laws, the company was denied a patent.

Answer: FALSE  
Diff: 2  
Topic: E-Commerce and Information Technology

24) In order to be eligible for copyright protection, a tangible writing or other item is required.

Answer: TRUE  
Diff: 1  
Topic: E-Commerce and Information Technology

25) An author must file a timely application in order to receive copyright protection.

Answer: FALSE  
Diff: 2  
Topic: E-Commerce and Information Technology

26) In order to receive copyright protection, a work must be marked as being copyrighted.

Answer: FALSE  
Diff: 2  
Topic: E-Commerce and Information Technology

27) In 1998, the length of copyright protection for an individual holder was extended to the life of the author plus 70 years.

Answer: TRUE  
Diff: 1  
Topic: E-Commerce and Information Technology
28) With computer software, source code but not object code can be copyrighted.

Answer: FALSE
Diff: 1
Topic: E-Commerce and Information Technology

29) The fair use doctrine allows limited public use of copyrighted material without the permission of the copyright holder.

Answer: TRUE
Diff: 2
Topic: E-Commerce and Information Technology

30) The Digital Millennium Copyright Act prohibits access to copyrighted digital works by circumventing the encryption, even if the work is not misused.

Answer: TRUE
Diff: 2
Topic: E-Commerce and Information Technology

31) Trademark law is exclusively federal law.

Answer: FALSE
Diff: 1
Topic: Registration of Trademarks

32) Trademarks are protected for a nonrenewable 10-year period.

Answer: FALSE
Diff: 1
Topic: Registration of Trademarks

33) A trademark can be registered even before it is actually used in commerce so long as the registrant verifies a bona fide intention to use the mark in commerce and actually does so within 6 months.

Answer: TRUE
Diff: 2
Topic: Registration of Trademarks

34) When a trademark becomes generic, it loses its trademark protection so that no one is able to use the mark.

Answer: FALSE
Diff: 1
Topic: Registration of Trademarks
35) Which of the following would not be a misappropriation of a trade secret?
   A) Paying an engineer who is working at a competitor to disclose the trade secret to you.
   B) Buying the competitor's product, then tearing it apart and analyzing it in your laboratory to reveal the trade secret.
   C) Hiring a spy to break into a competitor's offices to acquire the secret.
   D) Asking one of your current engineers to disclose a trade secret of her former employer, which she then does.

Answer: B
Diff: 2
Topic:  Trade Secrets
Skill:  Legal Concepts

36) Which of the following is true about misappropriation of trade secrets?
   A) Although it is not necessary that the trade secret be patented, the secret must be such that it could be patented.
   B) Trade secrets are protected regardless of the actions of the trade secret owner.
   C) The plaintiff can recover only if the defendant acquired the secret through illegal means.
   D) Injunctions are generally not available to protect trade secrets.

Answer: C
Diff: 2
Topic:  Trade Secrets
Skill:  Legal Concepts

37) Which of the following is true about misappropriation of trade secrets?
   A) A valid patent is required in order to recover.
   B) A valid trademark is required in order to recover.
   C) Both a valid trademark and valid patent are required in order to recover.
   D) Neither a valid trademark nor a valid patent is required in order to recover.

Answer: D
Diff: 2
Topic:  Trade Secrets
Skill:  Legal Concepts

38) What federal legal protection is there with respect to trade secrets?
   A) Trade secrets are protected under the federal patent laws.
   B) Trade secrets are protected under the federal copyright laws.
   C) Trade secrets are protected under the Trade Secret Protection Act of 1952.
   D) Trade secrets are protected under the Economic Espionage Act of 1996.
   E) Trade secrets receive no federal statutory protection.

Answer: D
Diff: 2
Topic:  Trade Secrets
Skill:  Legal Concepts
39) All but which one of the following could be patented?
   A) a design for an article of manufacture
   B) an asexually reproduced plant
   C) living material invented by a person
   D) a composition of matter
   E) an abstraction or scientific principle

   Answer: E
   Diff: 2
   Topic: Patenting an Invention
   Skill: Legal Concepts

40) The "one-year 'on sale' doctrine" is also known as:
   A) the Mickey Mouse doctrine
   B) the Maxxum doctrine
   C) the Berne doctrine
   D) the public use doctrine
   E) the prior use doctrine

   Answer: D
   Diff: 2
   Topic: Patenting an Invention
   Skill: Legal Concepts

41) In the case in the text where a patent holder sought enforcement of its patent for a machine to make waffle-cut French fries, the court ruled which of the following?
   A) The inventor had stolen a trade secret and used that information in his invention.
   B) The patent failed to meet the "nonobvious" requirement.
   C) The patent failed to meet the requirement of being useful.
   D) The patent was valid.
   E) The patent had originally been valid, but had expired by the time of the events alleged in the lawsuit.

   Answer: B
   Diff: 2
   Topic: Patenting an Invention
   Skill: Legal Concepts
42) A doctrine that says a patent may not be granted if the invention was used by the public for more than a certain period of time prior to the filing of the patent application is known as:
   A) the public service doctrine
   B) the public use doctrine
   C) the unfair doctrine
   D) the bar to patents doctrine
   E) None of these are correct.

Answer: B
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

43) Under current law, the statutory period for patent protection begins to run at the time that:
   A) the inventor finalizes the idea for the patent
   B) a working model for the invention is completed
   C) the patent application is filed
   D) the Patent and Trademark Office issues the patent
   E) the first unit of the patented invention is sold

Answer: C
Diff: 1
Topic: Patenting an Invention
Skill: Legal Concepts

44) Which of the following is not true about patent law after the changes adopted in 1995 relating to the requirements of the General Agreement on Tariffs and Trade?
   A) The legal life of a patent in the United States was extended to 20 years.
   B) The requirement of nonobviousness was eliminated.
   C) The United States continues to follow the first to invent rule rather than the first to file rule followed in most other nations.
   D) In the U.S., the period of legal protection begins to run upon the filing of the application.

Answer: B
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts
45) In a patent infringement case, which of the following could not be obtained in a civil lawsuit?
   A) Money damages that equal to a reasonable royalty rate on the sale of the infringed item.
   B) An injunction preventing the infringer from such action in the future.
   C) Liquidation of the infringer's business.
   D) An order requiring the destruction of the infringing articles.

Answer: C
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

46) What best describes the public use doctrine relative to patents?
   A) Patent protection is lost if the patented item becomes used by the public after the patent is granted.
   B) Patents will not be granted for items that have been used by the public for more than 1 year before the patent application was filed.
   C) Patent protection will be lost if a member of the public successfully discovers how to build the patented item through reverse engineering.
   D) Once a patent is granted, it will be lost if the patented item is not made available to the public within 1 year after the patent is granted.
   E) The public is allowed to engage in limited use of a patented invention without being held liable for damages.

Answer: B
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

47) Which of the following was the most recently recognized as a valid subject matter for a patent?
   A) machines
   B) certain types of business plans
   C) original ideas for community improvement
   D) processes
   E) designs

Answer: B
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts
48) In the *State Street* case discussed in the text, what change was made to patent law?
   A) Copyright protection was extended to previously noncopyrighted works once they are available over the Internet.
   B) Computerized online business operating plans and arrangements were determined to be eligible for patent protection.
   C) Invention promoters were determined to be liable to inventors for damages caused.
   D) Patent protection was determined to apply during the provisional period.

Answer: B
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

49) What was the basis for the federal court of appeals decision in the case in the text between Amazon.com and BarnesandNoble.com, involving the single-click online ordering system used by Amazon.com?
   A) The single-click online ordering system developed by Amazon.com was entitled to patent protection.
   B) Amazon.com had stolen trade secrets from BarnesandNoble.com.
   C) The use of the single-click ordering system by BarnesandNoble.com fell within the fair use doctrine.
   D) The single-click online ordering system could not receive patent protection due to the public use doctrine.
   E) The single-click ordering system did not meet the requirement of being nonobvious.

Answer: E
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

50) One of the provisions of the American Inventors Protection Act of 1999 is that:
   A) the power to regulate invention promoters was transferred to the Department of Justice
   B) the legal life of a patent was extended to 20 years
   C) the Patent and Trademark Office must make a decision on a patent application within 5 years after its filing
   D) inventors are able to file a provisional application granting provisional rights pending the filing of a final application within three months

Answer: D
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts
51) Which of the following is true about copyright law in the United States?
   A) A work must be published in order to receive copyright protection.
   B) State copyright laws supplement the federal copyright laws.
   C) A copyright is not created by the process of registration.
   D) A copyright must be registered before public disclosure of the copyrighted material.

   Answer: C
   Diff: 2
   Topic: Patenting an Invention
   Skill: Legal Concepts

52) Which of the following is true about what can be copyrighted?
   A) Paintings can be copyrighted, but not photographs.
   B) Books and newspapers can be copyrighted, but not sermons.
   C) Guidebooks can be copyrighted, but not maps.
   D) Books, plays, and ideas can all be copyrighted.
   E) Photographs, maps, and cartoons can all be copyrighted.

   Answer: E
   Diff: 2
   Topic: Patenting an Invention
   Skill: Legal Concepts

53) Which of the following is true about copyrights?
   A) Copyright protection lasts for 20 years.
   B) Copyright protection is effective only if the work has been properly registered.
   C) The Sony Bono Copyright Term Extension Act grants copyright protection for the life of the author plus 70 years.
   D) In order to obtain a copyright, a work must be novel, useful, and nonobvious.
   E) A work cannot be copyrighted if there is a likelihood of confusion with another work.

   Answer: C
   Diff: 1
   Topic: Patenting an Invention
   Skill: Legal Concepts
54) The international copyright treaty known as the Berne Convention had what effect on placing the copyright symbol or the wordy "copyright" on a copyrighted work?
   A) It entitles the creator to provisional copyright protection until a formal copyright application is filed.
   B) It extends the valid period of the creator's copyright such that it continues until 50 years beyond the creator's life.
   C) It has no legal effect.
   D) Its presence can help defeat an infringer's claim that the infringement was innocent.
   E) It eliminated the need for the copyright symbol or the word copyright on a copyrighted work.

Answer: E
Diff: 1
Topic: Patenting an Invention
Skill: Legal Concepts

55) What may be registered with the United States Copyright Office?
   A) patents
   B) patents and trademarks
   C) published works
   D) unpublished works
   E) published and unpublished works

Answer: E
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

56) Which of the following provides greater protection of the hardware components of computers?
   A) the fair use doctrine
   B) the Computer Software Copyright Act
   C) the Mask Act
   D) the Semiconductor Chip Protection Act of 1984

Answer: D
Diff: 3
Topic: Patenting an Invention
Skill: Legal Concepts
57) Which of the following is **not available** to a plaintiff in a copyright infringement case?
A) the profits made by the infringer
B) destruction of the infringing works
C) actual damages
D) statutory damages from $200 to $100,000 in place of actual damages
E) an order denying the infringer's ability to obtain copyright protection for other works for a fixed statutory period of time into the future

Answer: E
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

58) What was the finding in the case in the text where the company that makes the "Beanie Babies" line of toy stuffed animals claimed copyright infringement by a competitor?
A) The use was within the fair use doctrine because only a couple of the competitor's toys were similar.
B) The manufacturer of Beanie Babies had not registered its copyright in a timely manner.
C) The competitor had not infringed because it had independently created its toys even though they were similar to the Beanie Babies.
D) The competitor had infringed on the copyrights of the Beanie Babies toys.
E) The competitor was able to prove that its toys were on the market prior to the similar Beanie Babies toys.

Answer: D
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

59) What was the outcome in the U.S. Supreme Court case in the text where independent authors sued *The New York Times* for copyright infringement over the sale of the authors' articles to electronic databases?
A) The sale to the electronic databases was allowable because the authors had transferred this right to the newspapers in their original contract for writing the articles.
B) The sale of articles through an electronic database is within the fair use doctrine.
C) The authors were not entitled to damages because the articles had already become in the public domain through their prior publication in the print media.
D) The availability of the articles on electronic databases improperly infringed on the authors' rights to control the distribution of their works.

Answer: D
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts
60) What was the outcome in the case in the text involving the music file swapping service Napster?
   A) Napster had engaged in copyright infringement through its maintenance of music files for copying by its subscribers.
   B) Napster had engaged in no copyright infringement because most of the copying was done for personal, rather than commercial use.
   C) Napster was found to be liable for contributory copyright infringement because it encouraged and assisted in copyright infringement by its users.
   D) All swapping of music files over the Internet was prohibited following the decision.

Answer: C
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

61) What was accomplished by the Visual Artists Rights Act?
   A) Copyright protection was extended to visual creative works.
   B) The fair use doctrine was eliminated with respect to visual works of art.
   C) Copyright protection for visual artwork no longer needed a copyright notice.
   D) Artists retained certain rights to limit the reproduction and modification of their work even if the work or copyright is sold.

Answer: D
Diff: 2
Topic: Patenting an Invention
Skill: Legal Concepts

62) Will someone who uses a short section of a copyrighted work in a critical review be subject to copyright infringement?
   A) No, because of the fair use doctrine.
   B) No, if he obtained the original copyrighted work through legitimate means.
   C) Yes, if he did not pay the author for his use of the material.
   D) Yes, if he did not obtain permission from the author for his use of the material.

Answer: A
Diff: 1
Topic: Patenting an Invention
Skill: Legal Concepts
63) The fair use doctrine would allow the following types of use of a copyrighted work without the permission of the copyright holder, except:
   A) quotation in a critical review
   B) use in a parody
   C) sales of a single chapter of a book that is the only chapter of interest to most persons in a particular locale
   D) use by a teacher to illustrate a point in a class

Answer:  C
Diff: 1
Topic:  Patenting an Invention
Skill:  Legal Concepts

64) Which of the following is true about the Paris Convention of 1883?
   A) It grants automatic patent protection in all member nations once a patent is granted in one member nation.
   B) It grants automatic trademark protection in all member nations once a trademark is granted in one member nation.
   C) It allows an applicant from one member nation to apply for a trademark in another member nation even if the applicant does not own the mark in the applicant's home nation.
   D) The requirement to mark copyrighted works with a © is eliminated.
   E) Both A and B are true.

Answer:  C
Diff: 3
Topic:  Patenting an Invention
Skill:  Legal Concepts

65) What is the major convention that provides international protection to patents?
   A) The Berne Convention of 1886.
   C) The General Agreement on Tariffs and Trade (GATT).

Answer:  A
Diff: 2
Topic:  Patenting an Invention
Skill:  Legal Concepts
66) For which of the following kinds of intellectual property is a filing or registration required in order to receive protection?
   A) copyrights.
   B) patents
   C) trademarks
   D) A and B only.
   E) B and C only.

   Answer: E
   Diff: 2
   Topic: Patenting an Invention
   Skill: Legal Concepts

67) Which of the following is true about trademark registration?
   A) Trademark registration is optional because protection is automatic.
   B) Once a trademark is registered, protection cannot be lost.
   C) A trademark must be registered prior to its actual use in commerce.
   D) The registration of a trademark can be renewed an unlimited number of times.

   Answer: D
   Diff: 2
   Topic: Patenting an Invention
   Skill: Legal Concepts

68) In general, trademark protection is granted based on whether the trademark is:
   A) novel and useful
   B) the original creation of the trademark registrant
   C) understandable to the general public
   D) distinctive
   E) marketable

   Answer: D
   Diff: 1
   Topic: Registration of Trademarks
   Skill: Legal Concepts

69) When can an ordinary word such as "window" be granted trademark protection?
   A) In any situation if the applicant is the first to apply for trademark protection of that word.
   B) If the applicant can prove that the use of the word is novel.
   C) If the word has acquired a secondary meaning.
   D) If the applicant has used the word in the name of its product for at least 10 years.
   E) If the word has become a generic term.

   Answer: C
   Diff: 1
   Topic: Registration of Trademarks
   Skill: Legal Concepts
70) The following are types of marks that can be registered except:
   A) performance marks
   B) certification marks
   C) service marks
   D) trademarks
   E) collective marks

   Answer: A
   Diff: 1
   Topic: Registration of Trademarks
   Skill: Legal Concepts

71) Which of the following is correct with regard to a trademark infringement case?
   A) The plaintiff need prove only that its mark was used in an unauthorized manner.
   B) The plaintiff must prove actual damages to prevail in the suit.
   C) The plaintiff must prove that the unauthorized use is likely to cause confusion, mistake or deceive the public about the origin of the goods.
   D) Treble damages are not available.

   Answer: C
   Diff: 1
   Topic: Registration of Trademarks
   Skill: Legal Concepts

72) The Lanham Act was enacted to:
   A) provide federal protection to trademarks
   B) protect the owner's investment and goodwill in a mark
   C) prevent consumers from being confused as to the origin of goods and services
   D) all of these are correct

   Answer: D
   Diff: 2
   Topic: Registration of Trademarks
   Skill: Legal Concepts

73) United Airlines, Marriott Hotels, and Weight Watchers are examples of:
   A) collective marks
   B) service marks
   C) certification marks
   D) trademarks

   Answer: B
   Diff: 2
   Topic: Registration of Trademarks
   Skill: Legal Concepts
74) For which of the following can protection be extended by filing an application to renew?
   A) patents only
   B) patents and trademarks
   C) trademarks only
   D) copyrights and trademarks
   E) copyrights, trademarks, and patents

Answer: C
Diff: 2
Topic: Registration of Trademarks
Skill: Legal Concepts

75) Seattle Paint Company developed a new exterior house paint that can be properly applied even in the rain. How can this formula be protected without filing for a patent?
   A) Without a patent, no protection is available.
   B) If the company takes all reasonable steps to avoid discovery of the secret, it can be protected against some, but not all, methods of discovery of the secret.
   C) By putting a notice on the cans of paint that the formula is a protected trade secret.
   D) By registering a trademark for the product specifying that the product is distinctive.

Answer: B
Diff: 2
Topic: Trade Secrets
Skill: Factual Application

76) John has invented a device to monitor the tire pressure on bicycle tires. This device consists of a tire pressure sensor on the tire with a radio transmitter and a receiver mounted on the handlebars to give a readout of the pressure. The radio transmitter is similar to existing designs, but one has never been used in this way. The product cannot be produced for less than $120, but John's preliminary marketing studies indicate that the product could not be sold for more than $25. Which of the following is true?
   A) John cannot get a patent because the transmitter part is not a new invention.
   B) John cannot get a patent because the inability to produce the product at a cost low enough to sell it means that it does not meet the usefulness requirement.
   C) John can get a provisional patent that would provide limited protection until he can redesign it so that it can be made for under $25.
   D) John can obtain protection for his invention even if someone else files a patent application for the same invention so long as John actually invented his first.

Answer: D
Diff: 2
Topic: Patenting an Invention
Skill: Factual Application
77) Donna is on vacation in 2002 in San Francisco. She is a professional photographer and would like to take and sell some photographs of the Golden Gate Bridge. She wants her photographs to be copyrighted, but knows that there are already copyrighted photos of the Golden Gate Bridge taken from almost every angle. What must Donna do to obtain copyright protection for the photo?
   A) Take the photo, apply for copyright protection, and there will be a search to be sure her photo is not too similar to previously copyrighted photos.
   B) Take the photo, apply for copyright protection, and wait for the statutory period for anyone to file an objection.
   C) Take the photo and mark it as copyrighted with her name and the date.
   D) Take the photo.
   E) Donna cannot get copyright protection because her idea to take a photo of the Golden Gate Bridge is not original.

Answer: D
Diff: 2
Topic: Patenting an Invention
Skill: Factual Application

78) John is a country music songwriter who composes a song entitled "Busted, Rusted Heart" in which the melody is similar to that of the 1990s hit by Billy Ray Cyrus, "Achy Breaky Heart." The words also parallel and make fun of the words in the original song. Does John commit copyright infringement if he performs his song and sells copies of it?
   A) He can play the song in private performances but cannot sell it.
   B) He can neither play the song in any circumstance nor sell it.
   C) He can sell the song so long as he has applied for and been granted a copyright.
   D) John's song is probably a valid parody and acceptable within the fair use doctrine.
   E) John can play the song only if he can prove that he wrote it without knowledge of "Achy Breaky Heart."

Answer: D
Diff: 2
Topic: Patenting an Invention
Skill: Factual Application

79) Which of the following may not be afforded federal protection and therefore not be trademarked?
   A) cola
   B) south
   C) Just Do It
   D) good cheese
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Registration of Trademarks
Skill: Factual Application
80) Shirley invented a new product in March 2008. She publicized the invention and shared the product with the public to stimulate demand. She also needed time to finance the obtaining of a patent for the product. In May of 2009, she finally had the ability to patent the product. Can she still obtain a legal patent, and if so, for how long?

A) No, because she waited for over one year after the product was used by the public before attempting the patent.
B) No, because she publicized her invention.
C) Yes, she can obtain a patent for 20 years from the date of the invention.
D) Yes, she can obtain a patent for 20 years from the date of the patent application.

Answer: A
Diff: 2
Skill: Factual Application

81) Trademarks are valid for:
A) five year renewable terms in perpetuity
B) ten year renewable terms in perpetuity
C) twenty years
D) ninety-five years from the life of the trademark applicant

Answer: B
Diff: 2
Skill: Factual Application

82) Derek applies for and successfully receives a trademark registration on July 1, 2009. When will the trademark registration have to be renewed?
A) No later than July 1, 2014.
B) No later than July 1, 2019.
C) Ninety-five years from Derek’s demise.
D) There will not be a need to re-register. Once obtained, trademark protection lasts in perpetuity.

Answer: B
Diff: 2
Skill: Factual Application
83) Wildboards Company introduces a product called a "Rollerboard" for which it is granted a registered trademark. The Rollerboard is a snowboard with a removable row of wheels along the center of the underside. With the wheels attached, the user can attain extremely high speed in hard-packed snow conditions. In addition, many users have found that they can use their snowboards on streets with the wheels attached. This new use of snowboards becomes very popular and many competing snowboard makers introduce similar products. The sport becomes known generally as rollerboarding and most people refer to all such wheeled snowboards as rollerboards. The consequence of this is that:

   A) Wildboards cannot stop competitors from using the term "rollerboard" for their products.
   B) Competitors must pay royalties to Wildboards for using the term "rollerboard."
   C) Wildboards can no longer use the name Rollerboard on its boards.
   D) Competitors must put a disclaimer on their boards that they are not the original Rollerboard.

Answer: A  
Diff: 3  
Topic: Registration of Trademarks  
Skill: Factual Application

84) Why are patents protected for a limited period of time? Does this argue in favor of not patenting an item?

Answer: The goal of patent law is to reward inventors, but only for a limited period of time. The limited period of protection encourages the patent holder to develop a newer invention, perhaps an improvement of the older one. In addition, because a patent discloses the invention to the public, it can help others to develop an improvement. In these ways the patent laws also encourage the advance of technology. Choosing to not patent an invention and keep it as a trade secret can be advantageous when the technology is difficult to reverse-engineer or otherwise discover and the invention has a long economic life.  
Diff: 2  
Skill: Ethics and Policy

85) Should a drug manufacturer that holds a patent on a drug that is very effective for many AIDS patients be able to sell that drug well above its cost of production during the period of patent protection? If so, under what circumstances? Should these companies sell, or be required to sell, these drugs at lower prices to persons in poor nations that have a larger problem with AIDS than the United States?

Answer: Proponents argue that it is the ability to profit that gives drug companies the incentives to develop these drugs. In addition, although this drug might be selling at a price well above the cost of production, the revenues from successful drugs must cover research and development costs for all drugs including those that turn out to be unprofitable. On the other hand, many believe that if a company can sell a drug and not suffer a loss (although profits will be reduced), it should sell at the lower price to reduce the suffering and death in society. More difficult is whether the companies should be required to sell the drugs at lower prices in poor nations with a large incidence of AIDS. The effect on sale price in other nations might be a factor here.  
Diff: 2  
Skill: Ethics and Policy
86) The Sonny Bono Copyright Term Extension Act of 1998 added 20 years to the period of time that a copyright is valid. For an individual, the period of validity is now the life of the creator plus 70 years. Do you believe that a period this long is necessary to encourage the production of creative work? What are the advantages and disadvantages of a longer copyright validity period?

Answer: For individuals, the benefit might not be great. It would most likely benefit the creator's grandchildren or great-grandchildren. For an individual who will live 40 years beyond the date of the creation, the increase in value arising from a 110-year copyright rather than a 90-year copyright is minimal when discounted for its present value at the time that the work is created. One argument made by supporters of the measure is that it allows the numerous U.S. exporters of creative material to profit from its export for a longer period of time.

Diff: 2
Skill: Ethics and Policy

87) What changes should be made to copyright law to reflect the ease with which much creative material can be reproduced and distributed over the Internet? What concerns are there with any such law?

Answer: Perhaps the fair use doctrine will need to be modified. Perhaps there should be rigid guidelines as to what type of reproduction and distribution is permissible. A major concern is the difficulty of enforcement, especially given the ever-expanding technological capabilities to both properly and improperly reproduce and distribute materials. The litigation between music recording companies and parties that allow exchange and reproduction of copyrighted material illustrate some of the difficulties in addressing this issue.

Diff: 2
Skill: Ethics and Policy

88) Monty is an odd sort of fellow who spends most of his time tinkering in his garage. He is certain that someday he will invent something that will make him very wealthy. Finally, he thinks he has the million dollar idea. He has invented a device that attaches to both his phone line and through his computer to the Internet to block telemarketing calls without having to pay a service fee for the capability to the local phone company. The technology for this already existed, but Monty was the first to put it together in this way. Monty is waiting to perfect this invention before filing a patent application. Monty learns that someone else has invented a similar device after he did, but has already filed an application. Also, someone broke into Monty's garage and stole the information about the invention. Discuss Monty's legal situation.

Answer: Even though Monty has not patented his invention, his trade secrets are protected from being taken by illegal means. Monty would receive the patent so long as he can prove that he did, in fact, invent the device first.

Diff: 2
Topic: Patenting an Invention
Skill: Factual Application
89) Henry writes a series of essays that have an environmental focus. One of these essays contains a very detailed description of the workings of a forest ecosystem. A national environmental organization opposed to logging in certain areas has copied this essay and includes it in materials that the group gives to members of the public in hopes of persuading those persons to join the opposition to logging in these areas. Henry has never wanted his work to be forced onto people and objects to his essay being copied and distributed like this. He is afraid persons will think he is part of this organization, and he did not want his essay used this way. Was this within fair use?

Answer: This could be "educational," and was not for profit, making it likely to qualify as fair use, but it might go too far.
Diff: 3
Topic: Patenting an Invention
Skill: Factual Application

90) Billy has created a device called a TowRack which is a rack for carrying sports equipment such as bikes, skis, and kayaks. What makes this item different from other racks is that it attaches to a vehicle's trailer hitch and has a single wheel to help support the weight of the rack and items attached to it. Because it is so much lighter than a regular trailer, it can be used on even the smallest of cars that are not designed to tow regular trailers. Because of the success of this product, competitors introduce similar products. But because of the initial success of Billy's TowRack, all of these similar products are often referred to as TowRacks. Billy has also written a book about using "TowRacks" and safe driving techniques for driving with TowRacks and would like to obtain a copyright for the book. Discuss Billy's legal situation.

Answer: There are probably no trade secrets associated with this product because the design and technology are obvious to any observer. Billy could obtain a patent for the TowRack, so long as it meets the requirements of being novel, useful, and nonobvious, although simply attaching a wheel to a rack might be viewed as "obvious." To get a patent, Billy would have to determine if someone else invented it before he did, and would need to be able to prove when he invented his. "TowRack" could be trademarked so long as it would not be likely to cause confusion with existing marks. Although the two parts of the name are ordinary words, the combination into one name would probably be acceptable to trademark. Billy needs to beware of "TowRack" becoming generic, and take steps, if possible, to prevent this. Billy already has copyright protection for the book, but might want to register the copyright, and should mark it as copyrighted so others could not claim that an infringement was innocent.
Diff: 3
Topic: Registration of Trademarks
Skill: Factual Application
1) A person charged with a crime in the United States is presumed innocent until proven guilty.

Answer: TRUE
Diff: 1
Topic: Definition of a Crime

2) The evil intent necessary to commit a crime is known as "actus reus."

Answer: FALSE
Diff: 2
Topic: Definition of a Crime

3) If a statute imposes criminal liability based on strict liability, then "mens rea" is not required.

Answer: TRUE
Diff: 2
Topic: Definition of a Crime

4) Felonies, but not misdemeanors, can be punished by imprisonment.

Answer: FALSE
Diff: 2
Topic: Definition of a Crime

5) In most crimes, it is the conduct, rather than the intent behind the conduct, that determines whether the defendant committed the crime.

Answer: FALSE
Diff: 1
Topic: Definition of a Crime

6) The burden of proof is on the individual to prove that, as an accused, he or she is guilty of the crime charged.

Answer: FALSE
Diff: 2
Topic: Definition of a Crime
7) The person who initiates a criminal case is known as the plaintiff.

Answer: FALSE
Diff: 1
Topic: Definition of a Crime

8) A lawsuit for any torts connected with a crime may be brought by the victim, but the lawsuit is separate from the criminal case.

Answer: TRUE
Diff: 1
Topic: Definition of a Crime

9) The burden of proof in both civil and criminal cases is "beyond a reasonable doubt."

Answer: TRUE
Diff: 1
Topic: Definition of a Crime

10) A crime is defined as a violation of a statute for which the government imposes a punishment.

Answer: TRUE
Diff: 1
Topic: Definition of a Crime

11) Mens rea is the same as evil intent.

Answer: TRUE
Diff: 1
Topic: Definition of a Crime

12) A crime that imposes criminal liability without a finding of mens rea is referred to as a nonintent crime.

Answer: TRUE
Diff: 1
Topic: Definition of a Crime

13) Martha Stewart was found not guilty of insider trading based on her allegations that she had a sell order which did not amount to insider trading.

Answer: FALSE
Diff: 2
Topic: Definition of a Crime
14) An arrest warrant based on probable cause must first be obtained before a police officer can arrest an individual for the commission of a crime.

Answer: TRUE  
Diff: 2  
Topic: Criminal Procedure

15) An arrest warrant is not necessary if a person is fleeing from the scene of a crime.

Answer: TRUE  
Diff: 2  
Topic: Criminal Procedure

16) An arraignment is necessary before an indictment can be issued.

Answer: FALSE  
Diff: 1  
Topic: Criminal Procedure

17) A plea of "nolo contendere" means that the defendant admits guilt but no penalty can be imposed.

Answer: FALSE  
Diff: 2  
Topic: Criminal Procedure

18) After a criminal trial, only the defendant has the right to appeal the verdict.

Answer: TRUE  
Diff: 1  
Topic: Criminal Procedure

19) Persons convicted of money laundering can be fined up to $500,000 or twice the value of the property involved in the crime.

Answer: TRUE  
Diff: 1  
Topic: Criminal Procedure

20) If there is enough evidence to hold the accused for trial, a magistrate will issue a grand jury indictment.

Answer: FALSE  
Diff: 2  
Topic: Criminal Procedure
21) Computer-related crimes are considered distinct offenses under the Information Infrastructure Protection Act.

Answer: TRUE
Diff: 2
Topic: Common Crimes

22) If a robber threatens to physically harm a storekeeper unless he or she surrenders the money he or she has in the cash register, it is robbery.

Answer: TRUE
Diff: 1
Topic: Common Crimes

23) Under common law, the crime of burglary could occur only at night.

Answer: TRUE
Diff: 1
Topic: Common Crimes

24) Under common law, arson is defined as intentionally burning one's own dwelling in order to collect insurance proceeds.

Answer: FALSE
Diff: 2
Topic: Common Crimes

25) Armed robbery carries no harsher penalty than robbery without a deadly weapon.

Answer: FALSE
Diff: 1
Topic: Common Crimes

26) The wrongful and fraudulent taking of another's trade secrets or computer programs is not considered larceny.

Answer: FALSE
Diff: 2
Topic: Common Crimes

27) The distinction between grand theft and petit theft depends on the value of the property taken.

Answer: TRUE
Diff: 1
Topic: Common Crimes
28) In proving the crime of receiving stolen property, knowledge and intent cannot be inferred from the circumstances.

Answer: FALSE
Diff: 1
Topic: Common Crimes

29) At common law and in modern usage, arson is defined as the malicious or willful burning of the dwelling of another person.

Answer: FALSE
Diff: 2
Topic: Common Crimes

30) Extortion of public officials is also known as extortion "under color of official right."

Answer: TRUE
Diff: 3
Topic: Common Crimes

31) A distinguishing characteristic of embezzlement is that the wrongdoer initially had proper custody or access to the property that was embezzled.

Answer: TRUE
Diff: 1
Topic: White-Collar Crimes

32) It is a crime for a United States citizen to bribe a foreign official even if the conduct takes place entirely outside of the United States.

Answer: TRUE
Diff: 2
Topic: White-Collar Crimes

33) The Racketeer Influenced and Corrupt Organizations Act has been applied to defendants who have no connections to organized crime.

Answer: TRUE
Diff: 1
Topic: White-Collar Crimes

34) Signing another person's signature without the intent to defraud is still forgery.

Answer: FALSE
Diff: 2
Topic: White-Collar Crimes
35) Persons who unsuccessfully try to complete a crime can be convicted of a crime even if they are unsuccessful in carrying out the original crime.

Answer: TRUE
Diff: 1
Topic: Inchoate Crimes

36) A corporate director can be held individually liable for a crime the director committed on the behalf of a corporation, but cannot be held liable for crimes committed by his or her subordinates.

Answer: FALSE
Diff: 2
Topic: Corporate Criminal Liability

37) Search warrants are not required for searches of business premises for businesses in certain heavily regulated industries.

Answer: TRUE
Diff: 1
Topic: Constitutional Safeguards

38) The Fifth Amendment privilege against self-incrimination applies only to natural persons and not to corporations and partnerships.

Answer: TRUE
Diff: 1
Topic: Constitutional Safeguards

39) Which of the following is NOT true about the United States criminal law system?
A) Criminal defendants are presumed innocent until proven guilty.
B) The burden of proof in a criminal case is on the government.
C) A jury's vote to convict must be unanimous.
D) Once there has been an arraignment, most of a defendant's constitutional rights are no longer applicable.

Answer: D
Diff: 2
Topic: Definition of a Crime
Skill: Legal Concepts
40) What is a “penal code?”
   A) the classification of a particular crime
   B) a series of statutes that define precisely the conduct that is considered criminal
   C) the list of sentences for particular crimes
   D) the unwritten code of conduct among prison personnel
   E) another term used to describe a crime's degree, such as first degree or second degree

Answer:  B
Diff: 2
Topic:  Definition of a Crime
Skill:  Legal Concepts

41) Imprisonment is generally imposed to serve all of the following functions EXCEPT:
   A) protecting society from the person imprisoned
   B) providing a means to rehabilitate the criminal
   C) allowing victims to have a formalized process to meet and confront the criminal
   D) deterring others from engaging in criminal conduct

Answer:  C
Diff: 2
Topic:  Definition of a Crime
Skill:  Legal Concepts

42) For what offenses can imprisonment be imposed?
   A) felonies only
   B) felonies and misdemeanors
   C) felonies and violations
   D) misdemeanors and violations
   E) felonies, misdemeanors and violations

Answer:  E
Diff: 2
Topic:  Definition of a Crime
Skill:  Legal Concepts

43) Crimes such as illegal parking and jaywalking are normally categorized as:
   A) violations
   B) misdemeanors
   C) felonies
   D) none of the above

Answer:  A
Diff: 1
Topic:  Definition of a Crime
Skill:  Legal Concepts
44) Which of the following correctly ranks the types of crimes from most serious to least serious?
   A) violations, misdemeanors, felonies
   B) violations, felonies, misdemeanors
   C) misdemeanors, felonies, violations
   D) felonies, violations, misdemeanors
   E) felonies, misdemeanors, violations

   Answer: E
   Diff: 2
   Topic: Definition of a Crime
   Skill: Legal Concepts

45) In a criminal trial, which of the following is true?
   A) To be guilty, the defendant must have had a criminal intent at the time of the crime.
   B) The accused is presumed guilty once an indictment has been issued.
   C) The government must prove that the accused is guilty beyond all possible doubt.
   D) At the trial, the grand jury listens to evidence to determine guilt or innocence.

   Answer: A
   Diff: 2
   Topic: Definition of a Crime
   Skill: Legal Concepts

46) The two general elements required in order to prove guilt in a crime are:
   A) criminal act and damages
   B) criminal act and criminal intent
   C) criminal act and at least one impartial witness
   D) criminal act and resultant harm
   E) criminal act and physical injury

   Answer: B
   Diff: 1
   Topic: Definition of a Crime
   Skill: Legal Concepts

47) Once a criminal case has been brought against a defendant, a related civil case:
   A) will automatically become part of the criminal case
   B) can be incorporated into the criminal case, but only if the victim and the prosecutor agree
   C) will always be filed, but as a separate action
   D) can be filed by the victim, but in many cases no civil case is filed
   E) can be filed, but only if there is a conviction in the criminal case

   Answer: D
   Diff: 3
   Topic: Definition of a Crime
   Skill: Legal Concepts
48) Which of the following is true about crimes?
   A) Criminal liability exists only if there is a victim who suffered damages.
   B) A criminal defendant will be found guilty whenever the jury believes it is more likely than not that the defendant committed the crime.
   C) Torts always accompany crimes, although the civil case is often not brought.
   D) Criminal law is based on the conduct or activities of the defendant, rather than on resultant harm.

Answer: D
Diff: 2
Topic: Definition of a Crime
Skill: Legal Concepts

49) Where is the new International Criminal Court located?
   A) Geneva
   B) Zurich
   C) New York
   D) The Hague
   E) Paris

Answer: D
Diff: 2
Topic: Definition of a Crime
Skill: Legal Concepts

50) Sam is charged with the crime of theft and has also had a civil suit filed against him by the victim. Which of the following could NOT be a consistent outcome?
   A) not guilty in the criminal case; liable in the civil case
   B) not guilty in the criminal case; not liable in the civil case
   C) guilty in the criminal case; liable in the civil case
   D) guilty in the criminal case; not liable in the civil case

Answer: D
Diff: 3
Topic: Definition of a Crime
Skill: Legal Concepts

51) Which of the following steps of a criminal case are listed in the correct order?
   A) arraignment, arrest, trial, indictment
   B) arrest, indictment, arraignment, trial
   C) indictment, arraignment, arrest, trial
   D) arrest, arraignment, indictment, trial
   E) arrest, indictment, trial, arraignment

Answer: B
Diff: 2
Topic: Criminal Procedure
Skill: Legal Concepts
52) Probable cause is most directly associated with which step of the criminal process?
  A) arrest  
  B) indictment  
  C) plea bargaining  
  D) arraignment  
  E) jury deliberations

Answer: A  
Diff: 2  
Topic: Criminal Procedure  
Skill: Legal Concepts

53) In a criminal proceeding, what is the difference between an indictment and an information?
  A) The defendant is charged with a crime in an indictment, but not in an information.  
  B) Guilt or innocence is determined in an indictment, but not in an information.  
  C) A grand jury issues an indictment, but does not issue an information.  
  D) An indictment requires proof beyond a reasonable doubt, but an information does not.

Answer: C  
Diff: 2  
Topic: Criminal Procedure  
Skill: Legal Concepts

54) In criminal law, what is an "information?"
  A) the testimony of someone who has been given immunity as part of a plea bargain  
  B) the evidence presented by the prosecutor at trial  
  C) mitigating circumstances presented by a defendant at a sentencing hearing  
  D) a formal charge of a crime issued by a magistrate  
  E) summary of facts learned in the discovery process

Answer: D  
Diff: 2  
Topic: Criminal Procedure  
Skill: Legal Concepts

55) In a criminal trial, the hearing where the defendant is formally notified of the charges and asked to enter a plea is the:
  A) indictment  
  B) plea hearing  
  C) arraignment  
  D) information  
  E) booking

Answer: C  
Diff: 1  
Topic: Criminal Procedure  
Skill: Legal Concepts
56) If a defendant does not admit guilt, but is willing to accept the penalty for a crime, the defendant would most likely:
   A) plea bargain with the grand jury
   B) request the mandatory minimum sentence
   C) enter a plea of "nolo contendere"
   D) proceed directly to the appeal phase
   E) immediately be placed on probation

Answer: C  
Diff: 1  
Topic: Criminal Procedure  
Skill: Legal Concepts

57) Which of the following is true about how plea bargaining usually works?
   A) A defendant waives the right to a jury trial and the judge determines guilt or innocence.
   B) A defendant who is serving a prison sentence for a crime the defendant was convicted of can get the sentence reduced for good behavior, community service, or similar reasons.
   C) A defendant pleads guilty to the charged crime or to a lesser offense in exchange for receiving a lighter sentence than if the defendant were to be tried and found guilty of the original charges.
   D) A defendant waives certain constitutional rights in exchange for a lighter sentence.

Answer: C  
Diff: 2  
Topic: Criminal Procedure  
Skill: Legal Concepts

58) Which is true about jury verdicts in criminal cases?
   A) If the defendant is found guilty, the defendant may appeal.
   B) If the defendant is found not guilty, the government may appeal.
   C) If the jury cannot agree on guilt or innocence, it is a hung jury and the defendant goes free just as if found not guilty.
   D) In the case of a tie jury vote, the judge casts a vote to break the tie.
   E) Both A and B are true.

Answer: A  
Diff: 2  
Topic: Criminal Procedure  
Skill: Legal Concepts
59) Which of the following is true about a hung jury in a criminal case?
   A) Because it means that the jury did not find guilt beyond a reasonable doubt, it has the same result as if the jury had issued a verdict of not guilty.
   B) It will automatically result in a new trial conducted before the same judge.
   C) It will automatically result in a new trial, although it may be conducted before a different judge.
   D) It will allow another trial of the defendant to be held, which the state might or might not choose to actually prosecute.

Answer: D
Diff: 2
Topic: Criminal Procedure
Skill: Legal Concepts

60) Which of the following is true about money laundering?
   A) The primary difficulty with money laundering activities is that money laundering is not itself illegal.
   B) Although illegal, the penalties for money laundering are too small to be an effective deterrent.
   C) Money laundering is a federal crime and can carry fines up to $500,000 or more, depending on the amount of money laundered.
   D) One difficulty with prosecuting for money laundering is that lenient laws in some states allow those states to function as money laundering havens.

Answer: C
Diff: 2
Topic: Criminal Procedure
Skill: Legal Concepts

61) Someone who takes personal property from someone's home after entering without authorization has committed:
   A) extortion
   B) burglary
   C) embezzlement
   D) robbery

Answer: B
Diff: 1
Topic: Crimes Affecting Business
Skill: Legal Concepts
62) Which of the following is true?
   A) Some states now group the crimes of robbery, burglary, and larceny as theft.
   B) Some states now group the crimes of robbery, burglary, and theft as larceny.
   C) Some states now group the crimes of burglary, theft, and larceny as robbery.
   D) Some states now group the crimes of robbery, larceny, and theft as burglary.

Answer: A
Diff: 2
Topic: Crimes Affecting Business
Skill: Legal Concepts

63) To find someone guilty of receiving stolen property, it is sufficient to prove that the defendant:
   A) was in possession of stolen property
   B) intended to keep the property himself
   C) paid for the property and intends to keep it himself
   D) knowingly received the stolen property and intended to deprive the true owner of the property
   E) took part in the wrongful taking of the property and intended to deprive the true owner of the property

Answer: D
Diff: 2
Topic: Crimes Affecting Business
Skill: Legal Concepts

64) Which of the following is characteristic of a "qui tam" case?
   A) The federal government sues an individual for breach of a government contract.
   B) An individual brings a lawsuit against an alleged fraudulent government contractor.
   C) An individual files a false claim for workers' compensation or unemployment benefits.
   D) An individual or business is prosecuted for alleged money laundering.
   E) An individual or business is prosecuted for alleged involvement with organized crime.

Answer: B
Diff: 3
Topic: Crimes Affecting Business
Skill: Legal Concepts
65) Which of the following would constitute the crime of embezzlement?
   A) A self-serve gasoline customer drives away without paying for the gas.
   B) The cashier at a grocery store takes money from his own cash register.
   C) A receptionist who works in a bank lobby distracts a teller and takes money from the teller without the teller's knowledge.
   D) A roofing contractor takes a lawn mower from a homeowner while doing a job for the homeowner.
   E) An electrician working in a client's home takes $100 from the homeowner's desk drawer.

Answer: B
Diff: 3
Topic: White-Collar Crimes
Skill: Legal Concepts

66) Identity fraud typically occurs when:
   A) someone uses a fictitious name in place of her real name
   B) someone steals a ticket with a name associated with it, such as an airline ticket, and uses it in place of the original owner
   C) someone uses the name and other identifying information of another person to engage in fraudulent activity
   D) someone operates under two or more different names, at least one of which is fictitious

Answer: C
Diff: 2
Topic: White-Collar Crimes
Skill: Legal Concepts

67) Which of the following is true about the crime of bribery?
   A) Only the person who receives the bribe can be convicted.
   B) Only the person who gives a bribe and is successful at having it accepted can be convicted.
   C) Only the person who offers the bribe can be convicted, but that person is guilty whether or not the bribe is accepted.
   D) A party who actually accepts a bribe can be convicted, as well as the person offering the bribe, whether or not it is accepted.
   E) A party who even considers accepting a bribe can be convicted, as well as the person offering the bribe, whether or not it is accepted.

Answer: D
Diff: 2
Topic: White-Collar Crimes
Skill: Legal Concepts
68) Under The Racketeer Influenced and Corrupt Organizations Act, which of the following is true?

A) Racketeering activity is narrowly defined to include only offenses commonly engaged in by organized crime such as money laundering.
B) To constitute a pattern under the statute, the conduct must be engaged in at least once a year for 5 consecutive years.
C) Only corporations and individuals are subject to its provisions.
D) As few as two acts in a 10-year period can amount to a pattern under the statute.
E) Only organized crime organizations and their members can be convicted under the statute.

Answer: D
Diff: 2
Topic: White-Collar Crimes
Skill: Legal Concepts

69) To prove a pattern of racketeering under RICO, at least ________ predicate act(s) must be committed by a defendant within a 10-year period.

A) one
B) two
C) three
D) five

Answer: A
Diff: 1
Topic: White-Collar Crimes
Skill: Legal Concepts

70) A legitimate business that shows fake expenditures and receipts may be charged with which of the following?

A) false advertising
B) violating zoning laws
C) money laundering
D) bribery
E) None of these are correct.

Answer: C
Diff: 2
Topic: White-Collar Crimes
Skill: Legal Concepts
71) Which of the following is true regarding inchoate crimes?
   A) One can be found guilty only if the related crime was committed.
   B) They do not require any level of intent.
   C) One can be charged and found guilty of some inchoate crimes even if one did not try to commit the related crime.
   D) Because the sentence is usually less than that for the related crime, guilt need not be proven beyond a reasonable doubt.

Answer: C
Diff: 2
Topic: Inchoate Crimes
Skill: Legal Concepts

72) What is RICO?
   A) Rural Income Corporate Organization Act
   B) Rural Inchoate and Corrupt Organization Act
   C) Racketeer Influenced and Corrupt Organization Act
   D) Racketeer Information and Corporate Organization Act

Answer: C
Diff: 1
Topic: Inchoate Crimes
Skill: Legal Concepts

73) Which is true about corporate criminal liability?
   A) Corporations have always been just as subject to criminal liability as individuals.
   B) Because corporations cannot be sent to prison, they generally cannot be held criminally liable for the actions of their officers.
   C) If the criminal conduct can be traced to a specific person or persons, those persons will be liable and not the corporation.
   D) There can be liability for both the individuals who commit crimes and the corporation on whose behalf the crimes were committed.

Answer: D
Diff: 1
Topic: Corporate Criminal Liability
Skill: Legal Concepts
74) What does the Fourth Amendment do?
   A) It protects the rights of the people from unreasonable search and seizure by the government.
   B) It requires the police to obtain a search warrant in all search and seizure cases.
   C) It prohibits warrantless searches in connection with an arrest.
   D) It guarantees the defendant the right to an attorney.

Answer: A
Diff: 1
Topic: Constitutional Safeguards
Skill: Legal Concepts

75) In the U.S. Supreme Court's decision in 2000 regarding warrantless searches at traffic stops in Indianapolis, the Court held that:
   A) any warrantless searches at traffic stops were unconstitutional
   B) a traffic stop, without suspicion, to check sobriety was unconstitutional
   C) roadblock checkpoints to look for drugs in the possession of the persons stopped were unconstitutional
   D) roadblocks near the U.S. border were found to unconstitutionally discriminate against aliens

Answer: C
Diff: 3
Topic: Constitutional Safeguards
Skill: Legal Concepts

76) Which of the following statements is true?
   A) The Fifth Amendment guarantee against self-incrimination does not prohibit the taking of fingerprints against a suspect's will.
   B) The guarantee has been extended to include all business records and documents.
   C) Even if immunity from prosecution has been granted, the defendant may still refuse to testify.
   D) The attorney-client privilege is the only privilege that has been recognized under the Fifth Amendment.

Answer: A
Diff: 3
Topic: Constitutional Safeguards
Skill: Legal Concepts
77) The Miranda decision requires that a criminal suspect be notified of the following **EXCEPT**: 
   A) the right to a trial by jury  
   B) the right to have a lawyer present during interrogation  
   C) the fact that anything the suspect says may be used against the suspect  
   D) the right of the suspect to remain silent  
   E) the right to have an attorney appointed if the suspect cannot afford one  

   **Answer:** A  
   **Diff:** 3  
   **Topic:** Constitutional Safeguards  
   **Skill:** Legal Concepts

78) All of the following privileges have been recognized under the Fifth Amendment **EXCEPT**: 
   A) psychologist/psychiatrist-patient  
   B) minister-penitent  
   C) accountant-client  
   D) parent-child  
   E) spouse-spouse  

   **Answer:** C  
   **Diff:** 2  
   **Topic:** Constitutional Safeguards  
   **Skill:** Legal Concepts

79) Because of the prohibition against double jeopardy:  
   A) criminal defendants are never tried twice on the same charge  
   B) all criminal defendants are entitled to an attorney  
   C) the prosecution cannot appeal when a verdict of "not guilty" is rendered  
   D) persons are allowed one phone call when arrested  
   E) a jury's verdict in a criminal case is final and cannot be appealed  

   **Answer:** C  
   **Diff:** 3  
   **Topic:** Constitutional Safeguards  
   **Skill:** Legal Concepts

80) The Sixth Amendment right to a public jury trial includes the following rights **EXCEPT**: 
   A) the right to be tried in the same state or district where the alleged crime was committed  
   B) the right to a speedy trial  
   C) the right to have the assistance of a lawyer  
   D) the right to know the identity of the jurors deciding the case  
   E) the right to confront the witnesses testifying against the defendant  

   **Answer:** D  
   **Diff:** 2  
   **Topic:** Constitutional Safeguards  
   **Skill:** Legal Concepts
81) The Federal Antiterrorism Act of 2001 includes the following provisions **EXCEPT**:

A) the authorization of a Special Intelligence Court  
B) allowing nationwide search warrants  
C) permitting roving wiretaps  
D) allowing the detention of noncitizens for up to 7 days without filing charges if the person has been certified as being under suspicion of involvement in terrorist activities  
E) taking away the right to court-appointed attorneys for terrorism defendants who cannot afford to pay for their own attorneys

Answer: E  
Diff: 2  
Topic: Constitutional Safeguards  
Skill: Legal Concepts

82) Mary was at a party given by friends of her boyfriend. It was summer and the guests spent most of the time outdoors. Mary fell in love with a crystal serving dish being used, and when no one was looking, slipped it into her purse. She took the dish home and placed in her kitchen cabinet. Under the definitions under common law, what crimes has Mary committed?

A) burglary and larceny  
B) robbery and burglary  
C) larceny and receiving stolen property  
D) larceny  
E) larceny and robbery

Answer: D  
Diff: 2  
Topic: Crimes Affecting Business  
Skill: Factual Application

83) Jan saw an item at a local department store that she considered purchasing but did not. After getting home, she changed her mind. Her roommate was going to the same store, so Jan asked the roommate to pick up the item for her. Jan gave her credit card to the roommate and said, "Just sign my name; you know they never check the signature." The roommate purchased the item with Jan's credit card and signed Jan's name. Has the roommate committed forgery?

A) Yes, because the roommate misrepresented herself as Jan.  
B) Yes, because forgery occurs whenever one person signs the name of another.  
C) No, because the store did not realize that the roommate was not Jan.  
D) No, because the roommate did not intend to defraud either Jan or the store.  
E) No, because Jan is always liable for charges on her credit card.

Answer: D  
Diff: 3  
Topic: Crimes Affecting Business  
Skill: Factual Application
84) Sean works for a defense contractor. This contractor has a contract to sell 2 million pocket flashlights per year to the military at a price of "one dollar more than the cost to produce." The contractor has elaborate and detailed reports on the cost of making these flashlights. Copies of these reports are submitted to the government. Sean knows that some of the information in these reports calculating a cost of $243 per flashlight is false. Which of the following is true?

A) Because of Sean's knowledge, he is equally guilty as the corporation of committing fraud.
B) Sean can report this information to the government, but Sean cannot gain financially by doing so.
C) Sean could file a suit against the contractor under the Civil False Claims Act, and if the case is successful, receive a portion of the recovery.
D) Sean could possibly receive a portion of the recovery, but only if the government chooses to not intervene in the suit.
E) If Sean reports this information to the government, Sean is entitled to receive a reward whether or not the government is able to recover any money from the contractor.

Answer: C
Diff: 3
Topic: Crimes Affecting Business
Skill: Factual Application

85) Dean and Mary agree to sell fake stock to investors and disappear into the mountains with the proceeds. They print the stock and send offers to persons through the mail and make offers in person, but are unable to sell any of the fake stock. Dean and Mary are afraid they will get caught and go stay with Mary's friend Kathleen in another state. Kathleen gives Dean and Mary her car to escape, but the car breaks down a few blocks from Kathleen's house. Mary and Dean are picked up by the police as they try to get Kathleen's car running. Which of the following is true?

A) Dean and Mary have committed no crime because no one purchased the fake stock.
B) Dean and Mary became guilty of conspiracy when they agreed to sell the fake stock.
C) Kathleen did not commit a crime because her unreliable car did not help Dean and Mary escape.
D) Dean and Mary have committed conspiracy and at least one other crime.

Answer: D
Diff: 3
Topic: Inchoate Crimes
Skill: Factual Application
86) Jean, a nurse practitioner, is sitting at home one afternoon when an old friend comes knocking on her door looking very frightened. The friend said to Jean, "I don't know what got into me, but I just stole $200 from a convenience store. I don't know what to do. I want to return the money, but also fear the cops are on my trail." Jean says, "Don't worry, go hide in that secret room downstairs until we see what happens. Which convenience store was it? I'll put the $200 in an envelope and send it back." Just after Jean gets the envelope sealed and addressed, a police officer knocks on Jean's door. The officer warns Jean that there might be a robber in the neighborhood, and asks Jean if she has seen anyone unfamiliar. Jean says that she has not seen a single unfamiliar person, and the police officer leaves. Has Jean committed a crime?

A) Yes; she has committed the crime of aiding and abetting.
B) Yes; she has committed the crime of conspiracy.
C) She has committed no crime because she did not take part in the robbery.
D) She has committed no crime, but only if she actually returns the $200.
E) She has committed no crime because Jean was telling the truth in saying that she had not seen an unfamiliar person.

Answer: A
Diff: 3
Topic: Inchoate Crimes
Skill: Factual Application

87) A Rocky Mountain state has extensive safety regulations covering the design, operation, and maintenance of ski lifts. One day a state inspector arrives at the Powdermannia Ski Resort to inspect the lifts. The inspector does not have a search warrant and does not expect to find any violations, but finds several criminal violations. Which best describes this situation?

A) This was an illegal search made without a warrant and without probable cause.
B) The constitutional protection would not apply in this case because it was an inspector, rather than a police officer who conducted the inspection.
C) Assuming that Powdermannia Ski Resort is a corporation, it does not receive any Fourth Amendment protections due to its status as a corporation.
D) Assuming the inspection was conducted in accordance with state law, a search warrant was not needed because the lift operation aspect of the business is highly regulated.

Answer: D
Diff: 2
Topic: Constitutional Safeguards
Skill: Factual Application
88) Roger intentionally set his residence on fire in order to collect insurance proceeds. While the fire was being fought, the police arrived to help with the crowds of onlookers. Roger realized he had done something wrong and went to one of the police officers and told the officer that he had started the fire intentionally. The police officer did not give Roger the Miranda warnings. What is the most likely outcome if Roger tries to have the confession excluded from evidence at trial?

A) Because the Miranda warnings were not given, the confession must be excluded.
B) Because Roger was not in custody, was not a suspect, and was not being questioned about the fire, the Miranda warnings did not need to be given and the confession may be admitted as evidence.
C) Because the police did not have an arrest warrant, the confession cannot be admitted because the Miranda warnings were not given.
D) Because the Fifth Amendment requires exclusion of any incriminating evidence, the confession cannot be used.

Answer: B
Diff: 3
Topic: Constitutional Safeguards
Skill: Factual Application

89) Kim robbed a bank. Kim used a gun and attempted to murder the teller because the teller screamed upon seeing Kim's gun. The teller was injured. Bank robbery is a federal offense, and attempted murder is a state law offense. A trial is held on the state law charge of attempted murder and results in a hung jury. This is the only lawsuit Kim has faced up to this point arising from this incident. What is the complete list of legal actions that could be brought against Kim at this point arising from the bank robbery?

A) state criminal case and federal criminal case
B) state criminal case, federal criminal case, and a civil case by the teller for damages
C) federal criminal case and a civil case by the teller for damages
D) either a state or federal criminal case, but not both, and a civil case by the teller

Answer: B
Diff: 3
Topic: Constitutional Safeguards
Skill: Factual Application

90) Frank is walking down a busy city street when he suddenly discovers that his wallet is missing. A suspect is quickly apprehended, and Frank's wallet is discovered upon his person. What charge will most likely be brought against the suspect?

A) aggravated robbery
B) robbery
C) larceny
D) burglary

Answer: C
Diff: 3
Skill: Factual Application
91) Mr. and Mrs. Jones are sleeping in bed at night when they hear a strange noise from the kitchen. Mr. Jones goes into the kitchen and sees that an intruder with a gun has broken through a window. The intruder panics and flees when he sees Mr. Jones. The intruder is captured nearby in the neighborhood. For what crime will the intruder most likely be prosecuted?

A) aggravated burglary
B) burglary
C) robbery
D) larceny

Answer: A
Diff: 3
Skill: Factual Application

92) A criminal kidnaps a victim from State A and transports the victim to State B. In State B, the criminal kills the victim. Where can the criminal be prosecuted without violating the protection against double jeopardy?

A) The criminal can be prosecuted in State A because that was where the criminal act was initiated.
B) The criminal can be prosecuted in State B because that was where the more serious crime was committed.
C) The states will agree which one will prosecute the criminal.
D) Both states and the federal government may prosecute the criminal for all crimes.

Answer: D
Diff: 3
Skill: Factual Application

93) Assume that a CPA working as an internal auditor embezzles $50,000 from the bank over the course of a year. The CPA has no previous criminal record. An unemployed auto mechanic in the same town who has tried to find work unsuccessfully for 18 months robs a bank and gets away with $50,000. He used a gun in the robbery to threaten bank employees, but the gun was not loaded and therefore he obviously did not fire it. No one was injured. The mechanic has no previous criminal record. Which of these persons deserves the greater sentence? How much greater should it be? In general, should white-collar criminals receive stronger or more lenient sentences than the more traditional criminal for roughly equivalent crimes? Be sure to clearly state all your reasons for the conclusions you reach.

Answer: There is a wide perception that white-collar criminals receive softer punishments for their crimes. On one hand, the CPA did not threaten anyone, but on the other hand, the CPA has a good job with a good salary, whereas the mechanic might have been desperate.
Diff: 2
Skill: Ethics and Policy
94) In 2000, the U.S. Supreme Court ruled that police roadblocks where people were stopped without individualized suspicion in order to discover and intercept drugs were unconstitutional. In its opinion, the Court acknowledged its earlier 1990 decision in which sobriety checkpoints were constitutional even though drivers were stopped without individualized suspicion. Are the outcomes in these two cases consistent? How do you think they should have been decided?

Answer: Although they are similar, the sobriety checkpoints are intended to prevent driving while in a condition that could cause immediate and severe harm to others. The drug searches were not aimed at preventing such immediate harm. There are differing views on whether this difference is significant enough for one search to be constitutional and the other not.

Diff: 2
Skill: Ethics and Policy

95) Many persons believe that the Antiterrorism Act of 2001 improperly interferes with constitutional protections and civil liberties. Do you think it does? What risks are there associated with limiting the rights of persons charged in connection with international terrorism?

Answer: As always, constitutional issues involve a balancing. On one hand, some have argued that ironically the September 11, 2001 terrorists used the civil liberties of the United States in orchestrating the attacks on the United States. On the other hand, the legal system of the United States has long had a reputation for fairness. If the protections are cut back too much, in the court of world opinion, a conviction in the United States will not have much respect and may be viewed as unfair.

Diff: 3
Skill: Ethics and Policy

96) Barry is the computer systems director for a medium-sized consulting firm. One night Barry is at happy hour at a local bar talking about his job with some people he has just met. Barry mentions that he needs to buy computers for the three new persons the firm has recently hired. One of the persons he has just met, Tom, asks Barry what kind of computers he plans to purchase. Barry says, "I'm not sure. I'm still checking out what's available." Tom says, "Well, I can get you anything you want for much less than the stores." A week later Barry calls Tom and says he is interested in the Cybermega 4000 model and would order three if the price was right. Tom quotes a price, which is about half the normal price. Three days later Tom comes to Barry's office with the three computers. Barry is curious why only one is in a box and Tom replies, "Oh, I thought you wouldn't want the trash in your office. I also already sent in the warranty cards for you to save you the trouble." Later it is learned that the computers were stolen a few days before Tom took them to Barry. Is Barry or the consulting firm guilty of receiving stolen property?

Answer: The elements can be proven by circumstantial evidence, which are probably present here. A jury would likely find that Barry should have known the property was likely stolen, even if he did not know with certainty. The firm could also have criminal liability for the crimes committed on its behalf.

Diff: 2
Topic: Crimes Affecting Business
Skill: Factual Application
97) John is a sales associate for Neptune Cyber Solutions, a manufacturer of medium-sized computer operating systems. John is overseas in the nation of Megalopia hoping to secure a contract with a large manufacturing firm. Because the firm has technology contracts with Megalopia's military, any contract with the manufacturer must be approved by the Defense Department of Megalopia. John makes a cash payment of $10,000 to the Megalopian representative who is negotiating the contract. Of this amount, $3,000 is to cover the standard published fee that the government charges for these approvals, $2,000 is for an additional $2,000 to be paid to the government officials to expedite the approval, and $5,000 is a "thank you" to the manufacturer's representative for choosing the Neptune system. The $2,000 for expediting the approval is consistent with what is customary in Megalopia to pay for an expedited approval. Has John violated the Foreign Corrupt Practices Act?

Answer: The $3,000 is likely not a violation, as it is a published fee, and would likely be considered part of the written laws of Megalopia. The $5,000 was not paid to a government official and is thus not a violation of the Act. The $2,000 payment, even though not paid directly to a government official, might be a violation. More would need to be known if the "expediting" is really simply a speeding up of the approval process (and thus more ministerial and not a violation) or something paid to change the outcome of the approval process, in which case it is likely a violation.

Diff: 2
Topic: White-Collar Crimes
Skill: Factual Application

98) Hank, a Web page designer, recently discussed with his friend, Frank, how easy it would be to defraud people over the Internet. They decide to set up a fraudulent online casino. The next day Hank makes prints of the homepages of a dozen online casinos. Before either Hank or Frank does anything further, they are arrested for conspiracy. Are they guilty of conspiracy?

Answer: There was conspiracy by Hank and Frank because there was agreement, and Hank's prints of existing online casinos would be an overt act.

Diff: 2
Topic: Inchoate Crimes
Skill: Factual Application
1) The person who makes an offer to enter into a contract is the "offeree."

Answer: FALSE
Diff: 1
Topic: Definition of a Contract

2) The fact that a contract is legally enforceable means that the police can be called to make the other party live up to the terms of the contract.

Answer: FALSE
Diff: 1
Topic: Definition of a Contract

3) There must be at least three parties in order for a contract to be valid.

Answer: FALSE
Diff: 1
Topic: Definition of a Contract

4) In order for an offer to be valid, an offeror must promise to undertake some affirmative action.

Answer: FALSE
Diff: 2
Topic: Definition of a Contract

5) Two of the four basic contract requirements are agreement and signatures of the parties.

Answer: FALSE
Diff: 1
Topic: Definition of a Contract

6) In the early days of our nation's history, contracting was largely left up to the individual parties with little government regulation or oversight.

Answer: TRUE
Diff: 2
Topic: Definition of a Contract
7) A contract may be enforceable by a court of law or equity.

Answer: TRUE
Diff: 1
Topic: Definition of a Contract

8) The federal common law of contracts is the most important common law source, with state common law relative to contracts filling in gaps in the federal common law.

Answer: FALSE
Diff: 2
Topic: Sources of Contract Law

9) There is some variation in contract law from state to state.

Answer: TRUE
Diff: 1
Topic: Sources of Contract Law

10) The Uniform Commercial Code is a source of contract law that has been adopted by only a minority of the states.

Answer: FALSE
Diff: 1
Topic: Sources of Contract Law

11) The Restatement of the Law of Contracts is the highest priority source of contract law.

Answer: FALSE
Diff: 1
Topic: Sources of Contract Law

12) The Uniform Information Transactions Act was passed by Congress in 1999.

Answer: FALSE
Diff: 2
Topic: Sources of Contract Law

13) Under the modern law of contracts, there is substantial government regulation of the right to contract.

Answer: TRUE
Diff: 2
Topic: Sources of Contract Law
14) Offers for both bilateral and unilateral contracts involve a promise by the offeror.

Answer: TRUE
Diff: 2
Topic: Classifications of Contracts

15) An offer for a unilateral contract cannot be accepted by a mere promise to perform.

Answer: TRUE
Diff: 1
Topic: Classifications of Contracts

16) An offer for a unilateral contract can always be revoked at any time prior to the offeree's completion of the requested act.

Answer: FALSE
Diff: 2
Topic: Classifications of Contracts

17) One requirement of an express contract is that it be in writing.

Answer: FALSE
Diff: 2
Topic: Classifications of Contracts

18) An implied-in-fact contract is one based on the conduct of the parties.

Answer: TRUE
Diff: 2
Topic: Classifications of Contracts

19) The objective theory of contracts is judged by the reasonable person standard.

Answer: TRUE
Diff: 1
Topic: Classifications of Contracts

20) Quasi-contracts and implied-in-law contracts are two terms for the same situation.

Answer: TRUE
Diff: 1
Topic: Classifications of Contracts
21) Quasi-contract law attempts to prevent unjust enrichment where no contract actually existed.

Answer: TRUE
Diff: 1
Topic: Classifications of Contracts

22) A contract is created regardless of the offer being accepted or not.

Answer: FALSE
Diff: 2
Topic: Classifications of Contracts

23) A 1-year lease for an apartment that is 12 pages long, printed, covers all details of the parties' obligations, and contains the dated signature of each party is a formal contract.

Answer: FALSE
Diff: 2
Topic: Classifications of Contracts

24) A voidable contract is one that neither party can perform.

Answer: FALSE
Diff: 2
Topic: Classifications of Contracts

25) A contract remains executory as long as any party to the contract has not fully performed.

Answer: TRUE
Diff: 2
Topic: Classifications of Contracts

26) Equity courts, whether separate or merged into law courts, can decide contract disputes.

Answer: TRUE
Diff: 1
Topic: Equity


Answer: FALSE
Diff: 1
Topic: Equity
28) Which of the following is an equitable doctrine designed to prevent unjust enrichment and unjust detriment where no contract exists?
   A) an express contract
   B) the doctrine of formal contracts
   C) implied-in-law contract
   D) quantum meruit

Answer: C
Diff: 1
Topic: Definition of a Contract
Skill: Legal Concepts

29) Which of the following is NOT characteristic of a valid contract?
   A) It can be viewed as private law between the parties.
   B) The parties must have the contract's terms approved by the appropriate court.
   C) A court will enforce its terms if the parties do not voluntarily perform.
   D) It will have at least two parties.

Answer: B
Diff: 2
Topic: Definition of a Contract
Skill: Legal Concepts

30) Every contract has both:
   A) a buyer and seller
   B) an offeror and offeree
   C) a breaching party and a nonbreaching party
   D) an initiator and a responder

Answer: B
Diff: 1
Topic: Definition of a Contract
Skill: Legal Concepts

31) To create an enforceable contract, which of the following is(are) needed?
   A) agreement
   B) agreement and consideration
   C) agreement, consideration, and contractual capacity
   D) agreement, consideration, contractual capacity, and a lawful objective

Answer: D
Diff: 2
Topic: Definition of a Contract
Skill: Legal Concepts
32) Which of the following is NOT needed in order to have a valid contract?
   A) contractual capacity
   B) an agreement
   C) a signed written document
   D) consideration
   E) a legal object

   Answer: C
   Diff: 1
   Topic: Definition of a Contract
   Skill: Legal Concepts

33) Which of the following are valid informal contracts?
   A) leases
   B) sales contracts
   C) service contracts
   D) All of these are correct.

   Answer: D
   Diff: 2
   Topic: Definition of a Contract
   Skill: Legal Concepts

34) How has the government role in contract regulation changed since the founding of the United States?
   A) There is greater state and federal government involvement today than in the past.
      A) B) There is less state and federal government involvement today than in the past.
      B) There is approximately the same degree of state and federal government involvement today as in the past.
      C) There is less state, but more federal involvement today than in the past.
      D) There is less federal, but more state involvement today than in the past.

   Answer: A
   Diff: 1
   Topic: Definition of a Contract
   Skill: Legal Concepts

35) Common law as a source of law for contracts:
   A) comes primarily from federal law
   B) comes exclusively from state law
   C) comes exclusively from federal law
   D) comes primarily from state law
   E) comes equally from state and federal law

   Answer: D
   Diff: 1
   Topic: Sources of Contract Law
   Skill: Legal Concepts
36) The Uniform Commercial Code was first drafted in:
A) 1910
B) 1933
C) 1945
D) 1952
E) 1976

Answer: D
Diff: 1
Topic: Sources of Contract Law
Skill: Legal Concepts

37) The Uniform Commercial Code has been adopted by:
A) fewer than half of the states
B) most, but not all, states
C) at least in part by all states
D) in its entirety by all states

Answer: C
Diff: 1
Topic: Sources of Contract Law
Skill: Legal Concepts

38) The original source of the Uniform Commercial Code was:
A) the U.S. Constitution
B) Congress
C) the state legislature of Delaware
D) the United Nations
E) the National Conference of Commissioners on Uniform State Laws

Answer: E
Diff: 1
Topic: Sources of Contract Law
Skill: Legal Concepts

39) Which of the following best describes the Restatement of the Law of Contracts?
A) It is the supreme legal authority for contract law.
B) A law which has been adopted, at least in part, by every state.
C) A summary of the constitutional provisions affecting contract law.
D) A compilation of contract law that is not itself contract law, but is often referred to by judges.

Answer: D
Diff: 1
Topic: Sources of Contract Law
Skill: Legal Concepts
40) What is the name of the act recently drafted by the National Conference of Commissioners on Uniform State Laws in response to the growth in business conducted over the Internet?
   A) The Uniform Computer Information Transactions Act
   B) The Standard Internet Commerce Act
   C) The Uniform Computer Transaction Code
   D) The New Millennium E-Commerce Act

   Answer: A
   Diff: 2
   Topic: Sources of Contract Law
   Skill: Legal Concepts

41) What is the purpose of the Uniform Computer Information Transactions Act?
   A) to ensure that credit card companies process transactions promptly
   B) to establish uniform rules for the formation and enforcement of electronic contracts and licenses
   C) to convert existing contract law so that all contracts are interpreted as if they were negotiated over the Internet
   D) to provide consumers certain rights in their contracts with Internet service providers

   Answer: B
   Diff: 1
   Topic: Sources of Contract Law
   Skill: Legal Concepts

42) Which of the following is true in a unilateral contract?
   A) The offeror requests an act as acceptance of his offer.
   B) The offeror cannot revoke the offer once the offeree has begun performance or has substantially completed performance.
   C) The offeror will treat either a promise to perform or the actual performance of the act as acceptance of his offer.
   D) A and B only are true.
   E) B and C only are true.

   Answer: D
   Diff: 2
   Topic: Classifications of Contracts
   Skill: Legal Concepts
43) The terms "bilateral" and "unilateral" as applied to contracts are based on:
   A) the number of parties in a contract
   B) the number of attempts made to form a contract
   C) the number of parties who make a promise in the formation of a contract
   D) the number of promises that are made in connection with a contract
   E) the number of attempts it took for a contract to be successfully performed

Answer: C
Diff: 3
Topic: Classifications of Contracts
Skill: Legal Concepts

44) An offeree can form a contract by making a promise if the offer to form the contract is:
   A) bilateral
   B) unilateral
   C) trilateral
   D) either A or B
   E) neither A, B, nor C

Answer: A
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts

45) A contract is formed by the performance of the requested act in what kind(s) of contract?
   A) bilateral
   B) unilateral
   C) both A and B
   D) neither A nor B

Answer: B
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts

46) When can an offer to form a unilateral contract be revoked?
   A) before the offeree begins performance
   B) after the offeree begins performance, but before the performance is completed
   C) after completion of performance
   D) both A and B
   E) A, B, and C

Answer: A
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts
47) What is the common name for an agreement to protect one from having others disclose confidential information or ideas?
   A) a proprietary secrecy agreement
   B) a silence or be-penalized agreement
   C) a mute thoughts agreement
   D) a hold-information-close agreement
   E) a nondisclosure agreement

Answer: E  
Diff: 1  
Topic: Classifications of Contracts  
Skill: Legal Concepts

48) What is required for a contract to be an express contract?
   A) It is stated in words.
   B) It is written.
   C) It is written and signed.
   D) It is performed immediately after formation.
   E) It is performed for mutual benefit.

Answer: A  
Diff: 2  
Topic: Classifications of Contracts  
Skill: Legal Concepts

49) What kind of contract is based on the conduct of the parties?
   A) express
   B) action-oriented
   C) implied-in-fact
   D) implied-in-law
   E) quasi-contract

Answer: C  
Diff: 2  
Topic: Classifications of Contracts  
Skill: Legal Concepts

50) Which of the following is NOT a basic requirement to be an enforceable contract?
   A) There must be an agreement between the parties.
   B) The promise must be supported by a bargained-for exchange.
   C) The parties must have contractual capacity.
   D) The parties need not have assent.
   E) The object of the contract must be lawful.

Answer: D  
Diff: 2  
Topic: Classifications of Contracts  
Skill: Legal Concepts
51) Which of the following does not need to be proven by a plaintiff who is claiming that an implied-in-fact contract exists?
   A) The plaintiff provided property or services to the defendant.
   B) The plaintiff and defendant communicated with each other about the property or services.
   C) The plaintiff expected to be paid by the defendant for the property or services and did not intend to provide the property or services gratuitously.
   D) The defendant was given an opportunity to reject the property or services provided by the plaintiff but failed to do so.

Answer: B
Diff: 3
Topic: Classifications of Contracts
Skill: Legal Concepts

52) In the case in the text where an author discussed an idea for a book on strategy for the board game Scrabble, what was the outcome of the case?
   A) Because there was no express contract, there was no basis for the author to recover.
   B) The court found that an implied-in-fact contract existed, so the author won the suit.
   C) The court found that an implied-in-law contract existed, so the author won the suit.
   D) Because the offer was for a unilateral contract, there was no contract until the book was completed.

Answer: B
Diff: 3
Topic: Classifications of Contracts
Skill: Legal Concepts

53) A bail bond is an example of what type of formal contract?
   A) letters of credit
   B) contracts under seal
   C) negotiable instrument
   D) recognizances
   E) simple contract

Answer: D
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts
54) The reasonable person standard is used to decide whether an express contract exists under the:
   A) quasi-contract rules
   B) objective theory of contracts
   C) standard offer requirements
   D) contract existence standard guidelines
   E) nondisclosure rules

Answer: B
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts

55) Under the objective theory of contracts, a contract could result from an offer made:
   A) in jest
   B) in anger
   C) due to a need to sell an item quickly
   D) due to undue excitement

Answer: C
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts

56) In the case in the text where someone purchased a used safe at an auction for $50, but was later found by the buyers to contain more than $30,000 in cash, how did the court rule?
   A) There was no contract because the buyer was unjustly enriched.
   B) There was no contract because the act of opening the safe was not completed before the buyers took the safe.
   C) This was an implied-in-fact contract and the buyers were required to pay the fair value for the safe and its contents.
   D) There was objective intent that the parties intended that the safe, and whatever might be in it, be sold for a price of $50.

Answer: D
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts
57) The doctrine that applies when one person confers a benefit on another who retains the benefit in a situation where it would be unjust to allow the recipient to retain the benefit without paying for it, is known as:
   A) quasi-contract
   B) pseudo-contract
   C) unjust contract
   D) unilateral contract

Answer: A
Diff: 1
Topic: Classifications of Contracts
Skill: Legal Concepts

58) Which of the following are two terms for concept or situation?
   A) implied-in-law contract and implied-in-fact contract
   B) implied-in-law contract and quasi-contract
   C) implied-in-fact contract and quasi-contract
   D) unilateral contract and informal contract
   E) formal contract and implied-in-law contract

Answer: B
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts

59) Which of the following is needed to impose a quasi-contract?
   A) a benefit having been conferred and injustice if the benefit were not paid for
   B) actions implying a contract and an agreement as to the price
   C) a promise asking for action and the requested action having been completed
   D) a benefit having been conferred and objective intent that it be conferred

Answer: A
Diff: 2
Topic: Classifications of Contracts
Skill: Legal Concepts
60) What is the distinguishing characteristic that makes a contract a formal contract?
   A) a signature by both parties
   B) the contract being in writing
   C) a legal requirement that the contract be in a specific form
   D) all possible scenarios are addressed in the contract terms

Answer: C  
Diff: 1  
Topic: Classifications of Contracts  
Skill: Legal Concepts

61) Which of the following is NOT a formal contract?
   A) contract under seal
   B) recognizance
   C) negotiable instrument
   D) letter of credit
   E) new car purchase contract

Answer: E  
Diff: 2  
Topic: Classifications of Contracts  
Skill: Legal Concepts

62) Which of the following is true regarding contract validity?
   A) A void contract is one where a party has the option to avoid his/her contractual liability.
   B) A voidable contract is one in which a party may avoid his/her obligation under that contract.
   C) A voidable contract is one that has no legal effect because one of the essential elements is missing.
   D) An executory contract is also unenforceable.
   E) A unilateral contract is unenforceable.

Answer: B  
Diff: 3  
Topic: Classifications of Contracts  
Skill: Legal Concepts

63) Over time, most contracts are:
   A) executory at one time and executed at another
   B) bilateral at one time and unilateral at another
   C) valid at one time and void at another
   D) implied at one time and express at another

Answer: A  
Diff: 3  
Topic: Classifications of Contracts  
Skill: Legal Concepts
64) Otto approaches Edie and says, "If you pick up my new suit for me at the mall tomorrow, I'll pay you $20." Edie replies, "I don't know if I'll have time to get it, but I'll see if I get a chance." As a result of this conversation, which of the following is true?

A) Otto and Edie have formed a bilateral contract.
B) Edie has a legal obligation to use her best efforts to pick up the suit.
C) A contract will be formed only if Edie picks up the suit.
D) The contract which they have formed is voidable because Edie did not obligate herself.

Answer: C
Diff: 2
Topic: Classifications of Contracts
Skill: Factual Application

65) Jean says to Joan, "If you'll promise to feed my dog each day while I am out of town next week, I'll pay you $100." Joan replies, "I'll absolutely do that. I hope you have a nice trip." Joan then feeds the dog, after which Jean pays her. At what point did a contract come into existence?

A) When Jean made the offer to Joan.
B) When Joan said that she would feed Jean's dog.
C) When Joan started feeding Jean's dog.
D) When Joan completed the final feeding of Jean's dog.
E) When Jean paid the $100 to Joan.

Answer: B
Diff: 2
Topic: Classifications of Contracts
Skill: Factual Application

66) Frank says to Mary, "If you wash every window in my house today, I'll pay you $200. I don't care if you do it, but there is $200 in it for you if you do." Mary washes 12 of the 20 windows in Frank's house by 2:00 p.m. At this point, which of the following is true?

A) Frank can revoke his offer to pay Mary the $200 for washing the windows.
B) Mary is obligated to finish washing the windows.
C) Mary has formed a contract by beginning to wash the windows.
D) There is no contract yet in this situation.

Answer: D
Diff: 3
Topic: Classifications of Contracts
Skill: Factual Application
67) Janet pulls her car into a line for a car wash. Janet says nothing and her car is washed by the employees there. Janet then refuses to pay for the car wash, stating that there is no contract. What would the results be in a lawsuit over this situation?
   A) Janet wins; because she said nothing, there can be no contract.
   B) Car wash wins; this is an express, unilateral contract that has been accepted.
   C) Janet wins; because the car wash made no promise to wash her car, there is no contract.
   D) Car wash wins; this is an implied-in-fact contract that has been accepted.

Answer: D
Diff: 2
Topic: Classifications of Contracts
Skill: Factual Application

68) Lori just purchased a brand new lawnmower for $500. When she got home and tried to use it, it would not work. She became angry and shouted, "I'd sell this thing for $50." Her neighbor heard her and said, "I'll take it," and offered Lori the $50 in cash. Which of the following best describes this situation?
   A) This is an enforceable bilateral contract.
   B) This is an express contract.
   C) If Lori sells the lawnmower for $50, it would be a case of unjust enrichment.
   D) This situation does not result in the creation of a contract.

Answer: D
Diff: 2
Topic: Classifications of Contracts
Skill: Factual Application

69) Mr. Smith awakens one morning to the sound of construction in his back yard. When he looks out the window, he sees Ajax Construction Co. apparently erecting a garage on his property. He had not spoken or contracted with Ajax for this service. However, Mr. Smith really wanted a new garage, so he let them continue. Later, it was discovered that the garage was intended to go next door. Ajax sues Mr. Smith for the value of the garage. What is the probable result?
   A) Ajax wins; this is a case of a contract implied-in-fact, and Mr. Smith implicitly agreed to pay for the garage.
   B) Smith wins; there was no contract upon which Ajax could recover, and people are not liable for benefits that are thrust upon them.
   C) Ajax wins; although there is no real contract, this is a case of unjust enrichment, and because Mr. Smith accepted the garage, he must pay for it.
   D) Smith wins; unjust enrichment does not apply here because Mr. Smith had no duty to tell Ajax that it had the wrong house.

Answer: C
Diff: 3
Topic: Classifications of Contracts
Skill: Factual Application
70) Mike and Ike agreed orally that Mike would tutor Ike in geology for $10 per hour for 3 hours. After Mike has done the 3 hours of tutoring, but before Ike pays him next week, this contract is:
   A) executed
   B) implied-in-fact
   C) executory
   D) performed
   E) quasi-executed

Answer: C
Diff: 2
Topic: Classifications of Contracts
Skill: Factual Application

71) Jana and Annie enter into a written agreement whereby Jana promises to sell and Annie promises to buy a certain parcel of land for $5,000. There is adequate consideration, the contract is legal, and both parties have contractual capacity. The contract is fully performed by both parties on January 1. Which of the following best describes this contract as of January 2?
   A) bilateral, express, executed, valid
   B) unilateral, express, executed, valid
   C) unilateral, express, executory, valid
   D) unilateral, implied, executory, valid

Answer: A
Diff: 3
Topic: Classifications of Contracts
Skill: Factual Application

72) Wilma tells Sidney that she will buy his house from him. Before any paperwork is signed, Sidney backs out of the deal. Wilma sues Sidney for breach of contract. What is Sidney's best defense?
   A) The contract is void.
   B) The contract is voidable.
   C) The contract is unenforceable.
   D) The contract is illegal.

Answer: C
Diff: 3
Skill: Factual Application
73) Tim and his boss conspire by contract to cheat the IRS out of money. The boss later changes her mind. What is the status of the contract with respect to Tim?

   A) It is a valid contract.
   B) It is a void contract.
   C) It is a voidable contract.
   D) It is an unenforceable contract.

Answer: B
Diff: 3
Skill: Factual Application

74) Chad is sixteen years old. He went to a local used-car dealership and looked at an automobile. The salesperson never asked Chad his age, nor asked for identification. Chad agreed to purchase the vehicle, and then shortly thereafter changed his mind. What is the status of the contract with respect to Chad?

   A) It is an illegal contract.
   B) It is a void contract.
   C) It is a voidable contract.
   D) It is a valid contract.

Answer: C
Diff: 3
Skill: Factual Application

75) In the case involving the maker of the board game *Scrabble*, the court found that there was an implied-in-fact contract that if the maker of *Scrabble* used the author's information in writing a book on winning strategies for the game that it would compensate the author. How might an inventor or author use express contracts in situations such as this to avoid the situation in that case? What terms should be in these contracts? What other practical problems are there when inventors or authors want to protect their work but are trying to sell it at the same time?

Answer: This is a situation where nondisclosure agreements provide protection. This protection is not absolute because the other party can steal the ideas and subject the victim to high litigation costs. At some point in a negotiation process, the party disclosing the information will have to make a "leap of faith" in trusting the other party to live up to the terms of any nondisclosure agreement.

Diff: 2
Skill: Ethics and Policy
76) Which type of contract, bilateral or unilateral, is more common in business? Why? Under what circumstance would someone prefer one or the other? What are the advantages of each type for the offeror? For the offeree?

Answer: Bilateral contracts are more common in business because of the certainty that they provide regarding the other party’s performance. An offer for a unilateral contract gives the offeree the option to perform the act or not, while an offer for a bilateral contract will allow the offeror to know, once the return promise has been made, that the offeree is obligated to perform the act.
Diff: 2
Skill: Ethics and Policy

77) Under the objective theory of contracts it is possible that one can be in a contract against his/her will. What are the advantages of the objective theory of contract formation?

Answer: The objective theory of contract formation prevents a party from being able to make it appear that he/she has entered a contract yet be able to say that he/she was not serious, was simply joking, etc. If one could avoid a contract on the basis of subjective intent, no one would ever truly be bound to a contract.
Diff: 3
Skill: Ethics and Policy

78) Hilda Homeowner said to her neighbor, Paulette Painter, "If you paint my house, I'll pay you $1,500. All you must do is finish by the end of the next month. My price assumes that you will pay for all of the paint and any needed supplies." Paulette decided to paint the house. She purchased some supplies as well as enough custom-colored paint to complete the job. On the morning that Paulette was about to begin painting, Hilda told her that she had changed her mind and would not pay Paulette to paint the house. Discuss the rights of the parties in this situation.

Answer: This is a unilateral contract because Hilda seeks the act of having her house painted, not a promise that it will be painted. The contract is not formed until Paulette has completed the painting, but Hilda loses any right to revoke her offer once Paulette has begun to perform, including steps in preparation.
Diff: 3
Topic: Classifications of Contracts
Skill: Factual Application

79) Ron took his car to the muffler shop to have the left muffler of his dual exhaust system replaced. From the waiting room he sees that the worker is preparing to remove the right muffler. Ron says nothing, hoping that he'll get a free muffler for the right side. Discuss this situation.

Answer: Because Ron could have avoided the mistake, he will be liable, under the doctrine of quasi-contract, for any benefit he received.
Diff: 2
Topic: Classifications of Contracts
Skill: Factual Application
1) With mutual assent between the parties, there is no contract.

Answer: FALSE
Diff: 1
Topic: Agreement

2) The offeree has the power to create a contract by accepting the offer.

Answer: TRUE
Diff: 2
Topic: Agreement

3) The making of an offer occurs prior to the formation of a contract.

Answer: TRUE
Diff: 1
Topic: Agreement

4) Objective intent refers to the actual intent of a particular person.

Answer: FALSE
Diff: 2
Topic: Offer

5) An offer made in jest, where a reasonable person would conclude that it was made in jest, cannot result in a contract.

Answer: TRUE
Diff: 2
Topic: Offer

6) An offer made in anger, where a reasonable person would not have known that it was made in anger, cannot result in a contract.

Answer: FALSE
Diff: 2
Topic: Offer
7) The effectiveness of an offer is partially dependent upon whether or not it has been communicated to the offeree.

Answer: TRUE
Diff: 1
Topic: Offer

8) Where the terms of an offer are indefinite, the court can supply a missing term if a reasonable term can be implied.

Answer: TRUE
Diff: 2
Topic: Definiteness of Terms

9) Under modern law, the court can supply a missing contract term if a reasonable term can be implied.

Answer: TRUE
Diff: 1
Topic: Definiteness of Terms

10) An offer is considered communicated to the offeree so long as it has been communicated to the offeree in some way by someone.

Answer: FALSE
Diff: 2
Topic: Communication

11) The communication of an offer can be made by the offeror or the offeror's agent.

Answer: TRUE
Diff: 2
Topic: Communication

12) Generally, advertisements, catalogs, price lists, etc. are not treated as offers.

Answer: TRUE
Diff: 1
Topic: Special Offer Situations

13) An advertisement reading, "Our last Trailconquerer XL100 mountain bike, stock number T990234, will be sold to the first buyer with $700," would not be treated as an offer.

Answer: FALSE
Diff: 2
Topic: Special Offer Situations
14) Reward offers are offers to enter into a unilateral contract.

Answer: TRUE
Diff: 1
Topic: Special Offer Situations

15) To be entitled to collect on a reward offer, a person need only perform the requested act.

Answer: FALSE
Diff: 1
Topic: Special Offer Situations

16) In an auction without reserve, the seller is the offeror.

Answer: TRUE
Diff: 2
Topic: Special Offer Situations

17) In an auction without reserve, the seller must accept the highest bid and cannot withdraw the goods from sale.

Answer: TRUE
Diff: 2
Topic: Special Offer Situations

18) Revocation refers to the offeree communicating to the offeror that the offeree does not want to accept the offer.

Answer: FALSE
Diff: 3
Topic: Termination of the Offer by the Action of the Parties

19) A rejection of an offer is generally not effective until it is received by the offeror.

Answer: TRUE
Diff: 2
Topic: Termination of the Offer by the Action of the Parties

20) A counteroffer is treated as both a revocation and a new offer.

Answer: FALSE
Diff: 2
Topic: Termination of the Offer by the Action of the Parties
21) Death of the offeror terminates an offer even if the offer could still be carried out by the estate of the offeror, such as the sale of property of the offeror.

Answer: TRUE
Diff: 2
Topic: Termination of the Offer by Operation of Law

22) If the object of an offer becomes illegal after the offer was made, but before it is accepted, the offer remains valid because it was legal when made.

Answer: FALSE
Diff: 2
Topic: Termination of the Offer by Operation of Law

23) If nothing is stated about how long an offer is to remain open, it remains open until it is revoked by the offeror.

Answer: FALSE
Diff: 2
Topic: Termination of the Offer by Operation of Law

24) Generally, an offeror can specify the manner in which he/she wants his/her offer to be accepted.

Answer: TRUE
Diff: 1
Topic: Acceptance

25) If no mode of acceptance is stated in the offer, then any mode which is reasonable in the circumstances may be used.

Answer: TRUE
Diff: 1
Topic: Acceptance

26) In certain circumstances, silence can operate as acceptance.

Answer: TRUE
Diff: 1
Topic: Acceptance

27) Revocation of an offer may be done anytime prior to acceptance by the offeror.

Answer: FALSE
Diff: 2
Topic: Revocation
28) Offers made to the public may be revoked by communicating the revocation by the same means used to make the offer.

Answer: TRUE
Diff: 1
Topic: Revocation

29) A rejection is effective upon dispatch.

Answer: FALSE
Diff: 2
Topic: Rejection

30) If an offeree rejects an offer and then attempts to accept that same offer, the offer is now construed as a new offer that the original offeror is free to accept or reject.

Answer: TRUE
Diff: 2
Topic: Rejection

31) The basic concept that both parties to a contract should have agreed to the same terms is referred to as:
   A) bilateral agreement
   B) mutual assent
   C) co-agreement
   D) common intent

Answer: B
Diff: 1
Topic: Agreement
Skill: Legal Concepts

32) Which of the following are necessary to meet the requirements of a definite offer?
   A) identification of the parties, subject matter, and quantity
   B) consideration to be paid
   C) time of performance
   D) A, B, and C
   E) A and B only

Answer: D
Diff: 2
Topic: Requirements of an Offer
Skill: Legal Concepts
33) In order for an offer to be valid, the following must be met EXCEPT for which of the following?
   A) There is an objective intent by the offeror to enter into a contract.
   B) The offer must be in writing and signed by the offeror.
   C) The offer must be communicated to the offeree.
   D) The offer must be certain enough that most people can figure out what is being offered.

   Answer:  B
   Diff: 2
   Topic:  Requirements of an Offer
   Skill:  Legal Concepts

34) The objective theory of contracts is based on the which of the following premises?
   A) Even offers made in obvious jest can be the basis of a contract.
   B) Every contract must have a central object to it.
   C) Every contract must have consideration given by both parties.
   D) Whether the intent is present is based on how a reasonable person would view the parties' actions rather than on the actual intentions of the parties.
   E) The intent to be bound is determined after the parties have had a chance to perform the contract.

   Answer:  D
   Diff: 2
   Topic:  Requirements of an Offer
   Skill:  Legal Concepts

35) The concept of objective intent with respect to contract law means which of the following?
   A) When forming a contract, each party must expressly state an intent to be obligated under the terms of an agreement.
   B) The parties must each intend to be bound by the terms of an agreement based on each party's true intent, whether or not that intent is known by the other party.
   C) The parties' intent to be bound by the terms of a contract is based on whether an outsider observing the parties' words and conduct would reasonably conclude that the parties have the needed intent.
   D) So long as one party intends to be bound by the terms of an agreement, the objective intent requirement will be met.

   Answer:  C
   Diff: 2
   Topic:  Requirements of an Offer
   Skill:  Legal Concepts
36) In general, who can effectively accept an offer for a unilateral contract?
   A) Any person who performs the action requested in the offer, which can occur either before
      or after learning of the offer.
   B) Any person who performs the action requested in the offer, so long as the offer had been
      communicated to that person prior to the performance of the act.
   C) Any person who promises to perform the action requested in the offer, which can occur
      either before or after learning of the offer.
   D) Any person who promises to perform the action requested in the offer, so long as the
      offer had been communicated to that person prior to the making of the return promise.

Answer: B
Diff: 2
Topic: Requirements of an Offer
Skill: Legal Concepts

37) If a contract omitted some terms, which of the following terms could be implied by the
    court?
   A) quantity
   B) time for performance
   C) price, if a reasonable price can be determined
   D) A, B, and C
   E) B and C only

Answer: E
Diff: 3
Topic: Requirements of an Offer
Skill: Legal Concepts

38) In order to collect a reward, the person must:
   A) perform the requested act
   B) have knowledge of the reward before performing the act
   C) have knowledge of the reward before collecting the reward
   D) A and B only
   E) A and C only

Answer: D
Diff: 2
Topic: Requirements of an Offer
Skill: Legal Concepts
39) The communication of an offer can be made by:
   A) the offeror only
   B) the offeror or an agent of the offeror
   C) the agent of the offeror only
   D) the offeror, the offeror's agent, or any other party who learns of an offer

Answer: B  
Diff: 2  
Topic: Requirements of an Offer  
Skill: Legal Concepts

40) Advertisements are usually considered to be:
   A) offers that can be accepted only by those who have seen the advertisement
   B) invitations to deal
   C) offers that can be accepted by anyone attempting to purchase the item whether or not that person has seen the actual advertisement
   D) counteroffers to any previous advertisements

Answer: B  
Diff: 2  
Topic: Special Offer Situations  
Skill: Legal Concepts

41) In an auction when the highest bid has been made and no higher bids are forthcoming, the highest bid is treated as an acceptance in:
   A) auctions with reserve, but not in auctions without reserve
   B) auctions without reserve, but not in auctions with reserve
   C) both of these kinds of auctions
   D) neither of these kinds of auctions

Answer: B  
Diff: 2  
Topic: Special Offer Situations  
Skill: Legal Concepts

42) What is the legal effect of an auction being with reserve?
   A) The seller has the right to reject all of the bids.
   B) Certain bidders have reserved bids of specified amounts in advance.
   C) The bidders must be given an opportunity to inspect the items prior to the bidding.
   D) Bidders must make a cash deposit in advance to show the financial ability to carry through with the purchase of any item for which they are the highest bidder.

Answer: A  
Diff: 2  
Topic: Special Offer Situations  
Skill: Legal Concepts
43) What does an offeree use to simply indicate that he/she is not interested in an offer?
   A) revocation
   B) rejection
   C) counteroffer
   D) promissory estoppel
   E) option

   Answer:  B
   Diff: 1
   Topic:  Termination of the Offer by the Action of the Parties
   Skill:  Legal Concepts

44) If an offeree gives a rejection to the offeror, which of the following is true at this point?
   A) The offeree is still able to accept the original offer until its original expiration time.
   B) The offeree has made a counteroffer.
   C) The offeree cannot later enter into a contract on the terms of the rejected offer.
   D) The offeree can now transfer the rejected offer to a different party who becomes the new
      offeree.
   E) The offeree has lost the ability to accept the original offer.

   Answer:  E
   Diff: 3
   Topic:  Termination of the Offer by the Action of the Parties
   Skill:  Legal Concepts

45) The rejection of an offer:
   A) is effective when received by the offeror, and prevents the offeree from later accepting
      that offer
   B) is effective when sent to the offeror, and prevents the offeree from later accepting that
      offer
   C) is effective when received by the offeror, but does not prevent the offeree from later
      accepting that offer
   D) is effective when sent to the offeror, but does not prevent the offeree from later accepting
      that offer

   Answer:  A
   Diff: 2
   Topic:  Termination of the Offer by the Action of the Parties
   Skill:  Legal Concepts
46) Which of the following is correct regarding a "counteroffer?"
   A) It is no different from any other offer.
   B) It is not really an offer, but operates as the revocation of an offer.
   C) It operates as both an offer and an acceptance.
   D) It is treated as both a rejection of an offer and a new offer.
   E) It is treated as a new offer, but does not terminate the original offer.

   Answer: D
   Diff: 2
   Topic: Termination of the Offer by the Action of the Parties
   Skill: Legal Concepts

47) Which of the following would terminate an offer?
   A) revocation by the offeror
   B) rejection by the offeree
   C) counteroffer by the offeree
   D) A, B, and C
   E) A and B only

   Answer: D
   Diff: 1
   Topic: Termination of the Offer by the Action of the Parties
   Skill: Legal Concepts

48) The circumstance where an offer cannot be withdrawn under promissory estoppel is also known as:
   A) irrevocable offers
   B) the doctrine of detrimental reliance
   C) the doctrine of renewable offers
   D) the strict counteroffer rule

   Answer: B
   Diff: 2
   Topic: Termination of the Offer by the Action of the Parties
   Skill: Legal Concepts

49) Which of the following will not generally automatically terminate an open offer?
   A) death of the offeror
   B) death of the offeree
   C) changed economic circumstances
   D) destruction of the subject matter of the contract
   E) supervening illegality of the object of the contract

   Answer: C
   Diff: 2
   Topic: Termination of the Offer by Operation of Law
   Skill: Legal Concepts
50) Supervening illegality of the object of a contract occurs in which of the following circumstances?
   A) The illegality existed when the offer was made.
   B) The object of the contract is illegal where made, but would be legal in another location.
   C) The object of the contract is illegal to be performed by the offeree, but could be legally performed by a different party.
   D) The object of the contract was legal when the offer was made, but has subsequently become illegal.
   E) The offeror had an honest and reasonable belief that the object of the contract was legal when the offer was made, but later learned that the offer was illegal.

Answer: D
Diff: 2
Topic: Termination of the Offer by Operation of Law
Skill: Legal Concepts

51) An offer lapses upon the following except:
   A) counteroffer
   B) rejection
   C) detrimental reliance
   D) expiration of reasonable time
   E) death of offeror

Answer: C
Diff: 2
Topic: Termination of the Offer by Operation of Law
Skill: Legal Concepts

52) Which of the following statements is true regarding acceptances?
   A) If an offer is made to Mary in front of a group of people, any of the group may accept the offer.
   B) If an auction is "without reserve," the item must be sold to the highest bidder.
   C) Generally, an acceptance may contain new terms.
   D) Generally, silence operates as an acceptance.

Answer: B
Diff: 2
Topic: Acceptance
Skill: Legal Concepts
53) The requirement that the terms of the acceptance be the same as those of the offer is the:
   A) mirror image rule
   B) identical terms rule
   C) counteroffer equals rejection rule
   D) doctrine against offer modifications
   E) promissory estoppel doctrine

Answer: A  
Diff: 1  
Topic: Acceptance  
Skill: Legal Concepts

54) Silence will operate as acceptance in the following circumstances EXCEPT:
   A) when the offeree indicates that silence will operate as acceptance
   B) when the offeror indicates that silence will operate as acceptance
   C) when prior dealings between the parties indicate that silence is acceptance
   D) when the offeree signs an agreement that future shipments would be accepted until further notification

Answer: B  
Diff: 2  
Topic: Acceptance  
Skill: Legal Concepts

55) The mailbox rule means which of the following?
   A) Offers and acceptances must be communicated through the mail in order to be effective.
   B) Offers and acceptances are effective when placed in the mail.
   C) A properly dispatched acceptance is effective even if the offeror never receives it.
   D) A revocation is effective when sent.

Answer: C  
Diff: 2  
Topic: Acceptance  
Skill: Legal Concepts

56) Which of the following would be a valid offer?
   A) Bob's brand new riding lawn mower will not start, so Bob yells, "I'd sell this thing for $10."
   B) Jane is a real estate agent, and while looking at a house she says, "I think we can get $50,000 for this place."
   C) Mary goes to a garage sale, sees a dresser she wants, and says, "Would you take $25 for this dresser?"
   D) John tells Rhoda, "I'll give you $500 for your motorcycle."

Answer: D  
Diff: 2  
Topic: Requirements of an Offer  
Skill: Factual Application
57) Sally owns a very expensive fur coat that Mary would like to buy. During the course of conversation, Mary asks how much Sally would take for the coat. Sally replies, "I am not sure I want to sell the coat, but I think it is worth about $3,000." Mary says, "That is a little more than I wanted to spend." Several days later, Mary calls Sally on the telephone and says, "I'll bring over the $3,000 today." Sally refuses to sell the coat, and Mary sues. What results?
   A) Mary wins; a valid contract was created.
   B) Sally wins; there was never any offer for Mary to accept.
   C) Sally wins; when Mary said $3,000 was too much to pay, Mary rejected the offer.
   D) Sally wins; Mary did not accept the offer in a reasonable manner.
   E) Sally wins; Sally's offer expired due to the passing of a reasonable time.

Answer: B
Diff: 2
Topic: Requirements of an Offer
Skill: Factual Application

58) Mary, the seller, and Jane contract for the sale of 500 sweaters. They agree on color and style, but not on price or time of delivery. Mary refuses to deliver the sweaters, and Jane sues. What results?
   A) Mary wins; because all these terms were omitted from the agreement, the contract is not definite enough to be valid.
   B) Jane wins; the courts will fill in all the above-mentioned missing terms.
   C) Mary wins; the courts will fill in many missing terms, but never price.
   D) Mary wins; the courts will fill in many missing terms, but never time of delivery.

Answer: B
Diff: 2
Topic: Requirements of an Offer
Skill: Factual Application

59) An offeror says, "If you'll agree to do my taxes this year, I'll pay you $100 after you finish." This is an offer for which kind of contract?
   A) executed
   B) implied-in-fact
   C) unilateral
   D) bilateral
   E) promissory

Answer: D
Diff: 3
Topic: Requirements of an Offer
Skill: Factual Application
60) Jess says to a friend, "I'll sell you my 2-year-old Toyota Camry for $4,000." The friend says, "I'll take it," and they sign a short agreement to that effect. The friend didn't know this, but Jess intended the offer as a joke. There will be a contract if which of the following is true?
   A) The approximate fair value of the car is $4,000.
   B) A reasonable person would have concluded that Jess was serious when making the offer.
   C) Jess failed to disaffirm the contract within a reasonable time after the offer was accepted.
   D) The written agreement spells out all provisions of the contract.

Answer:  B
Diff: 2
Topic:  Requirements of an Offer
Skill:  Factual Application

61) Pam offers a reward for the return of the pet snake that escaped from her purse while she was having dinner at a restaurant. Fred finds the snake and returns it to her. Which of the following is relevant in deciding whether Pam must pay the reward?
   A) whether Fred is a minor
   B) whether Fred knew about the reward when he returned the snake
   C) whether Fred intended to get the reward
   D) whether the offer for the reward was in writing

Answer:  B
Diff: 2
Topic:  Special Offer Situations
Skill:  Factual Application

62) Sandy notices a dog tied to a chain behind a fence and recognizes it as belonging to an acquaintance who lives a couple of blocks away. Sandy goes to the acquaintance's house and says, "Your dog is tied up in someone's yard, and for $100 I will tell you where." The dog's owner says, "No way! I can't believe you won't simply tell me where the dog is!" The dog's owner drives around the neighborhood and finds the dog and retrieves it. The next day Sandy notices an advertisement in the paper where the owner offered a reward of $200 for information leading to the return of her dog. Sandy is:
   A) entitled to $100 because she made a counteroffer to the $200 reward offer, thereby lowering the amount she can claim
   B) entitled to $200 solely because she gave the dog's owner information leading to the return of the dog
   C) entitled to the $200 because she offered to pay money and the reward offer was outstanding
   D) not entitled to any money because she rejected the original offer and the dog's owner did not accept Sandy's counteroffer
   E) not entitled to any money because there was no offer that was accepted

Answer:  E
Diff: 3
Topic:  Special Offer Situations
Skill:  Factual Application
63) David decides to sell his coin collection at an auction that is advertised as being "without reserve." Can David change his mind and withdraw the collection from the auction?
   A) He can withdraw the collection at anytime before the auctioneer announces that it has been sold.
   B) He can withdraw the collection at anytime before the items in the collection are delivered to the buyers.
   C) He can withdraw the collection only if the bids are extremely low.
   D) He can withdraw the collection only before the auction begins.
   E) He cannot withdraw the collection once the auction has been advertised.

Answer: D
Diff: 3
Topic: Special Offer Situations
Skill: Factual Application

64) Marilyn decides to sell the diamond broach she inherited from her grandmother at an auction "with reserve." Can she withdraw the broach from sale?
   A) She can withdraw the broach any time before the auction announces it has been sold.
   B) She can withdraw the broach any time before it is delivered to the buyers.
   C) She can withdraw the broach only if the bids are extremely low.
   D) She can withdraw the broach only before the auction begins.
   E) She cannot withdraw the broach once the auction has been advertised.

Answer: A
Diff: 3
Topic: Special Offer Situations
Skill: Factual Application

65) Seasonal Selections, Inc. sends a copy of its catalog to William along with a personalized computer-generated letter inviting him to purchase any two items in the catalog at the advertised price. Has Seasonal Selections made an offer?
   A) Yes; the letter is an offer.
   B) It is an offer only if William is already a customer.
   C) The catalog and letter are an offer, because there is no room to negotiate a price.
   D) Seasonal Selections has not made an offer. The catalog is a solicitation of an offer by William.
   E) None of these are correct.

Answer: D
Diff: 3
Topic: Special Offer Situations
Skill: Factual Application
66) Kristin offers to sell land to Ian for $5,000. Ian says that $5,000 is too much, but he will pay $4,000. Kristin says no. Two days later, Ian accepts Kristin's original offer. Which of the following best describes this situation?
   A) There is now a valid contract between Kristin and Ian.
   B) Ian made a counteroffer; that terminated Kristin's offer.
   C) Kristin may now accept Ian's counteroffer.
   D) Ian made a counteroffer, but Kristin's offer may still be accepted.

Answer: B
Diff: 3
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application

67) Fred's beautiful photograph of the Washington Monument is hanging in a Washington Gallery. Jed is looking at it and Fred tells Jed he can have it for $1,000. Jed says, "No way, man! I won't pay that!" The next day, Jed reconsiders and goes to the gallery and tells Fred he'll take it for $1,000. Which is true at this point?
   A) Fred can tell Jed that the price is now $1,200.
   B) Jed can't force Fred to take the $1,000 because of the prior day's revocation.
   C) If they can't agree, a court would set the price at $1,100.
   D) Jed's acceptance of the $1,000 offer is effective only if Fred has not yet revoked his offer.

Answer: A
Diff: 3
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application

68) On Monday, Cindy says to Ruth, "I will sell you my car for $10,000. You have until Friday to decide." As of Wednesday, Ruth has paid nothing to Cindy and has not indicated if she is interested in buying the car. At this point, which is true?
   A) Cindy can revoke the offer on Wednesday.
   B) Ruth must reject Cindy's offer by Friday, or else she has bought the car.
   C) Cindy cannot revoke the offer on Wednesday.
   D) Ruth could send $250 to Cindy, which would make the offer irrevocable.

Answer: A
Diff: 2
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application
69) Sam receives an offer that states: "I will sell you my car for $8,500, you have 10 days to accept." On Day 4, Sam tells the seller that he will give him $8,000, but the seller rejects this. Which of the following is true?
   A) If Sam tells the seller within 6 days that he'll pay the $8,500, a contract is formed.
   B) Sam's only alternative is to pay the asking price for the car.
   C) If the seller changes his mind within 6 days, he can make Sam buy the car for $8,000.
   D) There is no open offer.
   E) If the seller does not want to sell his car to Sam for $8,500, he must revoke his offer.

Answer: D
Diff: 3
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application

70) Susan offered to sell her couch to Martin for $200. Martin said that $200 was too much, but that he would give her $125. Susan said no. Then, Martin said that he would pay Susan the entire $200.
   A) Martin has accepted Susan's original offer.
   B) Martin's statement that he would give Susan $125 was a rejection of Susan's original offer.
   C) Martin's statement that he would give Susan $125 was an offer by Martin.
   D) A and C only are true.
   E) B and C only are true.

Answer: E
Diff: 2
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application

71) Offeror says, "I will sell you my dog for $100. You have a week to decide." Two days later she tells the offeree, "I've changed my mind. I'm keeping the dog." This last statement is:
   A) an effective revocation
   B) an effective rejection
   C) ineffective in terminating the offer
   D) a counteroffer

Answer: A
Diff: 2
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application
72) Erin receives an offer in the mail from Susan on July 14 that says, "I will sell you my vacation home for $80,000. You may accept this offer by signing the bottom of this letter and placing it in the mail so that it is postmarked by July 31." Which is true?
   A) Susan will be liable for breach of contract if she sells that home to anyone else prior to July 31.
   B) If Erin accepts the offer on July 20 by meeting the terms of the offer, she (Erin) can change her mind up until July 31 so long as Susan is notified by that date.
   C) Assuming Erin has not paid Susan for an option contract, Susan may revoke the offer at any time so long as she does so before Erin accepts.
   D) If Erin counteroffers with a price of $75,000, and Susan rejects, Erin can create a contract by accepting the original offer by July 31.

Answer:  C
Diff: 3
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application

73) Anita offered to sell her condo to Bill. Before Bill could accept, one of the parties was killed in a car accident. The remaining party wishes to go through with the contract. Which of the following best describes this situation?
   A) The death of either party terminated the offer.
   B) If Anita died, Bill can still accept the offer; Anita's estate will be liable for the contract.
   C) If Bill died, Bill's heirs can still accept the offer.
   D) If Anita died, the offer is terminated; if Bill died, Bill's heirs can still accept the offer.

Answer:  A
Diff: 2
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application

74) John offered to sell Jane his 1959 Thunderbird automobile. Before Jane could accept the offer, lightning struck the car, and it was totally destroyed. Which of the following is true?
   A) Jane can still accept the offer and John must find a 1959 Thunderbird to sell.
   B) The offer is terminated by operation of law.
   C) John can still revoke his offer, if he does so before Jane accepts.
   D) Jane can still accept the offer; she will be entitled to the insurance proceeds.

Answer:  B
Diff: 2
Topic: Termination of the Offer by Operation of Law
Skill: Factual Application
75) Offeror says, "I'll sell you my car for $10,000." Offeree says, "I accept your offer but will pay $9,700." As a result, at this point which of the following are true?
   A) There are two open offers.
   B) This was a conditional acceptance.
   C) Offeror must sell car to offeree if offeree gives offeror $10,000.
   D) The only open offer is for $9,700.

Answer: D
Diff: 2
Topic: Acceptance
Skill: Factual Application

76) The owner of a small business is having lunch with an employee. He says, "I'm so tired of the problems that we are having lately that I would sell the entire business to you now for a nickel!" The employee quickly slams a nickel on the table and exclaims, "I accept!" Is there a valid contract?
   A) Yes; the offer was made and accepted in a timely fashion.
   B) Yes; the offer was made and the employee conferred the requested consideration.
   C) No; the consideration is inadequate for the purchase.
   D) No; there is a lack of objective intent.

Answer: D
Diff: 2
Skill: Factual Application

77) Larry loses his wallet on the bus. He places posters around the bus stop locations offering a reward for the wallet. Mary finds that wallet on the street and contacts Larry. After she had returned the wallet to Larry, a friend advised her that Larry had been offering a reward for the wallet. She later contacts Larry about the reward money. How much is she entitled to?
   A) the ancillary costs associated with returning the wallet
   B) one half of the reward money
   C) the entire reward
   D) none

Answer: D
Diff: 2
Skill: Factual Application
78) Denny is selling his house at an auction with reserve. Albert offers $50,000. Betty says, "I'll pay $60,000, if the bank will loan me that much." Denny says, "Forget it! I am not going through with the sale of my house." Carl then says, "I'll pay you $70,000 for it." Who gets the house?
   A) Albert, because he made a definite and certain offer, and did so before Denny stopped the bidding.
   B) Betty, because she offered the highest amount before Denny stopped the bidding.
   C) Carl, because he offered the highest amount.
   D) Denny, because he could withdraw the property from sale at any time.

Answer: D  
Diff: 2  
Skill: Factual Application

79) Under the mailbox rule there is a period of time when the offeror may be in a contract and not be aware of it. If the rule were changed such that acceptances were effective upon receipt, would this eliminate the problem of someone being in a contract without being aware of it? Is there any rule or set of rules that will eliminate the problem of one party or the other having a period of uncertainty, if all correspondence is conducted through the mail? If either the offeree or offeror must go through a period of uncertainty, which should it be? Why? What can the offeror do to avoid this uncertainty? Is the mailbox becoming more important or less important?

Answer: When the acceptance is effective at the time of receipt, the offeree has a period of uncertainty. Where there is a time lag in sending and receiving communications, any rule will result in one party experiencing a period of uncertainty. As the master of the offer, the offeror can determine whether it will be the offeror or the offeree. Instantaneous communications are making the mailbox rule less important.  
Diff: 2  
Skill: Ethics and Policy

80) Should the rules of offer and acceptance be changed to reflect the increasing use of instantaneous communications such as fax machines and online commercial transactions? How does doing business in this environment differ from in the past? What changes, if any, should a business make in the terms or manner of offers and acceptances?

Answer: Even instantaneous communications can be lost in transit. One way to reduce uncertainty is to set up the communications so that the sender receives confirmation that the communication has been received, as is typically done with fax transmissions.  
Diff: 2  
Skill: Ethics and Policy
81) What problems in connection with offer and acceptance might arise in an online auction situation? Are there any rules that could address these?

Answer: Where used merchandise is sold, there might be a problem with definiteness of the offer if the item is not described sufficiently. There might be a failure to indicate whether the auction is conducted with or without reserve. If a bidder suspects that in an auction without reserve he/she had the highest bid, but the seller improperly refused to sell to him/her, it is more difficult to get the information to determine if that is, in fact, the case.

Diff: 2
Skill: Ethics and Policy

82) Lefty's Surplus Store placed an advertisement in the newspaper offering one new bath tub, regularly priced at $500, for sale for only $10, to the first person who came to the store the next day. Judy was the first person to appear the next day and she demanded the bath tub for $10. Lefty's refused to sell to her. Judy sued. What is the likely outcome?

Answer: Due to the specific nature of the advertisement, it was an offer for a unilateral contract. Judy accepted the offer and formed a contract by being first at the store with $10.

Diff: 2
Topic: Requirements of an Offer
Skill: Factual Application

83) Sam places an advertisement in the newspaper for his Dodge Viper which states, "I hate to sell it, but high insurance costs force me to sell my 1999 Dodge Viper. The first $45,000 cash takes it." Betty goes to look at the car and says to Sam, "I'll give you $42,000 for it." Sam then says, "That's not the deal." Betty says nothing and leaves. A couple of weeks later Betty notices that the ad is still in the paper, so she takes $45,000 cash over to Sam's house. He hasn't sold the car, but says to Betty, "You rejected my offer of $45,000, so I don't have to sell it to you for that. You can have it for $47,000." Is Sam obligated to sell the car to Betty for $45,000? Give all possible arguments for each party.

Answer: The original ad was probably an offer for a unilateral contract because it was specific and there would be no over-acceptance problem. Betty's $42,000 offer could be viewed as a separate offer and not intending to be a rejection of the ability to be first with the $45,000. Even if viewed as a rejection, Sam's statement, "that's not the deal" might be a renewal of the original offer, and even if that was not a renewal, the continuing ad would be.

Diff: 3
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application
84) Roberta offers to sell certain land to Emily for $10,000. This offer is made by a letter, signed by Roberta and mailed on March 1, 1990. The letter also stated that the offer would be kept open until July 1, 1990. About two weeks later, Roberta sent Emily another letter in which she revoked her offer. On June 15, after she had received both letters, Emily wrote to Roberta accepting her offer of March 1. Discuss in detail whether there is a valid contract between Roberta and Emily.

Answer: There was no option contract, thus Emily's receipt of the revocation letter killed the offer before the acceptance was dispatched.

Diff: 2
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application

85) Wilbur, who has had difficulty making up his mind for most of his 29 years, was sitting around on Sunday with some of his friends. At one point, he says, "I'm going to try to sell my car, and if I get an offer close to $9,000 I'm going to take it." Andy, one of the friends, thinks to himself that this might be a good deal. The following events occur later that same week:

Monday: Wilbur arranges with the local newspaper for an advertisement to run beginning on Saturday which will say, "1999 Honda Prelude, excellent, 1st $8,000 takes it. See it at 1902 Maple Street."

Thursday: Andy delivers a note to Wilbur, which Wilbur reads later on Tuesday. The note says, "I'll take your car for $9,000" and is signed by Andy.

Friday: Wilbur thinks he may have under-priced the car and calls the paper to cancel. It is too late to make changes for Saturday so the ad runs. A new ad will start Sunday that does not mention a price but he expects that the car should bring close to $10,000.

Saturday: Bob shows up with $8,000 in hand to buy the car. Wilbur refuses to sell the car to Bob.

Andy and Bob each separately sue Wilbur wanting to force him to sell the car claiming that a contract has been formed. Discuss separately each case and how it might come out, including the arguments the parties would most likely raise.

Answer: Wilbur's statement on Sunday is not an offer, so the note from Andy is an offer that Wilbur is free to accept or reject. Bob had most likely received an offer for a unilateral contract, and it probably had not yet been revoked, either by Wilbur to Bob, individually or by publication.

Diff: 3
Topic: Termination of the Offer by the Action of the Parties
Skill: Factual Application
86) Tom lives in Michigan in a neighborhood with many elderly persons. Tom's next door neighbor, Thelma, is a retired CPA. In early February of 2002, Tom and Thelma discussed Thelma possibly doing Tom's personal income tax return. Tom told Thelma that he would pay her $300 to do his income tax return for 2001. Thelma said she would probably be able to, but that she could not commit and would let him know. She said she was going to Arizona to look for a home because she hoped that this would be her last winter in Michigan. Tom had always liked Thelma's house and asked what she was planning to do with it. She said she would be putting it on the market as soon as she found a place she liked in Arizona. Tom then told Thelma that he might be interested in the house. Thelma said, "I'll sell you my house for $240,000. You can think about it because I won't be doing anything else about selling it until I find my new place in Arizona. A real estate agent told me it could bring $270,000, but my price is $240,000 for you." Thelma left a week later and went to Arizona, with nothing further said about the taxes or the house. In late March, Thelma sent Tom a fax that she had found a new house and restated the offer's terms and asked Tom if he wanted the house. Tom sent a return fax stating that he thought he wanted it, but he needed to check on his finances before committing. Before there were any further communications, Thelma died the next day. Two days later, not knowing that Thelma had died, Tom sent her another fax in Arizona that he wanted the house at her price of $240,000. Tom did not learn of her death until April 12. Tom then had to find someone at the last minute to prepare his income tax return at a cost of $500. Tom also notified the executor that he wanted to proceed with his contract to buy the house even though Thelma had died. The executor refused, leading Tom to sue for damages from the tax return and house sale. Discuss the issues and outcome.

Answer: The general rule is that the death of either the offeror or the offeree terminates an offer. Thelma was the offeree in the case of the tax return, and the offeror in the case of the house sale. If no contract had been formed by the time of Thelma's death, any offer terminates. This is true even though it is possible for the executor to sell the house to Tom. If Tom's first fax had indicated an unequivocal acceptance, there would have already been a contract at the time of Thelma's death. Note that whether or not Tom was aware of Thelma's death is irrelevant.

Diff: 2
Topic: Termination of the Offer by Operation of Law
Skill: Factual Application
87) Wildland Amusements has just received an offer to install video games in the cafeterias of local high schools and split the revenues with the school system. This promises to be a very lucrative contract, and Wildland has 30 days within which to accept the offer. Wildland purchases a number of video games to place in the schools. Within the 30 days and on the day before Wildland plans to send its written acceptance to the School Board, the local city council passes an ordinance outlawing all video games in schools. Can Wildland recover damages from the school?

Answer: The supervening illegality terminated the offer. Wildland has no basis to recover. This could not be a situation allowing for recovery under promissory estoppel because it was not the school system that terminated the offer.

Diff: 2
Topic: Termination of the Offer by Operation of Law
Skill: Factual Application

88) Cody offered to sell certain land to Daniel for $50,000, by a letter, which was signed by Cody. The letter specified that the deal was to be closed by Nov. 1, 2001, and that the entire payment was to be in cash. Daniel sent a letter saying that he accepted the offer, but his letter also stated that payment was to be made one-half at closing and one-half 30 days later. As of March 2002, Cody had not responded. Discuss in detail whether there is a valid contract between Cody and Daniel.

Answer: The change in payment terms was material enough to result in terminating the original offer. Daniel's letter was thus a counteroffer, which has lapsed, assuming that a reasonable time has passed. Any further communication at this point would, at most, be a new offer.

Diff: 2
Topic: Termination of the Offer by Operation of Law
Skill: Factual Application
1) Sandra accepts an out of court settlement in exchange for dropping a lawsuit. The settlement agreement is supported by consideration in the form of forbearance of a legal right.

Answer: TRUE
Diff: 1
Topic: Consideration

2) Money is a common form of consideration to support a contract.

Answer: TRUE
Diff: 1
Topic: Consideration

3) Under the law, written contracts are presumed to be supported by consideration.

Answer: TRUE
Diff: 1
Topic: Consideration

4) The presumption that contracts are supported by consideration may be overcome by sufficient evidence.

Answer: TRUE
Diff: 1
Topic: Consideration

5) Something of "legal" value must be given to support a contract.

Answer: TRUE
Diff: 1
Topic: Consideration

6) A party has given consideration for a contract if that party suffers a legal detriment even if the other party does not receive a benefit.

Answer: TRUE
Diff: 2
Topic: Consideration
7) An agreement where a party gives up the right to sue for injuries in exchange for the right to take part in an activity is insufficient to constitute consideration.

Answer: FALSE
Diff: 2
Topic: Consideration

8) In order to meet the consideration requirement, the legal detriment suffered by each party must have been given in exchange for that of the other party.

Answer: TRUE
Diff: 2
Topic: Consideration

9) A promise to make a gift that has been completed can be rescinded by the donor if it was not supported by consideration.

Answer: FALSE
Diff: 2
Topic: Consideration

10) In some states, the courts will examine the amount of consideration and will allow a party to avoid a contract where the consideration is so inadequate that it "shocks the conscience" of the court.

Answer: TRUE
Diff: 2
Topic: Consideration

11) Forbearance in the form of refraining from drinking or using tobacco for a specified time period cannot be consideration to uphold a contract.

Answer: FALSE
Diff: 2
Topic: Consideration

12) Option-to-cancel clauses always render a contract illusory, because one party is not bound to the contract.

Answer: FALSE
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts

13) Promises made out of affection generally lack consideration.

Answer: TRUE
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts
14) Output and requirements contracts are unenforceable because the buyer or seller is not obligated to buy or sell a specific quantity.

Answer: FALSE
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts

15) A contract in which the seller agrees to sell all of its production to a single buyer is known as an "output contract."

Answer: TRUE
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts

16) A cash payment of $1 given to support a gift promise cannot support a contract.

Answer: FALSE
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts

17) Requirements contracts are not valid contracts as they are illusory.

Answer: FALSE
Diff: 1
Topic: Special Issues Concerning Consideration in Business Contracts

18) The imposition of a best efforts clause is generally viewed as sufficient consideration.

Answer: TRUE
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts

19) A promise to not inflict bodily harm on another is supported by consideration.

Answer: FALSE
Diff: 1
Topic: Contracts Lacking Consideration

20) An illusory promise is an example of a promise that will be enforced even when consideration is lacking.

Answer: FALSE
Diff: 2
Topic: Contracts Lacking Consideration
21) Generally, a moral obligation is sufficient consideration to bind someone to a contract.

Answer: FALSE
Diff: 1
Topic: Contracts Lacking Consideration

22) A preexisting duty can arise from a person's job or position, or it can arise out of an existing contract.

Answer: TRUE
Diff: 2
Topic: Contracts Lacking Consideration

23) A party who promises to complete a job according to the terms of a contract signed in the past has not given consideration due to past consideration.

Answer: FALSE
Diff: 3
Topic: Contracts Lacking Consideration

24) Most courts hold that a liquidated debt cannot be compromised without new consideration.

Answer: TRUE
Diff: 2
Topic: Settlement of Claims

25) A compromise agreement is referred to as an accord.

Answer: TRUE
Diff: 1
Topic: Settlement of Claims

26) The nonperformance of an accord is called satisfaction by the debtor party.

Answer: FALSE
Diff: 1
Topic: Settlement of Claims

27) The courts generally inquire into the adequacy of consideration.

Answer: FALSE
Diff: 2
Topic: When is Consideration Inadequate?
28) All states recognize that a party may escape from a contract if the inadequacy of consideration shocks the conscience of the court.

Answer: FALSE  
Diff: 2  
Topic: When is Consideration Inadequate?

29) For the doctrine of promissory estoppel (detrimental reliance) to apply, there still must be a contract with adequate consideration.

Answer: FALSE  
Diff: 2  
Topic: Promissory Estoppel

30) The doctrine of promissory estoppel holds that most gift promises can be enforced.

Answer: FALSE  
Diff: 2  
Topic: Promissory Estoppel

31) Promissory estoppel is an equitable doctrine that prevents the withdrawal of a promise by the promissor if it will adversely affect a promissee who has changed his or her position in justifiable reliance on the promise.

Answer: TRUE  
Diff: 1  
Topic: Promissory Estoppel

32) In order for a contract to be valid, it must:
   A) be made by a writing signed by adults  
   B) be fully performed on both sides  
   C) contain an offer, acceptance, and consideration  
   D) be properly filed

Answer: C  
Diff: 2  
Topic: Consideration  
Skill: Legal Concepts
33) Consideration can best be described as:
   A) something of legal value
   B) what is received in a contract
   C) a promise
   D) a counteroffer
   E) a signature on a contract

Answer: A
Diff: 2
Topic: Consideration
Skill: Legal Concepts

34) An agreement that is lacking consideration:
   A) is void as against public policy
   B) is not enforceable, and thus cannot be performed
   C) is enforceable only if in writing
   D) will be enforced only against the party who gave consideration
   E) is not enforceable, but can be voluntarily performed

Answer: E
Diff: 2
Topic: Consideration
Skill: Legal Concepts

35) Which of the following can be considered consideration?
   A) a promise to perform a service in the future
   B) payment of cash
   C) actual performance of a service
   D) B and C only
   E) A, B, and C

Answer: E
Diff: 2
Topic: Consideration
Skill: Legal Concepts

36) In a two-party contract, which is true about consideration?
   A) Only one party must suffer a legal detriment.
   B) Both parties must receive a benefit.
   C) Each party must suffer a legal detriment.
   D) Each party must either receive a benefit or suffer a legal detriment.

Answer: C
Diff: 2
Topic: Consideration
Skill: Legal Concepts
37) "Legal detriment" in the context of consideration means:
   A) giving up an existing legal right
   B) taking on a new legal duty
   C) giving up an existing legal right or taking on a new legal duty
   D) being found guilty in a criminal case
   E) getting the short end of the deal in a contract

   Answer: C
   Diff: 2
   Topic: Consideration
   Skill: Legal Concepts

38) To meet the contractual requirement, consideration must be:
   A) fair and reasonable according to the reasonable person standard
   B) approximately equal in overall value
   C) such that each party receives a benefit
   D) bargained-for and involve a legal detriment to each party
   E) recorded in writing in the contract

   Answer: D
   Diff: 2
   Topic: Consideration
   Skill: Legal Concepts

39) A promise to deliver merchandise in the future:
   A) is not consideration because the merchandise has not yet been delivered
   B) is not consideration because the person delivering the goods does not necessarily receive
      a benefit for doing so
   C) is consideration because it involves a new legal duty
   D) is consideration so long as the party to deliver the goods received payment before they
      were delivered

   Answer: C
   Diff: 2
   Topic: Consideration
   Skill: Legal Concepts

40) The requirement that consideration be bargained-for means that:
   A) the consideration in a contract must be exchanged simultaneously
   B) the values of the consideration cannot be greatly different between parties
   C) the inducement for each party to give consideration was the consideration of the other
      party
   D) one party determines the consideration to be given by each party

   Answer: C
   Diff: 3
   Topic: Consideration
   Skill: Legal Concepts
41) A promise to refrain from underage drinking in exchange for $10,000:
   A) is just as enforceable as any other promise
   B) is enforceable under a promissory estoppel theory
   C) is not enforceable, as the consideration is illegal
   D) may be enforceable if the recipient is a child

Answer: C
Diff: 1
Topic: Consideration
Skill: Legal Concepts

42) An illusory promise is:
   A) never sufficient to be consideration because it is considered fraudulent
   B) supported by consideration if the acceptance is also illusory
   C) usually considered to be sufficient consideration, although some states will consider it to
      not meet the consideration requirement if the amount and circumstances "shock the
      conscience" of the court
   D) one that a party has to perform if he or she chooses to do so

Answer: D
Diff: 2
Topic: Consideration
Skill: Legal Concepts

43) When a seller promises a buyer to sell to he/she all of an item that it produces, this results in:
   A) an unenforceable illusory contract
   B) an enforceable requirements contract
   C) an enforceable output contract
   D) an enforceable accord and satisfaction
   E) an enforceable contract with an option to cancel

Answer: C
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts
Skill: Legal Concepts

44) Which of the following constitutes legal consideration?
   A) a promise to make a gift
   B) a promise based upon a change in duties and payments
   C) a promise based upon a moral obligation
   D) a promise based upon past consideration
   E) a promise based upon a preexisting duty

Answer: B
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Legal Concepts
45) Which of the following most likely constitutes legal consideration?
   A) a promise to make a gift
   B) a promise to refrain from doing an illegal act
   C) a promise to buy all that the promisor needs of an item with specifying a minimum quantity
   D) a promise based upon past consideration
   E) a promise based upon a preexisting duty

Answer: C
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Legal Concepts

46) If Sam, a high school senior, promises to go to school every day in exchange for an "A" in his history class, his promise will most likely:
   A) be considered illusory
   B) be found to lack consideration as he had a preexisting duty to attend school
   C) be considered de facto
   D) be upheld as entering into a unilateral contract

Answer: B
Diff: 2
Topic: Contracts Lacking Consideration
Skill: Legal Concepts

47) An agreement to settle an earlier contract that was in dispute is:
   A) an illusory promise
   B) a putout contract
   C) a novation
   D) the exercise of an option to cancel
   E) an accord and satisfaction

Answer: E
Diff: 2
Topic: Settlement of Claims
Skill: Legal Concepts
48) Two friends, Ann and Mary, are having margaritas at happy hour. There had been no discussion of who would pay for the drinks. After the third round of drinks, Ann said, "I will pay for everything tonight including your drinks." A couple of minutes later, Ann says, "I've changed my mind. I just remembered that they might be having layoffs at my job tomorrow." Mary wants to force Ann to perform on her promise and threatens to sue. In this circumstance, a court would:

A) not require Ann to follow through on the promise because it was a gratuitous promise
B) require Ann to follow through on the promise under the doctrine of promissory estoppel
C) require Ann to follow through on the promise if Mary had previously paid a comparable amount for food or drinks consumed by Ann
D) require Ann to follow through on the promise if it would be a hardship for Mary to pay for her own drinks
E) not require Ann to follow through on the promise because it would encourage Mary to drink

Answer: A
Diff: 3
Topic: Consideration
Skill: Factual Application

49) Jean had just received a promotion and substantial raise. Jean felt her raise would give her much more spending money, thus she planned to buy a new sports car. Jean felt she did not need to worry about receiving the best price for her old car, which she thought was worth about $3,000. She sold the car for $500. In fact, the car was worth $5,000, and Jean had not taken into account the additional taxes on her extra income. Jean also decided that for a single mother a sports car would not be very practical. Jean wanted to return the $500 to the purchaser and get her car back. Assuming that Jean will return the $500 to the buyer, Jean can:

A) get her car back if the buyer knew that Jean should not have planned to get a sports car
B) get her car back if Jean can prove that the buyer knew the car was worth many times what he paid for it
C) not get her car back because the court would not inquire into the difference in the value of the consideration
D) get the car back based solely on the disparity in the price and value
E) not get the car back if the buyer had relied on getting a bargain price, but if the buyer could not prove that, Jean could get the car back

Answer: C
Diff: 2
Topic: Consideration
Skill: Factual Application
50) Seasonal Selections, Inc. enters into a contract with Arthur's Tree Farm to purchase all of the balsam fir tree boughs that it will need to make Christmas wreaths for the Christmas season. This contract is:

A) an illusory contract
B) an outputs contract
C) a requirements contract
D) a void contract based on illegal consideration
E) based on a promise that lacks consideration

Answer: C
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts
Skill: Factual Application

51) Lode Mines enters into a contract with Ajax Photo Labs, whereby Ajax agrees to purchase all its requirements of silver needed for photo finishing during the next year, from Lode, at $4.00 per ounce. Over the last 4 years, Ajax has used an average of 10,000 ounces of silver per year. Lode only produces about 15,000 ounces of silver per year. About 2 months into the contract, the price of silver skyrockets to $50 per ounce. Ajax immediately orders an additional 50,000 ounces from Lode. Lode refuses to deliver, and Ajax sues. What is the most likely outcome?

A) Lode wins; requirements contracts are not enforceable because they do not contain a quantity.
B) Ajax wins; requirements contracts are enforceable.
C) Lode wins; even if requirements contracts are enforceable, the parties must act in "good faith," and Ajax is acting in bad faith.
D) Ajax wins; they are acting in "good faith," and this was a risk that Lode assumed.

Answer: C
Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts
Skill: Factual Application

52) There is an existing contract calling for Seller to deliver 1,000 widgets to Buyer. Buyer says to Seller, "I would like to buy 100 additional units at the same price." Seller responds, "We promise to sell you the 100 extra units if we decide not to sell them to other customers." Regarding only the sale of the extra 100 units, which of the following is true?

A) There is no consideration due to an illusory promise.
B) There is no consideration due to a preexisting duty.
C) There is no consideration due to a past consideration.
D) There is consideration due to promissory estoppel.
E) There is consideration due to a legal detriment on both sides.

Answer: A
Diff: 2
Topic: Contracts Lacking Consideration
Skill: Factual Application
53) Lisa enters into a contract with Acme Groceries, Inc., in which she promises to purchase groceries "as she determines appropriate in the future" from Acme, and Acme promises to sell such groceries to Lisa. This is an example of:
   A) adequate consideration; a promise for a promise
   B) an illusory promise by Lisa
   C) an output contract
   D) an option contract
   E) a requirements contract

Answer: B
Diff: 2
Topic: Contracts Lacking Consideration
Skill: Factual Application

54) Worldwide Motor Company promised to buy all its needs, "taking into account tires purchased from other tire companies," for automobile tires from Good Tire Co., and Good promised to sell these tires. The contract also provided that Worldwide could cancel the contract at any time, without penalty, and could buy tires from other manufacturers if it so desired. This contract is:
   A) valid and fully enforceable
   B) unenforceable, because requirement contracts are generally unenforceable
   C) unenforceable, because Worldwide's promise is illusory and there is no mutuality of obligation
   D) unenforceable, because output contracts are generally unenforceable

Answer: C
Diff: 2
Topic: Contracts Lacking Consideration
Skill: Factual Application

55) Frieda is at a Denver Broncos Football game, and she is being bothered by several extremely drunk spectators in nearby seats. She asks a security officer to do something, but the security officer refuses. She then offers the security officer $100 if he'll stop the problem. He agrees, then warns the drunk spectators, after which the problem stops. Frieda refuses to pay the security officer. Is there sufficient consideration in this agreement?
   A) Yes, because the detriment of paying $100 was bargained for.
   B) Yes, because there was one party who suffered a detriment.
   C) No, because this agreement violates public policy.
   D) No, because one of the parties did not suffer legal detriment.
   E) Yes, so long as $100 is a fair price for the services of the security officer.

Answer: D
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Factual Application
56) Caterer agrees with Bride to cater Bride's wedding reception for $12 per plate. On the wedding day, Caterer calls Bride saying that some things have come up, and she will have to charge $16 a plate in order to do the catering. Bride agrees. Which is true?
   A) The $16 is not enforceable because the $12 per plate was past consideration.
   B) The $16 is not enforceable because of a preexisting duty.
   C) The $16 is enforceable if the reason for it was beyond Caterer's control.
   D) The $16 is not enforceable because it means the $12 was an illusory promise.
   E) The $16 is enforceable if Bride could have found another caterer before the wedding.

Answer: B
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Factual Application

57) Ricky signs a 2-year contract to play basketball for the Jolters, for $100,000 per game. Right before a big game, Ricky goes to the owner and says that he will not play unless the owner pays him an additional $5,000 per game. The owner, being desperate, agrees. Now that the season is over, Ricky demands his additional compensation, but the owner refuses to pay. Ricky sues. Which of the following is most likely?
   A) Ricky wins; this is a valid modification of an earlier contract.
   B) Owner wins; contracts can never be modified.
   C) Ricky wins; this is a modification under the UCC which needs no new consideration to be enforceable.
   D) Owner wins; Ricky was under a prior duty to play basketball, so Ricky's new promise is not supported by consideration.
   E) Ricky wins; this is a case of a modification due to unforeseen circumstances, and the modification is enforceable.

Answer: D
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Factual Application

58) Cheryl hired Golden Construction Co. to build a house for her. The plans for the house were complex, and expert workmanship was required. After the house was completed, Cheryl liked it so much that she promised to pay Golden a $4,000 bonus. Later, Golden demanded the money, but Cheryl refused to pay it. Golden sues. What is the most probable result?
   A) Golden wins; the promise was used to entice Golden to do an outstanding job, which is adequate consideration.
   B) Cheryl wins; the promise is based on past consideration.
   C) Golden wins; the promise is based on past consideration, which is legally sufficient.
   D) Golden wins; the promise is based on changed circumstances which makes it enforceable.

Answer: B
Diff: 2
Topic: Contracts Lacking Consideration
Skill: Factual Application
59) Frank is a loyal employee who has spent much time above and beyond the call of duty promoting his employer's company on weekends. Frank's boss says to him, "Because of all this extra work you have done, you'll get a $1,000 bonus next month." Because of this statement, which of the following is true?

A) The company is not obligated to pay him because the consideration is past consideration.
B) The company is not obligated to pay because there was a preexisting duty.
C) The company is obligated to pay because Frank has performed the extra work.
D) The company is obligated to pay because there is an implied-in-law contract.

Answer: A
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Factual Application

60) In which of the following situations have both parties given consideration to support a contract?

A) Pat, an accounting professor, agrees to tutor one of her students in the study of French for $10 per hour.
B) Pat, a police officer, agrees to patrol someone's neighborhood while on duty for $100 a week.
C) Pat, because of the great job that a contractor did in building an addition onto her house last year, promises to give the contractor an extra $1,000.
D) Pat promises to give her mother $100 per month for the next 10 years for all the work that her mother did in raising Pat.

Answer: A
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Factual Application

61) In which of the following situations is there adequate consideration on the part of the promisor to support enforcement of a contract?

A) Bob, a police officer, promises to drive by your house and check on it during his off-duty time.
B) Sam, a first-grade teacher, promises to make sure your child learns his lessons in class for $500.
C) LBM Corporation, at Fred's retirement dinner, promises to pay Fred $2,000 a month during his retirement because of his years of dedication to the company.
D) I promise to buy a bike from you for $400 if I decide I'm going to get a new bike this year.
E) Billy, because of all that his mother did in raising him, promises her that he will buy her a new car.

Answer: A
Diff: 3
Topic: Contracts Lacking Consideration
Skill: Factual Application
62) Farmer Smith hires Joe to drill a new well. Joe looks at the drilling site and quotes Smith a price of $500 for the new well. After drilling a short distance, Joe discovers hard bedrock, which is unexpected in this locality. To drill through this would take substantially more time and cost more. Joe says he will continue, but only if Smith pays him $2,000. Smith agrees. Smith's promise to pay an increased amount is enforceable for what reason?
   A) This is a valid settlement of a liquidated debt.
   B) This is an unforeseen circumstance.
   C) This is a Uniform Commercial Code modification.
   D) This is a preexisting duty.
   E) This is a novation.

Answer: B
Diff: 3
Topic: Settlement of Claims
Skill: Factual Application

63) Ralph is injured in an automobile accident. The other driver pays Ralph $10,000, and Ralph agrees not to sue that other driver. This is an example of:
   A) a liquidated debt
   B) an unliquidated debt
   C) an accord and satisfaction
   D) A and C only
   E) B and C only

Answer: B
Diff: 2
Topic: Settlement of Claims
Skill: Factual Application

64) Mary promises to give her car to her friend. The friend sells his current car for a fairly low price because he is expecting to get a nearly new car from his rich and generous friend, Mary. Mary changes her mind and decides to keep the car. If the friend sues Mary, the court most likely will:
   A) require Mary to give her friend the car because his sale of his car was consideration
   B) require Mary to give her friend the car because Mary made an illusory promise
   C) not require Mary to do anything because this was a gift promise
   D) require Mary to pay damages to the friend for any loss he incurred in connection with Mary not keeping her promise

Answer: D
Diff: 3
Topic: Promissory Estoppel
Skill: Factual Application
65) Shirley promised Jill that she would give her $50,000 if she won the lottery. Shirley later won the lottery and gave Jill $50,000. Shirley later changed her mind and demanded the money back. What happened?
A) Shirley had to give the money to Jill because she promised it in certain terms and Jill was willing to accept.
B) Shirley did not have to give the money, but once she did, Jill did not have to return it.
C) Shirley had to give the money, but Jill had to return it when Shirley asked that she do so.
D) Shirley did not have to give Jill the money, and Jill had to return it.

Answer: B
Diff: 3
Skill: Factual Application

66) Mrs. Potter tells a neighbor child, "Since you have been so good as to mow my lawn this summer without my asking, I am going to give you some money." By fall, she still hadn't paid up. The neighbor child files a breach of contract claim against Mrs. Potter. What will be the result?
A) Mrs. Potter will have to pay the money because the child mowed the lawn.
B) Mrs. Potter will have to pay the money because the contract is only voidable by the minor.
C) Mrs. Potter will not have to pay the money because the promise is illusory.
D) Mrs. Potter will not have to pay the money because the promise is based upon past consideration.

Answer: D
Diff: 3
Skill: Factual Application

67) Buyer executes a requirements contract with seller for the next year. Which statement is true?
A) Seller must sell all product produced to Buyer, and Buyer must buy it all.
B) Seller must sell all product produced to Buyer and no one else.
C) Buyer must purchase all product needed from Seller.
D) Buyer must purchase the entire product that the Seller can produce.

Answer: C
Diff: 3
Skill: Factual Application
68) Why does the law not enforce gratuitous promises? Are there some gratuitous promises which the courts should enforce? Which ones? Are there provisions in the law which take care of these situations?

Answer: The law does not enforce gratuitous promises for a number of reasons. The promisee has usually lost nothing more than an expectation, and thus the court's time should not be used for enforcement. Enforcement of the promises would likely discourage persons from making promises of favors. The doctrine of promissory estoppel enforces gratuitous promises where the promisee would unfairly suffer a loss if the promise were not enforced.

Diff: 1
Skill: Ethics and Policy

69) Courts generally do not examine the adequacy of consideration. Under what circumstances will a court look into the adequacy of consideration in a contract? Should the courts be more proactive or less proactive in this area?

Answer: Generally, the courts look at the consideration where it appears that the party who received a much better bargain might unfairly have taken advantage of the other party.

Diff: 2
Skill: Ethics and Policy

70) Most airline frequent flyer programs contain clauses allowing the airlines to change award levels (e.g., requiring more miles to get a free ticket) or to even cancel the program and all earned benefits without any compensation to the passenger. Is there any problem with consideration here?

Answer: There is probably adequate consideration because the frequent flyer program is only one part of the passenger's overall contract for airline service.

Diff: 2
Skill: Ethics and Policy

71) John Dee, one of the richest people in the world, was walking down the street in New York City, where he saw a man in tattered clothes on a bench. He said to the man, "If you come around the corner with me to the clothing store, I'll buy you a nice suit." Having nothing else to do at the time, the man complied. However, when they got to the clothing store, Mr. Dee changed his mind. The man sued, alleging a unilateral contract had been formed: Mr. Dee had asked for an act, and the man had performed it. Discuss whether this was a unilateral contract or a gift.

Answer: This is probably a gift, because the man's act of going around the corner was merely to facilitate receiving the gift, and the man didn't suffer a legal detriment by foregoing other opportunities.

Diff: 3
Topic: Consideration
Skill: Factual Situation
72) Harry meets his friend, Handy, for a few drinks one Friday afternoon. After a while, the following conversation takes place:

Harry: You know I just bought all the lumber to build a deck on the back of my house. The two builders I've talked to want over $1,000 to build it. That's ridiculous!
Handy: No kidding! I could do it for less.
Harry: Really? Do you know how? How much would you charge?
Handy: I pretty much know how right now and could figure out the rest. I don't know how long it would take, so I don't want to give a fixed price. But I'd do it for $10 an hour.
Harry: That's OK, so long as it doesn't take over 80 hours. Otherwise, I might as well pay one of those guys I talked to.
Handy: OK.

Handy builds the deck while Harry is out of town. Harry sees the deck when he returns and is happy until he notices that the support posts are not placed in concrete as they are on most decks. He contacts Handy and they have the following conversation:

Harry: Those posts should have been placed in concrete!
Handy: Probably, but this will probably be good enough.
Harry: Well, I want them in concrete.
Handy: I'll redo it if you want me to. It will take another 20 hours.
Harry: I don't care! I want it done right.

Handy finishes the job and presents Harry with a bill for $900, $750 for the original 75 hours, and $150 for the time spent redoing the job. Harry wants to pay only the $750 but Handy claims he is entitled to the full amount. Discuss the arguments and strengths of each side's case if it should go to court.

Answer: In the first agreement, there was probably a meeting of the minds and consideration on both sides. Analyzing the second agreement requires knowing exactly what was agreed to in the first. That would determine whether in the second agreement there was a preexisting duty to place the posts in concrete. Also, it is unclear whether Harry agreed to pay for the extra work.
Diff: 3
Topic: Consideration
Skill: Factual Situation
73) Bigbyte is a manufacturer of personal computers. Bigbyte has agreed with Max Harddrives to purchase from Max "all the hard-disk drives we need if we determine that your hard drives will meet our needs in our manufacturing of computers." Bigbyte does testing of the Max drives and other drives of competitors. Bigbyte determines that the drives made by another manufacturer perform somewhat better. Bigbyte then sends a letter to Max stating that "unfortunately we have determined that your drives do not meet our needs and we have decided to purchase elsewhere." Max Harddrives wants to force Bigbyte to stop purchasing disk drives from other manufacturers. Discuss the legal issues.

Answer: This contract appears to be a requirements contract, but the language commits Bigbyte to nothing because of Bigbyte's discretion in deciding if Max's drives meet Bigbyte's needs. Thus, it is most likely an illusory contract, and thus unenforceable.

Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts
Skill: Factual Situation

74) Henry had worked for a local medium-size manufacturer for over 30 years. A couple of weeks before he retired, the company director of human resources told Henry that the company would pay for health insurance for Henry and his wife for the remainder of his life, and for his wife's life if she were to survive him. He then received a letter from the company describing this. Henry had always known that the company provided this benefit to a few of its select employees. Henry didn't really expect that he would receive it, although he had secretly hoped so for some time. Four years after retirement Henry contracted cancer and incurred substantial medical bills under his insurance plan. Henry then received a letter from his former employer saying that the employer was discontinuing its payment of health insurance for those retirees who were receiving this benefit. Henry is considering suing the company to force it to live up to its agreement. Discuss the issues and likely resolution of Henry's case.

Answer: The company's promise to Henry was made after Henry had performed his services for the company and thus would be past consideration. Because this was past consideration, Henry could not enforce the promise unless he could prove the elements of promissory estoppel. He would have to prove that he relied on the promise and that he would suffer a loss if the promise were not enforced. If Henry could obtain different health insurance at this point, he would likely lose the case. If he could not now obtain health insurance, but could have obtained it at the time he retired, his reliance (by not getting his own policy) on the company's promise would entitle him to a remedy. Likewise, if he had to pay more now than he would have if he had acquired a policy at the time of his retirement, he could recover that difference.

Diff: 2
Topic: Special Issues Concerning Consideration in Business Contracts
Skill: Factual Situation
75) Discuss whether the agreements reached in each of the following situations is enforceable.

a. Mark is the owner of A-1 Construction. He agrees to construct an addition to a client's home for a total contract price of $45,000. When the addition is completed, the homeowner complains about the quality of the workmanship and refuses to pay the full contract price. Mark talks to the homeowner and Mark agrees to accept a payment of $43,000 rather than the $45,000 in the original contract.

b. Mark is the owner of A-1 Construction. He agrees to construct an addition to a client's home for a total contract price of $45,000. When the addition is completed, the homeowner says he is short of money and can only pay Mark $43,000 even though he is satisfied with the work. Mark agrees to accept the payment.

Answer: The first agreement is enforceable, because it is an accord and satisfaction to settle a dispute for an unliquidated obligation. The second agreement lacks consideration, because there is no dispute. The homeowner has a preexisting duty to pay $45,000. There is no consideration for Mark's acceptance of the lesser amount, and if he wanted to, Mark could sue the homeowner for the unpaid amount.

Diff: 2
Topic: Settlement of Claims
Skill: Factual Situation
1) The most prevalent age of majority for contractual purposes in the United States is 18 years of age for both males and females.

Answer: TRUE
Diff: 1
Topic: Minors

2) In most states, if a minor misrepresents her age when entering into a contract, that contract cannot be disaffirmed.

Answer: FALSE
Diff: 1
Topic: Minors

3) To disaffirm a contract, a minor must act before reaching the age of majority.

Answer: FALSE
Diff: 2
Topic: Minors

4) Minors are liable for the contract price of any necessaries of life for which they contract.

Answer: FALSE
Diff: 2
Topic: Minors

5) Each state has its own list of the items that are considered necessaries and such a list would then apply to all minors in that state.

Answer: FALSE
Diff: 2
Topic: Minors

6) What constitutes a necessity for a minor will depend on the particular minor's own individual circumstances.

Answer: TRUE
Diff: 2
Topic: Minors
7) The adult party to a contract with a minor has the option of choosing whether to enforce the contract.

Answer: FALSE
Diff: 1
Topic: Minors

8) Under the infancy doctrine, a minor can disaffirm a contract by his actions.

Answer: TRUE
Diff: 1
Topic: Minors

9) A minor may not affirm one part of a contract and disaffirm another part.

Answer: TRUE
Diff: 2
Topic: Minors

10) A minor's ratification of a contract must be express and cannot be implied.

Answer: FALSE
Diff: 2
Topic: Minors

11) Generally speaking, a minor must return goods or property he or she has received from the adult in the condition it is in at the time of disaffirmance.

Answer: TRUE
Diff: 1
Topic: Duties of Restoration and Restitution

12) Even though a minor returns goods or property received from the adult at the time the minor disaffirms the contract, the adult is under no duty to place the minor in the status quo.

Answer: FALSE
Diff: 2
Topic: Duties of Restoration and Restitution

13) A minor may not ratify a contract.

Answer: FALSE
Diff: 1
Topic: Duties of Restoration and Restitution
14) A minor may still be obligated to pay for tools of trade and education.

Answer: TRUE
Diff: 1
Topic: Duties of Restoration and Restitution

15) Parents still owe a legal duty to provide food, clothing, and shelter for their children regardless of emancipation.

Answer: FALSE
Diff: 2
Topic: Duties of Restoration and Restitution

16) If a person is insane at the time of signing a contract, but has not been adjudged insane, that contract is voidable.

Answer: TRUE
Diff: 1
Topic: Mentally Incompetent Persons

17) When a person is adjudged insane, that person loses the ability to enter into contracts.

Answer: TRUE
Diff: 1
Topic: Mentally Incompetent Persons

18) For a person who has alternating periods of sanity and insanity, any contracts made during a lucid interval are enforceable.

Answer: TRUE
Diff: 2
Topic: Mentally Incompetent Persons

19) In most states, if a contract is disaffirmed due to intoxication, both parties must be returned to the status quo.

Answer: TRUE
Diff: 2
Topic: Intoxicated Persons

20) The level of intoxication allowing a party to disaffirm a contract is the same as that considered too intoxicated to legally operate a motor vehicle.

Answer: FALSE
Diff: 2
Topic: Intoxicated Persons
21) A life insurance policy on a complete stranger is considered a gambling contract.

Answer: TRUE
Diff: 1
Topic: Illegality - Contracts Contrary to Statutes

22) All states allow gambling contracts to be enforced in the courts.

Answer: FALSE
Diff: 1
Topic: Illegality - Contracts Contrary to Statutes

23) A contract to discriminate against somebody on the basis of race is illegal because it usually violates state and or federal statutes; if not, it is illegal as being contrary to public policy.

Answer: TRUE
Diff: 2
Topic: Illegality - Contracts Contrary to Statutes

24) Where a contract has been found to violate a specific statute, the goal of contract law is to impose the appropriate criminal penalty on the party or parties found to violate the statute.

Answer: FALSE
Diff: 2
Topic: Illegality - Contracts Contrary to Statutes

25) Someone who is not yet a licensed real estate agent can legally collect a fee for real estate services.

Answer: FALSE
Diff: 2
Topic: Illegality - Contracts Contrary to Statutes

26) A contract must be found to violate a specific statute in order for the contract to be void due to illegal subject matter.

Answer: FALSE
Diff: 1
Topic: Illegality - Contracts Contrary to Public Policy

27) A contract in which one party agrees to get divorced will usually not be enforced even if the contract does not call for the violation of any specific statute.

Answer: TRUE
Diff: 1
Topic: Illegality - Contracts Contrary to Public Policy
28) Exculpatory clauses often are found illegal because they violate state statutes.

Answer: FALSE
Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy

29) A noncompete agreement will be found not to violate public policy so long as it meets the required tests for reasonableness.

Answer: TRUE
Diff: 1
Topic: Illegality - Contracts Contrary to Public Policy

30) An unlicensed contractor who performs services is entitled to payment for his services even if the licensing statute in question is regulatory in nature.

Answer: FALSE
Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy

31) Generally, the courts will not enforce an illegal contract, but will leave the parties where it finds them.

Answer: TRUE
Diff: 1
Topic: Effect of Illegality

32) If a court finds that the subject matter of a contract is not legal, the court will undo the contract and place the parties in the status quo.

Answer: FALSE
Diff: 2
Topic: Effect of Illegality

33) A party who has been induced to enter into an illegal contract because of fraud, duress, or undue influence can sue the other party and recover whatever consideration he has paid.

Answer: TRUE
Diff: 2
Topic: Effect of Illegality

34) A court's only remedy upon finding that a contract is unconscionable is to not enforce it.

Answer: FALSE
Diff: 1
Topic: Effect of Illegality
35) The doctrine of unconscionability is available in most cases when a party has made a bad bargain.

Answer: FALSE
Diff: 1
Topic: Effect of Illegality

36) A law that sets an upper limit on the interest rate that can be charged is unconscionable.

Answer: FALSE
Diff: 2
Topic: Effect of Illegality

37) Generally, which of the following statements relating to contractual capacity is correct?
   A) Persons with full competence make enforceable contracts.
   B) People with limited competence make void contracts.
   C) People with no competence make voidable contracts.
   D) Minors make void contracts.
   E) People who have been adjudicated insane make voidable contracts.

Answer: A
Diff: 2
Topic: Minors
Skill: Legal Concepts

38) A minor buys a car and continues to drive the car for a reasonable time after reaching majority. This action would constitute a(n):
   A) express disaffirmance
   B) implied disaffirmance
   C) express ratification
   D) implied ratification
   E) constructive disaffirmance

Answer: D
Diff: 2
Topic: Minors
Skill: Legal Concepts

39) Generally speaking, the contract of a minor:
   A) must be in writing
   B) is not enforceable by the minor
   C) is void
   D) is voidable at the minor's option

Answer: D
Diff: 1
Topic: Minors
Skill: Legal Concepts
40) The main purpose for making contracts involving minors voidable at the minor's option is:
   A) to protect the minor from unscrupulous adults
   B) to reduce the amount of litigation in the courts
   C) to support the policy of not enforcing gift promises.
   D) to punish adults for entering into contracts with minors
   E) to prevent minors from entering into contracts

Answer: A  
Diff: 2  
Topic: Minors  
Skill: Legal Concepts

41) If a minor wishes to be bound to a contract after becoming an adult, she must:
   A) ratify the contract
   B) disaffirm the contract
   C) give back the goods or services received as a minor
   D) bring an action to verify the contract

Answer: A  
Diff: 1  
Topic: Minors  
Skill: Legal Concepts

42) If a minor buys an item and then disaffirms the contract, and a court orders the minor to merely return the item in its present condition in order to get a refund, this minor has the duty of:
   A) restoration
   B) resuscitation
   C) revocation
   D) restitution

Answer: A  
Diff: 1  
Topic: Minors  
Skill: Legal Concepts

43) In most states, where a minor wants to disaffirm a contract and the minor has caused damage to the consideration received by gross negligence, the minor:
   A) can disaffirm, and owes a duty of restitution to the competent party
   B) can disaffirm, and owes a duty of restoration to the competent party
   C) cannot disaffirm
   D) must pay the reasonable value at the time the contract was entered into

Answer: A  
Diff: 2  
Topic: Minors  
Skill: Legal Concepts
44) Which of the following is NOT true?
   A) A minor can still disaffirm a contract for a reasonable time after reaching majority.
   B) An adult cannot disaffirm a contract made with a minor.
   C) A minor must pay the agreed price on a contract for necessaries.
   D) What constitutes a necessary varies over time and can differ from state to state.

Answer: C
Diff: 2
Topic: Minors
Skill: Legal Concepts

45) Which of the following statements is true?
   A) Restitution is placing the other party back in the position it was in prior to the contract.
   B) Restoration is what a minor is entitled to receive upon disaffirming a contract.
   C) Revocation refers to a party returning the consideration received in a contract.
   D) Rejection can occur only as part of a counteroffer.

Answer: A
Diff: 2
Topic: Minors
Skill: Legal Concepts

46) A computer retailer sells some computer games to a minor. This contract is:
   A) unenforceable
   B) voidable
   C) void
   D) enforceable

Answer: B
Diff: 2
Topic: Minors
Skill: Legal Concepts

47) Which of the following is correct about contracts entered into by insane persons?
   A) Contracts entered into by all insane persons are void.
   B) Contracts entered into by all insane persons are voidable.
   C) Contracts entered into by persons adjudicated insane are void, and those entered into by nonadjudicated insane persons are voidable.
   D) Contracts entered into by persons adjudicated insane are voidable, and those entered into by nonadjudicated insane persons are void.

Answer: C
Diff: 2
Topic: Mentally Incompetent Persons
Skill: Legal Concepts
48) The contract of a person who has been adjudicated insane, but enters into a contract during a lucid interval, is:
   A) void
   B) voidable by the insane person
   C) voidable by either party
   D) unenforceable
   E) valid

Answer: A
Diff: 2
Topic: Mentally Incompetent Persons
Skill: Legal Concepts

49) In order for someone to avoid a contract on the grounds of intoxication, the level of intoxication must have been:
   A) at or above the legal limit
   B) only high enough that he was able to notice it
   C) at least as high as that of the other party
   D) so great that he didn't comprehend the nature of the agreement he was entering into

Answer: D
Diff: 1
Topic: Intoxication
Skill: Legal Concepts

50) Which of the following statements is true regarding contracts made without legal capacity?
   A) The contracts of people who have been adjudicated insane are voidable.
   B) The duties of restoration and restitution are affected by the type of incapacity suffered.
   C) The contracts of people who are minors, insane, or intoxicated are treated the same.
   D) The contracts of people who are insane, but not adjudicated insane, are void.
   E) People who lack capacity due to adjudicated insanity are not even liable for necessaries of life.

Answer: B
Diff: 2
Topic: Intoxication
Skill: Legal Concepts

51) Usury laws are concerned with:
   A) taxes paid
   B) interest charged
   C) uses of the labor force
   D) contract purposes

Answer: B
Diff: 1
Topic: Illegality - Contracts Contrary to Statutes
Skill: Legal Concepts
52) When the provider of a service provides that service without obtaining a required license, with which kind(s) of license(s) can the service provider collect her fee as provided in a contract?
   A) regulatory licenses only
   B) revenue-raising licenses only
   C) with either kind of license
   D) with neither kind of license

   Answer: B
   Diff: 2
   Topic: Illegality - Contracts Contrary to Statutes
   Skill: Legal Concepts

53) Types of contracts that are commonly invalidated include the following EXCEPT:
   A) immoral contracts
   B) contracts in restraint of trade
   C) contracts that impair family relations
   D) contracts to commit a tort
   E) contracts which result in competition with a valid preexisting business

   Answer: E
   Diff: 2
   Topic: Illegality - Contracts Contrary to Public Policy
   Skill: Legal Concepts

54) Which of the following is generally true about exculpatory clauses?
   A) They are not valid with respect to intentional acts.
   B) The test is if they are reasonable in time, scope, and geographic area.
   C) They are usually found to be invalid.
   D) They are not valid for ordinary negligence.

   Answer: A
   Diff: 2
   Topic: Illegality - Contracts Contrary to Public Policy
   Skill: Legal Concepts

55) An exculpatory clause releasing a white water adventure rafting company from liability for all injuries it causes is:
   A) usually valid
   B) usually valid for negligence, not for intentional acts
   C) usually against public policy
   D) an illusory promise

   Answer: B
   Diff: 2
   Topic: Illegality - Contracts Contrary to Public Policy
   Skill: Legal Concepts
56) A contract provision that relieves a party to the contract from liability is known as:
   A) an executory clause
   B) an exculpatory clause
   C) a mitigating clause
   D) a disaffirming clause
   E) a liquidated damages clause

Answer: B
Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Legal Concepts

57) In order to be enforceable, a covenant not to compete must be reasonable in each of the following aspects EXCEPT:
   A) length of time the restriction is in effect
   B) scope (i.e., activities affected) of the restriction
   C) amount paid to the one who gives up the right to compete
   D) geographic area of the restriction

Answer: C
Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Legal Concepts

58) Generally, the courts will not enforce illegal contracts, but there are some exceptions. Which of the following would be exceptions where the courts would enforce the contract or allow some recovery?
   A) An innocent party is excusably ignorant of the fact of illegality.
   B) A person who enters into an illegal contract later withdraws before the illegal act is done.
   C) A person who used duress to get the other party to sign the contract attempts to enforce the contract.
   D) A and C only are true.
   E) A and B only are true.

Answer: E
Diff: 2
Topic: Effect of Illegality
Skill: Legal Concepts
59) Where a contract calls for action that violates a statute, in a breach of contract case the court will:
   - A) impose the appropriate criminal penalty
   - B) ignore the contract and leave the parties where they are
   - C) order both parties to return any consideration received
   - D) order payment so that the parties to the illegal contract share any losses equally
   - E) order the parties to change the terms of the contract such that it becomes legal

   Answer: B
   Diff: 2
   Topic: Effect of Illegality
   Skill: Legal Concepts

60) Under common law, the parties to an illegal contract were considered to be:
   - A) in pari delicto
   - B) victims of the more powerful party
   - C) in an adhesion contract
   - D) in an unconscionable contract

   Answer: A
   Diff: 1
   Topic: Effect of Illegality
   Skill: Legal Concepts

61) If a contract or contract clause is found to be unconscionable, the courts can do which of the following?
   - A) refuse to enforce the contract
   - B) refuse to enforce only the unconscionable portion
   - C) limit the application of the unconscionable portion
   - D) A, B, and C
   - E) B and C only

   Answer: D
   Diff: 2
   Topic: Unconscionable Contracts
   Skill: Legal Concepts

62) Which of the following is NOT one of the needed elements of an unconscionable contract?
   - A) parties possessing severely unequal bargaining power
   - B) the dominant party's unreasonable use of that bargaining power to obtain oppressive or
     manifestly unfair terms
   - C) an unreasonably short period of time for the oppressed party to perform
   - D) no reasonable alternative for the oppressed party

   Answer: C
   Diff: 2
   Topic: Unconscionable Contracts
   Skill: Legal Concepts
63) Marsha bought a car from Indy Auto Sales when she was 16. Marsha's parents had given their consent for Marsha to purchase the car. However, in order to buy the car, Marsha lied about her age. A few months later, Marsha was intoxicated, driving too fast, and caused an accident with Mr. Jones. Marsha's car was totally destroyed, and Mr. Jones' car was badly damaged. Marsha wishes to minimize her liability for this accident. Which of the following best describes this situation?

A) Marsha can disaffirm the auto sales contract, get back all her money, and disaffirm any damage done to Mr. Jones because she is a minor.
B) Marsha can disaffirm the auto sales contract and get back all her money, but she is still liable to Mr. Jones for damages.
C) Because Marsha's parents consented to Marsha buying the car, Marsha cannot disaffirm the contract.
D) Because Marsha's parents consented to Marsha buying the car, they are liable to both Indy Auto Sales and Mr. Jones.

Answer: B
Diff: 3
Topic: Minors
Skill: Factual Application

64) A minor, unable to live at home, contracts to rent an apartment for one year at $600 per month. After living there for three months, he disaffirms the contract. The reasonable value of that apartment was only $500 per month. Assuming no rent has been paid, the minor must pay which of the following?

A) Nothing; the contract has been disaffirmed.
B) $1,800; the contract rate for three months.
C) $1,500; the reasonable value for three months.
D) $7,200; the contract rate for one year.
E) $6,000; the reasonable rate for one year.

Answer: C
Diff: 3
Topic: Minors
Skill: Factual Application
65) Mary, age 16, buys a car from Friendly Auto Dealers. She pays $1,500 for the car. It turns out that the car is really worth $2,500. Friendly wants to disaffirm the contract and get the car back. Which of the following best describes this situation?
   A) This is a valid, enforceable contract because a car is a necessity.
   B) Because Mary is a minor, this contract is void and Friendly can get back the car by paying Mary $1,500.
   C) Because Mary is a minor, this contract is voidable and Friendly can get the car back by paying Mary $1,500.
   D) Because Mary is a minor, this contract is voidable, but only at the option of Mary, not at the option of Friendly.
   E) Because Mary has driven the car, the contract cannot be disaffirmed.

Answer: D  
Diff: 2  
Topic: Minors  
Skill: Factual Application

66) Bob, a 16-year-old minor, buys a snowmobile from Sam, an adult, for $2,000. Bob uses it for 2 months and then advertises the snowmobile for sale for $3,000 but has not yet sold it. At this point, which of the following is true?
   A) Bob can still disaffirm the contract.
   B) Either Bob or Sam can disaffirm the contract.
   C) Bob has ratified the contract by trying to sell the snowmobile.
   D) Bob has ratified the contract by using the snowmobile for 2 months.

Answer: A  
Diff: 3  
Topic: Minors  
Skill: Factual Application

67) Sid is a 15-year-old sophomore at East High School. He purchases a computer at a local store for a computer class, but wants to return it after using it for a couple of weeks because his classmates have nicer computers than his and he wants to get one of the better models. Sid can:
   A) not return the computer because he ratified the contract by using the computer
   B) not return the computer but only be liable for its fair value if the computer is considered to be a necessary
   C) not return the computer because Sid should not have entered a contract as a minor, and because he did, he will be treated as an adult
   D) be required to return the computer whether he wants to or not because minors cannot enter into contracts

Answer: B  
Diff: 3  
Topic: Minors  
Skill: Factual Application
68) Mike, who is 16 years old, buys a motorcycle from Cycle Sellers, Inc. Assume that Mike pays $5,000 and that the fair value of the motorcycle at the time of purchase is $4,500. Which of the following is true?
   A) This is an illegal contract because Mike is a minor.
   B) This contract is void because Mike is a minor.
   C) Even if Mike signs a statement as part of the contract that states, "I agree not to disaffirm this contract," Mike may nonetheless disaffirm when he is 17 years old.
   D) There was probably undue influence involved with this contract since Mike is a minor and the price charged was greater than the fair market value.
   E) If a court decides that the motorcycle is a necessary, Mike will be obligated to pay the $5,000.

Answer: C
Diff: 3
Topic: Minors
Skill: Factual Application

69) Sally and Jeff are both minors. Sally buys Jeff's motorcycle for $1,000, its reasonable value. Jeff spends $700 of this money. Later, Sally wrecks the motorcycle and it is a total loss. Sally wants her money back. Which of the following best describes this situation?
   A) Because Sally and Jeff are both minors, the contract is valid and fully enforceable.
   B) If Sally voids the contract, she must give Jeff back the wrecked motorcycle and $1,000.
   C) If Sally voids the contract, she must give Jeff only the wrecked motorcycle.
   D) The court will determine the relative sophistication of Jeff and Sally, and the one with the lesser sophistication will be allowed to void the contract.
   E) If Sally voids the contract, Jeff must return to her the entire $1,000.

Answer: C
Diff: 2
Topic: Minors
Skill: Factual Application

70) Julie buys an auto from John when she is 17. When she turns 21, Julie decides that she does not want the automobile. The age of majority in Julie's state is 18. Can Julie disaffirm this contract?
   A) Yes; all contracts made while a minor may be disaffirmed.
   B) Yes; Julie has a "reasonable time" after reaching majority to disaffirm this contract, and she acted within a "reasonable time."
   C) No; Julie had a "reasonable time" within which to disaffirm the contract, but a "reasonable time" has passed.
   D) No; to disaffirm the contract, Julie must have acted before she turned 18. Now it is too late.

Answer: C
Diff: 2
Topic: Minors
Skill: Factual Application
71) At age 16, Phil bought a car from Acme Auto Co. for $2,500. Phil drove the car for about six months, and then he had an accident. The damage to the auto was $1,500. In addition, the value of the auto before the accident was only $2,000. The accident was not Phil's fault. Phil wishes to disaffirm the contract. Which of the following best describes this situation?

A) Because the car was damaged, Phil cannot disaffirm the contract.
B) Phil can disaffirm the contract, but he can recover only $500 of his money.
C) Phil can disaffirm the contract, but he can recover only $2,000 of his money.
D) Phil can disaffirm the contract and recover the entire $2,500.
E) Phil can disaffirm the contract, but he must first have the car repaired.

Answer: D
Diff: 3
Topic: Minors
Skill: Factual Application

72) Arthur had been adjudicated insane. During his period of insanity, Arthur sold some unimproved real estate to Katrina for $5,000, its fair value. Katrina did not know that Arthur was insane. In fact, he acted perfectly normal in every way. Arthur spends this $5,000. Arthur's guardian learns of this transaction and sues to void the contract and recover the land. What results?

A) Because Arthur was acting normally, and because Katrina did not know of his insanity, the contract is valid.
B) The guardian can get the land back, but Arthur must pay Katrina the $5,000.
C) The guardian can get the land back, but since Arthur has spent the $5,000, Arthur does not need to give anything back to Katrina.
D) Because Arthur received the fair value for his land, the contract cannot be voided.

Answer: B
Diff: 3
Topic: Mentally Incompetent Persons
Skill: Factual Application

73) Mary is a bartender at a local pub. The state in which Mary works requires all bartenders to be licensed. No special education or experience is required, but one must pay $25 per year for the license. Mary was not aware of this, so she did not obtain a license. When her boss found out about this, he refused to pay Mary for the two weeks of work that she had done. Mary sues. What results?

A) Because this is an illegal contract, the courts will not enforce it.
B) Because Mary violated a regulatory statute, the contract is illegal.
C) Because this is a revenue raising statute, Mary can collect her wages.
D) Because this is a revenue raising statute, Mary cannot collect her wages.
E) Because this type of licensing is unconstitutional, Mary can collect her wages.

Answer: C
Diff: 3
Topic: Illegality - Contracts Contrary to Statutes
Skill: Factual Application
74) John hires Jane to steal a particular type of car for him. Jane demands $2,000 payment in advance, which John pays. Jane does not deliver the stolen car at the appointed time. John sues Jane. Which of the following is most likely?
   A) The courts will order Jane to return the $2,000.
   B) The courts will order Jane to deliver a car like she promised to steal for John.
   C) The courts will order Jane to pay John back the $2,000.
   D) John has his choice of either B or C.
   E) The courts will not do anything.

Answer: E  
Diff: 1  
Topic: Illegality - Contracts Contrary to Statutes  
Skill: Factual Application

75) Andrea is a real estate agent; however, she does not have a license as required by statute. Andrea sells a piece of property for George, but George refuses to pay her the agreed commission. Andrea sues George. What results?
   A) If the licensing statute is a regulatory statute, Andrea cannot collect her commission.
   B) If the licensing statute is a revenue-raising statute, Andrea cannot collect her commission.
   C) No matter what kind of statute, Andrea cannot collect her commission.
   D) No matter what kind of statute, Andrea can collect her commission.

Answer: A  
Diff: 2  
Topic: Illegality - Contracts Contrary to Statutes  
Skill: Factual Application

76) Bob sells Frank some cocaine, but Frank thinks he received baking soda. In this case:
   A) This contract is voidable by either party because it is illegal.
   B) The court in this suit could impose a criminal penalty against either party.
   C) Frank will win the suit because he is a victim of fraud.
   D) The court won't order either party to pay the other, regardless of whether Frank has already paid Bob.

Answer: D  
Diff: 2  
Topic: Illegality - Contracts Contrary to Statutes  
Skill: Factual Application
77) The courts have very broad powers to enforce or not enforce certain types of contracts. Which of the following statements best describes this power?

A) Contracts that are contrary to public policy are well defined by statutes.
B) The determination of what is unconscionable is very well established and follows very clear standards.
C) Exculpatory clauses and noncompete agreements sometimes violate public policy and sometimes do not.
D) To be contrary to public policy, the contract must violate a statute.

Answer: C

Diff: 3

Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application

78) A computer that is the subject of a contract has the capability to be programmed to embezzle funds in a way that no other computer is able to do. The contract to sell such a computer:

A) Might be considered an illegal contract that is void as against public policy even if there is no statute prohibiting the sale of such a computer.
B) Is voidable if the court determines that this contract is illegal.
C) Must be in writing, regardless of the cost of the computer.
D) Will result in embezzlement charges against the seller.

Answer: A

Diff: 2

Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application

79) You and Gary enter a contract where you will receive $1,000 if you tamper with a slot machine in the "Bye-Bye Bucks Casino" in Las Vegas so that Gary can make it pay out a jackpot whenever he wants it to. You perform your part of the contract, but Gary doesn't pay. In your breach of contract suit against Gary, the court will:

A) find you guilty of tampering with a gaming device (assuming it is illegal to do so)
B) make him pay you if he has benefited from making the machine pay out
C) make him pay you regardless of whether he has received any payouts because you have performed your part of the contract
D) ignore the contract and dismiss the case

Answer: D

Diff: 2

Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application
80) When Harry met Sally last month, he fell in love. Unfortunately Sally did not. He has appeared at her door twice daily since then to ask her to go on a sailing vacation. Sally has repeatedly told Harry to leave her alone, but he ignores that. Finally, Sally said, "I'll give you $100 if you never come here again." Harry left Sally alone for two months and then demanded the $100, which Sally refuses to pay. Which is true?

   A) This is an illegal contract because it requires the parties to violate a statute.
   B) Sally is obligated to pay because Harry has lived up to his end of the deal.
   C) To be paid, Harry must prove beyond a reasonable doubt that he has left Sally alone.
   D) A court would likely find that no contract exists between Harry and Sally.
   E) Harry cannot collect from Sally because they said "never" and only 2 months have passed.

Answer: D
Diff: 3
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application

81) On your first spring break, you go in a bar after reading a large sign outside saying, "Beers $1.00 each all night long. If you can drink 30, they're all free we'll pay for a taxi." You pay for your beers as you drink, and you manage to drink 30 beers. The bar agrees that you drank 30 beers, but refuses to refund your money. You sue the bar. Which is most likely true?

   A) This contract is voidable by the bar if you get so intoxicated while drinking the 30 beers that you don't comprehend the nature of what you are doing.
   B) The sign is an offer for a bilateral contract because both you and the bar must do something.
   C) A court would ignore this contract on the basis of illegality even if it does not violate a specific statute.
   D) There is no consideration on your part if you don't pay for the beer.

Answer: C
Diff: 3
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application
82) Lisa has been a dentist in Elmville for several years. She is now ready to retire and she sells her practice to Angie. As part of the sales agreement, Lisa agrees not to practice dentistry within 20 miles of Elmville for a period of three years. After 2 years, Lisa is bored, so she opens up a dental practice in her home. This practice is very small and Lisa wants to keep it that way. Angie sues on the noncompete agreement. What is the most likely result?

A) This agreement is fully enforceable.
B) This agreement is not enforceable because agreements in restraint of trade are never enforceable.
C) This agreement is not enforceable because it is not ancillary to an employment agreement.
D) This agreement is not enforceable because it is unreasonable as to area.
E) This agreement is not enforceable because it is unreasonable as to time.

Answer: A
Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application

83) Juan owns a house in a poor area of a large city. A salesman visits his home, selling aluminum siding. Juan buys and signs a contract, which calls for a price of $25,000 to be paid in monthly installments of $500 for 20 years. Juan only earns $700 per month. In addition, Juan's home is only worth about $35,000. The aluminum siding put on is worth no more than $1,500. Juan speaks and reads very little English and Juan thought he was signing a receipt for a free gift. Which of the following best describes this contract?

A) The contract is fully enforceable as written.
B) The contract is unenforceable because it is unconscionable.
C) The contract is unenforceable because it is illusory.
D) The contract is unenforceable because it is exculpatory.

Answer: B
Diff: 2
Topic: Unconscionable Contracts
Skill: Factual Application

84) Cedric watches a great number of legal shows on television. As practicing law looks pretty simple, he holds himself out as an attorney and begins drafting wills. He pulls some forms from the internet and prepares a will for Mr. Wilson. Mr. Wilson accepts the will, but later refuses payment. Cedric files a lawsuit on his own behalf. What is the most likely result?

A) Cedric will be entitled to payment because the work was performed and accepted.
B) Cedric will not be entitled to payment because Cedric has violated regulatory statutes.
C) Cedric will not be entitled to payment because the he did not prepare the will, but instead used forms from the internet.
D) Cedric will not be entitled to payment because he did not demand payment at the time that Mr. Wilson accepted the will.

Answer: B
Diff: 2
Skill: Factual Application
85) Anthony contracted with a company to participate in a shark feeding excursion. He signed an exculpatory clause as one of the contract provisions at the time that he signed up. He was later injured by a shark during the dive. He wants to sue the company for his injuries. What is the most likely result?
   A) The company will be liable because it is engaging in an ultra-hazardous activity.
   B) The company will be liable because it has an absolute duty to protect guests.
   C) The company will not be liable because everyone knows that sharks are dangerous.
   D) The company will not be liable because the exculpatory clause will most likely release the company from liability.

Answer: D
Diff: 2
Skill: Factual Application

86) Gertrude wants to buy a new car, but is short of money. She promises the salesperson that she will grant him sexual favors for the next year if he will give her an automobile. He agrees. She later changes her mind, and he seeks to enforce the contract. How will a court most likely rule on the matter?
   A) It is a valid contract.
   B) It is an illegal contract in violation of public law.
   C) It is a void contract in violation of public policy.
   D) It is a contract that may be voidable by Gertrude.

Answer: C
Diff: 2
Skill: Factual Application

87) Bob is 16 years old and recently purchased a car. His father also signed the contract. In May, Bob started a lawn care business, and purchased two lawn mowers, one each from two different stores. Bob used both of the lawn mowers for several months without any problems. Then he began having trouble with the mower he bought from store A. The store made repairs and the mower seems to be working properly, although he was without that mower for two weeks. Although he has had no trouble with the mower from store B, he recently learned that the price of $800 that he paid was $200 more than the mower was worth. It is now October and Bob has decided that he wants to disaffirm both of the contracts for the mowers. Discuss the cases.

Answer: Bob's ability to disaffirm is independent of whether the contracts have been breached by the other party. The main issue is whether the mowers are considered a necessity for Bob. On one hand they are a necessity for running his business, but on the other it is not necessary that he have this business. If they are a necessity, Bob could not disaffirm either contract. From Store A, he could only recover any damages from the breach, and from store B he could recover the amount he paid in excess of fair value. If not a necessity, he could disaffirm and would be entitled to receive restitution. In a few states, the amount he received might be reduced for the value of his use, given that the property was used for a profit in a business.

Diff: 2
Topic: Minors
Skill: Factual Application
88) Ginger is a Certified Public Accountant in practice by herself in Centerville. She merges her practice with that of Heap, Big, and Co. Part of the merger agreement states that if Ginger should ever leave Heap, Big, and Co., she promises not to practice public accounting in Centerville for a period of five years after leaving. Discuss the requirements for a valid covenant not to compete and discuss whether or not this particular covenant is enforceable.

Answer: This is likely reasonable in terms of line of business and geographic area, although five years might be too long. On the other hand, if this prevents her from being able to earn a living, it might not be enforced.
Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application

89) Foremost Company is a national company that installs computers for major corporations. In all of its contracts, there is a clause that states that Foremost is not liable for damages caused by the negligent installation of the computers. Foremost also operates a factory where the computers are made. Many people work in this factory and every employee is required to sign a release whereby Foremost is absolved from any liability for damages caused by its negligence. Discuss the requirements for an exculpatory clause to be valid and discuss whether these two particular clauses are enforceable.

Answer: The first is probably enforceable because it was negotiated between businesses. The second would not be enforceable because of the unequal bargaining power of the parties. More importantly, workers compensation laws would prevent it from being effective.
Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application
Harry and Wanda have been married for 10 years, and while it might not have been wedded bliss, it hasn't been bad either. Harry, meanwhile, has developed a romantic interest in someone else. Wanda dearly loves Harry and fears that he will leave her. Furthermore, she fears that raising their three children on her own will be too much. After much discussion and a couple of those expensive bottles of wine that come with a cork, Wanda and Harry sign the following agreement:

1. I, Harry, will no longer have any association with Doris, who I admit to spending too much time with, given that I am married.
2. I, Harry, will help Wanda in the raising of our three children.
3. I, Harry, give up any right to divorce Wanda prior to our children completing their formal education.
4. I, Wanda, will be a loving wife to my dear Harry.
5. I, Wanda, will give Harry $200,000 of the inheritance I received from my late great-aunt, once our children have completed their formal education.

Harry stays married to Wanda, and all three children complete their college education. Harry has sued Wanda seeking a divorce. Harry wants the $200,000, but Wanda does not want to pay it. How would a court analyze this case, and what is the likely outcome? Assume that under the state law where Harry and Wanda live, Harry would have no right to any of Wanda's inheritance before signing the contract.

Answer: The first issue here is consideration. Harry's first promise is consideration if the amount of time he spends with Doris is appropriate, given that he is married to Wanda. If the time is too much, he might be considered to not be giving up a legal right. Wanda's second promise would be consideration. This contract most likely violates public policy. There is also an issue of Harry's (because he is the one who seeks to avoid) intoxication, but more information would be needed.

Diff: 3
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application
91) Fran, a freshman, arrives at college ready to start her first year. Her parents give her $1,000 as an early birthday present because her eighteenth birthday is in October. She purchases the latest appliance from a local store: a compact (size of a file cabinet) combination beer-brewing refrigerator. The compact size allows her to fit it in her dorm room without her Resident Advisor (RA) knowing about it, which is important because such appliances are not allowed in her dorm. Not only is it the size of a file cabinet, it is made to look like one. One hot September afternoon, her RA notices her dispensing a beer and discovers that the file cabinet is in reality a microbrewery. The following conversation takes place:

RA: You have 24 hours to get that out of here!
Fran: But then it'll be a hassle to get beer.
RA: Yeah, I know what you mean. That sure is convenient. How is the beer?
Fran: It's pretty good. Better even than Snail Ale or Critter Bitter. If you let me keep this here all year, you can have unlimited access, except when I'm sleeping.
RA: It's a deal, so long as you don't tell anyone about it.
Fran: O.K.

Fran soon becomes the most popular person in her dorm. The people coming and going to her room prompt the RA to tell her just after Thanksgiving that she must remove the appliance at the end of the semester. She sues the RA for breach of contract. Discuss the arguments that each might raise and the court's likely resolution.

Answer: Fran has given consideration; the RA likely has not because she gave up no rights of her own. Large crowds may mean that Fran breached. This would be illegal, at least for violating public policy if not considered to violate a statute.

Diff: 3
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application
Billy is an avid bicyclist. Billy would like there to be a paved bike path into his neighborhood, so he contacts Don, who heads up the local city-sponsored bicycle program. Don is in charge of deciding where to locate new bicycle paths using the proceeds of a substantial grant that was recently received. Billy arranges to meet with Don at the Harmonic Convergence Brewpub for a few of their Granola Stout specialty brews. They have the following conversation:

Billy: Don, you know there's no bike path up to my subdivision, Heavenly Hills. There are many people in Heavenly Hills who would like a bike path constructed up that direction.

Don: Yes, I realize that. But there are many areas not yet served by bike paths around town and even though this recent grant is fairly good-sized, it is not unlimited. People are coming out of the woodwork with requests since news of this grant hit the papers.

Billy: Well, as you know, I just shared in the recent lottery jackpot. If you do everything you can to make sure that a path out to Heavenly Hills is included in projects funded by this grant, I can give you a few thousand dollars.

Don: I'll need a thousand up front before I can promise that. But, if you do that, I can promise you that the good people of Heavenly Hills won't be left out of the final plan.

Billy: It's a deal.

Billy then reaches into his bike bag and gets $1,000, which he gives to Don. Billy then leaves $40 on the table to cover the cost of their beer, and rides home. Twelve months later, the final plan is announced and there is no path planned out to Heavenly Hills, although there is a path which is planned to go about halfway from downtown in the general direction of Heavenly Hills. Don sues Billy seeking further payment, and Billy countersues seeking a return of his $1,000. What arguments could each raise, and how would a court likely rule? Discuss contract law principles only.

Answer: Don's promise may be too vague to be the basis of a contract. Don's promise may or may not be a legal detriment. Intoxication was not great here. This contract probably violates public policy.

Diff: 3
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application
93) Don and his son, 12 years old, went on a white-water rafting trip. On the way to where they would join the rafting company for the half-day trip, they stopped in a grocery and picked up some food for snacks along the way. Don did not notice the back of the receipt that noted that the store was "not responsible for any loss or injury resulting from the purchase of merchandise." At the rafting company, he signed a release for his son and himself that the rafting company was "not responsible for any injuries, whether caused negligently, intentionally, or otherwise by the company." On the rafting trip, Don's son fell off the raft, and the guide then pushed Don off to retrieve his son. Don and his son suffered injuries. They also got sick from some fried pork rinds that they purchased at the grocery. Discuss the recovery for these injuries.

Answer: The exculpatory clause related to rafting would apply to the son's injury, if caused by negligence and the state allows a parent to waive the rights of their child. Don could recover because his injury was intentionally caused. Courts are less likely to enforce these clauses for necessary items, like food.

Diff: 2
Topic: Illegality - Contracts Contrary to Public Policy
Skill: Factual Application
13 | GENUINENESS OF ASSENT AND UNDUE INFLUENCE

1) The assent of parties to a contract must be voluntary.

   Answer: TRUE
   Diff: 1
   Topic: Assent

2) Assent may only be demonstrated by words.

   Answer: FALSE
   Diff: 2
   Topic: Assent

3) Assent may still be present even if a party entered into a contract based on mistake.

   Answer: FALSE
   Diff: 2
   Topic: Assent

4) A fraudulent misrepresentation may be used to show that genuine assent was lacking in a parties' contract.

   Answer: TRUE
   Diff: 2
   Topic: Assent

5) When only one party to a contract is mistaken about a material fact that is the subject matter of the contract, that party will not be permitted to rescind the contract.

   Answer: TRUE
   Diff: 2
   Topic: Mistakes

6) Generally, a unilateral mistake allows either party to rescind the contract if the other party knew or should have known that a mistake was made.

   Answer: TRUE
   Diff: 1
   Topic: Mistakes
7) Generally, a mutual mistake does not allow either party to rescind the contract.

Answer: FALSE
Diff: 1
Topic: Mistakes

8) Generally, mistake in value allows for rescission.

Answer: FALSE
Diff: 1
Topic: Mistakes

9) Where two parties contract for the sale of an old violin, but neither party realizes that it is a rare and extremely valuable violin, this is a mutual mistake of fact allowing rescission.

Answer: FALSE
Diff: 2
Topic: Mistakes

10) An ambiguity in a contract will not constitute a mutual mistake of material fact.

Answer: FALSE
Diff: 2
Topic: Mistakes

11) Intentional misrepresentation is commonly referred to as "fraud."

Answer: TRUE
Diff: 1
Topic: Fraudulent Misrepresentation

12) A statement of opinion may form the basis for fraud.

Answer: FALSE
Diff: 2
Topic: Fraudulent Misrepresentation

13) So long as the plaintiff in a fraud in the inducement case actually relied on the defendant's false statement, the reliance element is met.

Answer: FALSE
Diff: 2
Topic: Fraudulent Misrepresentation
14) A prediction, if proven to be incorrect, can form the basis of a fraud case.

Answer: FALSE
Diff: 1
Topic: Fraudulent Misrepresentation

15) Fraud in the inception exists when the misrepresentation occurs at the beginning of negotiations.

Answer: FALSE
Diff: 2
Topic: Fraudulent Misrepresentation

16) Silence is actionable misrepresentation anytime it relates to a material fact.

Answer: FALSE
Diff: 2
Topic: Fraudulent Misrepresentation

17) A misrepresentation of law is actionable if one party to the contract is a professional and should know what the law is and intentionally misrepresents the law to a less sophisticated contracting party.

Answer: TRUE
Diff: 2
Topic: Fraudulent Misrepresentation

18) In order to recover damages for fraud, the innocent party must prove that the fraud caused economic injury.

Answer: TRUE
Diff: 2
Topic: Fraudulent Misrepresentation

19) Ordinarily, silence is not a misrepresentation.

Answer: TRUE
Diff: 1
Topic: Fraudulent Misrepresentation

20) A preexisting relationship is a required element of a duress claim.

Answer: FALSE
Diff: 2
Topic: Duress
21) The threat to bring a criminal charge (lawsuit) or civil lawsuit is duress.

Answer: FALSE
Diff: 2
Topic: Duress

22) The threat to bring a legitimate criminal lawsuit can support a duress claim.

Answer: TRUE
Diff: 2
Topic: Duress

23) Courts do not recognize economic duress as a contract defense.

Answer: FALSE
Diff: 1
Topic: Duress

24) A contract between two parties in a fiduciary relationship, which unduly benefits the dominant party, is presumed to have been made under undue influence.

Answer: TRUE
Diff: 1
Topic: Undue Influence

25) In undue influence, the persuasion by the dominant party must have overcome the free will of the innocent party.

Answer: TRUE
Diff: 1
Topic: Undue Influence

26) No special relationship between the parties is necessary to find undue influence.

Answer: FALSE
Diff: 1
Topic: Undue Influence
27) What is the effect of one party being mistaken about the subject matter of a contract?
   A) The mistaken party can rescind the contract.
   B) Either party can rescind the contract.
   C) Either party can rescind the contract, and the mistaken party can recover damages.
   D) There is no effect.
   E) Neither party can rescind the contract or recover damages.

Answer: E
Diff: 2
Topic: Mistakes
Skill: Legal Concepts

28) Under which of the following circumstances can the mistaken party rescind a contract when there is a unilateral mistake?
   A) The mistaken party first held the mistaken belief prior to entering into the contract.
   B) The mistaken belief is one that a reasonable person would have.
   C) The nonmistaken party was aware of the mistaken party's belief.
   D) The mistake has a material effect on the value of the contract.
   E) The mistake did not become known until after the formation of the contract.

Answer: C
Diff: 2
Topic: Mistakes
Skill: Legal Concepts

29) When both parties are mistaken as to the subject matter of a contract, which of the following is true?
   A) Either party can rescind the contract.
   B) Only the party injured by the mistake can rescind the contract.
   C) Only the party who first discovers the mistake can rescind the contract.
   D) Neither party can rescind the contract.
   E) Either party can rescind the contract or recover damages from the other party.

Answer: A
Diff: 2
Topic: Mistakes
Skill: Legal Concepts
30) Where two parties contract for the purchase and sale of an ordinary item, such as a desk, that unknown to both parties is a rare and valuable example of that item, this is:
   A) a unilateral mistake
   B) a case of fraud in the inception
   C) a mutual mistake of fact
   D) a mistake of value, but not a mistake of fact
   E) a case of fraud by concealment
Answer: D
Diff: 2
Topic: Mistakes
Skill: Legal Concepts

31) A _______ exists if both parties know the object of the contract but are mistaken as to its value.
   A) unilateral mistake
   B) unilateral mistake of value
   C) mutual mistake of a material fact
   D) mutual mistake of a value
   E) mutual mistake of identity
Answer: D
Diff: 1
Topic: Mistakes
Skill: Legal Concepts

32) The case that involved two ships, both of which were named "Peerless," is:
   A) Raffles v. Wichelhaus
   B) Konic International Corp. v. Spokane Computer Services, Inc.
   D) Lucy v. Zehmer
   E) Fisher v. Bell
Answer: A
Diff: 2
Topic: Mistakes
Skill: Legal Concepts
33) The knowledge that a misrepresentation is false is known as:
   A) duress
   B) undue influence
   C) scienter
   D) fraud in the factum
   E) *res ipsa loquitur*

Answer: C  
Diff: 1  
Topic: Fraudulent Misrepresentation  
Skill: Legal Concepts

34) If the seller of a product makes a misrepresentation of law that the buyer relies upon, can the buyer rescind the contract?
   A) Yes; this is considered to be fraud by concealment.  
   B) Yes; this is considered to be fraud in the inducement.  
   C) Yes; this is considered to be fraud in the inception.  
   D) No; each party to the contract is assumed to know the law that applies.  
   E) Not unless the buyer contacted his attorney.

Answer: D  
Diff: 2  
Topic: Fraudulent Misrepresentation  
Skill: Legal Concepts

35) Under which of the following types of misrepresentation is the innocent party usually not able to rescind a contract?
   A) fraud in the inducement  
   B) fraud in the inception  
   C) silence as misrepresentation  
   D) misrepresentation of law  
   E) innocent misrepresentation

Answer: D  
Diff: 2  
Topic: Fraudulent Misrepresentation  
Skill: Legal Concepts
36) In a situation where one party to a contract has lied about the subject matter in order to entice the other party to enter into a contract, the type of fraud that would most likely be present is:

A) fraud in the execution  
B) fraud in the inducement  
C) fraud by concealment  
D) fraud by undue influence  
E) fraud by duress

Answer: B  
Diff: 2  
Topic: Fraudulent Misrepresentation  
Skill: Legal Concepts

37) Where a party was given a document to sign and told that it was one type of document, but in reality was a different legal document, that party would have a claim based on:

A) fraud in the inception  
B) fraud in the inducement  
C) fraud by concealment  
D) fraud by undue influence  
E) fraud by duress

Answer: A  
Diff: 2  
Topic: Fraudulent Misrepresentation  
Skill: Legal Concepts

38) A plaintiff in a fraud case must prove which of the following?

A) misrepresentation of a material fact  
B) intent to deceive  
C) knowledge of the statement's falsity  
D) justifiable reliance on the false statement  
E) All of these are correct.

Answer: E  
Diff: 2  
Topic: Fraudulent Misrepresentation  
Skill: Legal Concepts
39) Which of the following apply to contracts involving fraud?
   A) The innocent party’s assent is not genuine
   B) The misrepresentation was of a past or existing material fact.
   C) The intent to deceive the innocent party can be inferred from the circumstances
   D) All of these are correct.

Answer: D
Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Legal Concepts

40) To be grounds for fraud, a misrepresentation must relate to:
   A) a material existing fact
   B) a any existing fact
   C) a statement of opinion
   D) a past event
   E) a written statement

Answer: A
Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Legal Concepts

41) Which of the following is true about misrepresentations of law?
   A) A misrepresentation of law is usually not a basis to recover because both parties are assumed to know the law.
   B) A misrepresentation of law is treated as fraud in the inducement.
   C) When an expert in the law makes a misrepresentation of law to a less sophisticated party, the misrepresentation is not actionable because each party is presumed to make its own investigation of the applicable law.
   D) A misrepresentation of law is treated as a unilateral mistake.

Answer: A
Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Legal Concepts
42) A party who has been a victim of fraud in the inducement can:
   A) rescind the contract only
   B) collect damages only
   C) rescind the contract or collect damages
   D) force the other party to live up to the agreement, but not rescind the contract or collect damages

Answer: C
Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Legal Concepts

43) Contracts involving fraud and misrepresentation are:
   A) actionable only if in writing
   B) void
   C) valid
   D) voidable

Answer: D
Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Legal Concepts

44) To be actionable for fraud, a misrepresentation must relate to:
   A) a material existing fact
   B) any existing fact
   C) a statement of opinion
   D) a past event

Answer: A
Diff: 1
Topic: Fraudulent Misrepresentation
Skill: Legal Concepts

45) Which of the following statements is true regarding duress?
   A) Threats of blackmail or extortion constitute duress.
   B) The threatened party must prove that she had no reasonable alternative but to enter into the contract.
   C) A threat to not drop a frivolous civil lawsuit constitutes duress.
   D) A and B only are true.
   E) A, B, and C are all true.

Answer: E
Diff: 2
Topic: Duress
Skill: Legal Concepts
46) Which of the following best describes duress?
   A) A situation where a trust relationship has been violated in forming a contract.
   B) A situation where a party has improperly given the other party no alternative but to enter into a contract.
   C) A situation where one party has lied to the other to lead them to enter into a contract.
   D) A situation where, after the contract was negotiated, circumstances have changed so that one of the parties is in a desperate circumstance and cannot reasonably perform.

Answer: B
Diff: 2
Topic: Duress
Skill: Legal Concepts

47) If Brent, a contractor refuses to complete a room addition unless the homeowner pays him an additional $20,000, this may be construed as:
   A) business compulsion
   B) business duress
   C) economic duress
   D) fraud in the factum

Answer: C
Diff: 1
Topic: Duress
Skill: Legal Concepts

48) What is the underlying concern of the economic duress doctrine?
   A) enforcement of the federal antitrust laws
   B) enforcement of the federal securities laws
   C) preventing misrepresentations of law
   D) enforcing certain minimal standards of business ethics
   E) preventing fraud in the inducement

Answer: D
Diff: 2
Topic: Duress
Skill: Legal Concepts
49) Undue influence is characterized by one party being put at a disadvantage in a contract due to:
   A) a party taking advantage of superior knowledge about the subject matter in a contract
   B) a party taking advantage of economic advantage in a transaction
   C) a party taking advantage of it being less urgent for that party to reach an agreement
   D) a party taking advantage of a fiduciary relationship
   E) a party taking advantage of the other party's legal circumstances

   Answer: D
   Diff: 2
   Topic: Undue Influence
   Skill: Legal Concepts

50) Where one party takes advantage of a confidential relationship when entering into a contract, the remedy would be based on:
   A) duress
   B) unconscionability
   C) undue influence
   D) unilateral mistake
   E) fraud in the execution

   Answer: C
   Diff: 2
   Topic: Undue Influence
   Skill: Legal Concepts

51) What is another term for economic duress?
   A) business compulsion
   B) business duress
   C) economic coercion
   D) A and B only
   E) A, B, and C

   Answer: E
   Diff: 2
   Topic: Undue Influence
   Skill: Legal Concepts
52) Jill asks Jack to give her an estimate in the price of building a fence around her orchard. Jack
inspects and measures Jill's apple orchard and gives Jill an estimate of $1,000. Jill agrees to the
price and they sign a contract. Jill, however, had in mind a fence around her peach orchard that is
much larger than the apple orchard on which Jack based his estimate. Jack says he cannot build a
fence around the peach orchard for $1,000, but Jill wants to hold Jack to the $1,000 for a fence
around the peach orchard. Which of the following statements best describes this situation?
   A) This is a case of mutual mistake.
   B) This is a case of unilateral mistake.
   C) This is a case of innocent misrepresentation.
   D) This is a case of fraud.

Answer: A
Diff: 3
Topic: Mistakes
Skill: Factual Application

53) Gerald was a subcontractor, bidding on a contract for XYZ Corp., the general contractor.
When adding up the total of materials and labor, Gerald's secretary made a clerical error with a
total of $45,000 instead of $450,000. Gerald then submitted his bid for $45,000. XYZ accepted
Gerald's bid of $45,000, mostly because all the other bids were over $400,000. When Gerald
learns of his mistake, he tells XYZ that he cannot perform the contract. If XYZ sues to enforce
this contract, what is the most likely result?
   A) The contract is fully enforceable because there was a valid offer and acceptance.
   B) This is a bilateral mistake, so either party can rescind the contract.
   C) This is a unilateral mistake, which can usually be rescinded by the mistaking party.
   D) Because XYZ should have known that this was an error, Gerald will be allowed to
      rescind the contract.
   E) This is a case of economic duress and Gerald will be allowed to rescind the contract.

Answer: D
Diff: 2
Topic: Mistakes
Skill: Factual Application
54) Joanne goes to a garage sale where she finds jewelry for sale. She buys a handful of what appears to be costume jewelry for her daughter to play with. She pays $5 for it. Later, a friend of Joanne happens to see the jewelry and discovers that one piece consists of diamonds and is worth about $2,000. If the seller of the jewelry seeks to rescind this contract, which of the following is true?

A) This is a case of mutual mistake, which allows either party to rescind the contract.
B) This is a case of mutual mistake in value; the contract is fully enforceable.
C) This is a case of unilateral mistake by the seller, who can rescind the contract.
D) This is a case of fraud in the inducement, and the seller can rescind the contract.

Answer: B
Diff: 2
Topic: Mistakes
Skill: Factual Application

55) Mark was shopping for a used car in February. He went to AutoMegaWorld and test drove a used 2000 Tiger XL. While driving the car, he looked at the climate control center and noticed that the temperature lever was marked "cold" at one end in blue and "hot" in red at the other end. Mark assumed that the "cold" marking meant that the car had air conditioning. Mark wanted to finally have an air-conditioned car. He did not discuss air conditioning in any way with the salesperson. Mark bought the car. Later, when Mark was showing his new car to friends, one of them pointed out to him that the car was not air conditioned. In this circumstance, which of the following is true?

A) Mark can avoid the contract on the basis of mutual mistake.
B) Mark can avoid the contract on the basis of unilateral mistake.
C) Mark can avoid the contract on the basis of fraud by concealment.
D) Mark can avoid the contract on the basis of fraud in the inducement.
E) Mark cannot avoid the contract on the basis of his unilateral mistake.

Answer: E
Diff: 2
Topic: Mistakes
Skill: Factual Application
56) Mark was shopping for a used car in February. He went to AutoMegaWorld and test drove a used 2000 Tiger XL. While driving the car, he looked at the climate control center and noticed that the temperature lever was marked "cold" at one end in blue and "hot" in red at the other end. Mark assumed that the "cold" marking meant that the car had air conditioning. Mark wanted to finally have an air-conditioned car. The salesperson did not mention anything about whether this car was air conditioned, but while test-driving the car, Mark commented, "It will be great to have an air-conditioned car." The salesperson heard Mark and knew that the car did not have air conditioning, but said nothing. Mark bought the car. When Mark was showing his new car off to friends, one of them showed him that the car was not air conditioned. In this circumstance, which of the following is true?

A) Mark can avoid the contract on the basis of mutual mistake.
B) Mark can avoid the contract on the basis of unilateral mistake because the salesperson knew that Mark was mistaken.
C) Mark can avoid the contract on the basis of fraud by concealment.
D) Mark can avoid the contract on the basis of fraud in the inducement.
E) Mark cannot avoid the contract on the basis of his unilateral mistake.

Answer: B
Diff: 2
Topic: Mistakes
Skill: Factual Application

57) Beta Construction Company, a subcontractor, understates its bid due to a clerical error. If Acme Construction is the general contractor, can Acme enforce the contract as bid?

A) Yes; if there is no reason to doubt its accuracy.
B) Yes; even if Acme Construction knew there was an error, it can enforce the contract.
C) No; not if the mistake was the result of gross negligence on the part of Beta Construction.
D) No; not if the mistake is so serious that enforcing it would be unconscionable.
E) A and D are correct.

Answer: E
Diff: 3
Topic: Mistakes
Skill: Factual Application
58) Mark was shopping for a used car in February. He went to AutoMegaWorld and test drove a used 2000 Tiger XL. While driving the car, he looked at the climate control center and noticed that the temperature lever was marked "cold" at one end in blue and "hot" in red at the other end. Mark assumed that the "cold" marking meant that the car had air conditioning. Mark wanted to finally have an air-conditioned car. Before test driving any cars, Mark had discussed with the salesperson what he wanted in a car, and mentioned air conditioning as a top priority. Mark and the salesperson had no other discussions about air conditioning generally or in connection with this particular car. When Mark was showing his new car off to friends, one of them showed him that the car was not air conditioned. In this circumstance, most likely, which of the following is true?

A) Mark can avoid the contract on the basis of mutual mistake.
B) Mark can avoid the contract on the basis of unilateral mistake because the salesperson should have known that Mark was mistaken.
C) Mark can avoid the contract on the basis of fraud by concealment.
D) Mark can avoid the contract on the basis of fraud in the inducement.
E) Mark cannot avoid the contract on the basis of his unilateral mistake.

Answer: B
Diff: 2
Topic: Mistakes
Skill: Factual Application

59) You buy a pair of very used skis for $25 from a store in Steamboat Springs. You learn later that Billy Kidd, a famous skier, owned the skis years ago. The store demands that you return them because it did not know that they once belonged to Billy Kidd. Which is true?

A) The store can force you to return them based on mutual mistake.
B) The store can force you to return them based on unilateral mistake.
C) You can be forced to return the skis because you have defrauded the store owner.
D) The store will not be able to force you to return the skis.

Answer: D
Diff: 3
Topic: Mistakes
Skill: Factual Application

60) Francis signs an agreement with Sam on July 21, but 4 days later decides he made a bad deal. Which of the following, if true, will be a legal basis for Francis to get out of the contract?

A) He did not receive a fair price for the goods or services he sold in the contract.
B) The consideration given up by Francis was twice the value of that given up by Sam.
C) Sam breached a contract with Francis last year.
D) Both Sam and Francis are mistaken as to the subject matter of the contract.

Answer: D
Diff: 2
Topic: Mistakes
Skill: Factual Application
61) Barb bought a 1968 Plymouth Valiant with 24,000 miles (the correct mileage) on it from Jolly John's Gently Used Car Sales. John told Barb that this car was used by a little old lady who only used it to go to church on Sundays. A couple of months later, Barb learned that the little old lady's Sunday trips were to the bingo parlor, not to church, and Barb learns that John knew this all along. Based on this information, Barb can probably:
   A) get out of the contract on the basis of fraud
   B) get out of the contract on the basis of undue influence
   C) get out of the contract on the basis of unilateral mistake
   D) get out of the contract on the basis of duress
   E) not get out of the contract based on any of these reasons

Answer: E
Diff: 3
Topic: Fraudulent Misrepresentation
Skill: Factual Application

62) You go to the Cosmic Runners Supply Store in Asheville. The salesperson shows you some shoes and says, "In a race, these shoes pick up the cosmic energy from the runners around you and channel it into your own legs. This causes everyone with these shoes to run twice as fast as in normal shoes." In your next race, you do only slightly better than usual and sue for fraud. Which of the following is true?
   A) You would lose because the statement did not contain a factual assertion.
   B) You would lose because your reliance was not justified.
   C) You would win if most runners do not go twice as fast in the cosmic shoes.
   D) Proving only that the salesperson intended to deceive you is enough to win your fraud case.

Answer: B
Diff: 3
Topic: Fraudulent Misrepresentation
Skill: Factual Application

63) Which of the following, if false, could support a fraud claim?
   A) "These liver and tofu noodles are the best you will ever taste!"
   B) "The beer from this brewery is going to be the best seller in Oregon in the near future."
   C) "Come to Padre Island . . . it has not rained here during March since 1955."
   D) "Come to Padre Island . . . it will not rain here on spring break this year."
   E) "Come fly Smoothie Airlines . . . we will not hit rough air."

Answer: C
Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Factual Application
64) Martha was selling some land she owned in Florida to Mary. Martha told Mary that there was a golf course and swimming pool in the subdivision as part of the development, and that other improvements would be made soon. Martha knew that none of these improvements existed and none were planned. Mary believed Martha and bought the land for $100,000 when it was really only worth $20,000. Mary learns of the error and sues Martha for fraud. Which of the following statements best describes this situation?
   A) Mary cannot recover because the misrepresentation was not of a material fact.
   B) Mary cannot recover because she can prove no damages.
   C) Mary can rescind the contract because this is an innocent misrepresentation, but Mary cannot collect damages.
   D) Mary can rescind or recover damages because this is clearly fraud.
   E) Either party can rescind because this is a case of mutual mistake.

   Answer: D
   Diff: 3
   Topic: Fraudulent Misrepresentation
   Skill: Factual Application

65) Jennifer was shopping at Good Deal Auto Sales. The salesperson showed her one particular car that caught her fancy. The salesperson said that the car was a 1999 model, only had 25,000 miles, had been overhauled one year ago, and was the best buy for the money anywhere in town. Jennifer knew the car was a 1998 model, but otherwise she believed the salesperson. She bought the car. Later it is discovered that the car had 125,000 miles, had been overhauled 14 months ago, and that a better buy existed at another dealer. Each of these things makes the car worth much less than Jennifer paid for it. The salesperson and the dealership knew all these things. Jennifer sues for fraud. Which of the following best describes this situation?
   A) The statement concerning the overhaul is a material misstatement.
   B) The statement concerning the model year constitutes actionable fraud.
   C) The statement concerning being the best buy in town for the money constitutes actionable fraud.
   D) The statement about the mileage constitutes actionable fraud.
   E) Both A and D are correct.

   Answer: D
   Diff: 3
   Topic: Fraudulent Misrepresentation
   Skill: Factual Application
66) Sally is thinking about buying Linda's car. Linda knows that there is a leak in the brake line, and that after driving the car for a few minutes, the brake fluid will leak out and the car will have no brakes. Sally does not ask about it and Linda does not tell her. Sally buys the car, and while driving home, the brakes fail. Sally has an accident and the car is destroyed. Sally sues Linda for fraud to get her money back. Which is true?
   A) This is not fraud, since there was no misrepresentation.
   B) This is not fraud, since there was no reliance.
   C) This is not fraud, since there was no scienter.
   D) Silence in this situation is a misrepresentation.
   E) Silence is never a misrepresentation.

Answer:  D
Diff: 2
Topic:  Fraudulent Misrepresentation
Skill:  Factual Application

67) The owner of a dance studio tells Rupert if he takes just one dance lesson for $50, his life will change forever. Rupert takes the lesson and his life remains the same. The dance instructor's statements could be described as:
   A) statements of fact
   B) fraud in the inception
   C) statements of opinion or sales talk
   D) fraud by concealment

Answer:  C
Diff: 2
Topic:  Fraudulent Misrepresentation
Skill:  Factual Application

68) Bob sees a used car advertised as having 65,000 miles on it, the same as the odometer shows. Bob has the car inspected by a mechanic who says, "I think this car actually has about 100,000 miles on it, but it is in excellent condition." Frank buys the car and the engine fails a month later. Based on this, Frank:
   A) cannot avoid the contract on the basis of fraud
   B) can avoid the contract on the basis of unilateral mistake
   C) can avoid the contract on the basis of undue influence due to the incorrect mileage
   D) can recover from the mechanic on the basis of fraud

Answer:  A
Diff: 3
Topic:  Fraudulent Misrepresentation
Skill:  Factual Application
69) Assuming that all the other elements of fraud are met, which of the following statements, if false, could be used to support a fraud claim?
   A) "This house should be able to withstand any wind Chicago can dish out."
   B) "Before this house was redecorated, every room had very ugly wallpaper."
   C) "Within 10 years, this house will be worth twice the price I am asking for it."
   D) "The furnace was installed within the last five years."
   E) "These window treatments I installed will still be in style in 2005."

Answer: D
Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Factual Application

70) Heidi persuades Iris to buy her used Ford Escort by telling Iris that the car "handles better than any car I have ever owned." Heidi’s statement is:
   A) a material statement of fact
   B) fraud in the inducement
   C) fraud in the inception
   D) economic duress
   E) a statement of opinion

Answer: E
Diff: 1
Topic: Fraudulent Misrepresentation
Skill: Factual Application

71) Donald is looking at a new Porsche Boxster, and the salesman tells him that driving the Porsche should improve his love life. Based on this and the fact that Donald thinks the Porsche is really nifty and swell, he buys the car. Donald sues the dealer because his love life has not improved. Which is true?
   A) Donald can win on the basis of a mutual mistake of fact because both parties were wrong about thinking his love life would improve.
   B) Donald cannot win on the basis of fraud because not all the elements of fraud are met.
   C) Donald can win on the basis of unilateral mistake because he was the only one who really thought his love life would improve.
   D) This contract is void as against public policy because someone named Donald should not be driving a Porsche.

Answer: B
Diff: 3
Topic: Fraudulent Misrepresentation
Skill: Factual Application
72) Kevin disconnects the odometer on his car and then drives it for another 15,000 miles after which he decides to sell it. When Linda inquires about the vehicle, Kevin says "the odometer indicates the car has only 20,000 miles on it." Kevin's statement is:
   A) a statement of opinion
   B) an innocent misrepresentation
   C) a material misstatement of fact
   D) a material misstatement of opinion
   E) a misrepresentation of law

Answer: C
Diff: 1
Topic: Fraudulent Misrepresentation
Skill: Factual Application

73) Robert is a pastor at United Church. One of the members of his congregation, Mrs. Smith, is a very devout believer. Robert convinces Mrs. Smith to sell him her farm for $5,000. The actual value of the farm is $500,000. Mrs. Smith dies and her estate sues to get her farm back. Which of the following best describes this situation?
   A) This is a case of fraud, so the estate can rescind the contract.
   B) This is a case of undue influence, so the estate can rescind the contract.
   C) Unless Robert can prove that there was no undue influence, the contract can be rescinded.
   D) This is not a case of undue influence because there is no fiduciary relationship.
   E) Mrs. Smith is a competent adult and may dispose of her property in any way, and for any price she sees fit.

Answer: C
Diff: 3
Topic: Undue Influence
Skill: Factual Application

74) Bill sells some old books to Marion for a small sum of money. A few weeks later, Marion discovers that the books are quite valuable, worth as much as $50,000. Bill seeks to rescind the contract. What is the most likely result?
   A) Bill may rescind the contract because of his unilateral mistake.
   B) Bill may rescind the contract because of the bilateral mistake.
   C) Bill may not rescind the contract because it is a mutual mistake of value.
   D) Bill may not rescind the contract because more than three days from the date of purchase have elapsed.

Answer: C
Diff: 3
Skill: Factual Application
75) Jay offers to buy a car from Leslie. He requests that she provide receipts and invoices from all repairs made to the vehicle during the past year. She agrees, but does not give him all of the receipts. He later purchases that car and determines that the auto has significant mechanical problems. He should be able to prove a claim of:
   A) Fraud in the Inducement
   B) Fraud in Inception
   C) Fraud by Concealment
   D) Unilateral Mistake

Answer: C
Diff: 3
Skill: Factual Application

76) Betsy told David about some wonderful development property that she owned in Florida. She offered to let him have a significant profit if he would invest in her development. After providing her with several thousands of dollars, David later discovered that there was no investment property in Florida. He should be able to state a claim of:
   A) Fraud in the Inducement
   B) Fraud in the Inception
   C) Fraud by Concealment
   D) Unilateral Mistake

Answer: A
Diff: 3
Skill: Factual Application

77) If someone buys a piece of artwork which neither the buyer nor seller knows is a masterpiece, this is considered a mutual mistake of value. Can the seller rescind such a contract? If, however, a buyer and seller think the piece of artwork being sold is a particular masterpiece, but in fact it is not, this is considered a mutual mistake of fact. Can the buyer in this case rescind the contract? Why is the result different in these two situations? What is different about the two situations that would suggest that they have different outcomes?

Answer: When the parties believe that the item is an ordinary example, the basis of their bargain is "a painting," for example. Even if it turns out to be a masterpiece, it does not change the fact that it is a painting, thus there is no mistake of fact. On the other hand, if the contract is for a "Picasso painting" and it turns out to not be a Picasso, then the subject matter of the contract was not the Picasso painting that the parties mistakenly believed it to be. They had a mutual mistake of fact, and either (although most likely the purchaser) can choose to rescind the contract.
Diff: 2
Skill: Ethics and Policy
78) Assume that someone who has just inherited some artwork wants to sell some of it so he can use the money to buy drugs. He goes to an art dealer and asks the art dealer how much the art is worth. The art dealer can tell that the seller is desperate to sell the artwork, and tells the seller that the art is worth much less than its actual value. Based on this, the dealer negotiates a price and buys the artwork for much less than the seller could have received elsewhere. Were the actions of the dealer ethical in this situation? Can the seller rescind the contract? Should the seller be able to rescind the contract?

Answer: As soon as the art dealer gives information to the seller about the value of the artwork, the dealer runs the risk of a fraud case. Even though the statement is made by the buyer about the seller's item, if factual in nature, it could probably support a fraud case. Here there would be strong argument that any assertion of value is an opinion or prediction rather than a statement of an existing fact. There could also be a question whether it was justifiable for the seller to rely on the buyer's statement of value. Much debate surrounds the question of when it is ethical to take advantage of the other party's limited knowledge or wrong assumptions.

Diff: 2
Skill: Ethics and Policy

79) Why is there a requirement to prove reliance in order to recover for fraud? Why should the law not penalize a person who knowingly makes a false statement, regardless of whether the person to whom the statement is made can prove reliance? Would there be any practical problems if the reliance requirement were eliminated?

Answer: Among other reasons, if there was no reliance, the fraudulent activity, no matter how deplorable, was not the cause of the plaintiff's injury. The requirement that the reliance be justifiable results in the court protecting only those who use reasonableness in deciding which statements to believe. Requiring that reliance be justifiable has the ironic result that extremely outlandish statements will be less likely to support a fraud claim than a less extreme false claim.

Diff: 2
Skill: Ethics and Policy

80) Neil owned a violin that he wanted to sell and Linda wanted to purchase. Both parties thought the violin to be a rare Stradivarius violin. They agreed on a price of $200,000. Later, it was discovered that the violin was just an ordinary violin, the value of which was only $10,000. Linda sues to recover her money. Discuss whether Linda is entitled to the return of her money or any other remedies. Fully discuss the legal theories involved.

Answer: This is a mutual mistake. The contract was for a Stradivarius violin, and both parties believed it to be a Stradivarius. Both parties, however, were mistaken.

Diff: 2
Topic: Mistakes
Skill: Factual Application
81) Nancy was shopping for a new car and had a 1998 Honda Accord to trade in. In the negotiating process, the appraiser at the dealer took her car for a test drive to aid in the appraisal process. Nancy had found a car she liked and began negotiations in earnest. They settled on a price for the new car, with a final agreement contingent on an acceptable amount for the trade-in. When the sales manager brought a contract showing the price of the new car, with the deduction for the trade in, it noted "1999 Accord" as the car traded in. Everything else in the car's description (mileage, etc.) was correct. Nancy noticed this but said nothing and quickly signed the contract. A few minutes later when Nancy went to sign over the certificate of title on her old car, the sales manager said that the deal was off because he had based his trade-in allowance on the car being a 1999 model. Nancy said she would take the deal only as it was, and would not accept a lower trade-in allowance. After some further negotiations, the dealer agreed to grant the trade-in allowance as originally stated. Nancy signed over the title and took the new car home. The next morning, the sales manager called and said that the dealer was rescinding the contract based on the mistake. Discuss the issues and how this case would turn out.

Answer: The original mistake was a unilateral mistake that would normally not allow either party to rescind the contract except for the fact that Nancy, the nonmistaken party, knew of the mistake and did not notify the dealer. However, when the dealer agreed to grant the same amount as trade-in allowance on the 1998 Accord as had been agreed for a 1999 model, a new contract was formed with both parties fully aware of all relevant facts. The dealer cannot rescind at this point.

Diff: 2
Topic: Mistakes
Skill: Factual Application

82) Murphy owned some farmland outside the city. He was interested in selling the land, so he told the first prospective purchaser, Jim, that the state was going to build a bypass around the city that would go directly through this land, making it more valuable. Murphy told Jim that he would like to hold on to the land until the bypass was built, but he needed money desperately. Based on Murphy's statements, Jim bought the land for $2,000 per acre. As farmland, it was worth only $1,000 per acre, but with the bypass, it would be worth $5,000 per acre. Murphy knew that there were no plans for a bypass. Jim learns of this, and sues Murphy. Discuss whether Jim has any grounds to obtain relief in this situation. Discuss fully the legal theories involved.

Answer: Jim likely has a fraud case here. Although the statement relates to a future event, it is an existing fact as to whether there are currently plans to build the road. A court might find that Jim's reliance was not justifiable on the grounds that he easily could have investigated the truth of this statement. A court also might treat this as a misrepresentation of law, and not allow recovery. If Jim could prove all the elements of fraud except intent, he could rescind on the basis of mutual mistake.

Diff: 2
Topic: Fraudulent Misrepresentation
Skill: Factual Application
83) Sam wants to sell his stereo system because one side of his amplifier occasionally doesn't work properly and the cost of repair is so high that Sam wants to get a new stereo. Otherwise, it works well and the sound quality is very good. Sam places an advertisement in the newspaper and Bob comes to look at the stereo. Bob tries it out and likes what he hears. The following conversation then takes place:

Bob: How does it work?
Sam: Listen for yourself. Isn't that sound great?
Bob: Yes, it is. Have you ever had to have it repaired?
Sam: It's never been repaired ... it's just as it came from the factory. Try the CD, the cassette tape, and the tuner. You'll see they all work.

Bob plays a cassette tape and after a few minutes, the sound on the left channel sounds distorted.

Bob: This was sounding great, then all of a sudden it didn't sound right. I know a lot about stereos and that just didn't sound the way it should.
Sam: Try the CD and I'll get another tape.

Bob plays the CD and no further problem occurs. Bob then tries a different cassette tape and no further problem occurs. Bob spends an hour or so playing and testing the stereo system. Sam and Bob then negotiate a price. Bob pays and takes the stereo home only to discover the problem. Bob wants to get out of the contract. Discuss whether Bob can get out of the contract and get his money back.

Answer: The fraud elements are present, although Bob's statement about knowing a lot about stereos, and his inspection of the stereo may negate the reliance element.
Diff: 3
Topic: Fraudulent Misrepresentation
Skill: Factual Application
84) Billy is out in the bars one hot August afternoon and runs into Carl Coach, who coaches the football team where he went to college. Billy invites Carl to join him for drinks, and they have the following conversation:

Billy: I need to talk to you about the upcoming football season. I need you to make sure that the football team wins each game by as much as possible. For each game that the team wins by at least 25 points, I'll give you $1,000.
Carl: I don't know if I can promise that. I don't know if any coach could.
Billy: Well, I'll even give you an extra $500 if it's by more than 35 points.
Carl: That sounds good. I can do that with this team.
Billy: Great! Here's to a good season!

And, they toast pitchers of beer. The team is undefeated that year, winning all but two games by more than 25 points and 3 of them by more than 35 points. The other two games were each won by 20 points. At season's end, Billy has paid nothing to Carl. Carl sues Billy for payment. Billy sues Carl to recover loses caused because of bets he placed in the two games won by only 20 points. Discuss the arguments caused that each has with respect to this agreement and the likely outcome.

Answer: It is unclear what the parties agreed to, and there are also consideration and legality issues. Carl probably had a preexisting duty to have the team do its best. A fraud claim would fail because there was no false statement of an existing fact made by Carl. This contract probably violates public policy.
Diff: 3
Topic: Fraudulent Misrepresentation
Skill: Factual Application
Sandy Student is having difficulties in her advanced accounting class this semester. Sandy, who is a 21-year-old senior, is out consuming green beer on St. Patrick's Day and runs into Professor Debit, who was Sandy's Principles of Accounting professor. Sandy and Professor Debit discuss Sandy's current problems in accounting and have the following conversation:

Sandy: I just don't get it. I really know the material, I don't know how I got a "D" on the first exam. Professor Consolidation's exams are so hard.
Debit: I know that. I know a little about how Professor Consolidation makes up those exams. We've team-taught that course in the past. And, we see each other often. I'll tell you what I can do if you like. Before each of the remaining exams, we'll get together and I'll tell you exactly what you need to know to do well. We'll take as long as you want on a Saturday for a flat fee of $100.
Sandy: That sounds good except for one thing. I'm flat broke. I don't know if you remember that I work weekends at the Divide Basin Ski Area checking lift tickets. How about if I pay you $40 each exam, but allow you to ski without checking your lift ticket anytime I am working. Just make sure you have an old lift ticket on so everything looks proper.
Debit: It's a deal. Let's get another pitcher of this Old Stumpshovel Green Beer. I don't know if it's green from food coloring or from age, but it's finally starting to go down pretty smoothly.

The next exam comes along and Professor Debit spends several hours on a Saturday with Sandy. Sandy does better on that exam, but not as well as she had hoped because unknown to Debit or Sandy, Professor Consolidation had changed the format of his exams. The following week, Professor Debit goes skiing. As agreed, he has an old lift ticket visible, and Sandy lets Debit through the line, but tells Debit, "You are going to have to get a ticket after you take this run. I didn't get an "A" on that exam, so I don't feel I owe you anything. Besides, I'm now afraid I may get caught." Professor Debit buys a lift ticket and skis the rest of the day. Debit cancels class Monday morning in order to meet with an attorney regarding a lawsuit against Sandy, who has not yet paid the $40 for the session. If you were Debit's lawyer, what would you tell Debit about the strengths and weaknesses of the case against Sandy? Among Sandy's claims is a claim that the mistake over the format of the exam should allow her to rescind the contract.

Answer: There are problems with what was agreed to, and with consideration and legality. Apart from those issues, there was probably not any mistake here that would let Sandy out of the contract. That might depend on whether the parties entered the agreement based on Professor Debit knowing Professor Consolidation's current exam format (a current fact) or based on Professor's Debit's predictions about Professor Consolidation's future exam format (not a current fact).

Diff: 3
Topic: Fraudulent Misrepresentation
Skill: Factual Application
86) John was the oldest of three boys. John's mother was single, elderly, and owned her own home. Her primary concern was leaving her home to her children and minimizing taxes. John was an attorney and a certified public accountant. John told his mother that he would draw up a trust arrangement whereby she would live in the home as long as she was able to, and at that point (or upon her death if she lived in the home at that point), the home would be transferred to her three children, with John in charge of selling it, either to an outsider or to one of her three children. When his mother moved to an apartment, it was discovered that the trust transferred the house to John only. Discuss this situation.

Answer: This is a case of undue influence that would allow John's mother (or John's brothers) to rescind the contract.

Diff: 2
Topic: Undue Influence
Skill: Factual Application
1) The primary purpose of the Statute of Frauds is to ensure that the terms of important contracts are not forgotten, misunderstood, or fabricated.

Answer: TRUE
Diff: 2
Topic: Statute of Frauds - Writing Requirement

2) The source of the Statute of Frauds today is a federal statute.

Answer: FALSE
Diff: 2
Topic: Statute of Frauds - Writing Requirement

3) A promise made in consideration of marriage need not be in writing under the Statute of Frauds.

Answer: FALSE
Diff: 1
Topic: Statute of Frauds - Writing Requirement

4) The Statute of Frauds may not be used as a defense to an already executed oral contract.

Answer: TRUE
Diff: 3
Topic: Statute of Frauds - Writing Requirement

5) Generally speaking, an oral contract that the Statute of Frauds requires to be in writing is voidable.

Answer: FALSE
Diff: 2
Topic: Statute of Frauds - Writing Requirement

6) The Statute of Frauds is generally raised by one party as a defense to the enforcement of the contract by the other party.

Answer: TRUE
Diff: 1
Topic: Statute of Frauds - Writing Requirement
7) Even if a contract is required to be in writing by the Statute of Frauds, the parties may voluntarily perform the contract if they so choose.

Answer: TRUE
Diff: 2
Topic: Statute of Frauds - Writing Requirement

8) Fixtures, such as cabinets, start out as personal property but become part of the real estate when they are attached to the wall.

Answer: TRUE
Diff: 1
Topic: Contracts Involving Interests in Land

9) The part performance exception to the Statute of Frauds applies only to guaranty contracts.

Answer: FALSE
Diff: 2
Topic: Contracts Involving Interests in Land

10) For Statute of Frauds purposes, an "interest in land" includes only the land itself and any fixtures attached to the land.

Answer: FALSE
Diff: 2
Topic: Contracts Involving Interests in Land

11) Under the Statute of Frauds, express easements must be in writing.

Answer: TRUE
Diff: 2
Topic: Contracts Involving Interests in Land

12) A lease for more than a one-year term must comply with the Statute of Frauds.

Answer: TRUE
Diff: 2
Topic: Contracts Involving Interests in Land

13) The "part performance" exception to the Statute of Frauds would allow an oral contract for the transfer of land to be enforced if the buyer had taken possession of and/or paid for the land.

Answer: TRUE
Diff: 1
Topic: Contracts Involving Interests in Land
14) The Statute of Frauds does not apply to mortgage contracts.

Answer: FALSE
Diff: 1
Topic: Contracts Involving Interests in Land

15) If Fred cannot finish building a 20-story hotel by the contract's own terms within one year of its formation, the contract must be in writing.

Answer: TRUE
Diff: 2
Topic: One-Year Rule

16) A contract to provide services from February 1, 2007, to November 25, 2007, that was signed on September 15, 2003, is required to be in writing under the Statute of Frauds.

Answer: TRUE
Diff: 2
Topic: One-Year Rule

17) A contract to provide a service to a person for the remainder of that person's life is not required to be in writing under the Statute of Frauds even if the services are to be provided to someone who is young and healthy.

Answer: TRUE
Diff: 2
Topic: One-Year Rule

18) The "main purpose" or "leading object" exception is intended to ensure that the primary benefactor/guarantor of the contract is answerable for the debt or duty.

Answer: TRUE
Diff: 2
Topic: Collateral Promises

19) In a guaranty situation where the main purpose is not to benefit the guarantor, the guaranty contract must be in writing.

Answer: TRUE
Diff: 1
Topic: Collateral Promises

20) In a guarantee situation, there are only two parties involved.

Answer: FALSE
Diff: 1
Topic: Collateral Promises
21) Ed's Cars is selling a car called the "Whamo" for $499.00 to Jane. The contract between the parties does not have to be in writing.

Answer: TRUE
Diff: 1
Topic: Contracts for the Sale of Goods

22) If Amy hires Cyrina, a licensed real estate agent and broker, to sell his cabin, the contract does not have to be in writing as long as Cyrina's real estate license is in writing.

Answer: FALSE
Diff: 2
Topic: Contracts for the Sale of Goods

23) Under the UCC Statute of Frauds, a contract for the sale of goods for the price of $500 must be in writing.

Answer: TRUE
Diff: 1
Topic: Contracts for the Sale of Goods

24) The equal dignity rule only applies if a private sale by owner of real estate is taking place.

Answer: FALSE
Diff: 1
Topic: Agent's Contracts

25) Under the doctrine of promissory estoppel, the promisor is prevented from asserting the Statute of Frauds as a defense to the enforcement of an oral contract.

Answer: TRUE
Diff: 2
Topic: Promissory Estoppel

26) Promissory estoppel is a remedy at law.

Answer: FALSE
Diff: 1
Topic: Promissory Estoppel

27) A symbol or mark may act as an individual's signature as per the Statute of Frauds and the UCC's requirement that a written contract must be signed by the party against whom enforcement is sought.

Answer: TRUE
Diff: 1
Topic: Sufficiency of the Writing
28) A written contract may be enforceable against one party but not the other party.

Answer: TRUE
Diff: 1
Topic: Sufficiency of the Writing

29) The UCC does not allow the integration of writings to form a single contract.

Answer: FALSE
Diff: 1
Topic: Integration of Several Writings

30) The physical attachment of several documents to form one contract may be allowed as long as the attachment indicates a party's intent to show integration.

Answer: TRUE
Diff: 1
Topic: Integration of Several Writings

31) Regardless of whether or not the parties have defined the words or terms of a contract, the courts will apply what is referred to as the standards of interpretation.

Answer: FALSE
Diff: 2
Topic: Interpreting Contract Words and Terms

32) Where there is a contradiction in the terms of a contract, specific terms will control over general terms.

Answer: TRUE
Diff: 2
Topic: The Parol Evidence Rule

33) The parol evidence rule does not apply to agreements made after the primary agreement.

Answer: TRUE
Diff: 2
Topic: The Parol Evidence Rule

34) The parol evidence rule prohibits any evidence outside the "four corners" of the written contract from being used to supplement or explain that contract.

Answer: FALSE
Diff: 3
Topic: The Parol Evidence Rule
35) Parol evidence can be admitted regarding additions to contracts, so long as they are reasonable.

Answer: FALSE
Diff: 2
Topic: The Parol Evidence Rule

36) An oral contract for the sale of land is:
   A) void
   B) enforceable
   C) voidable
   D) unenforceable
   E) implied

Answer: D
Diff: 2
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts

37) If a judge rules that a party has lost its case because of the Statute of Frauds, the judge has essentially stated that which of the following?
   A) The losing party purposely deceived the other party about a material fact.
   B) The losing party will not be allowed to introduce evidence to contradict a written agreement.
   C) The losing party cannot enforce an oral contract that should have been in writing.
   D) The losing party was found by the court to have lied, and will therefore lose the case.
   E) The winning party has proven criminally fraudulent conduct on the part of the losing party.

Answer: C
Diff: 3
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts

38) The Statute of Frauds requires that the following types of contracts be in writing except:
   A) promises to make a will
   B) promises to marry
   C) contracts involving the sale of interests in land
   D) contracts impossible to perform within a year

Answer: B
Diff: 2
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts
39) Which of the following is not true about the Statute of Frauds?
   A) One purpose is to preserve evidence where there might be a question about the terms of a contract long after the contract is entered into.
   B) One purpose is to make parties think seriously about contracts that they might not otherwise seriously consider the potential consequences of.
   C) A promise to marry someone must be in writing in order to be enforceable.
   D) Pre-nuptial agreements must be in writing in order to be enforceable.

Answer: C
Diff: 3
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts

40) Which of the following contracts is not required to be in writing under the Statute of Frauds?
   A) a contract to be performed in less than 1 year
   B) a contract made in consideration of a promise to marry
   C) a contract involving the sale of land
   D) a contract for the sale of goods of $500 or more
   E) a contract to pay someone else's debt if that person fails to

Answer: A
Diff: 1
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts

41) The Statute of Frauds:
   A) makes certain contracts illegal if they are not in writing
   B) makes contracts covered by it voidable
   C) is designed to protect minors from being taken advantage of
   D) makes certain contracts unenforceable if they are not in writing

Answer: D
Diff: 2
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts

42) The Statute of Frauds requires that certain types of contracts:
   A) be in writing in order to be valid
   B) be in writing in order to be enforceable
   C) contain a promise for an act
   D) have two or more attorneys present at the signing of a written contract

Answer: B
Diff: 1
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts
43) If a contract is not enforced on the basis of the Statute of Frauds, the court has based its decision on the presence of which type of fraud:
   A) fraud in the inducement
   B) fraud in the inception
   C) fraud by concealment
   D) The decision could have been based on the presence of any of these three types of fraud.
   E) The decision could not have been based on the presence of any of these three types of fraud.

Answer: E
Diff: 3
Topic: Statute of Frauds - Writing Requirement
Skill: Legal Concepts

44) For Statute of Frauds purposes, an interest in land includes:
   A) fixtures
   B) mortgages, leases, easements, and life estates
   C) insurance contracts on interests in land
   D) A and B only
   E) A, B, and C

Answer: D
Diff: 1
Topic: Contracts Involving Interests in Land
Skill: Legal Concepts

45) A contract for the sale of land:
   A) must be in writing only if the value of the land exceeds $500
   B) requires at least two promisors
   C) must be in writing in order to be enforceable
   D) is governed exclusively by the Uniform Commercial Code
   E) must be in writing or there is no contract

Answer: C
Diff: 3
Topic: Contracts Involving Interests in Land
Skill: Legal Concepts
46) The exception to the Statute of Frauds, which allows an oral contract for the transfer of land to be enforced, if the buyer has either paid for the land or taken possession of the land is called the ________ exception.
   A) parol evidence
   B) equal dignity
   C) promissory estoppel
   D) part performance
   E) novation

Answer: D
Diff: 2
Topic: Contracts Involving Interests in Land
Skill: Legal Concepts

47) The part performance exception for contracts involving the sale of an interest in land provides that which of the following is true?
   A) The parol evidence rule does not apply.
   B) The contract will be enforced despite the fact that it is not in writing.
   C) Where multiple parties share the performance obligations, the contract need not be in writing.
   D) Once a contract has been partially performed, it must be put in writing if that has not already happened.
   E) Contracts cannot be partly performed until they are put in writing.

Answer: B
Diff: 3
Topic: Contracts Involving Interests in Land
Skill: Legal Concepts

48) An oral contract in which Sally agrees to work for Jane for the rest of Jane's life is:
   A) a guaranty contract
   B) unenforceable under the Statute of Frauds because it cannot possibly be performed within one year
   C) enforceable under the Statute of Frauds
   D) A and C only
   E) A and B only

Answer: C
Diff: 2
Topic: One-Year Rule
Skill: Legal Concepts
49) A contract must be in writing under the Statute of Frauds if:
   A) according to its terms, it cannot be performed within 1 year
   B) its actual performance is not completed within 1 year
   C) no one could perform the duties within 1 year
   D) it would take no one more than a year to perform
   E) in the past, no one has performed a similar contract within 1 year

Answer: A
Diff: 2
Topic: One-Year Rule
Skill: Legal Concepts

50) The 1-year period for determining whether a contract is required to be in writing under the Statute of Frauds is measured from the date that:
   A) the contract is formed until its stated completion date
   B) performance begins until it is actually completed
   C) the contract is formed until it is actually completed
   D) performance begins until its stated completion date

Answer: A
Diff: 2
Topic: One-Year Rule
Skill: Legal Concepts

51) In a guaranty arrangement, the guarantor:
   A) promises to pay the debt of another in any circumstance
   B) promises to pay the debt of another if that other person does not pay
   C) promises to pay the debt of another contingent upon the happening of some external event
   D) promises to assume responsibility for the quality of goods
   E) promises to collect a debt or debts on behalf of a creditor

Answer: B
Diff: 3
Topic: Collateral Promises
Skill: Legal Concepts
52) Which of the following contracts is required to be in writing under the Statute of Frauds?
   A) A contract for the sale of one piece of business equipment costing $700.
   B) A contract for the sale of two pieces of business equipment costing $300 each.
   C) A contract for the purchase of a secondhand piece of home furniture from a consumer by a consumer in the amount of $600.
   D) A and B only are required.
   E) A, B, and C are required.

Answer: E
Diff: 2
Topic: Contracts for the Sale of Goods
Skill: Legal Concepts

53) When a contract for the sale of goods is modified such that the total price due under the contract is modified, under what circumstances must the agreement to modify be in writing?
   A) If the original contract amount was $500 or more.
   B) If the contract price is changed by more than $500.
   C) If the new contract price is more than $500.
   D) B and C only are true.
   E) A, B, and C are true.

Answer: C
Diff: 2
Topic: Contracts for the Sale of Goods
Skill: Legal Concepts

54) What does the "equal dignity rule" require?
   A) That contracts for the sale of goods over a certain dollar amount be in writing.
   B) Consideration to support a contract.
   C) That the writing required by the Statute of Frauds meet certain requirements.
   D) That an offer and an acceptance be mirror images of each other.
   E) That the contract of an agent to sell property covered by the Statute of Frauds must be in writing for the sale of the property to be enforceable.

Answer: E
Diff: 2
Topic: Agent's Contracts
Skill: Legal Concepts
55) The equitable doctrine that permits enforcement of oral contracts that should have been in writing is known as:
   A) the equal dignity rule
   B) promissory estoppel
   C) a collateral contract
   D) part performance

Answer: B
Diff: 2
Topic: Promissory Estoppel
Skill: Legal Concepts

56) In order to satisfy the Statute of Frauds sufficiency of writing requirement, generally a writing must:
   A) be a formal, written document
   B) be any written memorandum containing the essential terms of the parties’ agreement
   C) be signed by the party against whom enforcement is sought
   D) B and C
   E) A and B

Answer: D
Diff: 2
Topic: Sufficiency of the Writing
Skill: Legal Concepts

57) Under the Statute of Frauds:
   A) the writing must be contained in a single document
   B) the writing must be signed by both parties
   C) any required signatures must be the complete signature of the person
   D) incorporation of other documents by reference is permitted

Answer: D
Diff: 2
Topic: Sufficiency of the Writing
Skill: Legal Concepts

58) Incorporation by reference in a contract means that:
   A) at least one of the parties is a corporation
   B) the written contract has incorporated all aspects of the parties' agreement
   C) the written contract includes all or part of another document as part of the written contract's terms
   D) no terms other than those in the contract can be admitted as evidence in court

Answer: C
Diff: 2
Topic: Sufficiency of the Writing
Skill: Legal Concepts
59) The primary significance of requiring only the signature of the party "against whom enforcement is sought" under the Statute of Frauds is that:
   A) the court will check to see that the signatures of both parties are present
   B) the contract need not be signed by the party seeking to enforce the contract
   C) parties can be penalized for failing to sign a written contract
   D) a party's signature must be present in order to introduce evidence from outside the four corners of the contract

Answer: B
Diff: 2
Topic: Sufficiency of the Writing
Skill: Legal Concepts

60) Which of the following constitutes a sufficient signature under the Statute of Frauds?
   A) the complete signature of the party
   B) a signature affixed by an authorized agent
   C) a party's first name or nickname
   D) A and B only
   E) A, B, and C

Answer: E
Diff: 1
Topic: Sufficiency of the Writing
Skill: Legal Concepts

61) Which of the following is NOT one of the general rules of contract interpretation?
   A) Ordinary words are interpreted according to their ordinary dictionary definition.
   B) General terms are controlling over any inconsistent specific terms.
   C) Handwritten words control over preprinted words.
   D) Ambiguities are construed against the party who drafted the contract.
   E) Technical words are given their technical meaning.

Answer: B
Diff: 2
Topic: The Parol Evidence Rule
Skill: Legal Concepts
62) What does the parol evidence rule do?
   A) It sets the rules for the admissibility of evidence relating to releasing a criminal from a prison term.
   B) It determines which contracts are required to be in writing.
   C) It sets the general rules for the admissibility of evidence in criminal actions.
   D) It limits the ability of parties to written contracts from introducing certain evidence related to the contract.
   E) It determines the types of evidence that can be introduced in connection with oral contracts.

Answer: D
Diff: 3
Topic: The Parol Evidence Rule
Skill: Legal Concepts

63) Under the parol evidence rule, which of the following items could be used to interpret, explain, or otherwise affect a complete and final written contract?
   A) evidence of a prior oral agreement
   B) evidence of a subsequent oral agreement
   C) evidence to explain an unclear term or phrase
   D) A and C only
   E) B and C only

Answer: E
Diff: 2
Topic: The Parol Evidence Rule
Skill: Legal Concepts

64) A written agreement was signed by the parties and was intended to be their entire agreement. Under the parol evidence rule, oral evidence **CANNOT** be admitted to:
   A) explain the meaning of an ambiguity in the contract
   B) fill in a gap in the contract
   C) prove the existence of a prior oral agreement that modifies the contract
   D) prove the existence of a later oral agreement that modifies the contract

Answer: C
Diff: 3
Topic: The Parol Evidence Rule
Skill: Legal Concepts
65) Which of the following is not a general rule of contract interpretation?
   A) Ordinary words are given their ordinary dictionary definition.
   B) Specific terms qualify or override general terms.
   C) Handwritten terms prevail over printed terms.
   D) Ambiguities in a contract are resolved in favor of the party who drafted the contract.

Answer: D
Diff: 2
Topic: The Parol Evidence Rule
Skill: Legal Concepts

66) What is "parol evidence?"
   A) Oral evidence that always conflicts with an existing valid written contract.
   B) Evidence that is never admissible in a court of law.
   C) Evidence that can apply to any written contract and may be used to clear up ambiguities.
   D) Evidence that can only be introduced to clear up any questions regarding an oral contract.

Answer: C
Diff: 3
Topic: The Parol Evidence Rule
Skill: Legal Concepts

67) Assuming the existence of a complete and final written contract, the parol evidence rule would prohibit evidence of:
   A) prior or contemporaneous oral statements that alter, contradict, or add to the terms of the contract
   B) prior or contemporaneous oral statements that explain ambiguities in the contract
   C) subsequent oral statements that modify the contract
   D) A and C

Answer: A
Diff: 2
Topic: The Parol Evidence Rule
Skill: Legal Concepts
68) Seller and Buyer negotiate for the sale of 100 acres of land. They orally agree on a price of $100,000, one half in cash at closing and the other half 90 days after closing. Buyer sends Seller a letter in which all the terms are included and is signed by Buyer. Seller never responds. When the closing date arrives, Seller refuses to transfer title. Buyer sues. This contract is:
   A) enforceable, because Buyer had partly performed the contract by sending the letter to Seller
   B) unenforceable, because there is no writing signed by Seller
   C) enforceable, because Buyer sent a memorandum sufficient against himself, which binds Seller unless Seller objects, which he did not
   D) unenforceable, because the parol evidence rule applies

Answer: B
Diff: 2
Topic: Contracts Involving Interests in Land
Skill: Factual Application

69) Seller and Buyer negotiate for the sale of 100 acres of land. They orally agree on a price of $100,000, with payment to be made within 10 days and the deed delivered within another 30 days. Buyer sends Seller a letter in which all these terms are included, along with a check for $100,000 that Seller deposits. Seller fails to deliver a deed, and Buyer seeks to enforce the contract. This contract is:
   A) enforceable, because Buyer had partly performed the contract by making payment
   B) unenforceable, because there is no writing signed by Seller
   C) enforceable, because Buyer sent a memorandum sufficient against himself, which binds Seller unless Seller objects, which he did not
   D) unenforceable, because the parol evidence rule applies

Answer: A
Diff: 2
Topic: Contracts Involving Interests in Land
Skill: Factual Application

70) Two adults enter into an oral contract for the sale and purchase of some land. All material facts were disclosed by the seller to the buyer. Which is true?
   A) This contract is voidable because it is not in writing.
   B) This contract is unenforceable because of the Statute of Frauds.
   C) Because the parties are adults, it is certain that there is no problem with capacity.
   D) This is a unilateral contract if only one party transfers land.

Answer: B
Diff: 2
Topic: Contracts Involving Interests in Land
Skill: Factual Application
71) In December, 2001, Mark signs a written consulting agreement for the period of January, 2002, through May, 2003. The contract is going well, so on June 15, 2002, the parties orally agree to extend the arrangement by 4 months through September 2003. In October 2002, the client tells Mark that the 4-month extension will not be honored. Under these circumstances, which of the following is true?

A) The extension is unenforceable because it cannot be completed within one year of when the extension agreement was made.
B) The extension is unenforceable due to the parol evidence rule.
C) The extension is enforceable because the period of extension was less than 1 year.
D) The extension is enforceable because of the part performance exception.

Answer: A
Diff: 2
Topic: One-Year Rule
Skill: Factual Application

72) John is president and sole shareholder of Photo, Inc. Photo, Inc. wishes to borrow money, but to do so, the bank requires John to orally guarantee to repay the loan if Photo, Inc. cannot. John's guaranty to repay is:

A) enforceable, because in general, guaranty contracts do not need to be in writing
B) unenforceable, because in general, guaranty contracts need to be in writing
C) enforceable, because the main purpose of the loan and the guarantee was to benefit John
D) unenforceable, because John did not sign any agreement

Answer: C
Diff: 2
Topic: Collateral Promises
Skill: Factual Application

73) Buyer and Seller orally agree to a contract for the sale of 400 shirts at $10 per shirt. Seller fails to perform and Buyer sues. This contract is:

A) enforceable, because the Statute of Frauds does not apply to sales of shirts
B) unenforceable, because the contract is not in writing
C) enforceable; no writing is required because the sale is not over the Statute of Frauds dollar limit
D) unenforceable, unless both parties are merchants

Answer: B
Diff: 2
Topic: Contracts for the Sale of Goods
Skill: Factual Application
74) Buyer and Seller enter into an agreement on April 26 for the sale of a piece of equipment for $595. This agreement is in writing and calls for delivery and payment on June 1. On May 10, the Buyer and Seller orally agree to reduce the price to $495 because the Buyer has agreed to delay the delivery date to July 1. Which of the following is true?
   A) The modified agreement is enforceable even though it was an oral modification to a written contract.
   B) The parol evidence rule would prohibit the introduction of evidence of the contract modification.
   C) The modified agreement is unenforceable because it is lacking consideration.
   D) The modified agreement is enforceable because it was made within one year of the date that the original contract was executed.

Answer: A  
Diff: 3  
Topic: Contracts for the Sale of Goods  
Skill: Factual Application

75) Jack and Jill were discussing business over lunch when they agreed on the sale of some goods. Because neither of them had any paper handy, Jack wrote the following on a napkin: "Jill agrees to purchase from Jack, 1,000 widgets to be delivered on July 1, 2001, at a cost of $10,000, payable on delivery." Jill signed the napkin, although Jack did not sign it. Jack delivered the widgets per the contract, but Jill refuses to pay for them. If Jack sues Jill for the price of the goods, the most likely result is which of the following?
   A) Jill will win because this writing is not sufficient under the Statute of Frauds.
   B) Jack will win because the writing is sufficient under the Statute of Frauds.
   C) Jill will win because Jack did not sign the contract.
   D) Jack will win because the Statute of Frauds does not apply to this situation.

Answer: B  
Diff: 2  
Topic: Sufficiency of the Writing  
Skill: Factual Application
76) Mandy enters a written agreement to rent a motor home for six days. Persons under age 25 are not permitted to drive it under terms of the written agreement. Mandy calls the rental company on the third day and asks if Dave, age 23, can drive it. The rental company says Dave can drive it if Mandy pays an extra $10 per day when he returns the motor home. When Dave drives in to return the motor home, the rental company refuses to return the $500 deposit because the written contract says any breach of the contract will result in the forfeiture of the entire damage deposit. Which is true?
   A) Mandy loses because of the parol evidence rule.
   B) Mandy loses because he had not yet paid the $10 extra per day.
   C) Mandy wins because the parol evidence does not apply.
   D) Mandy loses because of the Statute of Frauds.

Answer:  C
Diff: 3
Topic:  The Parol Evidence Rule
Skill:  Factual Application

77) A signed written contract states that "Sam will pay $900 for Skitravel to provide a week of skiing that includes lift tickets Sunday through Wednesday at Vail and Thursday through Saturday at Aspen. Skitravel will provide seven nights of lodging: Sunday, Monday, and Tuesday at Vail Hotel and Thursday, Friday, and Saturday at Aspen Lodge." The written contract failed to mention where Wednesday night accommodations would be. Which of the following statements, all made before this contract was signed, could be admitted into evidence?
   A) "Wednesday night the accommodations will be at Vail Hotel."
   B) "Saturday you will stay at the Westin Hotel in Aspen."
   C) "Group lesson fees are included if you want lessons."
   D) Because these statements are not in writing, none can be admitted into evidence.

Answer:  A
Diff: 3
Topic:  The Parol Evidence Rule
Skill:  Factual Application

78) A contract for the purchase of a bicycle states that the sale is made without any warranty and includes no service. In a separate paragraph of the contract it states that the seller will make free adjustments to the bicycle one time between 30 and 60 days after the purchase. This contract:
   A) will be considered void due to the ambiguity
   B) will be interpreted to not include the service
   C) will be interpreted to include the one adjustment, but no others
   D) will be interpreted to include the stated adjustment, as well as any others reasonably needed
   E) will be interpreted as if the two contradictory terms were not part of the agreement

Answer:  C
Diff: 2
Topic:  The Parol Evidence Rule
Skill:  Factual Application
79) Prior to signing a written agreement for hotel accommodations that provided for no refunds, the hotel manager stated to the guest, "We will give refunds if you have a good reason." Assuming that there was no fraud on the part of the hotel, which of the following is true?

A) The guest can introduce evidence of the oral statement to prove her entitlement to a refund.
B) The oral statement will take precedence over the terms of the written agreement.
C) The oral statement will be ignored by a court.
D) The contract is against public policy because of its mixture of oral and written terms.

Answer: C
Diff: 2
Topic: The Parol Evidence Rule
Skill: Factual Application

80) Sam and Betty sign a written contract on June 1 in which Sam will sell his 1999 Honda Accord to Betty for $10,000, not including the CD player which is mounted in the trunk. Sam will remove the CD player from the car and keep it. They will exchange the car and money on June 10. On June 8, Betty tells Sam she will pay an extra $100 if he will include the CD player and Sam agrees. Which is true?

A) Sam and Betty cannot enter into the additional agreement regarding the CD player because it violates the parol evidence rule.
B) The additional agreement regarding the CD player is unenforceable because of the parol evidence rule.
C) The parol evidence rule does not apply to the agreement about the CD player because it was made after the original agreement was made.
D) The improper attempt to modify the original agreement renders the original agreement void.
E) The parol evidence rule would apply only if the agreement about the CD player was entered into after June 10.

Answer: C
Diff: 3
Topic: The Parol Evidence Rule
Skill: Factual Application

81) Helen goes to the bank to obtain an auto loan. Her father accompanies her to the bank. The loan officer states that the bank does not feel comfortable granting the loan unless her father will also guarantee that the money will be repaid. Her father states, "I'll make sure that she makes her payments, but I'm not signing anything!" The bank makes the loan. Is the father liable?

A) Yes. He specifically agreed to repay the loan.
B) No; the loan was for the benefit of his daughter and he received no tangible benefit.
C) No; not if he did not sign for the loan.
D) No, unless he used the vehicle for his own purposes.

Answer: C
Diff: 3
Skill: Factual Application
82) Lyle offers to sell Eddie his car for $1,000. Eddie shows up a day later, but Lyle refuses to deliver the car. Can Eddie enforce the contract?

   A) Yes; it is a valid oral contract.
   B) No, because the agreement was not in writing.
   C) No, because Lyle can terminate the contract before accepting the money.
   D) No, because Eddie did not immediately provide payment.

Answer: B
Diff: 3
Skill: Factual Application

83) Angela and Scott are getting married. They discuss and agree on the disposition of all property in the event that the marriage is not successful. During divorce proceedings, Scott states that the couple had an agreement as to the disposition of property. Is the agreement enforceable?

   A) Yes; it was an agreement made in contemplation of marriage.
   B) No, the agreement was not in writing.
   C) Yes, so long as the terms were reasonably specific or ascertainable.
   D) No; the agreement is contrary to public policy.

Answer: B
Diff: 3
Skill: Factual Application

84) What is the purpose of the parol evidence rule? Would it be better to simply allow all parol evidence in as evidence and leave it up to the jury how much weight to give to the evidence? Would this be better than not allowing the jury to see the evidence at all? What advantages and disadvantages would there be to eliminating the parol evidence rule?

Answer: One main reason is to preserve evidence in situations where disputes might arise long after the contract is entered into. In other situations, such as with guaranty arrangements or contracts made in consideration of marriage, the rule serves the purpose of encouraging parties to carefully consider the terms of an agreement. The exceptions to the rule, such as the fraud exception, address many situations where injustice might occur if the evidence were not allowed to be admitted.
Diff: 3
Skill: Ethics and Policy
85) How should an e-mail message be evaluated for meeting the Statute of Frauds requirements for a writing? How should the signature requirement be interpreted?

Answer: One question is whether the e-mail message was sent to or from the party sought to be charged in the agreement. At the very least, the e-mail should be one that came from the party to be charged. The real problem comes with the signature requirement, because it is very easy to fabricate e-mail messages after the fact, that purport to be sent by someone who actually did not send them. The development of various forms of digital signatures should help alleviate the signature problem.

Diff: 3
Skill: Ethics and Policy

86) One night at a restaurant, Mark and Mary wrote up an agreement on a couple of napkins about a construction project whereby Mark would build a room addition to Mary's house. Mark said he would do this in exchange for Mary agreeing to marry him. It took two napkins because the agreement would not fit on a single napkin. On one of the napkins, it was stated that the addition would be built according to plans "that are drawn up on a yellow pad at Mary's house." Mark signed one of the napkins, but Mary signed neither. The contract price was $30,000. A few days later Mark saw the plans, which were more complex than he expected. He told Mary that he could not do the addition. Discuss Mark's claims that Mary did not sign the agreement, there is no sufficient writing, and that the parol evidence rule keeps the plans out of the agreement.

Answer: A writing is required because the contract is made in consideration of marriage. Note that the construction aspect is a services contract, not a sale of an interest in land. The writing requirement can be met with multiple writings, including items incorporated by reference, such as the plans. The parol evidence rule does not apply here.

Diff: 2
Topic: Sufficiency of the Writing
Skill: Factual Application

87) Peter signs a contract with a tour company that reads as follows:

Fun Times Travel will provide the customer with airline travel to and from Washington and with seven night's accommodations at the Happy Holiday Hotel. This package includes a half-day city tour and one day's admission to the museum of the customer's choice. Also included is one ticket to a major league baseball game if there are any home games during the trip.

Peter later claims that before the contract was signed, he was told that he would be staying at the downtown Happy Holiday Hotel, which is much nicer than the suburban Happy Holiday Hotel where the tour company plans for him to stay. Peter also claims the tour company told him that meals are included and that he could substitute a second day of museum admission for the baseball ticket, both of which the tour company denies. Can Peter present evidence of his claims?

Answer: The first is an ambiguity and could be admitted. The other two are alterations or additions that could not be admitted. Peter may claim that no mention of meals in the contract is a gap, but most likely the claim for meals would be viewed as an impermissible addition.

Diff: 3
Topic: The Parol Evidence Rule
Skill: Factual Application

88) Beth was negotiating for the purchase of a used car from Sue. Sue told Beth that Sue would
fix any problems with the drivetrain that arose in the first 1,000 miles. After further negotiation, they signed a written agreement that provided that the sale was made "as is, without any warranties." After driving the car for 400 miles, the antilock brake system failed. Sue denied having made the repair promise. But she said she would cover $200 of the repair costs. Beth then took the car to be repaired at a cost of $487. Beth now wants to recover the full repair costs from Sue. Sue refuses to pay any amount. Discuss the issues that would arise in this case.

Answer: The statement about making repairs for 1,000 miles was made prior to the signing of the written agreement and would be excluded from evidence under the parol evidence rule. The later statement about paying $200 could be admitted as evidence because it was made after the agreement, although there might be a question whether Beth gave any consideration for that promise. The term "drivetrain" might be considered ambiguous, but would be interpreted according to the ordinary meaning of drivetrain. In most cases, that would not include brakes.

Diff: 2
Topic: The Parol Evidence Rule
Skill: Factual Application

89) Mary signed a lease agreement that includes the following provisions, among others:
1. The monthly rent is $800, due on the first of the month. Late rent is not accepted and will be considered a breach of this lease agreement. The term of this lease is 12 months.
2. Utilities costs will be shared with the other three units in the building. The landlord will provide copies of the monthly electric and water bills along with a calculation of the amount owed by the tenants in each unit.
3. No more than one automobile per unit can be parked in the parking lot. Parking is unassigned.
4. No pets, except fish, are allowed. Any tenant caught with a pet in violation of this provision will be considered in breach of this agreement.
5. Tenants keeping a cat will be charged a $100 cleaning fee. This will be charged regardless of the actual cleanliness of the apartment.
6. Security deposit. The tenant will pay a security deposit of $1,000 to secure the performance of this lease.

Several months into the agreements several disputes arise over this lease. The parties continue with the agreement until just before the rent is due for the last month. Mary has the following disputes:

a. The landlord told Mary in the fifth month that she could pay by the fifth day of the month and it would not be a problem. He now claims that she has breached by paying in this 5-day period.

b. The landlord has been charging Mary one-fourth of the water and electricity costs even though he told Mary that her share would be 20 percent, because her unit is significantly smaller than the other three units.

c. Next to the "one" in the car parking provision, the landlord wrote "two" by hand. Now the landlord wants to limit Mary and her roommate to one car in the lot.

d. Mary has had a cat in the apartment for the last few months and the landlord wants her to remove it.

e. Mary wants the landlord to take her last month's rent out of the security deposit, and the landlord refuses. Discuss the issues surrounding the disputes in this lease.
Answer: Generally, there are parol evidence rule questions and contract interpretation issues.
   a. Because this occurred after the agreement was formed, it would be binding unless modification of a lease of this type must be in writing.
   b. If the term "share" is considered ambiguous, the evidence of this discussion could be admitted. On the other hand, if share is considered to unambiguously mean equal shares absent any language to the contrary, the parol evidence rule would keep evidence of this discussion out of court. Note that the rule of construing ambiguous terms against the drafter might not apply here (even assuming that the landlord drafted the lease) because it might be the other tenants, not the landlord, who would suffer if Mary paid less.
   c. Mary will be allowed to keep both cars in the lot because handwritten terms control over the preprinted terms.
   d. The clause prohibiting pets could be viewed as a general clause, with the cleaning charge clause being a specific clause implicitly allowing cats.
   e. The term security deposit would be interpreted according to its ordinary meaning and would not be construed to have been the last month's rent.

Diff: 3  
Topic: The Parol Evidence Rule  
Skill: Factual Application
1) The state of an individual party being in a contract is known as privity of contract.

Answer: FALSE
Diff: 1
Topic: Privity of Contract

2) Third parties never acquire rights under other people's contracts.

Answer: FALSE
Diff: 1
Topic: Privity of Contract

3) An assignor is someone who subsequently gains rights under a preexisting contract.

Answer: FALSE
Diff: 1
Topic: Assignment of Rights

4) The party who is owed a right under the contract is called the assignor.

Answer: FALSE
Diff: 2
Topic: Assignment of Rights

5) Nor formalities are required for a valid assignment of rights.

Answer: TRUE
Diff: 1
Topic: Assignment of Rights

6) The assignee of a legal right is subject to the same defenses as the assignor.

Answer: TRUE
Diff: 1
Topic: Assignment of Rights
7) Bill may assign his expected right to receive his inheritance from his grandmother Irma to John, his best friend.

Answer: FALSE
Diff: 2
Topic: Assignment of Rights

8) Barney's assignment of his rights to be insured may not be assigned to Betty, as the assignment would materially alter the risk and duties of the insurance company.

Answer: TRUE
Diff: 1
Topic: Assignment of Rights

9) A clause that prohibits the assignment of rights under a contract is called a pro-assignment clause.

Answer: FALSE
Diff: 1
Topic: Assignment of Rights

10) The English rule regarding successive assignment of rights states that the first assignment in time prevails, regardless of notice.

Answer: FALSE
Diff: 2
Topic: Assignment of Rights

11) The American rule regarding successive assignment of rights is the majority rule.

Answer: TRUE
Diff: 2
Topic: Assignment of Rights

12) Someone who owes a duty under a contract is an obligor.

Answer: TRUE
Diff: 2
Topic: Delegation of Duties

13) In a contract, a party can be both an obligor and an obligee.

Answer: TRUE
Diff: 2
Topic: Delegation of Duties
14) Under the American rule, when an assignor assigns the same right to more than one person, the first assignment in time prevails.

Answer: TRUE
Diff: 2
Topic: Delegation of Duties

15) The duties in a personal service contract can always be delegated.

Answer: FALSE
Diff: 1
Topic: Delegation of Duties

16) Under both an "assumption of duties" and a "declaration of duties" the delegatee is legally liable to the obligee for nonperformance.

Answer: FALSE
Diff: 2
Topic: Delegation of Duties

17) The parties to a contract can include an "anti-delegation clause" if they so chose.

Answer: TRUE
Diff: 2
Topic: Delegation of Duties

18) Joe, a well known plastic surgeon decides he would rather be golfing than perform surgery on his patient Missy's nose. As such, he delegates the job a colleague, Frank who is a highly respected foot doctor. Since Joe chose a competent medical profession to do Missy's nose, the delegation is a valid one.

Answer: FALSE
Diff: 2
Topic: Delegation of Duties

19) If a third-party beneficiary tries to enforce a contract, the promisor may use any defense against the third party that could have been used against the original promisee.

Answer: TRUE
Diff: 2
Topic: Third-Party Beneficiaries
20) Seller 1 contracts with Buyer to deliver 400 widgets. Seller 1 could fulfill this contract, but it assigns the benefits and delegates the duties of this contract to Seller 2, who accepts. If Seller 2 delivers the widgets that were contracted for, Buyer must accept and pay for them.

Answer: TRUE
Diff: 2
Topic: Third-Party Beneficiaries

21) A third party who is not in privity of contract but who has rights under the contract and can enforce the contract against the obligor is said to be an intended beneficiary.

Answer: TRUE
Diff: 1
Topic: Third-Party Beneficiaries

22) A donee beneficiary is someone who obtains rights under a contract without giving valuable consideration for those rights.

Answer: TRUE
Diff: 1
Topic: Third-Party Beneficiaries

23) In general, an incidental beneficiary has no enforceable contract rights because she was not intended to have such rights.

Answer: TRUE
Diff: 1
Topic: Third-Party Beneficiaries

24) For a condition to be enforceable, it must be an express condition.

Answer: FALSE
Diff: 1
Topic: Promises of Performance

25) A contract for decorating someone's home that contains a personal satisfaction test would allow the homeowner to judge the satisfaction based on the homeowner's own personal tastes, so long as the homeowner acted in good faith.

Answer: TRUE
Diff: 2
Topic: Promises of Performance
26) A contract cannot be based on the satisfaction of a third party, such as an engineer or architect.

Answer: FALSE
Diff: 1
Topic: Promises of Performance

27) In a condition subsequent, the duty of performance is discharged upon the failure to meet a condition after the duty has already arisen.

Answer: TRUE
Diff: 1
Topic: Promises of Performance

28) Because of the uncertainty that they add to contracts, conditions must be express.

Answer: FALSE
Diff: 2
Topic: Promises of Performance

29) A covenant is an unconditional promise to perform.

Answer: TRUE
Diff: 1
Topic: Promises of Performance

30) A condition concurrent is one that requires the occurrence of an event before a party is obligated to perform a duty under the contract.

Answer: TRUE
Diff: 1
Topic: Promises of Performance

31) The reasonable person test is a subjective test that is used to judge contracts involving the mechanical fitness and most commercial contract.

Answer: FALSE
Diff: 2
Topic: Promises of Performance

32) A unilateral rescission is effective in terminating a contract if done in good faith.

Answer: FALSE
Diff: 2
Topic: Discharge by Agreement
33) When there is a substituted contract, the discharge of the duties under the original contract occurs as soon as the substituted contract comes into existence.

Answer: TRUE
Diff: 2
Topic: Discharge by Agreement

34) An accord and satisfaction discharges the original contract upon the formation of the accord.

Answer: FALSE
Diff: 2
Topic: Discharge by Agreement

35) In a novation, both of the original parties are replaced by new parties.

Answer: FALSE
Diff: 2
Topic: Discharge by Agreement

36) A new contract entered into by the parties that revokes and discharges a prior contract is known as mutual rescission.

Answer: FALSE
Diff: 2
Topic: Discharge by Agreement

37) Impossibility, excusing performance of a contract, is measured objectively.

Answer: TRUE
Diff: 2
Topic: Discharge by Impossibility

38) A "force majeure clause" sets damages in advance for failure to perform.

Answer: FALSE
Diff: 2
Topic: Discharge by Impossibility

39) The doctrines of commercial impracticality and frustration of purpose apply only to unforeseeable events.

Answer: TRUE
Diff: 2
Topic: Discharge by Impossibility
40) A debtor who files for bankruptcy and receives a discharge from the federal bankruptcy court is relieved of the legal liability to pay the debts.

Answer: TRUE
Diff: 2
Topic: Discharge by Operation of Law

41) Commercial impracticability will sometimes excuse performance if an unforeseeable event makes it impractical for the promisor to perform.

Answer: TRUE
Diff: 2
Topic: Discharge by Operation of Law

42) Regarding the assignment of contract rights, which of the following is true?
   A) The party owed a particular right under a contract is called the obligee.
   B) The party who owes the duty of performance is called the obligor.
   C) The party who transfers his right to another is called the assignor.
   D) A, B, and C are true.
   E) A and B only are true.

Answer: D
Diff: 1
Topic: Assignment of Rights
Skill: Legal Concepts

43) Joan owes Richard money. Richard assigns his rights of collection to Steve. In this situation, which of the following is true?
   A) Joan is the obligee.
   B) Richard is the obligor.
   C) Richard is the assignor.
   D) A, B, and C are true.
   E) A and B only are true.

Answer: C
Diff: 2
Topic: Assignment of Rights
Skill: Legal Concepts
44) In an ordinary contract assignment, the assignee:
   A) acquires the rights of the assignor, but nothing more
   B) is released from liability
   C) assumes the assignor’s duty by operation of law
   D) assumes no liability pursuant to the UCC

Answer: A
Diff: 1
Topic: Assignment of Rights
Skill: Legal Concepts

45) The transfer of rights under a contract to a third party is called:
   A) an assignment
   B) an adjudication
   C) a resolution
   D) a delegation to an obligee

Answer: A
Diff: 1
Topic: Assignment of Rights
Skill: Legal Concepts

46) In general, contract rights may be assigned. Which of the following types of contract rights may not be assigned?
   A) personal service contracts
   B) assignments of future rights
   C) contracts for the sale of goods
   D) A and C only
   E) A and B only

Answer: E
Diff: 2
Topic: Assignment of Rights
Skill: Legal Concepts

47) If a person assigns the same contract rights to more than one assignee, the majority of courts would decide that which of the following is true?
   A) The first assignee to give notice would prevail.
   B) The first assignee to be assigned the rights would prevail.
   C) The first assignee to file a lawsuit would prevail.
   D) The first assignee to collect would prevail.
   E) The assignee who paid the most would prevail.

Answer: B
Diff: 2
Topic: Assignment of Rights
Skill: Legal Concepts
48) A contract contains a clause that states, "no part of this contract may be assigned or delegated."
   A) Generally, this clause is unenforceable.
   B) Generally, this clause is enforceable.
   C) Some courts would rule that if the duty is totally impersonal, such as the payment of money, the clause would be unenforceable.
   D) A and C only are true.
   E) B and C only are true.

Answer: E
Diff: 2
Topic: Delegation of Duties
Skill: Legal Concepts

49) Which of the following duties cannot be delegated?
   A) a surgeon's duty to do laser vision-correction surgery
   B) a buyer's duty to purchase a house
   C) a contractor's duty to repair a roof
   D) a rancher's duty to deliver a quantity of beef

Answer: A
Diff: 2
Topic: Delegation of Duties
Skill: Legal Concepts

50) A transfer of some portion of a contract's rights and corresponding duties means that:
   A) rights are assigned, duties are delegated
   B) duties are assigned, rights are delegated
   C) rights and duties are discharged
   D) rights and duties are never permitted to be assigned

Answer: A
Diff: 2
Topic: Delegation of Duties
Skill: Legal Concepts

51) Duties under a contract:
   A) are freely assignable under all circumstances
   B) can be delegated, but only if there is a signed writing
   C) may be delegated without assigning rights
   D) may be delegated only if there is a corresponding assignment of rights

Answer: C
Diff: 2
Topic: Delegation of Duties
Skill: Legal Concepts
52) If a contract is silent about assignment and delegation, which of the following is generally true?

A) The rights can be assigned and the duties can be delegated.
B) The rights can be assigned and the duties can be delegated, but neither can occur without the other also occurring.
C) The rights can be assigned, but the duties cannot be delegated.
D) The rights cannot be assigned, but the duties can be delegated.
E) The rights cannot be assigned, nor can the duties be delegated.

Answer: A  
Diff: 2  
Topic: Delegation of Duties  
Skill: Legal Concepts

53) Which of the following types of third-party beneficiaries can acquire enforceable rights under the original contract?

A) incidental, donee, creditor  
B) incidental, donee  
C) creditor only  
D) donee only  
E) creditor, donee

Answer: E  
Diff: 1  
Topic: Third-Party Beneficiaries  
Skill: Legal Concepts

54) Which of the following is true about third-party donee beneficiaries?

A) The donee beneficiary can sue the promisor to enforce the contract.  
B) The donee beneficiary can sue the promisee to enforce the contract.  
C) The donee beneficiary can sue either the promisor or the promisee to enforce the contract.  
D) The donee beneficiary can sue neither the promisor nor the promisee to enforce the contract.

Answer: A  
Diff: 3  
Topic: Third-Party Beneficiaries  
Skill: Legal Concepts
55) An unconditional promise to perform is known as a(n):
   A) irrevocable offer 
   B) firm offer 
   C) covenant 
   D) estopped promise 

   Answer:  C
   Diff:  1
   Topic:  Promises of Performance
   Skill:  Legal Concepts

56) Conditions can be only:
   A) precedent 
   B) subsequent 
   C) precedent or subsequent 
   D) precedent, subsequent, or concurrent 
   E) precedent, subsequent, concurrent, or nominal 

   Answer:  D
   Diff:  2
   Topic:  Promises of Performance
   Skill:  Legal Concepts

57) Which of the following is true about personal satisfaction clauses in contracts?
   A) These clauses are usually unenforceable due to their subjective nature.
   B) Where the personal satisfaction depends on personal taste and comfort, an objective standard applies.
   C) Personal satisfaction is always evaluated on a subjective basis.
   D) Personal satisfaction cannot be based on the satisfaction of a third party.
   E) In commercial contracts, such as building construction, personal satisfaction is evaluated on an objective basis.

   Answer:  E
   Diff:  3
   Topic:  Promises of Performance
   Skill:  Legal Concepts
58) The release of one party to a contract and the substitution of another party for the released party is called:
   A) a substitution by law
   B) a summation
   C) a novation
   D) an adjudication
   E) an accord and satisfaction

Answer: C
Diff: 2
Topic: Discharge by Agreement
Skill: Legal Concepts

59) An accord and satisfaction:
   A) usually arises in settlement of a dispute under the original contract
   B) involves a third party in the contract
   C) discharges the original contract's duties upon reaching the accord
   D) can come into existence even if only one party wants it

Answer: A
Diff: 2
Topic: Discharge by Agreement
Skill: Legal Concepts

60) Which of the following is true about the similarities and differences between a substituted contract and a novation?
   A) A novation must be in writing but a substituted contract does not need to be.
   B) Neither will discharge duties under the original contract until the new contract is performed.
   C) A novation involves a new party, and a substituted contract is between the parties to the original contract.
   D) There is no difference because these are two terms to describe the same kind of contract.
   E) Both of these involve a new party who was not part of the original contract.

Answer: C
Diff: 3
Topic: Discharge by Agreement
Skill: Legal Concepts
61) Which of the following is true?
   A) An accord and satisfaction involves a new party, but a substituted contract does not.
   B) Both an accord and satisfaction and a substituted contract involve a new party.
   C) An accord and satisfaction discharges the duties under the original contract only when it has been performed, whereas a substituted contract discharges duties under the original contract upon formation of the substituted contract.
   D) A substituted contract can occur for any kind of contract but an accord and satisfaction can be used only for contracts for the sale of goods.

   Answer: C
   Diff: 3
   Topic: Discharge by Agreement
   Skill: Legal Concepts

62) Under a mutual rescission, the parties to a contract:
   A) agree to new terms
   B) involve a third party in the contract
   C) agree to undo and cancel a contract
   D) agree to perform a contract a second time under the same terms as the original

   Answer: C
   Diff: 1
   Topic: Discharge by Agreement
   Skill: Legal Concepts

63) Which of the following is true?
   A) A seller's duty to sell goods is discharged due to impossibility if the seller is unable to acquire the goods from its normal supplier.
   B) If a contract can be performed, but doing so has become illegal, performance will be discharged on the basis of impossibility.
   C) Death of a party will always result in discharge of that party's duties.
   D) A party can get out of a contract by destroying the subject matter of the contract.

   Answer: B
   Diff: 2
   Topic: Discharge by Operation of Law
   Skill: Legal Concepts
64) Which of the following events would probably excuse performance of a contract because of commercial impracticability?
   A) The price of the commodity increases slightly so that the contract will not be as profitable.
   B) There is an unforeseeable trade embargo causing commodity prices to triple.
   C) The promisor of a personal service contract dies.
   D) The subject matter of the contract is destroyed by fire.
   E) The contract contains a time-is-of-the-essence clause.

   Answer: B
   Diff: 2
   Topic: Discharge by Operation of Law
   Skill: Legal Concepts

65) A force majeure clause:
   A) prohibits assignment of contract rights
   B) creates a third-party beneficiary
   C) excuses performance in the event of a natural disaster
   D) requires that the performance meet the personal satisfaction of the promisee
   E) operates as a delegation of duties

   Answer: C
   Diff: 2
   Topic: Discharge by Operation of Law
   Skill: Legal Concepts

66) Rebecca owes Ian $5,000. Ian needs money in a hurry so he assigns his right to collect from Rebecca to Janet for $4,500. Several days later, Ian assigns his right to collect from Rebecca to Kristin for another $4,500. Ian then leaves town. Kristin is the first to notify Rebecca of the assignment. In the majority of states, which of the following best describes this situation?
   A) Rebecca need pay only Janet, since Janet was the first to receive the assignment.
   B) Rebecca need pay only Kristin, since Kristin was the first to give notice to Rebecca.
   C) Rebecca must pay both Janet and Kristin, since a valid assignment was made to each.
   D) Rebecca need pay only Ian, since debts are not assignable.

   Answer: A
   Diff: 2
   Topic: Assignment of Rights
   Skill: Factual Application
67) Pete leases an apartment. The written lease agreement states that the lease is not assignable without consent of the landlord. Pete assigns his lease to his sister Paula, without the landlord's consent. In most states, which of the following is true?

A) The assignment is invalid until the landlord consents, but the landlord must be reasonable in any decision to not consent.
B) Paula now "stands in the shoes" of her brother and has succeeded to Pete's rights to occupy the apartment.
C) Pete is no longer liable on the lease because he assigned it to Paula.
D) Non-assignability clauses are unenforceable as being contrary to public policy.

Answer: A  
Diff: 3  
Topic: Delegation of Duties  
Skill: Factual Application

68) Ralph Co. enters into an agreement to sell 500 computers to Buyer. Ralph decides that it cannot fulfill its contract so it transfers all its rights and duties under the contract to George Co. Which of the following is true?

A) The contract is unenforceable because this type of contract cannot be assigned.
B) This is an assignment.
C) This is a delegation.
D) This is an assignment and a delegation.
E) This is a novation.

Answer: D  
Diff: 2  
Topic: Delegation of Duties  
Skill: Factual Application

69) Homeowner enters into an agreement with Grasscutter to cut the grass at Homeowner's house. The contract says nothing about delegation or assignment. Grasscutter gets a friend, Lawnmower to do the actual work. Which is true?

A) This is a breach of the original contract because Grasscutter was the person hired.
B) This is an assignment by Grasscutter of his duty to cut the grass.
C) Because the contract does not mention assignment or delegation, Grasscutter cannot have someone else perform his duty.
D) Grasscutter can have Lawnmower do the work, but Grasscutter can be held responsible if Lawnmower does not do the work properly.

Answer: D  
Diff: 3  
Topic: Delegation of Duties  
Skill: Factual Application
70) The bank lends money to Jane to buy a car. After several months, Jane sells the car to Dan. Dan agrees to pay off the loan to the Bank. If Dan fails to pay the loan, then which of the following is true?
   A) The bank may recover the amount due on the loan from Jane.
   B) The bank may recover the amount due on the loan from Dan.
   C) The bank may recover from either Dan or Jane.
   D) The bank can repossess the car, but cannot collect money from anyone.

Answer: C
Diff: 2
Topic: Delegation of Duties
Skill: Factual Application

71) Paragon Studios hires Harry Ford to play Indiana Bones in one of its new movies. Harry decides that he cannot fulfill this contract so he assigns his rights and delegates his duties under the contract to Tom Smellnik, another famous actor and friend of Harry. Which of the following best describes this situation?
   A) Paragon Studios must accept Smellnik, so long as he is an equally capable actor.
   B) Paragon Studios must accept Smellnik whether he is a good actor or not.
   C) Ford may not delegate his duty under this contract.
   D) Smellnik must accept this job because it was assigned to him.
   E) A and D are true.

Answer: C
Diff: 2
Topic: Delegation of Duties
Skill: Factual Application

72) Luziva Co. enters into a contract to deliver 200 coats to Buyer. Luziva determines that it cannot honor the contract, so it assigns the contract to Maniva Co. Maniva Co. delivers the specified 200 coats to Buyer per the contract. Which of the following is true?
   A) Buyer can refuse to accept the coats because its contract was with Luziva, not Maniva.
   B) Buyer must accept the coats and pay Maniva Co.
   C) Luziva Co. still must deliver the coats to Buyer because this contract cannot be assigned.
   D) A and C only are true.

Answer: B
Diff: 2
Topic: Delegation of Duties
Skill: Factual Application
73) Ralph Co. contracts to sell 500 televisions to Buyer. Ralph decides that it cannot fulfill its contract, so it transfers all its rights and duties to George Co. If George Co. fails to deliver the televisions as scheduled, then which of the following is true?

A) Buyer may sue and collect from Ralph only.
B) Buyer may sue and collect from George only.
C) Buyer may sue and collect from both George and Ralph.
D) Buyer may sue and collect from either George or Ralph.

Answer: D
Diff: 2
Topic: Delegation of Duties
Skill: Factual Application

74) Assume that the players on the Colorado Rockies baseball team breach their contract by refusing to play the remainder of their games in the season. A restaurant located near Coors Field, where the games would have been played, sues the players. As a result, which of the following is true?

A) The restaurant loses due to public policy.
B) The restaurant loses because it is not an intended beneficiary of the players' contract.
C) The restaurant wins as a third-party beneficiary.
D) The restaurant wins under promissory estoppel.

Answer: B
Diff: 1
Topic: Third-Party Beneficiaries
Skill: Factual Application

75) Husband buys an insurance policy with a face value of $100,000 and names his wife as sole beneficiary. When husband dies, the insurance company refuses to pay her the $100,000. Which of the following best describes this situation?

A) The wife cannot sue the insurance company because she was not a party to the contract and does not have privity.
B) The wife can sue the insurance company because she was a party to the contract and does have privity.
C) The wife cannot sue the insurance company because she does not have an insurable interest in her husband.
D) The wife can sue the insurance company because she is a third-party beneficiary to this contract.

Answer: D
Diff: 3
Topic: Third-Party Beneficiaries
Skill: Factual Application
76) The City of Monroe enters into an oral contract with Allied Construction Co. to pave a gravel road. The gravel road passes in front of John's home. Once the road is paved, John's home would increase significantly in value. Allied fails to pave the gravel road. If John sued Allied for breach of contract, then which of the following is true?

A) John would prevail, because John is an intended third-party beneficiary.
B) John would not prevail, because John is only an incidental third-party beneficiary.
C) John would prevail, because he is a party to the contract and has privity.
D) John would not prevail, because the Statute of Frauds applies.

Answer: B
Diff: 2
Topic: Third-Party Beneficiaries
Skill: Factual Application

77) Roger wants to buy a new car, so he borrows money from the bank. Several months later, he sells his car to Lisa, who agrees to pay the bank loan. Which of the following is true?

A) The bank is an intended third-party beneficiary.
B) The bank is an incidental third-party beneficiary.
C) Roger is an intended third-party beneficiary.
D) Lisa is an intended third-party beneficiary.
E) Lisa is an incidental third-party beneficiary.

Answer: A
Diff: 2
Topic: Third-Party Beneficiaries
Skill: Factual Application

78) Roger contracted with Lori to produce a sculpture of her. The sculpture was to be made to Lori's satisfaction. Upon completion of the sculpture, which of the following is true?

A) Lori may refuse to accept the sculpture if she really does not like it.
B) Lori may refuse to accept the sculpture only if a reasonable person would not like it.
C) Lori may refuse to accept the sculpture if she cannot afford to pay for it.
D) Both B and C are correct.
E) Lori may not refuse to accept the sculpture.

Answer: A
Diff: 2
Topic: Promises of Performance
Skill: Factual Application
79) Amy agrees to build a barn for Sally. The contract provides that Sally must be "personally satisfied with the barn." If the barn is completed in a workmanlike manner, which of the following tests would be used to test Sally's satisfaction?

A) The personal satisfaction test.
B) The reasonable person test.
C) The workmanlike construction test.
D) The third-party satisfaction test.
E) Either test A or B would produce the same results.

Answer: B
Diff: 2
Topic: Promises of Performance
Skill: Factual Application

80) Tenant has a lease on an apartment through December of the current year. Tenant and Newtenant go to Landlord to have Newtenant take over the lease through the end of December. Landlord agrees and releases Tenant from any responsibility under the lease. This is a(n):

A) substituted contract
B) accord and satisfaction
C) novation
D) mutual rescission

Answer: C
Diff: 2
Topic: Discharge by Agreement
Skill: Factual Application

81) Buyer 1 and a seller agree on the sale of a new truck. Buyer 1 decides that she does not need the truck, but Buyer 2 agrees to purchase the truck. If Buyer 2 breaches this contract, which of the following statements is true, assuming this that is a novation?

A) The seller may sue either Buyer 1 or Buyer 2, but may not collect from both.
B) The seller may sue only Buyer 1.
C) The seller may sue only Buyer 2.
D) The seller may sue either Buyer 1 or Buyer 2 and may collect from both of them.
E) Novations are unenforceable.

Answer: C
Diff: 3
Topic: Discharge by Agreement
Skill: Factual Application
82) Sarah agrees to paint John's house for $5,000. After Sarah finishes the job, John complains that it was not done correctly. After much discussion, they agree that the contract will be satisfied if John gives Sarah $4,000 and a certain diamond necklace. Which of the following statements is true concerning this situation?

A) This is an accord and satisfaction; if John fails to perform, Sarah can sue only for the $4,000 and the necklace.
B) This is an accord and satisfaction; if John fails to perform, Sarah can sue only for the original $5,000 promised.
C) This is an accord and satisfaction; if John fails to perform, Sarah can sue to enforce either the original $5,000 or the $4,000 and the necklace.
D) This is a novation; if John fails to perform, Sarah can sue to enforce either promise.
E) This is a novation; only the last promise can be enforced.

Answer: C
Diff: 3
Topic: Discharge by Agreement
Skill: Factual Application

83) Sam and Sandy have an agreement whereby Sam will build a house on Sandy's beachfront lot. Before construction begins, Sandy changes her mind and decides she would rather build an addition onto her home in Baltimore. She discusses this with Sam, and they agree that he would build the addition to her home and not build the beach house. In this case, Sandy and Sam have:

A) entered into a substituted contract that will discharge the original contract only upon performance of the second contract
B) entered into a substituted contract that will discharge the original contract upon formation of the second contract
C) entered into an accord and satisfaction that will discharge the original contract only upon performance of the second contract
D) entered into a novation that will discharge the original contract only upon performance of the second contract
E) exercised a force majeure clause that will discharge the original contract only upon performance of the second contract

Answer: B
Diff: 3
Topic: Discharge by Agreement
Skill: Factual Application
84) Buyer and seller enter into an agreement to sell a mobile home and lot. Before the deed can be signed, the mobile home is destroyed by a tornado. Which of the following doctrines would most likely allow the buyer to avoid his contractual obligations?

A) impossibility  
B) commercial impracticality  
C) frustration of purpose  
D) failure of a condition precedent  
E) novation

Answer: A  
Diff: 1  
Topic: Discharge by Impossibility  
Skill: Factual Application

85) Fresh Air Contractors agree with a bar owner to install a smoke removal system to remove cigarette smoke from the air. Prior to the start of the work, the city where the bar is located passes an ordinance prohibiting all smoking in bars. The bar owner can:

A) avoid the contract on the basis of impossibility  
B) avoid the contract on the basis of commercial impracticability  
C) avoid the contract on the basis of frustration of purpose  
D) avoid the contract on the basis of failure of illegality

Answer: C  
Diff: 3  
Topic: Discharge by Impossibility  
Skill: Factual Application

86) Barb has contracted to build a garage at Holly's house for Holly's 2001 Chrysler PT Cruiser. Before Barb begins work on the garage, the city where Holly lives outlaws the possession and driving of cars. On what basis could Holly get out of the contract?

A) frustration of purpose  
B) commercial impracticability  
C) contrary to public policy  
D) past consideration  
E) intervening illegality

Answer: A  
Diff: 3  
Topic: Discharge by Impossibility  
Skill: Factual Application
87) A car owner enters into a contract to buy 50 gallons of gasoline each month in 2002 from Greedy Oil Co. for $1.70 per gallon. By June, the wholesale price of gasoline is $1.80 and the retail price is $1.90. Greedy wants out of the contract. Which of the following is most likely true?

A) Greedy can get out on the doctrine of impossibility.
B) Greedy can get out on the doctrine of commercial impracticability.
C) Greedy cannot get out of the contract, but the car owner must pay the market price.
D) Greedy must sell the gasoline at a loss under the terms of the contract.

Answer: D
Diff: 3
Topic: Discharge by Impossibility
Skill: Factual Application

88) Jerry Lee was a professional singer. He entered into a contract to sing at a concert sponsored by ABC Co. He also entered into a contract to sell his house to Mary. Before either contract could be performed, Jerry dies. Both ABC and Mary sue for breach of contract. What results?

A) Jerry's estate wins; both contracts are unenforceable because of Jerry's death.
B) Both ABC and Mary win; both contracts are fully enforceable.
C) Mary wins, but ABC loses; Jerry's death has made ABC's contract, but not Mary's, impossible to perform.
D) ABC wins, but Mary loses; Jerry's death has made Mary's contract, but not ABC's, impossible to perform.

Answer: C
Diff: 3
Topic: Discharge by Impossibility
Skill: Factual Application

89) John contracted to rent a condominium in the U.S. Virgin Islands for the month of September. In early August, the condominium was destroyed by a hurricane. The contract contained a clause that the parties' obligations would be discharged in the event of a natural disaster. In this situation, which of the following is true?

A) The parties' obligations are not discharged because a hurricane is foreseeable in the Virgin Islands.
B) This is an enforceable force majeure clause that would discharge the parties.
C) This results in an accord and satisfaction under which alternate time in the condominium must be provided once it is reconstructed.
D) This is an example of the doctrine of commercial impracticability discharging the parties.
E) The force majeure clause renders the contract void because it makes the promises illusory.

Answer: B
Diff: 2
Topic: Discharge by Operation of Law
Skill: Factual Application
90) Da Vinci, Jr. is hired to paint a portrait of a young woman. The contract calls for the young woman to pay $10,000 for the portrait. Da Vinci, Jr. is contemplating having one of his associates paint the portrait. Generally, what are the rules in such an agreement?
   A) Da Vinci, Jr. may assign the work and the payment.
   B) Da Vinci, Jr. may assign the work but not the payment.
   C) Da Vinci, Jr. may not assign the work but may assign the payment.
   D) Da Vinci, Jr. may not assign the work nor may he assign the payment.

Answer: C
Diff: 2
Skill: Factual Application

91) Patty acquires debt from the use of a credit card. The credit card company attempts to sell the debt to a credit collection company. Is such a transfer of debt usually legal?
   A) No; it is against public policy.
   B) No; there is no privity of contract between Patty and the credit collection company.
   C) No, unless Patty consents to the transfer.
   D) Yes; creditors are generally permitted to assign collection rights.

Answer: D
Diff: 2
Skill: Factual Application

92) What is the impact of bankruptcy upon the debtor with respect to non-exempt property?
   A) Bankruptcy generally discharges the debt.
   B) Bankruptcy has no impact upon the debt.
   C) Bankruptcy does not impact the amount of the debt, but delays payment.
   D) None of the above is true.

Answer: A
Diff: 2
Skill: Factual Application

93) Why should a donee beneficiary be able to sue for the benefit that she was to receive, even though someone to whom a promise of a gift is made directly is not able to sue to enforce the promise of a gift?

Answer: Although the donee beneficiary has not paid for the benefit, the party making the gift has a valid contract with the party whose performance will confer the benefit on the donee beneficiary. Thus the benefit has been paid for, although not by the donee beneficiary.
Diff: 2
Skill: Ethics and Policy
94) Is the doctrine of commercial impracticability a good doctrine? Or, should the parties to a contract spell out in advance the exact circumstances when performance is excused? Isn't everyone who enters into a contract taking certain chances?

Answer: It is impossible to identify in advance all of the possible courses of events. Furthermore, to compel performance of these contracts could economically waste resources.
Diff: 1
Skill: Ethics and Policy

95) The rule on delegation says that duties involving the exercise of personal skills or expertise cannot be assigned. Given this, how can accounting firms, law firms, and consulting firms delegate their work to subordinates? In the case of CPA firms, this is often to someone who is not yet even a CPA. Clients of these firms often get upset when they find out that someone at the firm other than the person they dealt with personally is doing the work on their matter. In one of these firms, how could you prevent clients from getting upset about this?

Answer: Often it is only the more clerical portions of the work being delegated. In all cases, the firm is ultimately responsible for the quality of the work. To avoid misunderstandings, the contract with the client should expressly allow such delegation.
Diff: 1
Skill: Ethics and Policy

96) Is it ever wise for persons such as an artist or interior decorator to enter into a contract that depends on the personal satisfaction of the other party? Why would someone enter into such a contract given the considerable risks? How could one of these persons minimize the risk if the other party demands a personal satisfaction clause?

Answer: Some parties will contract only if there is a personal satisfactions clause. Where one of these is based on subjective aspects of personal taste, the party providing the goods or services should keep in close contact with the other party (if the nature of the contract makes this practical) during the performance of the contract. This will allow satisfaction problems to be corrected early and minimize the likelihood of unpleasant surprises.
Diff: 2
Skill: Ethics and Policy

97) Robert leased an apartment from Universal Apartments for $600 per month, signing a one-year lease. After two months, Robert's employer transferred him out-of-state, so Robert cannot use the apartment anymore. However, Robert's friend Sam would like to take over the apartment. Robert would like to assign his lease to Sam, but the lease contains a clause that allows assignment only with the consent of the landlord. The landlord refuses to consent to the assignment, because he could now end Robert's lease and rent the apartment for $800 per month. Sam would be just as good a tenant as Robert. Discuss the validity of the anti-assignment clause.

Answer: The anti-assignment clause is valid, but the landlord must be reasonable in giving consent. Here, because Robert would be released if consent is withheld, it is probably not unreasonable to withhold consent.
Diff: 3
Topic: Assignment of Rights
Skill: Factual Application
Sandy Skier is having lunch one March day with a friend, Pat, who is president of Great Rockies Ski Area. Sandy holds a season pass, good through April, at Great Rockies. The following conversation takes place:

Pat: You know we are having some financial problems. We need more skiers who are paying. Most of our skiers lately have been season pass holders...the only problem is that the money from selling the passes is long gone. We're going to have to do two things. First, we must find a way to get more skiers to come who pay for a daily lift ticket. Second, we are going to have to start charging the pass holders $10 a day to ski.

Sandy: I don't know how the season pass holders will like that. I myself can't afford even $10 extra right now.

Pat: I know it won't be popular. Sandy, I'll make a deal for you and your friends. The other part of my strategy is to get more new skiers. You know how focused people are on lift safety after some of the recent problems. Here's what I want you to do. I'll pay you to ski at Megasnow Valley, our main competitor, and all you have to do is leave copies of this memorandum everywhere you can. This is simply some information that the maker of the chairlift distributes relating to procedures to use when a safety problem is discovered in a chairlift. It doesn't say anything about there actually being a problem, but if you leave copies of this around, rumors will probably start. So, leave copies on the ground and on the chairs, on tables in the restaurants, and while riding up the lifts or in line, show it to people and raise questions, but don't say that there actually is a problem.

Sandy: I think I can do that.

Pat: Well, that's the deal.

Sandy: OK.

Sandy and eight of her friends, all season pass holders, then go and spend the entire spring break at Megasnow Valley spreading these memos around. The following week, they then go to Pat President to be reimbursed for nine days of lift tickets each, but Pat refuses to pay anyone, including Sandy. Sandy's friend Kim, and Sandy, want to sue for the cost of their lift tickets. How would a court analyze their cases and what would the likely outcome be? If Sandy were able to recover for her own lift ticket costs, would her friends?

Answer: This contract would probably not be enforced for public policy reasons. Even if enforced for Sandy, the friends' status is unclear. They might be intended beneficiaries, or they might be considered to each be in a separate contract since they, also, each had to do the act.

Diff: 3
Topic: Third-Party Beneficiaries
Skill: Factual Application
99) On Alice's recent birthday she received a card from her father saying that he was giving her a new desk and table to be made by a local furniture maker. They would be ready in about a month. A week later, without Alice's knowledge, her father talked to the furniture maker about rescinding the contract for the table. The furniture maker agreed to this. About a month after her birthday, the furniture maker delivered the desk. When Alice asked about the table, she learned about the rescission. As she was putting items into the desk, she noticed that the workmanship was poor. Among other problems, two drawers would not operate properly and the finish had several flaws. Alice wants to sue both the furniture maker and her father for the defective desk and the table. Discuss her options.

Answer: Alice is a donee beneficiary, a type of intended beneficiary, and would be entitled to rights under the contract. Thus she could recover from the furniture maker for the desk. As for the table, the furniture maker's duty was discharged by the rescission. Nor could she sue her father, because with respect to him, she had merely received a gift promise that was not supported by consideration.

Diff: 2
Topic: Third-Party Beneficiaries
Skill: Factual Application

100) Sally owns 50 acres of vacant land near a large growing university. Sally is elderly and is planning to move out of town to live near her children. Sally plans to donate most of this land to the university in order to build badly needed dorms. She wants to sell a portion of the land, and finds someone who is interested in building a small shopping center. Because the university plans to build housing for about 5,000 students, a shopping center would certainly be successful. Bob purchases the land and begins building the shopping center. Sally showed Bob the agreement that she was entering into with the university regarding the donation of the land. It stated that the university would use the land only for building dorms and that there would be dorms housing 5,000 students within five years. The university built two high-rise dorms and then came under criticism from the local community fearing that 5,000 students would be too many in that space. In addition, revised projections showed a lower rate of enrollment growth in the coming years. The university decided to build housing for only 2,000 students on this land. In addition, they built 1,000 additional units on another parcel of land on the other side of campus. Bob's shopping center is unable to attract tenants because there are not enough potential customers nearby. It is known that he would have no trouble attracting tenants if the housing for all 5,000 students was built on the adjoining land. Bob feels the university has wronged him. Who can he sue and on what basis? If he cannot sue either Sally or the university, indicate why not.

Answer: Bob could be viewed either as a donee beneficiary or incidental beneficiary of Sally's contract with the university, which would determine whether he had a cause of action against the University. Bob's contract with Sally might allow him to sue if having 5,000 students housed there was a condition in his contract to purchase the land, but most likely the agreement with the university did not become part of his purchase contract, making him merely a incidental beneficiary.

Diff: 3
Topic: Third-Party Beneficiaries
Skill: Factual Application
Sprawlmaker, Inc. was a developer of shopping malls and other shopping centers. Sprawlmaker was developing a shopping mall in suburban Detroit. Sprawlmaker approached Cindy about the development of a strip mall across the street from this shopping mall. Cindy and Sprawlmaker reached an agreement where Sprawlmaker would construct the strip mall for Cindy. She would become the owner, and would lease it out to tenants. The mall was already under construction at this point. Because Cindy's project was much smaller and simpler, it was finished before the shopping mall. Cindy paid Sprawlmaker all amounts due under their contract. There began to be problems with the construction of the shopping mall. Eventually Sprawlmaker and the construction company building the mall stopped communicating and construction stopped. Meanwhile, Cindy was unable to secure leases for most of the space in her strip mall. Cindy wants to sue to recover for lost rent. Discuss Cindy's options and the likely outcome of a suit.

Answer: The question does not indicate who breached the mall construction contract. If the construction contractor breached, Cindy would be considered an incidental beneficiary of that contract and could not recover. If Sprawlmaker breached the mall construction contract, Cindy might be able to claim that she was an intended beneficiary of that contract with respect to Sprawlmaker. It also might be possible for Cindy to show that the construction of the mall was a condition in her contract with Sprawlmaker, thus she had no duty to perform.

Diff: 2
Topic: Third-Party Beneficiaries
Skill: Factual Application
Mary signs a contract for an addition to her home that will extend the living room and add two bedrooms to the house. The contractor is responsible for all the design and construction, as well as all the redecorating of the living room and the decorating of the two bedrooms. The following provision is part of the contract:

The parties agree that all the work in this contract must meet Mary's own personal satisfaction. In addition, the work must also meet the approval and satisfaction of Mary's brother, who is a builder and licensed contractor.

Mary's brother lives in another city and is not involved in the planning or construction of the addition, but has agreed with Mary to inspect the work at or near the time of completion. Mary has this work done while she is living in another country for a couple of months. Upon her return, the work is almost finished. She does not like the following aspects of the work:

1. The roofing material on the addition does not match the material on the rest of the house.
2. She does not like the style of the new draperies, although they are high quality and of a current style.
3. She is displeased with some of the workmanship on the wood trim around the windows. She admits that she is a perfectionist about this and that most persons would be satisfied with it.
4. The concrete foundation under the addition was not as thick as she would like it. It is of standard thickness and would be satisfactory to most persons.

Her brother comes and inspects the addition. He notes three problems:

1. The slope of the new part of the roof is not steep enough for the type of roofing materials used. They should have used something more appropriate for a nearly flat roof.
2. There should have been a bathroom included as part of the addition. The house originally had three bedrooms and one bathroom. Now there are five bedrooms and only one bathroom. Furthermore, the new bedrooms are located a long distance from the bathroom.
3. The windows are not of sufficient quality.

Mary wants to force the contractor to make all of these changes based on the personal satisfaction clause in the contract. Which of these, if any, can she force the contractor to change? Explain your reasoning with respect to each item.

Answer: The contractor would have to change the roofing material and draperies because the subjective test would apply. The wood trim would probably not have to be changed, because Mary's problem is not with the style, but the workmanship, so most likely the reasonable person would apply. The foundation would not be changed. The roof would need to be redesigned to meet Mary's brother's satisfaction, as well as the windows, assuming that both complaints are reasonable. The bathroom would not need to be added.

Diff: 3
Topic: Promises of Performance
Skill: Factual Application
103) Cathy signed a contract on July 1 with the local Ford dealer to purchase a Ford Venus for $18,000. This car was supposed to be delivered on August 5. On July 15, Cathy's grandmother unexpectedly died, and left approximately $50,000 to Cathy. Cathy's car had not arrived at the dealer by August 5. On August 7, she decides that with her inheritance she would prefer a nicer car. She goes to the dealer on August 8 and is told that her Venus will be in the next day. She tells the dealer that she is upset that the car is not in and that she would prefer a Ford Muskrat, which is a luxury model. She and the dealer agree on a price of $42,000 for a Muskrat to be delivered by September 15. By September 20, the Muskrat has not arrived. Cathy starts thinking that it would be wiser to use her grandmother's inheritance to purchase a house. She goes to the dealer and says that she does not want the Muskrat, and that she will take the Venus, which is still in inventory, for the $18,000 previously agreed to. Can Cathy get out of the contract to purchase the Muskrat? Can she force the dealer to sell her the Venus for $18,000?

Answer: The critical issue is whether the second contract is a substituted contract or an accord and satisfaction. If the second contract arose from a dispute over the first contract, she can choose to enforce either. If it is a substituted contract, the duties of the first contract were discharged upon formation of the second contract.

Diff: 3
Topic: Discharge by Agreement
Skill: Factual Application

104) Hargrove Inc. is a distributor of grains and other farm commodities, which it buys directly from the farmers. Hargrove contracts with National Bakery Association to sell and deliver 1,000 tons of wheat during August. The wheat is to be delivered by rail (train). During July, before the wheat was shipped, the railroads went on strike. The wheat could not be shipped by train. However, the grain could be shipped by truck, but only at a cost double that of trains. Hargrove refused to ship the wheat at the extra expense. National sues for breach of contract. It should be noted that the trains have gone on strike four times in the past ten years, and that there was talk of a strike before this contract was created. Who will win in this lawsuit and why?

Answer: Commercial impracticability would not apply here because the strike was foreseeable and could have been addressed by the parties in the contract if they desired.

Diff: 3
Topic: Discharge by Excuse
Skill: Factual Application

105) Betty has applied to General Motors to obtain a dealership in Smalltown. In order to be granted a dealership, Betty must have a showroom, so she contracts with Bob to buy a building that would be suitable for a showroom. Bob knows that Betty has applied for a dealership and he knows that Betty wants this building for an auto showroom. After the contract for the sale of the land and building is signed, but before the transaction is completed, Betty is notified that she will not receive the G.M. dealership. Betty refuses to pay for Bob's land and building. Bob sues. What results? What is Betty's best defense for not performing this contract?

Answer: Betty would try to claim frustration of purpose. Her claim is weak because it was foreseeable that she might not get the dealership. She should have put a condition in the land purchase contract.

Diff: 2
Topic: Discharge by Excuse
Skill: Factual Application
1) Tender of performance is another term for completion of performance.

Answer: FALSE
Diff: 1
Topic: Substantial Performance: Minor Breach

2) Substantial performance constitutes a minor breach of the contract.

Answer: TRUE
Diff: 2
Topic: Substantial Performance: Minor Breach

3) When there is substantial performance of a contract with a minor breach, the other nonbreaching party may sue to recover the cost to repair the defect.

Answer: TRUE
Diff: 1
Topic: Substantial Performance: Minor Breach

4) Specific performance is the most common remedy for a breach of contract.

Answer: FALSE
Diff: 1
Topic: Substantial Performance: Minor Breach

5) A material breach allows the other party to rescind a contract.

Answer: TRUE
Diff: 1
Topic: Inferior Performance: Material Breach

6) A breach of a contract cannot occur until the time for performance of the duty in question.

Answer: FALSE
Diff: 1
Topic: Inferior Performance: Material Breach
7) When one party materially breaches a contract, the other nonbreaching party is discharged from any further performance.

Answer: TRUE
Diff: 1
Topic: Inferior Performance: Material Breach

8) When performance is tendered, this will discharge a party's contractual obligations.

Answer: TRUE
Diff: 2
Topic: Inferior Performance: Material Breach

Answer: FALSE
Diff: 1
Topic: Inferior Performance: Material Breach

10) When there is an anticipatory breach, the nonbreaching party's obligations under the contract are discharged immediately.

Answer: TRUE
Diff: 1
Topic: Anticipatory Breach

11) The primary goal of compensatory damages is to compensate a nonbreaching party for the loss of the bargain.

Answer: TRUE
Diff: 1
Topic: Monetary Damages

12) The UCC governs damages for a breach of a sales contract involving goods.

Answer: TRUE
Diff: 2
Topic: Monetary Damages

13) A buyer can generally recover the additional cost of acquiring substitute goods if the seller breaches by not delivering the goods.

Answer: TRUE
Diff: 1
Topic: Monetary Damages
14) A contractor is generally entitled to recover any lost profits on a contract breached by the client.

Answer: TRUE
Diff: 1
Topic: Monetary Damages

15) If an employee breaches an employment contract, the employer can recover the costs incurred to replace the employee, plus any increase in salary paid to the new employee in excess of what would have been paid to the old employee.

Answer: TRUE
Diff: 2
Topic: Monetary Damages

16) Only those consequential damages that are unforeseeable can be collected.

Answer: FALSE
Diff: 1
Topic: Monetary Damages

17) Lost profits can be recovered as consequential damages only if they are related to an existing established business.

Answer: FALSE
Diff: 2
Topic: Monetary Damages

18) In the *Super Valu Stores, Inc. v. Peterson* case, the court refused to grant damages for lost profits, because the store involved had not been built.

Answer: FALSE
Diff: 1
Topic: Monetary Damages

19) Liquidated damages will be invalidated if they are unreasonably large or small.

Answer: FALSE
Diff: 2
Topic: Monetary Damages

20) A liquidated damages provision will be validated if it is considered to be a penalty.

Answer: FALSE
Diff: 1
Topic: Monetary Damages
21) Cases involving nominal damages are generally brought on "principle."

Answer: TRUE
Diff: 1
Topic: Monetary Damages

22) Mitigation of damages is no longer necessary in the area of employment law.

Answer: FALSE
Diff: 1
Topic: Monetary Damages

23) When an employer breaches an employment contract, if the employer offers substitute employment to the employee, the doctrine of mitigation places a duty on the employee to accept the work so long as the employee is capable of doing the work.

Answer: FALSE
Diff: 2
Topic: Monetary Damages

24) Rescission and restitution are designed to give the parties the benefit of the bargain.

Answer: FALSE
Diff: 1
Topic: Rescission and Restitution

25) Where the man has given a ring to a woman in connection with an engagement, the modern rule requires that the ring be returned to the man regardless of who breaks off the engagement.

Answer: TRUE
Diff: 1
Topic: Rescission and Restitution

26) When rescinding a contract, the parties must make restitution of the consideration they received under the contract.

Answer: TRUE
Diff: 2
Topic: Rescission and Restitution

27) Equitable remedies are available if there has been a breach of contract that cannot be adequately compensated by a legal remedy.

Answer: TRUE
Diff: 1
Topic: Equitable Remedies
28) The downfall of using equitable remedies is that they do not prevent unjust enrichment.

Answer: FALSE
Diff: 1
Topic: Equitable Remedies

29) Specific performance is usually available for the buyer in contracts for the sale of land.

Answer: TRUE
Diff: 1
Topic: Equitable Remedies

30) Specific performance is the primary remedy used to make a party live up to his/her obligations under a personal services contract.

Answer: FALSE
Diff: 2
Topic: Equitable Remedies

31) If Julia agrees to construct a platinum sailboat with green emeralds all around the bow of the boat and Ted decides to halt construction in the middle of the project, Julia may seek reformation of her contract with Ted to show she really intended to have him put rubies along the bow instead.

Answer: FALSE
Diff: 2
Topic: Equitable Remedies

32) Reformation permits the court to order the breaching party to perform the acts promised in the contract.

Answer: FALSE
Diff: 1
Topic: Equitable Remedies

33) A recovery in quasi-contract is based on the fair value of the goods or services provided.

Answer: TRUE
Diff: 1
Topic: Equitable Remedies

34) The general standard to obtain an injunction is that the party seeking the injunction would suffer irreparable injury without the injunction.

Answer: TRUE
Diff: 1
Topic: Equitable Remedies
35) Intentional interference with contractual relations requires a showing of bad faith before liability can be imposed.

Answer: FALSE
Diff: 2
Topic: Torts Associated with Contracts

36) Many states have held that there is an implied covenant of good faith and fair dealing in certain contracts.

Answer: TRUE
Diff: 2
Topic: Torts Associated with Contracts

37) Punitive damages are always available for breach of contract.

Answer: FALSE
Diff: 1
Topic: Torts Associated with Contracts

38) What is tender of performance in connection with a contract?

A) one party's completion of duties under the contract
B) a party's offering substitute performance that is superior to the performance called for in the contract
C) performance whose terms have been ordered by the court
D) an unconditional offer by a contracting party to perform his or her obligations under a contract

Answer: D
Diff: 1
Topic: Performance and Breach
Skill: Legal Concepts

39) A contract that has been fully performed by all parties is said to be:

A) executed
B) tendered
C) mitigated
D) liquidated
E) substantiated

Answer: A
Diff: 1
Topic: Performance and Breach
Skill: Legal Concepts
40) When one party substantially, but not completely, performs a contract, creating a minor breach, which of the following remedies may the aggrieved party choose?
   A) deduct the cost necessary to complete performance from the payment due to the breaching party
   B) sue the breaching party for the cost to complete performance
   C) rescind the contract
   D) A, B, and C
   E) A and B only

Answer: E
Diff: 2
Topic: Performance and Breach
Skill: Legal Concepts

41) Under which kind(s) of performance by the other party can a party rescind a contract?
   A) substantial performance
   B) inferior performance
   C) both A and B
   D) neither A nor B

Answer: B
Diff: 2
Topic: Performance and Breach
Skill: Legal Concepts

42) A minor breach is most directly associated with:
   A) strict performance
   B) tender of performance
   C) complete performance
   D) substantial performance
   E) inferior performance

Answer: D
Diff: 2
Topic: Performance and Breach
Skill: Legal Concepts

43) When the other party commits an anticipatory breach, the nonbreaching party:
   A) must wait until the performance was due before suing
   B) is immediately discharged from her own duties
   C) is not able to seek damages because she received advance notice of the breach
   D) is usually able to seek specific performance

Answer: B
Diff: 2
Topic: Performance and Breach
Skill: Legal Concepts
44) What distinguishes an anticipatory breach from other breaches?
   A) It involves a breach by each party to the contract.
   B) It entitles the nonbreaching party to consequential damages.
   C) It occurs in connection with substantial performance.
   D) It is a foreseeable breach.
   E) It occurs prior to the time that performance is due.

   Answer: E
   Diff: 2
   Topic: Performance and Breach
   Skill: Legal Concepts

45) Which is the most basic or common remedy available for the breach of a contract?
   A) compensatory damages
   B) consequential damages
   C) punitive damages
   D) nominal damages
   E) equitable damages

   Answer: A
   Diff: 2
   Topic: Monetary Damages
   Skill: Legal Concepts

46) What is the general goal of awarding compensatory damages in a breach of contract situation?
   A) return the parties to the situation that they were in prior to the contract
   B) punish the breaching party for the wrongdoing
   C) modify the contract terms to be more equitable to the parties
   D) place the nonbreaching party in the same position as if the contract had been fully performed
   E) require the breaching party to actually do what was called for in the contract

   Answer: D
   Diff: 2
   Topic: Monetary Damages
   Skill: Legal Concepts
47) "Benefit of the bargain" is descriptive of which type of damages?
   A) compensatory damages
   B) punitive damages
   C) reliance damages
   D) liquidated damages
   E) injunction damages

   Answer: A
   Diff: 1
   Topic: Monetary Damages
   Skill: Legal Concepts

48) When a client breaches a contract with a construction contractor in the early phase of construction, what is the contractor generally able to recover?
   A) the amount of the contract price
   B) only the out-of-pocket costs incurred by the contractor up to the time of the breach
   C) the amount necessary to provide the same profit to the contractor that the contractor would have earned if the contract were fully performed
   D) three times the contract price as punitive damages
   E) the amount determined by the court to have been a fair profit on the contract

   Answer: C
   Diff: 2
   Topic: Monetary Damages
   Skill: Legal Concepts

49) George, an employee, breaches a fixed-term employment contract by quitting before the end of the term. What can his employer, MNO Inc., recover as damages?
   A) nothing, because courts do not order anyone to perform a job against his or her will
   B) all amounts already paid to the employee under the contract
   C) only amounts paid to the employee for which the employee has not yet done the work
   D) the costs of hiring a replacement employee plus any increase in salary paid to the replacement employee

   Answer: D
   Diff: 2
   Topic: Monetary Damages
   Skill: Legal Concepts
50) Which of the following damages must be foreseeable in order to be collected?
   A) consequential
   B) nominal and liquidated
   C) compensatory, consequential, and punitive
   D) consequential and compensatory
   E) liquidated and compensatory

Answer: A  
Diff: 2  
Topic: Monetary Damages  
Skill: Legal Concepts

51) Another term for consequential damages is:
   A) special
   B) remedial
   C) liquidated
   D) nominal
   E) distinguishable

Answer: A  
Diff: 1  
Topic: Monetary Damages  
Skill: Legal Concepts

52) Which of the following is not a characteristic of consequential damages?
   A) They arise from circumstances outside of the contract.
   B) They can be recovered in addition to compensatory damages.
   C) They can be collected only if they are foreseeable or known to the other party.
   D) They are fixed in amount at the time the contract is formed.
   E) To be collectible, the breaching party must have known about them or had reason to know about them.

Answer: D  
Diff: 2  
Topic: Monetary Damages  
Skill: Legal Concepts
53) Based on the Alabama Supreme Court case discussed in the text involving the lost profits in connection with a grocery store, what is the general requirement in order for lost profits to be awarded in a breach of contract case?

A) There must be an established business that has a record of earning profits in the past and it must be proven that lost profits would have been earned in the absence of the breach.
B) There must be an established business, but a record of past profits is not necessary so long as it can be proven that the profits would have been earned in the absence of the breach.
C) Lost profits can be recovered, whether or not the related business was an actual established business, so long as the lost profits can be proven with reasonable certainty.
D) Lost profits generally cannot be recovered because they are too speculative in nature.

Answer: C
Diff: 2
Topic: Monetary Damages
Skill: Legal Concepts

54) Damages that are fixed in the contract for the amount to be awarded in the event of a breach are known as:

A) punitive damages
B) liquidated damages
C) consequential damages
D) conditional damages

Answer: B
Diff: 1
Topic: Monetary Damages
Skill: Legal Concepts

55) What are liquidated damages in connection with a contract?

A) damages that are used to punish the nonbreaching party
B) damages that are set at a fixed amount in advance in the contract
C) damages that are used when there are no actual damages
D) damages that require approval in advance from the court
E) damages that result in all assets of the breaching party being paid out as damages

Answer: B
Diff: 1
Topic: Monetary Damages
Skill: Legal Concepts
56) The general requirements for a liquidated damages clause to be enforceable are which of the following?
   A) Actual damages are difficult to determine and the liquidated damages amount is reasonable.
   B) Actual damages exceed the amount foreseen by the parties.
   C) The liquidated damages clause applies only to unforeseeable damages.
   D) The breaching party used its best efforts to avoid a breach of the contract.
   E) The parties have rescinded the contract.

   Answer: A
   Diff: 2
   Topic: Monetary Damages
   Skill: Legal Concepts

57) A court will not enforce a liquidated damages clause when which of the following is true?
   A) The amount specified is too small and considered to be unfair.
   B) The amount of actual damages is significantly greater than the amount specified as liquidated damages.
   C) The amount was agreed to by the parties prior to the existence of an actual breach.
   D) The amount is so large that it is viewed as a penalty.
   E) The actual damages are difficult to determine and compare to the amount specified as liquidated damages.

   Answer: D
   Diff: 3
   Topic: Monetary Damages
   Skill: Legal Concepts

58) What kinds of damages will be awarded when there is no actual financial loss?
   A) special damages
   B) consequential damages
   C) nominal damages
   D) compensatory damages
   E) There are no damages that a court will award in the absence of an actual financial loss.

   Answer: C
   Diff: 1
   Topic: Monetary Damages
   Skill: Legal Concepts
59) Which of the following types of damages could generally be simultaneously recovered in the same breach of contract action?
   A) punitive and compensatory
   B) compensatory and liquidated
   C) punitive and liquidated
   D) compensatory and consequential
   E) consequential and liquidated

   Answer: D
   Diff: 3
   Topic: Monetary Damages
   Skill: Legal Concepts

60) What does the term "mitigation" refer to in connection with damages?
   A) the calculation of lost profits in determining damages
   B) the duty of the breaching party to make a damages payment as soon as practical
   C) the combination of the different kinds of damages into a single dollar amount
   D) the duty of a nonbreaching party to make reasonable efforts to reduce damages
   E) the requirement of the nonbreaching party to allow the breaching party one final chance to perform the contract before being entitled to collect damages

   Answer: D
   Diff: 2
   Topic: Monetary Damages
   Skill: Legal Concepts

61) The doctrine that places a duty on a nonbreaching party to take reasonable steps to reduce damages is called:
   A) liquidation
   B) mitigation
   C) garnishment
   D) avoidance
   E) reciprocal duties

   Answer: B
   Diff: 1
   Topic: Monetary Damages
   Skill: Legal Concepts
62) When an employer breaches an employment contract, what obligation does the employee have in seeking substitute employment?

A) Because it was the employer who breached, the employee has no obligation to seek substitute employment.
B) The employee must accept any employment available with the same employer, but is not required to accept any substitute employment with a different employer.
C) The employee must accept any employment available with a different employer, but is not required to accept any substitute employment with the same employer.
D) The employee is obligated to accept any employment for which the employee is qualified.
E) The employee is obligated to accept substitute employment only if it is comparable employment.

Answer: E
Diff: 2
Topic: Monetary Damages
Skill: Legal Concepts

63) Which of the following is true about rescission and restitution?

A) Rescission and restitution are designed to give the nonbreaching party the benefit of the bargain.
B) Rescission and restitution are the primary and most common remedies for breach of contract.
C) Rescission and restitution can occur separately, but they usually occur together.
D) Rescission and restitution are available only when the subject matter of the contract is unique.

Answer: C
Diff: 2
Topic: Rescission and Restitution
Skill: Legal Concepts

64) In connection with a contract, what is rescission?

A) a court order to perform one's duties under a contract
B) a return of consideration to the other party
C) an undoing or cancellation of the contract
D) a formation of a second contract identical to the first

Answer: C
Diff: 1
Topic: Rescission and Restitution
Skill: Legal Concepts
65) What is the modern rule for who gets to keep an engagement ring given by the man to the woman if the planned wedding does not occur?
   A) The woman can keep it regardless of who breaks off the engagement.
   B) It must be returned to the man regardless of who broke off the engagement.
   C) The party who did not break off the engagement gets to keep it.
   D) It will be based on who was determined by the court to be more at fault in causing the engagement to be broken off.

Answer: B  
Diff: 2  
Topic: Rescission and Restitution  
Skill: Legal Concepts

66) When, generally, are equitable remedies available?
   A) They are usually the first remedy that a court will try to apply.
   B) They are required to be used alongside any legal remedy.
   C) They are only awarded when a breach of contract case has been appealed.
   D) They are used when the legal remedy does not adequately compensate the nonbreaching party.

Answer: D  
Diff: 2  
Topic: Equitable Remedies  
Skill: Legal Concepts

67) Which of the following is not an equitable remedy?
   A) specific performance  
   B) monetary damages  
   C) reformation  
   D) injunction  
   E) quasi contract

Answer: B  
Diff: 2  
Topic: Equitable Remedies  
Skill: Legal Concepts

68) Specific performance is generally awarded:
   A) in cases where nominal damages are also awarded  
   B) where the contract involves the sale of property that is unique  
   C) only under the UCC  
   D) when the nonbreaching party requests it  
   E) only if provided for in a liquidated damages clause

Answer: B  
Diff: 1  
Topic: Equitable Remedies  
Skill: Legal Concepts
69) When a court orders specific performance, it:
   A) orders monetary damages to be paid by the breaching party to the nonbreaching party
   B) modifies the contract terms in order to maximize the fairness to both parties
   C) orders a party to a contract to do exactly what was called for in the contract
   D) orders a party to return any and all consideration received

   Answer: C
   Diff: 1
   Topic: Equitable Remedies
   Skill: Legal Concepts

70) When a court rewrites a contract to express the parties' true intentions, what remedy has it used?
   A) reformation
   B) restitution
   C) specific performance
   D) substituted contract
   E) quasi-contract

   Answer: A
   Diff: 1
   Topic: Equitable Remedies
   Skill: Legal Concepts

71) What is required in order for a court to issue an injunction?
   A) Any breach of contract will justify an injunction.
   B) Any breach of contract that causes injury to the other party will justify an injunction.
   C) Any situation that entitles the award of specific performance will justify an injunction.
   D) A showing that the party requesting the injunction would suffer irreparable injury without
      the injunction will justify an injunction.
   E) Proof that the party requesting the injunction would win any breach of contract lawsuit
      will justify an injunction.

   Answer: D
   Diff: 2
   Topic: Equitable Remedies
   Skill: Legal Concepts
72) Which of the following is NOT one of the required elements of the tort of intentional interference with contractual relations?
   A) a valid, enforceable contract between the contracting parties
   B) third-party knowledge of this contract
   C) third-party inducement to breach the contract
   D) malicious intent in inducing the breach

Answer: D  
Diff: 2  
Topic:  Torts Associated with Contracts  
Skill:  Legal Concepts

73) Which of the following is true about the recovery of punitive damages in connection with contracts?
   A) They are recoverable whenever a breach of contract is intentional.  
   B) If awarded, they are held by the court to be distributed to other parties with whom the defendant has breached a contract.  
   C) They can be covered for tortious conduct in connection with a contract, but generally not for the breach of a contract.  
   D) They are awarded only by an appellate court.

Answer: C  
Diff: 2  
Topic:  Torts Associated with Contracts  
Skill:  Legal Concepts

74) Assume that a car owner contracts with a mechanic to have his engine overhauled. The mechanic mistakenly used original equipment quality piston rings in doing the overhaul, whereas the contract had called for the use of premium-quality rings that are better than original equipment quality. Which of the following is true?
   A) This is a substantial performance, and the owner must still pay something to the mechanic.  
   B) This is a material breach, and the owner must still pay something to the mechanic.  
   C) This is a substantial performance, and the owner owes nothing to the mechanic.  
   D) This is a material breach, and the owner owes nothing to the mechanic.  
   E) This is a novation, and the owner owes nothing to the mechanic.

Answer: A  
Diff: 2  
Topic:  Performance and Breach  
Skill:  Factual Application
75) Alice has a contract with a surgeon to have a medical procedure performed on July 17. The surgeon notifies Alice on July 5 that he is in the Bahamas and will be there until the end of August and will not be able to do the surgery. Which of the following is true at this point?
   A) There will be no breach until July 17.
   B) Alice must wait until July 17, and if the surgeon does not perform the procedure, then Alice can contract with another surgeon.
   C) If Alice contracts with another surgeon prior to July 17, and this second surgeon is aware of Alice's original contract, the second surgeon has no obligation to perform.
   D) Alice is free to contract with another surgeon.

Answer: D  
Diff: 3  
Topic: Performance and Breach  
Skill: Factual Application

76) Pat Painter contracts to paint Harry Homeowner's home for $6,000. Pat would supply all materials at a cost to Pat of $1,000. Harry breaches by refusing to let Pat paint the house, which Pat found out before spending any money on the materials. Pat is able to find another job that nets a profit of $4,200 during that same time that Harry's house was to be painted. How much can Pat recover from Harry in damages?
   A) $1  
   B) $800  
   C) $1,800  
   D) $3,200  
   E) $5,000

Answer: B  
Diff: 2  
Topic: Monetary Damages  
Skill: Factual Application

77) Henry took his Porsche to the shop for repairs, but it was not ready on Friday afternoon as had been agreed to. Henry was then unable to rent the car to his sister on Saturday for $400 to use in her wedding. Henry paid $60 to rent a car on Sunday for a trip to the mountains. The car repair shop knew about neither of Henry's planned uses of the car that weekend. Which is true?
   A) Henry can collect for neither amount because the car repair shop was unaware of them.
   B) Henry can collect for both amounts because the shop was the cause of his losses.
   C) Henry can collect for the car rental, but not for the money his sister would have paid.
   D) Henry can collect for both amounts and will likely recover punitive damages as well.
   E) Henry can collect nothing because his greediness with his sister is against public policy.

Answer: C  
Diff: 2  
Topic: Monetary Damages  
Skill: Factual Application
78) A construction contractor entered into a contract to build a family room addition onto Harry's home for $25,000. In order to encourage timely performance, the agreement provided that the contractor would be penalized $2,000 as liquidated damages for each day that the project was late in getting finished. The contractor was 30 days late in finishing the project, but otherwise met the terms of the agreement. What is most likely in this situation?

A) The liquidated damages clause would not be enforced due to its being excessive.
B) The liquidated damages clause would be limited to $25,000, the amount of the contract price.
C) The liquidated damages clause would be enforced.
D) The liquidated damages clause would not be enforced because the parties made a mutual mistake about when the contract would be finished.

Answer: A
Diff: 2
Topic: Monetary Damages
Skill: Factual Application

79) Paul is an organic biologist who teaches classes occasionally at a local college. Paul is a wonderful professor with a unique style of teaching. In the third week of the semester, Paul notified the school that he was suddenly too busy to teach that semester. Which of the following is true?

A) Because of his unique style, the college could get an order of specific performance.
B) Paul would be obligated to pay the salary of any replacement that the school was able to find.
C) The school would not be able to recover from Paul for excessive amounts that it paid to a replacement instructor.
D) The school would be able to obtain an injunction against Paul ordering him to teach the course.
E) Paul would be discharged from his duty to teach because of commercial impracticability.

Answer: C
Diff: 2
Topic: Monetary Damages
Skill: Factual Application
80) Waldo washes windows with Worldwide Window Washers. Waldo has just begun the second year of a 3-year contract that pays him $30,000 per year. Even though Waldo has performed his job perfectly, he was suddenly told that his contract was being terminated. Waldo was offered a couple of other jobs shortly after this contract was terminated. The first was as a custodian in a city 200 miles away paying $24,000 a year. The second was as a cook in a local fast food restaurant paying $22,000 a year. Waldo took neither job. In connection with his duty to mitigate, which of the following is true?

   A) Waldo would not be obligated to accept the custodian job.
   B) Waldo would not be obligated to accept the cook job.
   C) Waldo would be obligated to accept neither job.
   D) Waldo would be obligated to accept one of the jobs, but the choice of which one was up to Waldo.
   E) Waldo is not obligated to accept any job of any kind for the duration of the contract that was breached.

Answer: C
Diff: 3
Topic: Monetary Damages
Skill: Factual Application

81) Creative Charlie had sketched plans for an invention, but had not yet built a prototype. He wanted to make sure that the invention could actually be manufactured before going through the expense of applying for a patent. He contracted with a local machine shop to work on the prototypes. As part of the agreement, the machine shop agreed not to disclose any information about the invention. Charlie learned from one of the employees that the owner of the machine shop had successfully built a prototype without telling Charlie and that the owner was going to begin marketing the invention in a joint venture with another firm. Could Charlie get an injunction in this situation?

   A) No; this is a situation where the only allowable damages would be liquidated damages.
   B) No; Charlie could be adequately compensated with compensatory damages.
   C) Yes, assuming that Charlie would likely suffer irreparable harm if others learn of his invention and it becomes public before he can obtain a patent.
   D) Yes, because this is an anticipatory breach and injunctions can be issued in connection with any anticipatory breach.

Answer: C
Diff: 2
Topic: Monetary Damages
Skill: Factual Application
82) Michelle is hired as a corporate executive for a large corporation. She signed a three-year contract that will pay her $10,000 per month. Six months into the contract, the company unilaterally terminates the contract due to concerns over the company's future. How much money should Michelle be entitled to?

A) $10,000  
B) $60,000  
C) $300,000  
D) $360,000  
E) None. The contract was terminated in good faith.

Answer: C  
Diff: 2  
Skill: Factual Application

83) The Smiths hire a contractor to build a home for them. The total cost of the contract is for $110,000. Some of the building materials are delivered, and the contractor refuses to build the house. An alternate contractor agrees to build the house using the same materials for $125,000. Are the Smiths entitled to damages? If so, how much?

A) No; the contract was terminated before construction began and the house was still built.  
B) Yes; they are entitled to contract damages in the amount of $15,000.  
C) Yes; they are entitled to contract damages in the amount of $110,000.  
D) Yes; they are entitled to contract damages in the amount of $125,000.

Answer: B  
Diff: 2  
Skill: Factual Application

84) Why is the general measure of compensatory damages "benefit of the bargain" rather than a measure based on returning the parties to the position that they were in prior to the contract? What do you think is the best approach?

Answer: Benefit of the bargain protects the nonbreaching party. If the parties merely had to be returned to the status quo, there would be less incentive to perform contracts. In many cases, it simply is not possible to return both parties to the status quo.  
Diff: 2  
Skill: Ethics and Policy
85) Liquidated damages clauses will generally not be enforced where courts view them as excessive, but courts generally do not inquire into whether liquidated damages clauses are too small. For example, when taking a roll of film to be developed, most developers include a liquidated damages clause to provide a new roll of film, and nothing more, in the event that the customer's film is lost or destroyed. Why is there this difference in treatment? Do you agree with this rule?

Answer: The concern with liquidated damages clauses is that parties often pay little attention to them. One reason is that because most parties do not enter a contract planning to breach, they do not expect such clauses to apply to them. With clauses setting very small liquidated damages, this allows certain services, such as film developing, to be offered at lower prices than they might be otherwise. A professional photographer can often choose a more expensive professional photo lab that charges more for the service, but accepts greater liability.

Diff: 2
Skill: Ethics and Policy

86) Should there be such a tort as the intentional interference with contractual relations? Even though one person might induce another to breach a contract, isn't it ultimately the choice of that other person to breach the contract? Why should one be liable if that person was not the one who actually breached the contract?

Answer: Even though the outsider has not breached the contract, the law regards contracts as private law. Thus the existence of this tort serves to deter parties from encouraging others to breach existing contracts. In some cases the breach would not have occurred without the outsider's inducement, thus the two persons each share some responsibility for the breach.

Diff: 2
Skill: Ethics and Policy
87) Painter contracts to paint the interior of Owner's home for $2,000. In each of the following unrelated examples, indicate what amount of damages Owner is entitled to recover from Painter.

A. Painter stops work when halfway finished. Owner pays someone else $1,700, a reasonable amount, to finish the work. Owner has paid Painter $700.

B. Painter stops work when 75 percent finished with the job. Owner pays someone else $1,500, a reasonable amount, to finish the work. Owner has paid Painter $700.

C. Painter stops work when 50 percent finished with the job. Owner pays someone else $1,800 to finish the job, but could have paid yet another person $1,500 to finish it. Owner has paid Painter $700.

D. Painter stops work when 50 percent finished with the job. Painter finds someone who will finish the work for $1,100. However, the delay caused $200 in water damage and Owner missed an opportunity to rent an upstairs apartment in the home for $400 per month. Owner has paid the original painter $1,200 and the new painter $1,100.

Answer:  
A. $400  
B. $200  
C. $200  
D. $300 compensatory, $200 for water damage, and lost rent until Owner could find another tenant; difference in rent if he must rent at less than $400.

Diff: 3  
Topic: Monetary Damages  
Skill: Factual Application

88) Justin purchased a new Ford Thunderbird in April of 2003. This was to be Justin's midlife crisis car and would not be used in everyday driving. He did not sell his current car and would continue to drive it most of the time. Even though this was a low-volume car, Justin wanted his to be unique. He entered into a contract on May 1, 2003 with a firm to make a custom interior for the car, with the job to be completed on June 11, 2003. The customizer informed Justin on May 10 that the car would not be ready until late June. On June 12, 2003, Justin rented a 2003 Thunderbird Convertible from a specialty car rental company at a cost of $120 a day until his car was ready on June 29. Can Justin recover his car rental cost from the customizer?

Answer: Given that Justin did not need this car to meet his daily transportation needs, he might not have met his duty to mitigate by renting the substitute car for this entire period.

Diff: 2  
Topic: Monetary Damages  
Skill: Factual Application
89) Betty is retired and works on antique cars as a hobby, sometimes working on those belonging to others, and sometimes on cars that she purchases and restores for resale. Betty has a 1965 Ford Mustang on which she has completed the mechanical and exterior restoration. She has not yet begun the restoration of the interior, which needs a lot of work. Betty needs some money quickly, so she advertises the Mustang for $13,000. Bob looks at it and enters into a written contract at $12,500. Bob then offers to pay Betty $2,300 to complete the interior restoration. They agree, with the work to begin in 2 months and take about three months to complete. Betty changes her mind about selling the car. Can Bob get specific performance for these two contracts?

Answer: Although there are many old Mustangs in existence, if the court found that the uniqueness requirement was met based on the year and model of the car, he may be entitled to specific performance. Further, if he can demonstrate that there was no adequate remedy at law and also that if he had breached, she would be entitled to specific performance (hence, mutuality of remedy), Bob may be prevail. However, Bob could not get specific performance for the personal services contract to restore.

Diff: 2
Topic: Equitable Remedies
Skill: Factual Application
1) One of the uniform laws developed in response to electronic commerce is the Uniform Computer Information Transactions Act.

Answer: TRUE
Diff: 1
Topic: The Internet

2) The Internet was begun in the late 1980s by the U.S. Department of Education.

Answer: FALSE
Diff: 2
Topic: The Internet

3) The Communications Decency Act of 1996 was found to violate freedom of speech rights.

Answer: TRUE
Diff: 1
Topic: The Internet

4) Electronic mail is one of most widely used applications for communication over the Internet.

Answer: TRUE
Diff: 2
Topic: The Internet

5) A printout of a contract negotiated using e-mail is usually not sufficient to meet the requirements of the Statute of Frauds because its source cannot be verified.

Answer: FALSE
Diff: 1
Topic: The Internet

6) The Electronic Communications Privacy Act protects electronic communications while they are in transit as well as when they are stored.

Answer: TRUE
Diff: 1
Topic: The Internet
7) Under the Electronic Communications Privacy Act, an employer cannot access any stored e-mail of an employee without that employee's consent.

Answer: FALSE
Diff: 2
Topic: The Internet

8) The government can get access to an individual's stored e-mail pursuant to a legitimate criminal investigation without a search warrant.

Answer: FALSE
Diff: 2
Topic: The Internet

9) Under the terms of a 1999 trade pact between China and the United States, foreign companies cannot own more than 50 percent of an Internet business in China.

Answer: TRUE
Diff: 1
Topic: The Internet

10) In order to register for a domain name, the U.S. Patent and Trademark Office must issue an authorization that the name is available and is not confusingly similar to existing names.

Answer: FALSE
Diff: 1
Topic: Internet Domain Names

11) The price charged for the sale or transfer of Web domain names is regulated in order to prevent excessive prices from being charged.

Answer: FALSE
Diff: 1
Topic: Internet Domain Names

12) Trademark laws adequately protect holders of trademarks from persons acquiring domain names in bad faith using the trademark, or confusingly similar names.

Answer: FALSE
Diff: 1
Topic: Internet Domain Names

13) The Anticybersquatting Consumer Protection Act protects any individual's name from being registered by another person.

Answer: FALSE
Diff: 1
Topic: Internet Domain Names
14) The Anticybersquatting Consumer Protection Act protects against bad faith registrations of domain names only if the domain name is trademarked.

Answer: FALSE  
Diff: 2  
Topic: Internet Domain Names

15) In order to be authorized to be a domain name registrar, the registrar must agree to use an arbitration procedure for resolving cybersquatting disputes.

Answer: TRUE  
Diff: 1  
Topic: Internet Domain Names

16) All arbitrations related to Internet domain name disputes must be heard by the World Intellectual Property Organization.

Answer: FALSE  
Diff: 1  
Topic: Internet Domain Names

17) The "Whois" database contains everyone's name in the United States.

Answer: FALSE  
Diff: 2  
Topic: Internet Domain Names

18) One of the places domain names can be registered at is Network Solutions, Inc.'s Web site.

Answer: TRUE  
Diff: 1  
Topic: Internet Domain Names

19) Under the Uniform Computer Information Transactions Act, a license is a contract that transfers limited rights in intellectual property and informational rights.

Answer: TRUE  
Diff: 1  
Topic: Licensing of Informational Rights

20) A computer information transaction is an agreement to create, transfer, or license computer information or information rights.

Answer: TRUE  
Diff: 2  
Topic: Licensing of Informational Rights
21) In a licensing agreement, the licensor is the owner of intellectual property or informational rights who transfers rights in the property or information to the licensee.

Answer: TRUE
Diff: 1
Topic: Licensing of Informational Rights

22) Intellectual property licensing agreements are simple, standard agreements that generally convey similar rights to licensees.

Answer: FALSE
Diff: 1
Topic: Licensing of Informational Rights

23) An exclusive license means that a licensor will not grant to any other person rights in the same information for an infinite amount of time.

Answer: FALSE
Diff: 3
Topic: Licensing of Informational Rights

24) An intellectual property licensing arrangement is a method used to transfer certain rights of use, but not ownership, of intellectual property.

Answer: TRUE
Diff: 2
Topic: Licensing of Informational Rights

25) A software access contract is not breached by changes by the licensor in the content of the information licensed if the change does not conflict with express terms of the license contract.

Answer: TRUE
Diff: 1
Topic: Licensing of Informational Rights

26) The Uniform Computer Information Transactions Act was passed by Congress in 1999.

Answer: FALSE
Diff: 1
Topic: Licensing of Information Technology Rights

27) Under the Uniform Computer Information Transactions Act, when an offer is conditioned on agreement by the other party to all of the terms of the offer, varying the terms in a purported acceptance may still create an acceptance.

Answer: FALSE
Diff: 2
Topic: Licensing of Information Technology Rights
28) When contracting with an electronic agent, a contract can be formed even though the content of the purported acceptance would constitute a counteroffer if dealing with a live agent.

Answer: TRUE
Diff: 1
Topic: Licensing of Information Technology Rights

29) Counteroffers are effective against electronic agents.

Answer: FALSE
Diff: 2
Topic: Licensing of Information Technology Rights

30) Unfortunately, breach of a licensing agreement by one party leaves the aggrieved party without any type of remedy.

Answer: FALSE
Diff: 1
Topic: Licensing of Information Technology Rights

31) Under the Uniform Electronic Transactions Act, electronic signatures must generally be followed up by executing a manual signature in order to attest to the authenticity of the electronic signature.

Answer: FALSE
Diff: 1
Topic: Licensing of Information Technology Rights

32) Under the Uniform Computer Information Transactions Act, consumers are held responsible for electronic errors, such as ordering more copies than intended, if there was a confirmation procedure and the consumer erroneously confirmed the incorrect quantity.

Answer: TRUE
Diff: 2
Topic: Licensing of Information Technology Rights

33) Under the Uniform Computer Information Transactions Act, the remedy of specific performance is available if the parties have agreed to the remedy in the contract or if the agreed-upon performance is unique.

Answer: TRUE
Diff: 2
Topic: Licensing of Information Technology Rights
34) Under the Uniform Computer Information Transaction Act, a cause of action must be brought within 1 year after the breach was or should have been discovered, but not more than 5 years after the breach actually occurred.

Answer: TRUE
Diff: 2
Topic: Licensing of Information Technology Rights

35) Model acts promulgated by the National Conference of Commissioners on Uniform State Laws include the:

   A) Electronic Commerce Amendments to the Uniform Commercial Code
   B) Uniform Electronic Transactions Act
   C) Uniform Computer Information Transactions Act
   D) B and C only
   E) A, B, and C

Answer: D
Diff: 1
Topic: The Internet
Skill: Legal Concepts

36) Which of the following statements is true about the Internet?

   A) It was begun in the 1970s.
   B) It was started by the National Aeronautics and Space Administration.
   C) It had more than 1,000 computers connected by 1980.
   D) Its original purpose was to develop communications for military and national defense purposes.

Answer: D
Diff: 2
Topic: The Internet
Skill: Legal Concepts
37) Which of the following apply to the Electronic Signature in Global and National Commerce Act?
A) It is a statute enacted by Congress and therefore has national reach.
B) The act provides that electronically signed contracts cannot be denied effect because they are in electronic form.
C) The act is designed to place the world of electronic commerce on the same par as the world of paper contracts in the United States.
D) It recognizes electronic contracts as meeting the writing requirement of the Statute of Frauds.
E) All of these are correct.

Answer: E
Diff: 2
Topic: The Internet
Skill: Legal Concepts

38) The two specific provisions of the Telecommunications Act of 1996 that the American Civil Liberties Union objected to in its 1996 challenge to the Act were the:
A) "indecent transmission" provision and "parental control" provision
B) "patently offensive display" provision and "sexual deviant" provision
C) "indecent transmission" provision and "patently offensive display" provision
D) "patently offensive display" provision and "latent offensive display" provision
E) "indecent transmission" provision and "prevention of obscene domain names" provision

Answer: C
Diff: 2
Topic: The Internet
Skill: Legal Concepts

39) Which of the following was NOT part of the U.S. Supreme Court's findings or reasoning in its decision declaring parts of the Communications Decency Act of 1996 to be unconstitutional?
A) New technology would soon be available allowing easier parental control over children's access to online material.
B) If applying proper standards, the government is in the best position to determine the appropriateness of material to be seen by children over the Internet.
C) One of the problems with the law was its vagueness.
D) The criminal sanctions in the statute would make individuals too afraid to make material available even if there were only a possibility that it was illegal.
E) The provisions were lacking in the precision that is needed when a statute regulates the content of speech.

Answer: B
Diff: 3
Topic: The Internet
Skill: Legal Concepts
40) Which of the following best describes how e-mail contracts are viewed under the law?
   A) E-mail contracts are not usually valid because of the ease of deleting e-mail messages.
   B) E-mail contracts for goods can be valid, but not e-mail contracts for services.
   C) E-mail contracts are valid only for contracts less than $500.
   D) E-mail contracts are valid so long as both parties sign a written copy printed out from the e-mail.
   E) E-mail contracts are generally treated similarly to contracts negotiated by other means.

Answer: E
Diff: 2
Topic: The Internet
Skill: Legal Concepts

41) Which of the following is correct about the Electronic Communications Privacy Act?
   A) Law enforcement authorities can access an employee's e-mail stored on the employer's computer system in connection with a criminal investigation only with a search warrant.
   B) An employer has the right to view an employee's e-mail regardless of where it is stored if it can be accessed through the employer's e-mail system.
   C) The Act contains civil limitations, but no criminal provisions.
   D) The act applies to stored e-mail, but not e-mail in the process of transmission.

Answer: A
Diff: 2
Topic: The Internet
Skill: Legal Concepts

42) Which of the following is true about investment by U.S. companies in Chinese Internet businesses under the 1999 trade pact between the United States and China?
   A) Internet business ownership interest by foreigners is limited to 50 percent.
   B) The content of most Web sites will be free from Chinese government regulation.
   C) The investments in Internet companies can be made without having to obtain a license.
   D) Investments can be made by parties from only one nation other than China.

Answer: A
Diff: 2
Topic: The Internet
Skill: Legal Concepts
43) Which of the following extensions for domain names represents an unrestricted global name that may be used by businesses, individuals, and organizations?
   A) .Edu
   B) .Org
   C) .Com
   D) .Info
   E) .Net

   Answer: D
   Diff: 2
   Topic: Internet Domain Names
   Skill: Legal Concepts

44) Internet domain names are assigned by:
   A) the Patent and Trademark Office
   B) a subagency of the Commerce Department
   C) Network Solutions, Inc. only
   D) Network Solutions, Inc., and other authorized companies

   Answer: D
   Diff: 1
   Topic: Internet Domain Names
   Skill: Legal Concepts

45) In order to obtain a domain name, one must:
   A) obtain clearance that the name is not confusingly similar to another name, and pay the appropriate fee
   B) apply for the name and, if within the waiting period, there are no objections to the applicant taking the name, pay the appropriate fee
   C) verify that the name is not already taken, directly notify parties who might object to obtain their waiver of objection, and pay the appropriate fee
   D) verify that the name is not already taken and pay the appropriate fee or, if already taken, negotiate to purchase the name from its current owner
   E) apply for the name, state the purpose for which the name will be used, and if the use is approved, pay the appropriate fee

   Answer: D
   Diff: 2
   Topic: Internet Domain Names
   Skill: Legal Concepts
46) Which of the following is true about the sale of Internet domain names?
   A) The fee for the transfer of an Internet domain name cannot be greater than the fee paid to
      register the name, prorated over the remaining period that the registration fee covers.
   B) Amounts charged to transfer ownership of a domain name must be approved by the
      agency that initially sold the name.
   C) Names have not been sold for more than nominal amounts.
   D) Some names have properly been sold for millions of dollars.
   E) The periodic registration fee will be affected by the amount for which a domain name is
      sold.

   Answer: D
   Diff: 2
   Topic: Internet Domain Names
   Skill: Legal Concepts

47) Under the Anticybersquatting Consumer Protection Act, which of the following is true?
   A) Prior approval by the affected celebrity is needed to obtain a domain name that is similar
      to a celebrity's name.
   B) Penalties are imposed for obtaining any domain name that infringes on a valid trademark.
   C) Domain names are granted only after ensuring that they do not infringe on a valid
      existing trademark.
   D) A plaintiff must show that the defendant acted in bad faith in order to recover.
   E) Both C and D are true.

   Answer: D
   Diff: 2
   Topic: Internet Domain Names
   Skill: Legal Concepts

48) Of the following, which celebrity(ies) was/were successful in recovering under the
    Anticybersquatting Consumer Protection Act from someone who improperly obtained an Internet
    domain name?
   A) Julia Roberts
   B) Sting
   C) both A and B
   D) neither A nor B

   Answer: A
   Diff: 1
   Topic: Internet Domain Names
   Skill: Legal Concepts
49) Which types of names are protected under the Anticybersquatting Consumer Protection Act?
   A) any name of a natural person
   B) names of famous persons only
   C) names of famous companies, but only if the name is trademarked
   D) names of famous persons or of famous companies, but only if the name is trademarked
   E) names of famous persons or of famous companies, even if the name is not trademarked

   Answer: E  
   Diff: 2  
   Topic: Internet Domain Names  
   Skill: Legal Concepts

50) Which of the following is not true about the settlement of domain name disputes under the Uniform Dispute Resolution Policy?
   A) This policy was adopted by the Internet Corporation for Assigned Names and Numbers.
   B) This policy requires all companies who want to become approved registrars of domain names to agree to settle domain name disputes using an arbitration procedure.
   C) Disputants must use the World Intellectual Property Organization, an agency of the United Nations, for the settlement of disputes.
   D) The arbitration panels are composed of intellectual property experts.
   E) Arbitration panel awards can be appealed to U.S. courts.

   Answer: C  
   Diff: 3  
   Topic: Internet Domain Names  
   Skill: Legal Concepts

51) The primary requirement of the Uniform Dispute Resolution Policy as applies to domain name disputes is that:
   A) domain name disputes must be decided in the jurisdiction of the defendant
   B) domain name disputes will be decided by the use of mediation
   C) domain name disputes will be decided by the use of arbitration
   D) domain name disputes will be decided outside of the traditional court system, and these decisions cannot be appealed
   E) domain name disputes must be decided by an agency of the United Nations

   Answer: C  
   Diff: 2  
   Topic: Internet Domain Names  
   Skill: Legal Concepts
52) Under the procedure instituted by the Internet Corporation for Assigned Names and Numbers, domain name disputes are resolved according to:
   A) the rules of the American Arbitration Association
   B) mandatory mediation, with court action if this is not successful
   C) the Uniform Dispute Resolution Policy
   D) the U.S. Patent and Trademark Office
   E) the first-to-apply rule

Answer: C
Diff: 2
Topic: Internet Domain Names
Skill: Legal Concepts

53) Licensing of informational rights can best be described as:
   A) a sale of the underlying intellectual property rights
   B) a lease of tangible personal property to the licensee
   C) the granting of limited rights to use that cannot be simultaneously granted to others
   D) the granting of any rights to use information, which can differ greatly in scope and duration
   E) the right to temporarily use the domain name of another

Answer: D
Diff: 2
Topic: Licensing of Informational Rights
Skill: Legal Concepts

54) A licensing arrangement that calls for the use of software that remains in the possession of the licensor is called a(n):
   A) access contract
   B) remote site license
   C) noncarrier software contract
   D) periodic use site license

Answer: A
Diff: 2
Topic: Licensing of Informational Rights
Skill: Legal Concepts
55) In a software or information access contract, which of the following is true?
   A) Occasional failures to have access to the information are not breaches if they are normal in the business, trade, or industry.
   B) Occasional failures to have access to the information are not breaches if they result from planned downtime.
   C) The information to be accessed is updated periodically in many contracts.
   D) A and B only are true.
   E) A, B, and C are true.

Answer: E
Diff: 2
Topic: Licensing of Informational Rights
Skill: Legal Concepts

56) Which of the following is true about the Uniform Computer Information Transactions Act?
   A) It became law in all 50 states in 1999.
   B) The Act is the exclusive source of law for the transactions that it applies to.
   C) It establishes a uniform set of rules that governs the creation, performance, and enforcement of computer information transactions.
   D) State trade secret law could not apply to a contract covered by the Act.

Answer: C
Diff: 2
Topic: Licensing of Informational Rights
Skill: Legal Concepts

57) The Uniform Computer Information Transactions Act governs which types of transactions?
   A) It governs any contract entered into by using electronic messages.
   B) It governs contracts to create, transfer or license computer information or informational rights.
   C) It governs any contract for the sale of goods that is entered into by using electronic messages.
   D) It governs any contract where payment is made electronically, including electronic credit card transactions.

Answer: B
Diff: 2
Topic: Licensing of Informational Rights
Skill: Legal Concepts
58) Under the Uniform Computer Information Transactions Act, which of the following is not true?
   A) Contract formation can occur in any manner that shows agreement.
   B) Acceptance can generally be in any manner and by any medium reasonable in the circumstances.
   C) Acceptances by electronic message are effective when sent if they are made in response to an offer evoking an electronic response.
   D) The offeror can make acceptance valid only upon the offeree accepting all terms of the offer.

Answer: C
Diff: 3
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

59) Under the Uniform Computer Information Transactions Act, what is the effect of putting additional terms into an acceptance delivered through an electronic agent?
   A) The acceptance is treated as a counteroffer.
   B) The additional terms are ignored and a contract is formed based on the original terms.
   C) The additional terms become part of the agreement unless objected to within 10 days.
   D) The acceptance is treated as if it never occurred, leaving the original offer open.

Answer: B
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

60) Under the Uniform Computer Information Transactions Act, contracts must be authenticated if the amount to be paid is:
   A) $500 or more
   B) $1,000 or more
   C) $2,000 or more
   D) $5,000 or more
   E) $10,000 or more

Answer: D
Diff: 1
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts
61) Under the Uniform Computer Information Transactions Act, which of the following is true regarding contracts that need to be authenticated?

A) All covered contracts must be authenticated.
B) Authentication can occur only with a hand signature.
C) To be enforceable, both parties must have authenticated the contract.
D) Authentication may be shown using an attribution procedure.
E) The same authentication rules apply regardless of whether the parties are merchants or nonmerchants.

Answer: D
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

62) What is the legal significance of a confirmation letter in a contract covered by the Uniform Computer Information Transactions Act?

A) It eliminates the authentication requirement for contracts involving less than $5,000.
B) It eliminates the authentication requirement for all contracts involving $5,000 or more.
C) It eliminates the authentication requirement for contracts involving $5,000 or more if both parties are merchants.
D) It requires that a confirmation letter be sent in addition to the authentication requirements in all contracts involving $5,000 or more.

Answer: C
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

63) Which of the following is generally true about contracts covered by the Uniform Electronic Transactions Act?

A) An e-mail printout is not admissible as evidence due to the ease with which a printout can be fabricated.
B) E-mail contracts cannot meet the Statute of Frauds requirements for a writing.
C) Electronic signatures are considered equivalent to handwritten signatures for meeting the Statute of Frauds requirements.
D) Electronic signatures have been held to be sufficient for contracts not required to be in writing under the Statute of Frauds, but not for meeting the Statute of Frauds signature requirement.
E) An e-mail contract meets the Statute of Frauds requirement only if a printout of the e-mail has a hand signature on it.

Answer: C
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts
64) Which of the following is true about the provisions of the Uniform Electronic Transactions Act?
   A) A notarization or acknowledgment can be accomplished with an electronic signature of the authorized person so long as all of the information required in the authorization or acknowledgment is provided.
   B) The Act's primary goal is to place electronic signatures at a higher level than manual signatures.
   C) The Act includes several modifications to the rules of offer and acceptance if the contract is negotiated electronically.
   D) Although ordinary signatures can be replaced with electronic signatures, notarized signatures must still be executed manually.
   E) Its provisions apply only to transactions involving the transfer of rights to the use of information.

Answer: A
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

65) Under the Uniform Computer Information Transactions Act, tender of performance is:
   A) a party's unequivocal indication of intent to perform
   B) a party's agreement to perform
   C) the offer to complete the performance of contractual duties made by a party who is willing and able to perform
   D) the actual completion of a party's obligations under the contract
   E) any action made by a party that is a beginning of performance of contractual duties

Answer: C
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

66) Under the Electronic Signature in Global and National Commerce Act, electronic signatures can be verified by the following methods except:
   A) by a secret password known by the signatory
   B) by a digitally encoded smart card belonging to the signatory
   C) by the use of a device that electronically recognizes fingerprints or parts of the eye
   D) by the use of a notary public to check digital identifying information

Answer: D
Diff: 1
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts
67) Under the Uniform Computer Information Transactions Act, which of the following actions will **not** cause a licensee to be deemed to have accepted a copy of the information?

A) signifying that the tender was conforming  
B) retaining a copy despite its nonconformity  
C) obtaining, from the copy, a substantial benefit that cannot be returned  
D) having a course of dealing of accepting nonconforming copies of information in the past  
E) commingling the copies or information with other copies or information

Answer: D  
Diff: 2  
Topic: Licensing of Information Technology Rights  
Skill: Legal Concepts

68) Which of the following is true about impracticability under the Uniform Computer Information Transactions Act?

A) Performance is not excused under the Act due to impracticability.  
B) Even when nonperformance is excused due to impracticability, there is a breach of contract.  
C) When the existence of impracticability is not subject to reasonable dispute, no notice is necessary to the other party.  
D) When a party receives notice of impracticability from the other party, the party receiving the notice can choose to terminate the contract and be discharged from any duties related to the unperformed portion.

Answer: D  
Diff: 3  
Topic: Licensing of Information Technology Rights  
Skill: Legal Concepts

69) Under the Uniform Computer Information Transactions Act, if a consumer makes a unilateral electronic error in an electronic contract, which of the following is the consumer **NOT** required to do in order to avoid being bound by the error?

A) Upon learning of the error, promptly notify the other party.  
B) Explain the cause or source of the error to the other party.  
C) Does not use or benefit from the information or make it available to a third party.  
D) Deliver all copies to the other party, or destroys them pursuant to the other party's instructions.  
E) Pay the shipping, reshipping, and processing costs of the other party.

Answer: B  
Diff: 2  
Topic: Licensing of Information Technology Rights  
Skill: Legal Concepts
70) Under the Uniform Computer Information Transactions Act, which of the following implied warranties does NOT apply, assuming that the licensor is a merchant?

A) noninfringement
B) merchantability
C) noninterference
D) nontransferability
E) informational content

Answer: D
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

71) Which of the following is true under the Uniform Computer Information Transactions Act about a licensor's use of self-help techniques in response to a breach of a contract by a licensee?

A) The licensor can use self-help techniques whether or not they are mentioned in the contract terms.
B) It is acceptable to cause a breach of the peace, assuming that the licensee breached.
C) The licensor must give the licensee at least 15 days notice before taking any disabling action.
D) Self-help cannot include any techniques that make software inoperative.

Answer: C
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

72) Under the Uniform Computer Information Transactions Act, the licensee can revoke acceptance of the information if which of the following is true?

A) There is a material breach and discovery of the nonconformity was difficult at the time of delivery but was later discovered.
B) There is a breach of any kind and discovery of the nonconformity was difficult at the time of delivery but was later discovered.
C) There is a material breach, and after discovering the nonconformity at the time of delivery, the licensor agreed to cure the defect, but has not done so.
D) There is a breach of any kind, and after discovering the nonconformity at the time of delivery, the licensor agreed to cure the defect, but has not done so.
E) A or C will allow the licensee to revoke acceptance.

Answer: E
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts
73) Under the Uniform Computer Information Transactions Act, the licensor has a right to cure under the following circumstances **EXCEPT** where the:
   A) licensor affects a cure before the time for performance has expired
   B) time for performance has expired, but the licensor had reasonable grounds to believe that the performance would be acceptable, and cures within a reasonable time
   C) nonconformity was caused by a supplier to the licensor, and the licensor was not able to discover the nonconformity before delivery to the licensee
   D) licensor cures by making a conforming performance prior to a cancellation of the contract by the licensee

Answer: C
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

74) Under the Uniform Computer Information Transactions Act, which of the following is true?
   A) Where both parties to the transaction are merchants, the court will not examine the reasonableness of any liquidated damages clause.
   B) Specific performance can be obtained by the licensee if the information is unique or the parties agreed to it as a remedy in the contract.
   C) Liquidated damages clauses are not permitted under the Act.
   D) Following a breach by the licensor, the licensee can continue to use the information without incurring an obligation to pay.

Answer: B
Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Legal Concepts

75) John works for a company that provides computers and access to a service provider that provides access to the Internet, as well as an e-mail address for all employees. While at work, John often accesses the e-mail account that he uses at home. John's employer would like to access John's e-mail to see if he is using company time for personal purposes. Which of the following is true?
   A) The company must get a search warrant before it can access any of John's stored e-mail.
   B) The company can have access to e-mail stored at John's work e-mail address, but not that stored at the e-mail address he usually accesses from home.
   C) The company can have access to e-mail stored at either location if the e-mail at the address he accesses from home was sent or received during John's time at work.
   D) The company cannot access any of John's stored e-mail unless it obtains the assistance of law enforcement personnel and obtains a search warrant.

Answer: B
Diff: 2
Topic: The Internet
Skill: Factual Application
76) Mark recently started a small business and acquired a domain name for the business. At the same time, he remembered hearing about people buying up names related to companies and to famous individuals and then selling the names for astronomical sums. Mark wants to buy the domain name, "Sharonstone.com." He figures he will start a fan club for the famous movie star, and then see if he can sell the domain name to her for a profit. Which is true in these circumstances regarding Mark's options?

A) He will be unable to buy the name because it is the name of a person.
B) He will have to give Sharon Stone the first opportunity to buy the name.
C) He could buy the domain name, but could be liable under the Anticybersquatting Consumer Protection Act if it can be proven that he acted in bad faith in acquiring the name.
D) He could buy the domain name, but could be liable under the Anticybersquatting Consumer Protection Act if it can be proven that he acted in bad faith in acquiring the name but only if Sharon Stone can prove that she suffered damages from his Web site.
E) He could buy the domain name, but could be liable under the Anticybersquatting Consumer Protection Act if it is proven that he acted in bad faith in acquiring the name but only if Sharon Stone can prove that he earned profits from the fan club Web site.

Answer: C
Diff: 3
Topic: Internet Domain Names
Skill: Factual Application

77) Andy has entered into an agreement whereby he can make limited use of software that will remain stored at the licensor's site. Andy accesses the software over the Internet when he needs to use it, but does not store the software on his own computer. Andy uses this software three or 4 days a week, and usually has no problem, but on some occasions the licensor's computer is down and Andy cannot access the software. Based on the above, which of the following is true?

A) Andy can get out of the contract because the inability to access the software is a material breach whereby he is not getting the benefit of the bargain.
B) If the periods the computer is down are considered normal in the industry, there has been no breach.
C) This is considered a breach of the warranty of noninterference.
D) The downtime of the computer is not a breach only if it is scheduled in advance and Andy is given notice of it.

Answer: B
Diff: 3
Topic: Licensing of Informational Rights
Skill: Factual Application
78) Bill and Sally sent several e-mails back and forth in the process of agreeing for Bill to buy Sally's 2001 Acura TL. Sally places an electronic signature on her final correspondence. Bill did not place any type of signature on any of his correspondence. There is actually no single e-mail with all the terms of their agreement, but Bill has printed out copies of all the e-mails between them concerning this transaction. Can Bill enforce this contract?

A) Bill cannot enforce the agreement because Sally's electronic signature does not meet the Statute of Frauds requirement.
B) Bill cannot enforce the agreement because there is no single writing with all the terms of the agreement within the four corners.
C) Bill cannot enforce the agreement because the printed copies of the e-mail correspondence do not meet the writing requirement under the Statute of Frauds.
D) Bill is able to enforce the agreement against Sally.

Answer: D
Diff: 3
Topic: Licensing of Information Technology Rights
Skill: Factual Application

79) Ed Smith purchases the domain name "bradpitt.com." He believes that he may be able to sell the web-site to the actor at a significant profit. The famous actor wants the domain name. What will most likely happen?

A) Pitt may have the domain if he pays what Smith wants for it.
B) Pitt may have the domain because it is his name.
C) Pitt may have the domain because Smith registered it in bad faith.
D) Smith may keep the domain because the name "Brad Pitt" is generic.

Answer: C
Diff: 3
Skill: Factual Application

80) Ed Smith purchases the domain name "sting.com." The famous musician later brings a lawsuit to obtain the domain name. What will most likely happen?

A) Sting will get the domain, but must pay Smith for it.
B) Sting will get the domain because it is his name.
C) Smith may keep the name because the name is generic.
D) Smith may keep the name because Sting is not an American citizen.

Answer: C
Diff: 3
Skill: Factual Application
81) How much regulation of Internet content should be permissible? How does the Internet differ from television and how is it similar with respect to this issue? How should children's access enter into the analysis?

Answer: Even if the government tried to strictly regulate Internet content, the dispersed nature of the Internet would make it difficult. The Internet requires more deliberate steps to be taken to reach a specific destination, unlike television, where it will always be on a particular station when it is turned on, and the programming generally changes every hour or so. Various filtering programs and other restrictive devices allowing parents to control access of the children reduce the validity of arguments that Internet content must be controlled to protect children.

Diff: 2
Skill: Ethics and Policy

82) Do you agree with the provisions of the Anticybersquatting Consumer Protection Act? Should alert individuals who purchase valuable domain names be able to sell them to the highest bidder? If so, in all circumstances or only in certain circumstances?

Answer: Most people believe (and the law allows) individuals should be able to profit from selling valuable generic names such as "accountant.com" or "cars.com" because no one could claim to have had an interest in the name before the enterprising individual purchased it. Even so, some believe that individuals should not be able to profit solely by possessing a domain name that is never planned to be used. More people believe that the purchasers of trademarked company names or names relating to celebrities should not be rewarded by what these critics claim is essentially an act of extortion. On the other hand, some believe that all is fair in love, war, and the grabbing of domain names, and everyone had an equal opportunity to get the names.

Diff: 2
Skill: Ethics and Policy

83) In contracts for the sale of goods, do the parties contracting electronically or face-to-face need more protections? What circumstances might affect your opinion?

Answer: On one hand, at least at the consumer level, the average consumer contracting over the Internet might have a slightly higher sophistication level than the average of all consumers, thus possibly needing less protection. On the other hand, due to the inability to personally know the other party, perhaps greater protections are appropriate. The fact that the parties are usually separated by great distance also argues for greater protections.

Diff: 3
Skill: Ethics and Policy
84) Ingrid works for a large wholesale operation in the finance department. In connection with the investigation of suspected embezzlement, her employer looked at her saved e-mail at work. Then, from some forwarded messages, discovered her home e-mail address, and convinced the Internet service provider to allow them access to that as well. Apparently she has become a suspect in the embezzlement investigation. The police have become involved. Discuss this situation.

Answer: The company is able to read Ingrid's work e-mail because the company is paying for, and thus considered to be providing, the work e-mail. Because the company can properly access it, the company can probably voluntarily turn it over to a police investigator without a search warrant. A search warrant would be needed if the company did not want to turn it over. The access of her home e-mail was improper and should have been done only pursuant to a valid search warrant.

Diff: 2
Topic: The Internet
Skill: Factual Application

85) Shortly before President Clinton left office in 2001, he granted a number of controversial pardons. Heather acquired several domain names, including ones such as "pardonmetoobill.com" and "outofjailfreewithbill.com." Heather hopes to use the Web sites to post jokes and anecdotes about the controversy and the ongoing lives of Bill and Hillary. Heather hopes that she can attract advertisers to the site. Barring that, she hopes that maybe Bill Clinton will pay her for the sites. Could Heather face any liability under the Anticybersquatting Consumer Protection Act?

Answer: This act is primarily aimed at persons who buy the names in order to profit by selling them to the respective individuals because the named individual wants the name. In this case, the name is being used in a political and/or satire or parody Web site, which would likely be deemed to be a proper use. Mr. Clinton would likely be interested in the sites only to prevent the parody, and not for his own use. A famous person's name was not part of the domain names here.

Diff: 2
Topic: Internet Domain Names
Skill: Factual Application
86) Jacob has long been fascinated with gambling, and has traveled to many of the world's gambling centers, including Monte Carlo. He now plans to turn his hobby into work by opening a gambling education Web site. He hopes to attract advertising from casinos who would want to reach the persons using his Web site to learn about gambling. Because of his love of Monte Carlo and its worldwide fame, he acquired several domain names with Monte Carlo in the name. Assume that a few months before he is ready to go online, he is sued by General Motors who wants the Monte Carlo domain name for use as a Web site to promote its Chevrolet Monte Carlo. Discuss the likely outcome of this lawsuit.

Answer: Presumably this suit is being brought under the Anticybersquatting Consumer Protection Act. General Motors would have to prove that the name is famous and that Jacob acquired it in bad faith. The name of the car is probably not all that famous. That is probably not important because General Motors could not prove that Jacob acquired the name in bad faith. Jacob's use of the Monte Carlo name is legitimate for his intended use.

Diff: 2
Topic: Internet Domain Names
Skill: Factual Application

87) Henry has entered into an access contract covered by the Uniform Computer Information Transaction Act. Henry began accessing the software without problem, but after 2 months, began occasionally having difficulty accessing the software. Henry is also upset because the licensor has made periodic changes to the software. Henry now wants out of the contract. Discuss generally Henry's options at this point.

Answer: If the access failures are normal in the business or caused by scheduled downtime, Henry would not have a remedy, and if the software changes do not violate the terms of agreement, the changes are not a breach.

Diff: 2
Topic: Licensing of Informational Rights
Skill: Factual Application

88) Cybertime Software sold a software package to a client. The terms of the contract provided that the client was purchasing use of the software for 6 months. Cybertime delivered the software copy on compact disks, encoded to become usable on May 1, 2002, with payment due from the client by June 1, 2002. Unbeknownst to the client, the software was set to disable on June 15, 2002 unless Cybertime supplied the client with special software to reactivate the program, which would be done upon full payment. Discuss the legality of this situation.

Answer: Under the Uniform Computer Information Transactions Act, self-help such as this must be specifically disclosed in the contract.

Diff: 2
Topic: Licensing of Information Technology Rights
Skill: Factual Application
1) Article 2 of the UCC applies to transactions in goods.

Answer: TRUE
Diff: 1
Topic: Scope of Article 2 (Sales)

2) The common law of contracts governs if either Article 2 or Article 2A is silent on the issue.

Answer: TRUE
Diff: 1
Topic: Scope of Article 2 (Sales)

3) Every state except Louisiana has enacted the UCC as its commercial statute.

Answer: TRUE
Diff: 1
Topic: Scope of Article 2 (Sales)

4) In order for title to pass from a seller to a buyer, the purchase of the good must be by cash.

Answer: FALSE
Diff: 2
Topic: Scope of Article 2 (Sales)

5) The UCC applies to contracts for services as well as to contracts for the sale of goods.

Answer: FALSE
Diff: 1
Topic: Scope of Article 2 (Sales)

6) Sales of stocks and bonds are covered by Article 2 of the UCC.

Answer: FALSE
Diff: 1
Topic: Scope of Article 2 (Sales)

7) Article 2 of the UCC applies to real estate, because real estate generally has severable things that are goods according to Article 2 of the UCC.

Answer: FALSE
Diff: 1
Topic: Scope of Article 2 (Sales)
8) Growing crops that are severable from real estate may be classified as goods and subject to Article 2.

Answer: TRUE
Diff: 1
Topic: Scope of Article 2 (Sales)

9) A transaction that includes both a goods and a services component will be covered by the UCC so long as the goods are the predominant part of the transaction.

Answer: TRUE
Diff: 2
Topic: Scope of Article 2 (Sales)

10) A sale involving both goods and services is known as a mixed sale.

Answer: TRUE
Diff: 1
Topic: Scope of Article 2 (Sales)

11) A party is considered a merchant if that party holds herself out as having special knowledge of the goods involved in the transaction, even if she does not regularly deal in the goods.

Answer: TRUE
Diff: 2
Topic: Scope of Article 2 (Sales)

12) The UCC applies only to sales between merchants.

Answer: FALSE
Diff: 2
Topic: Scope of Article 2 (Sales)

13) A party that is a merchant in one transaction is a merchant for all transactions in which he/she is involved.

Answer: FALSE
Diff: 2
Topic: Scope of Article 2 (Sales)

14) If a homeowner sells a used lawn mower to his neighbor, Article 2 of the UCC does not apply.

Answer: FALSE
Diff: 2
Topic: Scope of Article 2 (Sales)
15) The installation of a pacemaker by a hospital is a sale of goods subject to Article 2 of the UCC.

Answer: FALSE
Diff: 1
Topic: Scope of Article 2 (Sales)

16) A sporting goods dealer is a merchant with respect to golf clubs but not if he sells a wheelbarrow to a neighbor.

Answer: TRUE
Diff: 1
Topic: Scope of Article 2 (Sales)

17) The lessee is the party who holds himself or herself out as having knowledge or skill peculiar to the goods involved in the transaction.

Answer: FALSE
Diff: 2
Topic: Scope of Article 2A (Leases)

18) Article 2A of the UCC directly addresses personal property leases.

Answer: TRUE
Diff: 2
Topic: Scope of Article 2A (Leases)

19) In a lease, the lessee does not acquire title to the leased goods.

Answer: TRUE
Diff: 1
Topic: Scope of Article 2A (Leases)

20) A finance lease is a three-party transaction comprised of the lessor, the lessee, and the offeror.

Answer: FALSE
Diff: 1
Topic: Scope of Article 2A (Leases)

21) Under the UCC, a court can find that a contract exists as long as the moment of its making is determined.

Answer: FALSE
Diff: 2
Topic: Offer
22) Under the UCC, courts will frequently enforce a contract that does not state a price.

Answer: TRUE
Diff: 2
Topic: Offer

23) In a contract for the sale of goods, if the seller does not have a place of business and the contract does not mention delivery in any way, delivery is to be made at the buyer's house.

Answer: FALSE
Diff: 2
Topic: Offer

24) Generally, under the UCC, the only term that needs to be stated in a contract is quantity, and even that is not necessary in output and requirements contracts.

Answer: TRUE
Diff: 2
Topic: Offer

25) A "firm offer" may be made by a nonmerchant seller.

Answer: FALSE
Diff: 3
Topic: Offer

26) A "firm offer" can be held open as long as 3 months.

Answer: TRUE
Diff: 2
Topic: Offer

27) A seller or buyer who reserves the right to fix a price must do so in good faith.

Answer: TRUE
Diff: 2
Topic: Offer

28) Under Article 2 of the UCC, acceptances are effective when dispatched.

Answer: TRUE
Diff: 1
Topic: Acceptance
29) Under Article 2 of the UCC, there are detailed rules for the proper methods of acceptance in various situations.

Answer: FALSE
Diff: 2
Topic: Acceptance

30) Under the UCC, the mirror-image rule applies in the same manner as under common law.

Answer: FALSE
Diff: 2
Topic: Acceptance

31) The "battle of the forms" is a reference to the insistence by many merchant sellers that customers sign the seller's standard form contract without modification.

Answer: FALSE
Diff: 2
Topic: Acceptance

32) Additional terms to a contract are considered proposed additions if one or both parties to a sales contract are nonmerchants.

Answer: TRUE
Diff: 1
Topic: Acceptance

33) The formation of sales and lease contracts requires no consideration.

Answer: FALSE
Diff: 1
Topic: Consideration

34) An agreement modifying a sales or lease contract needs consideration to be binding.

Answer: FALSE
Diff: 2
Topic: Consideration

35) Under the Uniform Commercial Code, it is possible for a nonmerchant to be liable on a contract for the sale of goods of $500 or more without having signed any writing.

Answer: TRUE
Diff: 2
Topic: Statute of Frauds
36) If both parties to an oral sale or lease contract are merchants, the Statute of Frauds requirement can be satisfied if one of the parties sends a written confirmation and the other merchant does not object within 10 days of receiving the confirmation.

Answer: TRUE
Diff: 2
Topic: Statute of Frauds

37) The proper relationship between the common law and the UCC regarding sales is:
   A) common law no longer applies to sales
   B) the UCC no longer applies to sales
   C) the UCC controls sales, but where the UCC is silent, common law still controls
   D) the common law controls sales, but where the common law is silent, the UCC controls

Answer: C
Diff: 1
Topic: Scope of Article 2 (Sales)
Skill: Legal Concepts

38) A general purpose of the UCC is to:
   A) protect the merchant who deals in goods
   B) protect the consumer
   C) standardize commercial law and facilitate commercial transactions
   D) protect parties from entering into unconscionable contracts

Answer: C
Diff: 2
Topic: Scope of Article 2 (Sales)
Skill: Legal Concepts

39) Articles 2 and 2A of the UCC cover which types of transactions:
   A) sales of goods and sales of real property
   B) sales of goods and leases of goods or real property
   C) sales of goods and contracts for the providing of services
   D) sales of goods and leases of goods

Answer: D
Diff: 1
Topic: Scope of Article 2 (Sales)
Skill: Legal Concepts
40) The UCC applies to a mixed sale:
   A) whenever a sale of goods is a part of the transaction
   B) only if there is no service involved
   C) if the sale of the goods is the predominant part of the transaction
   D) only if the contract provides that the UCC applies

Answer: C  
Diff: 2  
Topic: Scope of Article 2 (Sales)  
Skill: Legal Concepts

41) Under UCC 2-206(1)(b), an accommodation:
   A) neither applies to merchants nor nonmerchants
   B) applies to nonmerchants only
   C) is a shipment that is offered to the buyer as a replacement for the original shipment when the original shipment cannot be filled
   D) is a bonus shipment when items are temporarily out of stock

Answer: C  
Diff: 1  
Topic: Scope of Article 2 (Sales)  
Skill: Legal Concepts

42) A merchant is a person who:
   A) deals in goods of the kind involved in the transaction
   B) by his or her skill or occupation, holds himself or herself out as having special skill or knowledge regarding the goods in the transaction
   C) employs a merchant as his or her agent
   D) Any of the above would qualify a person as a merchant.
   E) A, B, or C are all required to qualify a person as a merchant.

Answer: D  
Diff: 2  
Topic: Scope of Article 2 (Sales)  
Skill: Legal Concepts

43) Regarding differences under the UCC in the treatment of merchants and nonmerchants, which is true?
   A) The UCC applies to merchants, but not to nonmerchants.
   B) The UCC requires merchants' contracts to be in writing, but not those of nonmerchants.
   C) The requirements for a merchant to form a contract are less stringent than those for nonmerchants, and merchants receive fewer protections than nonmerchants.
   D) The consideration requirement has been eliminated for contracts between merchants, but is still present in contracts involving at least one nonmerchant.

Answer: C  
Diff: 3  
Topic: Scope of Article 2 (Sales)  
Skill: Legal Concepts
44) Which of the following is not true about Article 2A of the UCC?
   A) Many of its provision are similar to corresponding provisions of Article 2.
   B) The primary motivation in creating a separate Article for leases was to address those areas where the sales provisions didn't exactly fit a lease transaction.
   C) Article 2A was drafted in the late 1950s, a few years after Article 2 was drafted.
   D) Consumer leases are defined as having a maximum value of $25,000.

Answer: C
Diff: 2
Topic: Scope of Article 2A (Leases)
Skill: Legal Concepts

45) Under Article 2A of the UCC, a consumer lease is defined as:
   A) any lease involving goods leased to a consumer primarily for personal, family, or household purposes
   B) a lease involving goods leased to a consumer primarily for personal, family, or household purposes where the amount of the lease is $25,000 or less
   C) any lease where a consumer is either the lessee or the lessor and the amount of the lease is $500 or more
   D) any lease, whether or not the parties are consumers, where the goods being leased are consumer goods
   E) any lease, 3 years or less in duration, involving goods leased to a consumer primarily for personal, family, or household purposes

Answer: B
Diff: 3
Topic: Scope of Article 2A (Leases)
Skill: Legal Concepts

46) Which of the following statements is not true about a finance lease as defined in Article 2A of the UCC?
   A) A finance lease is a two-party transaction where the lessor sells the goods to the lessee and provides the financing of the goods.
   B) A finance lease results in the title being transferred from the seller of the goods to the lessor.
   C) The UCC covers all finance lease transactions regardless of the dollar amount of the lease.
   D) Once the lease term begins, the seller generally is no longer involved in the transaction.
   E) The lessor is usually not involved in manufacturing or supplying the goods to the lessee.

Answer: A
Diff: 3
Topic: Scope of Article 2A (Leases)
Skill: Legal Concepts
47) Under Article 2 of the UCC, when a court finds a clause in a contract to be unconscionable, the court will:
   A) determine the penalty to be paid by the party who placed the unconscionable clause in the contract
   B) not enforce any aspects of the contract
   C) order specific performance in such a way that the contract is not unconscionable
   D) enforce the contract, but limit the application of the unconscionable clause
   E) either B or D

Answer: E
Diff: 2
Topic: Formation of Sales and Lease Contracts
Skill: Legal Concepts

48) If the time, place, and manner of delivery of goods is not mentioned in a contract:
   A) the place of delivery is the buyer's place of business
   B) the contract is void for lack of definiteness
   C) the place of delivery is the seller's place of business
   D) the seller is obligated to pay for shipping to the buyer's place of business

Answer: C
Diff: 2
Topic: Offer
Skill: Legal Concepts

49) Under Article 2 of the UCC, a contract is usually enforceable even if which of the following terms is omitted:
   A) price
   B) quantity
   C) price or quantity
   D) neither price nor quantity may be omitted

Answer: A
Diff: 2
Topic: Offer
Skill: Legal Concepts
50) Which of the following statements is true regarding sales contract terms left open under the UCC?
   A) Leaving terms open makes the contract unenforceable.
   B) If not stated, the price is a "reasonable" price at the time of delivery.
   C) The price may be fixed by a market, a third person, or another standard, if so provided in the contract.
   D) A and C only are true.
   E) B and C only are true.

Answer: E
Diff: 2
Topic: Offer
Skill: Legal Concepts

51) Where a contract for the sale of goods does not mention the place of delivery for the goods, which of the following is true?
   A) The seller is obligated to deliver the goods to the buyer's place of business.
   B) The contract fails for failure to state a material term.
   C) The seller is obligated to deliver the goods at the seller's place of business.
   D) Sellers without a place of business are obligated to deliver the goods at the seller's home.
   E) Both C and D are true.

Answer: E
Diff: 2
Topic: Offer
Skill: Legal Concepts

52) Which of the following is true relating to a "firm offer" under the UCC?
   A) It can be made only by a merchant.
   B) It must be in writing and signed by the merchant.
   C) It may provide that the offer remain open for any period of time up to 4 months.
   D) A, B, and C are true.
   E) A and B only are true.

Answer: E
Diff: 1
Topic: Offer
Skill: Legal Concepts
53) Under the UCC, firm offers can be made:
   A) orally or in writing by either merchants or nonmerchants
   B) orally or in writing by merchants
   C) orally or in writing by merchants, but only in writing by nonmerchants
   D) in writing by either merchants or nonmerchants
   E) in writing by merchants

Answer: E  
Diff: 2  
Topic: Offer  
Skill: Legal Concepts

54) For the firm offer rule to apply, who must be a merchant?
   A) the offeror
   B) the offeree
   C) both the offeror and the offeree
   D) neither the offeror nor the offeree

Answer: A  
Diff: 2  
Topic: Offer  
Skill: Legal Concepts

55) Under the UCC Article 2, unless otherwise agreed, an acceptance of an offer is effective:
   A) when dispatched
   B) when dispatched, but only if the acceptance reaches its destination within a reasonable time
   C) when the acceptance is received
   D) when the goods are received
   E) when the offeree acknowledges receipt of the acceptance

Answer: A  
Diff: 2  
Topic: Acceptance  
Skill: Legal Concepts

56) An order or other offer to buy goods which requires prompt or current shipment may be accepted by:
   A) a prompt shipment of conforming goods
   B) a prompt shipment of nonconforming goods
   C) a prompt promise to ship the goods
   D) A, B, or C
   E) A or B only

Answer: E  
Diff: 2  
Topic: Acceptance  
Skill: Legal Concepts
57) Under the UCC, if an offer is received by mail, the acceptance:
   A) must also be made by mail
   B) can be made by other means, but only if the offer so states
   C) is effective only once it is received by the offeror
   D) can be canceled by the offeree at any time during the period of a firm offer
   E) can be made in any commercially reasonable manner

   Answer: E
   Diff: 1
   Topic: Acceptance
   Skill: Legal Concepts

58) Under the UCC, if a purported acceptance to an offer contains additional terms:
   A) it is treated as a rejection and counteroffer
   B) if both parties are merchants, there is a contract and the additional terms may or may not become part of the contract
   C) if neither party is a merchant, there is no contract
   D) it is treated as a counteroffer, but it does not reject the original offer

   Answer: B
   Diff: 3
   Topic: Acceptance
   Skill: Legal Concepts

59) Under the UCC, between merchants, if a purported acceptance contains additional terms, there is an acceptance, and:
   A) the additional terms are not part of the contract
   B) the additional terms are part of the contract
   C) the additional terms do not become part of the contract if they materially alter the contract
   D) there is no contract

   Answer: C
   Diff: 2
   Topic: Acceptance
   Skill: Legal Concepts
60) Where the offeror is a merchant and the offeree is a nonmerchant, what is the effect of minor different terms contained in an acceptance?

A) A contract will be formed incorporating the different terms of the acceptance.
B) No contract is formed, and the purported acceptance is treated as a counteroffer.
C) A contract is formed, but only if the parties resolve the differences in the offer and the acceptance.
D) A contract is formed according to the terms of the offer, and the additional terms are treated as proposed additions to the contract.
E) The purported acceptance is treated as a rejection, except that the original offer remains open under the firm offer rule.

Answer: D
Diff: 3
Topic: Acceptance
Skill: Legal Concepts

61) What is required to meet the writing requirement of the Statute of Frauds under the UCC?

A) In all cases, a writing signed by all parties to the contract.
B) In all cases, a writing signed by the party to be charged.
C) In cases where at least one party is a merchant, either a writing signed by the party to be charged or a written confirmation of an oral agreement that is sent to the merchant and not objected to by the merchant. In transactions not involving a merchant, a writing signed by the person to be charged.
D) In cases where both parties are merchants, a writing signed by the party to be charged or a written confirmation of an oral agreement that is sent by one party to the other and not objected to by the other party. In all other transactions, a writing signed by the party to be charged.

Answer: D
Diff: 3
Topic: Statute of Frauds
Skill: Legal Concepts

62) According to the UCC, which of the following will be enforceable even if it is not in writing?

A) admissions in pleadings or court
B) part acceptance by the buyer or lessee
C) specially manufactured goods
D) All of these are correct.
E) None of these are correct.

Answer: D
Diff: 2
Topic: Statute of Frauds
Skill: Legal Concepts
63) For the written confirmation rule to apply, who must be a merchant?
   A) the offeror
   B) the offeree
   C) both the offeror and the offeree
   D) neither the offeror nor the offeree

Answer: C
Diff: 2
Topic: Statute of Frauds
Skill: Legal Concepts

64) What is "course of performance?"
   A) the previous conduct of the parties regarding the contract in question
   B) the conduct of the parties in prior transactions and contracts
   C) any practice or method of dealing that is regularly observed or adhered to in a place, a
      vocation, a trade, or an industry
   D) an exception to the Statute of Frauds

Answer: A
Diff: 2
Topic: Parol Evidence
Skill: Legal Concepts

65) A buyer purchases some equipment that costs $20,000. As part of the contract, the seller
    agrees to install this equipment for an additional $2,000. After the buyer begins using the
    equipment, problems develop. Some of the problems relate to how the equipment was installed,
    while others relate to the equipment itself. Which of the following is true?
    A) The sales portion of the contract is covered by the UCC, but the installation services are
       covered under common law.
    B) The entire contract is covered under the UCC.
    C) The entire contract is covered under common law.
    D) Either the entire contract is covered under the UCC or the entire contract is covered under
       common law; which one covers it depends on whether more of the problems relate to the
       equipment itself or to the installation.

Answer: B
Diff: 2
Topic: Scope of Article 2 (Sales)
Skill: Factual Application
66) A buyer and seller enter into a written contract for the sale of some specialty steel to be used by the buyer in the manufacture of some appliances. The contract specified all the terms of the contract except the price. Which of the following is true?
   
   A) There is no contract because there is no meeting of the minds as to a material term.
   
   B) There would be a contract except that the price cannot be implied in this contract because it is not a contract for the sale of a commodity with an easily determined market price.
   
   C) A price will be implied only if the contract called for the price to be determined at a later date.
   
   D) A reasonable price will be implied.

   Answer: D
   Diff: 1
   Topic: Offer
   Skill: Factual Application

67) A newly opened retailer contracted with a computer component manufacturer for the purchase of some accessory keyboards. The contract was very detailed, specifying all aspects of the contract except for the quantity. Under these circumstances, a court would most likely:

   A) enforce the contract, filling in the gap with a reasonable quantity
   
   B) order the parties to reach agreement regarding the number of keyboards to be purchased
   
   C) not enforce the contract because it would be impossible to determine the number of keyboards that would be a reasonable quantity
   
   D) set the quantity based on the seller's average sale quantity to similar retailers

   Answer: C
   Diff: 2
   Topic: Offer
   Skill: Factual Application

68) A grocery store mails an offer to purchase 50,000 pounds of bananas to a produce importer. The importer immediately ships the 50,000 pounds of bananas by truck to the buyer but does not send notification to the buyer that it is making the shipment. Which of the following is true?

   A) There has been an effective acceptance merely by shipping the bananas.
   
   B) There would be an acceptance only if the seller sends a written acceptance by mail because the offer was received by mail.
   
   C) The seller must send an acceptance to the buyer by any commercially reasonable method.
   
   D) When the bananas arrive at the grocery store, their arrival will be treated as an offer.

   Answer: A
   Diff: 2
   Topic: Acceptance
   Skill: Factual Application
69) Seller offers to sell to Buyer 1,000 widgets at $5 each. Buyer responds in writing, stating that Buyer accepts the offer, but at a reduced price of $4.95. Seller refuses to deliver at this price. Buyer sues. Both parties are merchants. In this situation, which of the following is true?

A) There is no contract.
B) There is a contract; the $4.95 price is an additional term, which becomes part of the contract because it is not material.
C) There is a contract; the $4.95 price is an additional term, which does not become part of the contract because it is material.
D) This is a firm offer.

Answer: A
Diff: 3
Topic: Acceptance
Skill: Factual Application

70) A homeowner orally contracted to buy some custom-made parts that the homeowner will use to build a retaining wall in the homeowner's back yard. The contract price for these materials was $2,000. The buyer refused to take delivery even though the materials were conforming. The seller is unable to sell these parts to anyone else because they were individually designed for the homeowner. In a lawsuit against the homeowner by the seller of the parts, which of the following is true?

A) The UCC would not apply because these goods will become real property when installed by the homeowner.
B) This contract is not enforceable because the price is $500 or more.
C) This contract is not enforceable, assuming that the homeowner is not a merchant in the materials purchased.
D) This contract is fully enforceable even though it is not in writing.

Answer: D
Diff: 3
Topic: Statute of Frauds
Skill: Factual Application

71) A retailer ordered some inventory by phone from a manufacturer. The order was for 1,000 machines from the manufacturer's inventory at $300 each. The manufacturer sent the retailer a fax moments later detailing the order. The retailer looked at the fax and was satisfied that it stated the terms of the contract, but never responded in any way. When the goods were delivered on time a month later, the retailer refused to accept them, asserting that the contract was unenforceable. Which is true?

A) No writing is needed because of one of the exceptions to the Statute of Frauds.
B) The contract is unenforceable because the retailer has not signed a writing.
C) The contract is enforceable because it would be unconscionable to not enforce it.
D) The contract is enforceable under the written confirmation rule.
E) Because the fax was not responded to, this was an accommodation shipment.

Answer: D
Diff: 3
Topic: Statute of Frauds
Skill: Factual Application
72) A buyer who is not a merchant in boats is at a boat store and orally agrees to purchase a sailboat for $2,000. The buyer sends a written confirmation to the boat dealer the next day describing all relevant terms of their agreement. When the buyer goes to the store a week later to pick up the boat, the store refuses to sell the boat for $2,000. Which is true?

A) This contract is not enforceable because it is not in writing.
B) This contract is enforceable because the boat dealer did not object to the written confirmation.
C) This contract is enforceable if $2,000 is a reasonable price for the boat.
D) This contract is enforceable because the boat dealer is a merchant.
E) The firm offer rule would require the boat to be sold at the offered price of $2,000.

Answer: A
Diff: 3
Topic: Statute of Frauds
Skill: Factual Application

73) If a buyer and seller agree to a contract for the sale of goods amounting to $400, which modifications must be in writing in order to be enforceable?

A) all modifications
B) any modification increasing the price by $500 or more
C) any modification increasing the price by $100 or more
D) No modification to such a contract needs to be in writing because the original contract did not need to be in writing.

Answer: C
Diff: 2
Topic: Statute of Frauds
Skill: Factual Application

74) Seller orally contracts to sell goods to Buyer for a total price of $450. Several days later, both parties orally agree to raise the price to $550 because of a shortage of these goods. When the goods are delivered, Buyer refuses to accept them. Seller sues. Both parties are merchants. In this situation, which of the following is true?

A) Buyer wins; this contract must be in writing to be enforceable.
B) Seller wins; the contract is enforceable without a writing and Seller can collect $550.
C) Seller wins; the contract is enforceable without a writing, but Seller can collect only $450.
D) Buyer wins; both the original contract and the modification needed to be in writing.

Answer: C
Diff: 3
Topic: Statute of Frauds
Skill: Factual Application
75) A buyer agrees to purchase "two cars" from an elevator company. All material terms are contained in a written contract, but "two cars" is not further defined. Which of the following evidence can be admitted if there is a dispute over what "two cars" refers to?

A) Oral evidence that before the signing of the contract the parties intended the contract to be for the purchase of three cars.
B) Oral evidence that before the signing of the written agreement the elevator company said it would extend its normal 1-year warranty (which is stated in the written contract) to 2 years.
C) Oral evidence that the word "car" refers to an elevator, since that is normal in the elevator industry, and that it does not refer to any of the company's automobiles.
D) Written evidence from prior to the signing of the written contract that the parties intended the contract to be for the purchase of three cars.

Answer: C
Diff: 3
Topic: Statute of Frauds
Skill: Factual Application

76) JetRed Airlines wants a new plane that is manufactured by the Boeing Corporation. A local bank agrees to purchase the plane from Boeing, and lease the aircraft to JetRed. The plane is delivered directly to JetRed. Who is the lessor in this arrangement?

A) Boeing Corporation
B) the bank
C) JetRed Airlines
D) none of the above

Answer: B
Diff: 3
Skill: Factual Application

77) A lessor and lessee orally agree to a lease of goods in the amount of $400 per month. The lease is later modified to $600 per month. Must the modification be in writing?

A) No; the original lease was already in effect.
B) No; oral contracts in this amount are common.
C) Yes; every modification must be in writing.
D) Yes; a lack of writing would violate the Statute of Frauds.

Answer: D
Diff: 3
Skill: Factual Application
78) Company A signs a lease contract with Company B on Monday. The signor leaves the contract on his desk until Tuesday. The contract is brought to the post office on Tuesday afternoon. The post office temporarily misplaces the document, and does not locate it until Thursday. The contract is delivered to Company B on Friday. At what point was the contract accepted?
   A) upon the signing of the document by Company A on Monday
   B) upon delivery of the document to the post office on Tuesday
   C) upon the relocating of the document by the post office on Thursday
   D) upon delivery of the document to Company B on Friday

Answer: B
Diff: 3
Skill: Factual Application

79) Which terms will be implied in a contract under the UCC if they are omitted in the express contract? Why does the UCC so freely imply these omitted terms? What are the risks of such a liberal policy of implying omitted terms?

Answer: One of the general policies behind the UCC is the facilitation of commerce. One way the UCC accomplishes this is to make it easier to form a contract than was the case under common law. Most terms will be implied except quantity, because in most cases there is no way to determine a "reasonable" quantity.
Diff: 3
Skill: Ethics and Policy

80) Is it reasonable for certain provisions of the UCC to apply to merchants only or to apply differently to merchants than to nonmerchants? Shouldn't anyone who chooses to enter into a commercial transaction be held to the same standard? Is it unfair to have the two standards?

Answer: The difference in treatment, which applies to relatively few provisions of the UCC, is based on holding the professional trader in goods to a higher standard and providing greater protections to persons less experienced in sale transactions. Most people believe this is a reasonable policy.
Diff: 2
Skill: Ethics and Policy

81) Is the purpose of the UCC undermined by allowing nearly every one of its provisions to be made nonapplicable to a particular contract if the parties agree? Doesn't this interfere with the goal of the standardization of contract law? Why do you think that the UCC allows this?

Answer: Although standardization is a goal of the UCC, there is a long-standing tradition of allowing parties the freedom to contract as they see fit. This is even mentioned in the Constitution. There is great value in standardizing, even if only the "default" provisions.
Diff: 3
Skill: Ethics and Policy
82) Why did contract law develop for hundreds of years and function well without a Uniform Commercial Code? Why did any need for standardized laws from one jurisdiction to another not get addressed until the beginning of the twentieth century?

Answer: It was not until the industrial age that many contracts for goods involved great distances across jurisdictions. Thus, there was little need for uniformity until many transactions crossed state lines.

Diff: 3
Skill: Ethics and Policy

83) A small consulting firm entered into a contract with an office machine retailer to purchase a photocopier for $3,000. The contract included a service agreement. The consultants inquired into dropping the service agreement, but because that would lower the price by only $250, they decided to pay the $3,000. After using the copier for several months, it began to need a few service calls. The copier generally worked well, and the problems were minor, but there were problems with the service. Many times it would take a couple of days for a technician to arrive and take care of the problem. More frustrating was the fact that many of the problems required only minor adjustments. Other times parts were not available. The consultants read the provisions of the agreement relating to the servicing and concluded that there had been numerous breaches. In a dispute over the service, what laws would apply and why?

Answer: Because this contract is predominantly a sale of goods, Article 2 of the UCC would apply to all aspects of the contract, including the service portion. For purposes of this contract, the consulting firm would be considered a nonmerchant.

Diff: 2
Topic: Scope of Article 2 (Sales)
Skill: Factual Application
84) Melissa purchased a compact satellite dish as part of a contract to obtain satellite television service. Melissa owns a small bar and plans to use the dish and cable service in her bar. The contract provided that she pay $200 for the dish, after which she would receive 12 months of television service through the satellite dish at no charge. After 12 months, in order to receive continued service, she would have to pay the company's regular monthly charge of $21, or her dish would be disabled. The dish is specially manufactured such that it can receive only the signals provided by the company that provided her with the dish. The company installed the dish in Melissa's bar as provided in the contract. For the first couple of months, Melissa was happy with the service. It was less expensive than regular cable television and the quality of the picture was superior. In the fourth month of the contract, Melissa began having problems. First, the dish became slightly warped. Second, the signals received by the dish began to fail frequently, at least once every week when bar patrons wanted to watch television. Melissa assumes the signal fails at other times when patrons are not watching. The warping of the dish appears to have affected the quality of the picture. Melissa had a friend hold the dish and push it into its original shape while Melissa watched the television, and the picture improved as long as the friend held the dish. The company refuses to address Melissa's complaints. Discuss whether the Uniform Commercial Code or common law would apply in resolving each of Melissa's problems. Also, discuss whether Melissa would be considered a merchant under the UCC.

Answer: This is a mixed sale, and either the UCC or common law would apply to the entire transaction. The dish itself is useless if she does not continue to purchase the service, thus this is most likely predominantly a service, and common law would apply.

Diff: 3
Topic: Scope of Article 2 (Sales)
Skill: Factual Application
85) Bob is a biology teacher whose hobby is refinishing antique furniture. Bob shops yard sales and estate auctions looking for nice antiques to refinish. The problem is that Bob can never pass up a bargain and purchases items at garage sales that he later realizes he doesn't have room for or doesn't want. Sometimes among these purchases are pieces of furniture that do not need refinishing. Thus, Bob has a problem accumulating too many things and has a garage full of items he plans to refinish and other "bargains" he could not pass up. To solve this problem, Bob has a yard sale at his home two or three times a year. He is careful never to have four sales in 1 year because his city requires a business license for four or more sales in 1 year. At one of his yard sales, he has a nice antique dining room table and chairs for sale for $600. Mike, a garage sale shopper, sees the table and is very interested in it. Mike says, "I'll give you full asking price, but I can't know for sure until my wife sees it and likes it also. Can you hold it until 3 p.m.? I know my wife and I can be back by then." Bob gives Mike a small piece of paper on which he has written, "I will give Mike Smith until 3 p.m. to decide whether to purchase the dining room table and chairs for $600." When Mike returns at 2 p.m. with his wife, he sees the table and chairs in the back of a truck as the truck pulls away. Mike wants to know whether he has a case against Bob. Discuss.

Answer: Whether Bob's writing is a firm offer under the UCC depends on if Bob signed it, which is not mentioned, and whether Bob is a merchant with respect to the table, which is likely. If Bob is a merchant and signed the writing, the firm offer would prevent his revoking it prior to 3 p.m.

Diff: 3
Topic: Offer
Skill: Factual Application
86) Mary runs a clothing store near a college campus. In the winter, Mary was preparing to order some T-shirts and shorts for the upcoming summer. She prepared an order on her stationery for "1,000 T-shirts of assorted sizes; S, M, L, and XL; 800 in royal blue, the other 200 in assorted colors." For the shorts her order read, "1,000 pairs of shorts, assorted sizes; approximately equal quantities of white, black, khaki, and olive." She sent the order to the clothing maker and about a week later received an order confirmation on their sales order form. She glanced at it and the wording for her order was the exact same as she had sent in. When she received the merchandise a month later, there were only 150 royal blue shirts, and the others were various assorted colors. There were only 50 pairs of white shorts, with the other 950 approximately equal quantities of the other three colors. Mary looked back at the sales order and noticed a provision in the fine print that the clothing maker could substitute different colors for what was ordered. Mary claims that the clothing maker has breached the agreement. The different colors shouldn't affect the sales of the shorts, but she ordered the royal blue shirts because that is the local university's predominant school color. Discuss Mary's situation.

Answer: This is the classic battle of the forms situation. Mary could have objected to the added terms, but because she is a merchant, she is bound by them unless they materially alter the terms of the contract. The term is probably not a material change with respect to the shorts, meaning that it became part of the agreement. But the term is a material change with respect to the shirts, entitling her to the shirts as ordered, or damages.

Diff: 2  
Topic: Offer  
Skill: Factual Application

87) A seller and a buyer orally agree to the following two transactions: The buyer wants to purchase 500 plain white tablecloths at $10 each. In addition, the buyer wants to purchase 500 tablecloths with its very distinctive logo imprinted on them at $20 each. The seller delivers 250 of the plain white tablecloths, which the buyer accepts. Later, according to the contract, the seller attempts to deliver all the rest of the tablecloths; but the buyer refuses to accept or pay for any of them, claiming that the Statute of Frauds prohibits the enforcing of these contracts. Discuss in detail whether these contracts are enforceable and how much, if any, the seller can collect.

Answer: The seller can collect for all of the imprinted tablecloths, and the 250 accepted plain ones.

Diff: 2  
Topic: Statute of Frauds  
Skill: Factual Application
88) Jean owns a small manufacturing company in North Carolina with a sales force of ten salespersons. The company provides a company car to each of the salespersons to use. The company sells throughout the southeastern United States. Jean suspects that during the long, hot, humid summer the salespersons often do not take the fastest route from one customer to another because they enjoy the comfort of the air conditioning in their cars. Jean decides to order a fleet of ten cars without air conditioning, believing that the salespersons will spend less time in their cars and more time in the offices of potential customers. Air conditioning is an option on the economy car, the Mink, although the factory makes all Minks with air conditioning unless a customer special orders one without air conditioning. The salesperson is a little surprised at Jean's plan, but reaches an oral agreement with Jean for the 10 cars. The salesperson orders the cars. A few weeks later Jean's sales force finds out about the plan and revolts. Jean decides it is not worth angering the sales force to make them use nonair-conditioned cars. She calls the salesperson at the dealer to cancel the order for the cars, six of which have arrived, and the other four, which will be built next week. Can the dealer hold Jean to the purchase of any of the cars?

Answer: These might be specially manufactured goods, not requiring a writing, if they are not suitable for sale to others. Factors whether specially manufactured include the fact that air conditioning is an option, and that one must special order to get one without air conditioning.

Diff: 3
Topic: Statute of Frauds
Skill: Factual Application
1) Title to goods may pass from the seller to the buyer before the goods are identified to the sales contract.

   Answer: FALSE  
   Diff: 1  
   Topic: Identification

2) In a lease transaction, title to the leased goods remains with either the lessor or a third party.

   Answer: TRUE  
   Diff: 1  
   Topic: Identification

3) At common law, the risk of loss to goods is placed on the party that has the insurable interest.

   Answer: FALSE  
   Diff: 2  
   Topic: Identification

4) The unborn young of stock animals are considered future goods.

   Answer: TRUE  
   Diff: 2  
   Topic: Identification

5) Ownership of the unborn foal of a pregnant mare cannot pass to a buyer until the colt is born.

   Answer: TRUE  
   Diff: 2  
   Topic: Identification

6) Chairs in a warehouse are identified to a sale contract when the seller explicitly selects and separates the chairs for shipment to the buyer.

   Answer: TRUE  
   Diff: 2  
   Topic: Identification
7) Under common law, the risk of loss was based on who had title to the goods.

Answer: TRUE  
Diff: 1  
Topic: Identification

8) Under the UCC, the risk of loss depends on who had title to the goods.

Answer: FALSE  
Diff: 2  
Topic: Identification

9) For goods to be selected from like items in inventory, identification cannot occur until the specific goods for the specific customer are separated or tagged for that customer.

Answer: TRUE  
Diff: 1  
Topic: Identification

10) Unborn animals are identified when they are conceived.

Answer: TRUE  
Diff: 1  
Topic: Identification

11) A destination contract requires the seller to deliver to either the buyer's place of business or to another destination specified in the sales contract.

Answer: TRUE  
Diff: 2  
Topic: Passage of Title

12) If no document of title is needed, and the goods are identified at the time of contracting, title passes at the time of contracting.

Answer: TRUE  
Diff: 2  
Topic: Passage of Title

13) Title for goods cannot pass before the goods are identified to the contract.

Answer: TRUE  
Diff: 1  
Topic: Passage of Title
14) The parties to a contract may decide when title and risk of loss pass, but if the parties do not specifically agree on such a time, the UCC provides rules for them.

Answer: TRUE  
Diff: 1  
Topic: Passage of Title

15) The general rule for passage of title is that title passes when the buyer acquires possession of the goods.

Answer: FALSE  
Diff: 2  
Topic: Passage of Title

16) A shipment contract requires the seller to ship the goods to the buyer via a common carrier.

Answer: TRUE  
Diff: 1  
Topic: Passage of Title

17) With letters of credit in international transactions, a bill of lading is issued by the common carrier.

Answer: TRUE  
Diff: 1  
Topic: Passage of Title

18) The function of a letter of credit is to substitute the credit of a recognized international bank for that of the buyer.

Answer: TRUE  
Diff: 1  
Topic: Passage of Title

19) The issuing bank for a letter of credit is called the correspondent bank.

Answer: FALSE  
Diff: 2  
Topic: Passage of Title

20) If the parties do not have a specific agreement regarding the assessment of the risk of loss, the UCC mandates who will bear the risk.

Answer: TRUE  
Diff: 1  
Topic: Risk of Loss - No Breach of Sales Contract
21) In a shipment contract, risk of loss passes to the buyer when the goods are delivered to the common carrier.

Answer: TRUE
Diff: 1
Topic: Risk of Loss - No Breach of Sales Contract

22) A seller's duty in an F.O.B. destination contract with respect to delivering the goods ends upon placing the goods in the hands of the common carrier.

Answer: FALSE
Diff: 1
Topic: Risk of Loss - No Breach of Sales Contract

23) In an F.O.B. destination contract, the seller must replace the goods if they are lost in transit.

Answer: TRUE
Diff: 1
Topic: Risk of Loss - No Breach of Sales Contract

24) If goods are held by the seller to be picked up by the buyer, the risk of loss passes to the buyer upon "tender of delivery," if the seller is a merchant.

Answer: FALSE
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract

25) F.O.B. Burlington, Vermont requires the seller to arrange to ship goods and put the goods in the carrier's possession.

Answer: FALSE
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract

26) C.I.F is a pricing term that indicates the seller is responsible for paying the cost of the goods that are the subject of the sale as well as insurance and freight for their delivery.

Answer: TRUE
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract

27) If a contract for the sale of goods is F.O.B. Minneapolis and the seller is in Minneapolis and the buyer is in Chicago, the contract is a shipment contract.

Answer: TRUE
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract
28) In a sale or return, risk of loss passes to the buyer when the buyer takes possession of the goods.

Answer: TRUE
Diff: 2
Topic: Conditional Sales

29) Under the UCC, for risk of loss purposes, the "sale on consignment" is treated like a "sale on approval."

Answer: FALSE
Diff: 1
Topic: Conditional Sales

30) In a consignment, the seller is also known as the consignor.

Answer: TRUE
Diff: 1
Topic: Conditional Sales

31) Acceptance of a sale on approval can occur if the buyer uses the goods inconsistently with the purpose of the trial.

Answer: TRUE
Diff: 3
Topic: Conditional Sales

32) A consignment is treated as a sale or return under the UCC.

Answer: TRUE
Diff: 2
Topic: Conditional Sales

33) When the seller breaches, the risk of loss often passes to the buyer sooner than it otherwise would.

Answer: FALSE
Diff: 2
Topic: Risk of Loss - Breach of Sales Contract

34) A breach by the buyer will shift the risk of loss to the buyer as soon as the breach occurs if the risk has not already shifted.

Answer: TRUE
Diff: 2
Topic: Risk of Loss - Breach of Sales Contract
35) If a seller delivers nonconforming goods to a buyer and the buyer rejects them, the risk of loss remains on the seller until either the defect is cured or the buyer accepts the nonconforming goods.

Answer: TRUE
Diff: 2
Topic: Risk of Loss - Breach of Sales Contract

36) A merchant-seller bears the risk of loss between the time of contracting and the time the buyer picks up the goods.

Answer: TRUE
Diff: 2
Topic: Risk of Loss - Breach of Sales Contract

37) In an ordinary lease, the risk of loss transfers to the lessee.

Answer: FALSE
Diff: 1
Topic: Risk of Loss in Lease Contracts

38) Both the buyer and seller of goods can have an insurable interest in the same goods at the same time.

Answer: TRUE
Diff: 2
Topic: Risk of Loss in Lease Contracts

39) A thief can transfer good title to stolen goods, as long as the other person purchased them in good faith.

Answer: FALSE
Diff: 1
Topic: Sales by Nonowners

40) If a good faith purchaser for value acquires goods from another good faith purchaser, but the goods were stolen at some point in the past, the last good faith purchaser does not obtain good title.

Answer: TRUE
Diff: 2
Topic: Sales by Nonowners

41) One who has voidable title can transfer good title to a good faith purchaser for value.

Answer: TRUE
Diff: 1
Topic: Sales by Nonowners
42) If an owner brings a computer to a store to be repaired and the store accidentally sells it to a customer who is a buyer in the ordinary course of business, the buyer from the store has ownership priority over the original owner.

Answer: TRUE
Diff: 2
Topic: Sales by Nonowners

43) Which of the following statements regarding identification of goods under the UCC is false?
A) Purchased goods that are part of a larger mass are identified when designated as the goods sold to the buyer.
B) Fungible goods may be identified without being separated.
C) Risk of loss may shift to the buyer before identification occurs.
D) Future goods (other than crops and unborn animals) must come into existence before they can be identified.

Answer: C
Diff: 3
Topic: Identification
Skill: Legal Concepts

44) Identification of goods is significant because:
A) it allows the contract to be a destination contract
B) it is the earliest that risk of loss can pass
C) it determines when a document of title is needed
D) it determines when the implied warranties become effective

Answer: B
Diff: 2
Topic: Identification
Skill: Legal Concepts

45) Which of the following is true about passage of title?
A) It occurs at the time and place goods are shipped in a shipment contract, and upon reaching the buyer's place of business or other specified location in a destination contract.
B) It always occurs when the goods leave the hands of the seller.
C) It does not occur until the buyer indicates acceptance of the goods.
D) It always passes at the same time that risk of loss passes.
E) It occurs at the time payment is made by the buyer.

Answer: A
Diff: 3
Topic: Passage of Title
Skill: Legal Concepts
46) What would a seller of goods use to assure payment from the sale of goods overseas?
   A) bill of lading
   B) warehouse receipt
   C) letter of credit
   D) negotiable draft

   Answer: C
   Diff: 1
   Topic: Passage of Title
   Skill: Legal Concepts

47) If no carrier is involved, the goods are sold without a document of title, and the goods are identified at the time of contracting, when does title pass?
   A) when the buyer pays for them
   B) at the time of contracting
   C) when the warranty period expires
   D) when the buyer picks them up

   Answer: B
   Diff: 2
   Topic: Passage of Title
   Skill: Legal Concepts

48) The International Chamber of Commerce has issued the following for rules on letters of credit:
   A) The International Credit Collection Procedures
   B) The Uniform Customs and Practices for Documentary Credits
   C) The International Convention for the Sale and Delivery of Goods
   D) The United Nations Process for Letter of Credit Documentation

   Answer: B
   Diff: 3
   Topic: Passage of Title
   Skill: Legal Concepts

49) When does risk of loss pass in a sale of goods that does not involve a common carrier:
   A) upon tender of delivery for both merchant sellers and nonmerchant sellers
   B) upon tender of delivery for merchant sellers and when goods are received by the buyer in the case of nonmerchant sellers
   C) upon tender of delivery for nonmerchant sellers and when goods are received by the buyer in the case of merchant sellers
   D) when goods are received by the buyer for both merchant sellers and nonmerchant sellers

   Answer: C
   Diff: 3
   Topic: Risk of Loss - No Breach of Sales Contract
   Skill: Legal Concepts
50) A provision under the UCC that affects merchants differently from nonmerchants is:
   A) the effect of additional terms in an acceptance
   B) the firm offer rule
   C) transfer of risk of loss in noncarrier cases
   D) the written confirmation rule
   E) all of the above

Answer: E
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Legal Concepts

51) In a noncarrier case for the sale of goods, which of the following is most important in determining when risk of loss passes?
   A) whether the seller is a merchant
   B) whether any warranties have been disclaimed
   C) whether the buyer is a merchant
   D) when title passes

Answer: A
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Legal Concepts

52) In a noncarrier case, under which of the following sales will risk of loss pass upon tender of delivery?
   A) sale by a nonmerchant to a nonmerchant
   B) sale by a merchant to a nonmerchant
   C) sale by a nonmerchant to a merchant
   D) both A and C
   E) A, B, and C

Answer: D
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Legal Concepts
53) Which of the following best describes the significance of risk of loss in a carrier case?
   A) It determines who will bear the loss for any problems that arise under the contract.
   B) It determines with certainty which party will pay if the goods are lost or damaged in transit.
   C) It determines whether the buyer or seller will pay if the goods are lost or damaged in transit, and other possible sources of recovery, such as insurance, do not cover the loss.
   D) It determines the terms of payment under the contract.

Answer: C
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Legal Concepts

54) How does a "no-arrival, no-sale" contract differ from an F.O.B. destination contract?
   A) If the goods fail to reach their destination, the seller must replace them in an F.O.B. destination contract, but not in a no-arrival, no-sale contract.
   B) Risk of loss while the goods are in transit is on the seller in an F.O.B. destination contract, but on the buyer in a no-arrival, no-sale contract.
   C) Implied warranties exist in the F.O.B. destination contract, but not in the no-arrival, no-sale contract.
   D) Identification will occur in an F.O.B. destination contract, but not in a no-arrival, no-sale contract.

Answer: A
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Legal Concepts

55) If a contract calls for the goods to be shipped "F.A.S. the Peerless" it means that:
   A) The seller must place the goods on the Peerless and will bear the risk of loss until the goods reach their destination.
   B) The seller must place the goods alongside the Peerless and will bear the risk of loss until the goods are loaded onto the ship.
   C) The seller must place the goods alongside the Peerless and the risk of loss will shift when this is done.
   D) The seller must notify the operator of the Peerless as to the location of the goods, and the risk of loss will shift when they are picked up.
   E) The seller must notify the buyer so that the buyer can make arrangements to get the goods to the Peerless and the risk of loss will shift when the notification has been made.

Answer: C
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Legal Concepts
56) In a carrier case, what is most important in determining when risk of loss passes from the seller to the buyer?
   A) the contract's shipping terms
   B) the buyer's insurance policy terms
   C) the seller's insurance policy terms
   D) when title passes
   E) the price of the goods

   Answer: A
   Diff: 2
   Topic: Risk of Loss - No Breach of Sales Contract
   Skill: Legal Concepts

57) When a buyer may return goods to a seller if the buyer does not resell them within a stated period of time, this is known under the UCC as:
   A) a sale or return
   B) a sale contingent upon no return
   C) a consignment sale
   D) a sale on approval
   E) a preliminary sale

   Answer: A
   Diff: 1
   Topic: Conditional Sales
   Skill: Legal Concepts

58) For which of the following does the risk of loss shift to the buyer upon the buyer taking possession?
   A) sale on approval
   B) sale or return
   C) consignment and sale or return
   D) consignment, sale or return, and sale on approval
   E) sale or return and sale on approval

   Answer: C
   Diff: 2
   Topic: Conditional Sales
   Skill: Legal Concepts
59) In which of the following is the usual reason for the return of the goods that they were not able to be resold?
   A) sale on approval
   B) sale or return
   C) consignment and sale or return
   D) consignment, sale or return, and sale on approval
   E) sale or return and sale on approval

   Answer: C
   Diff: 2
   Topic: Conditional Sales
   Skill: Legal Concepts

60) In which of the following, does the buyer usually try out the goods for the buyer's own use?
   A) sale on approval
   B) sale or return
   C) consignment and sale or return
   D) consignment, sale or return, and sale on approval
   E) sale or return and sale on approval

   Answer: A
   Diff: 2
   Topic: Conditional Sales
   Skill: Legal Concepts

61) When a seller breaches a contract for the sale of goods by delivering nonconforming goods, the risk of loss:
   A) is unaffected by the seller's breach
   B) remains on the seller until the nonconformity is cured or the buyer accepts the nonconforming goods
   C) remains on the seller indefinitely
   D) is transferred to the buyer upon delivery of the nonconforming goods, but is transferred back to the seller if the buyer returns the goods

   Answer: B
   Diff: 2
   Topic: Risk of Loss - Breach of Sales Contract
   Skill: Legal Concepts
62) Once a seller breaches by delivering nonconforming goods, which of the following is true?
   A) The risk of loss will remain on the seller, but only if it has not already shifted to the buyer.
   B) The risk of loss will shift back to the seller even if it had already shifted to the buyer.
   C) The risk of loss will not be affected by the breach.
   D) The title will follow the risk of loss.

Answer: B
Diff: 2
Topic: Risk of Loss - Breach of Sales Contract
Skill: Legal Concepts

63) When a buyer breaches a contract by refusing to take delivery of conforming goods, the buyer:
   A) bears the risk of loss only for a commercially reasonable time
   B) bears the risk of loss until the breach is cured
   C) shifts the risk of loss back to the seller
   D) bears the risk of loss only in the case of an unjustified breach

Answer: A
Diff: 2
Topic: Risk of Loss - Breach of Sales Contract
Skill: Legal Concepts

64) In general, what is the effect on risk of loss when a party breaches a contract?
   A) The breaching party will bear the risk of loss for some period of time.
   B) The breaching party will permanently bear the risk of loss.
   C) The breach can speed up shift of the risk of loss to the buyer, or return the risk to the seller.
   D) A and C are true.

Answer: D
Diff: 2
Topic: Risk of Loss - Breach of Sales Contract
Skill: Legal Concepts

65) For which types of leases is the risk of loss on the lessor during the term of the lease?
   A) ordinary leases
   B) finance leases
   C) both ordinary and finance leases
   D) neither ordinary nor finance leases

Answer: A
Diff: 2
Topic: Risk of Loss in Lease Contracts
Skill: Legal Concepts
66) To whom can a thief pass good title to stolen goods?
   A) any purchaser who gives consideration
   B) any purchaser or donee who is unaware that the goods are stolen
   C) any good faith purchaser for value
   D) any buyer in the ordinary course of business
   E) no one

   Answer: E
   Diff: 1
   Topic: Sales by Nonowners
   Skill: Legal Concepts

67) When a thief sells stolen goods to someone who does not know that they were stolen and has no reason to know that they were stolen, the buyer receives what kind of title?
   A) voidable
   B) void
   C) good
   D) joint

   Answer: B
   Diff: 1
   Topic: Sales by Nonowners
   Skill: Legal Concepts

68) When a buyer of goods has obtained the goods properly from the seller, but later fails to pay for them, what kind of title does the buyer have?
   A) voidable
   B) void
   C) good
   D) joint

   Answer: A
   Diff: 1
   Topic: Sales by Nonowners
   Skill: Legal Concepts
69) Under the UCC, an entrusting of goods to a merchant who deals in that kind of goods gives the merchant:
   A) the power to transfer all rights of the entrustor to a buyer in the ordinary course of business
   B) no power to transfer all rights of the entrustor to a buyer in the ordinary course of business
   C) the power to transfer all rights of the entrustor to anyone who makes a demand for the goods
   D) the power to transfer all rights of the entrustor to anyone except to a buyer in the ordinary course of business

Answer: A
Diff: 2
Topic: Sales by Nonowners
Skill: Legal Concepts

70) A seller and buyer have just agreed that the buyer will purchase 1,000 of the widgets from the thousands that the seller has in its warehouse. The buyer will pick them up at the seller's warehouse. The day before the buyer is to pick them up, the seller's employee sets the 1,000 widgets aside. What is the significance of setting the buyer's widgets aside?
   A) It shifts the risk of loss to the buyer.
   B) It constitutes identification.
   C) It terminates the buyer's ability to revoke.
   D) It fully discharges the seller's duties under the contract.

Answer: B
Diff: 2
Topic: Identification
Skill: Factual Application

71) A buyer and seller contract for the sale of certain goods, currently in the seller's possession. The contract requires that the goods be delivered by the seller to the buyer's place of business. Title of these goods passes to the buyer when:
   A) the seller places the goods in the possession of a common carrier and makes a proper contract for delivery
   B) the seller physically delivers these goods to the buyer's place of business
   C) the buyer picks up the goods
   D) the buyer receives a document of title

Answer: B
Diff: 2
Topic: Passage of Title
Skill: Factual Application
72) A seller contracted to sell lumber to the buyer. The contract was a destination contract and the goods were to be shipped by common carrier. The lumber was destroyed by fire before it was delivered to the buyer. Which of the following statements best describes this situation?

A) The risk of loss passed to the buyer when the contract was made.
B) The risk of loss passed to the buyer when the goods were delivered to the common carrier.
C) The risk of loss has not yet passed to the buyer and remains on the seller until the goods are delivered.
D) The risk of loss remains on the seller until a document of title is delivered to the buyer.

Answer: C
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application

73) A seller contracted to sell lumber to the buyer. The contract was a shipment contract and the goods were to be shipped by common carrier. The lumber was destroyed by fire before the common carrier delivered the lumber to the buyer. Which of the following statements best describes this situation?

A) The risk of loss passed to the buyer when the contract was made.
B) The risk of loss passed to the buyer when the goods were delivered to the common carrier.
C) The risk of loss has not yet passed to the buyer and remains on the seller until the goods are delivered.
D) The risk of loss remains on the seller until a document of title is delivered to the buyer.

Answer: B
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application

74) A seller contracted to sell goods to the buyer. The goods were to be held by the seller until the buyer could pick them up. The seller informed the buyer that the goods were ready to be picked up. Several days later, before the buyer could pick up the goods, the goods were destroyed by fire. The seller is a merchant. Which of the following statements best describes this situation?

A) The risk of loss passed to the buyer when the contract was made.
B) The risk of loss passed to the buyer when the goods were tendered to the buyer.
C) The risk of loss has not yet passed to the buyer.
D) The risk of loss remains on the seller until a document of title is delivered to the buyer.

Answer: C
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application
75) A seller contracted to sell goods to the buyer. The goods were to be held by the seller until the buyer could pick them up. The seller informed the buyer that the goods were ready to be picked up. Several days later, before the buyer could pick up the goods, the goods were destroyed by fire. The seller is not a merchant. Which of the following statements best describes this situation?

A) The risk of loss passed to the buyer when the contract was made.
B) The risk of loss passed to the buyer when the goods were tendered to the buyer.
C) The risk of loss has not yet passed to the buyer.
D) The risk of loss passed to the buyer a reasonable time after she was notified that the goods could be picked up.

Answer: B
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application

76) Mrs. Smith is moving out of her personal residence to a smaller apartment. Because of this, she wishes to sell her piano. George inspects her piano and decides to buy it. Mrs. Smith receives her money and tells George he can take the piano right now. George says he needs to borrow his friend's truck before he can remove the piano. That night, the piano is destroyed by fire. George sues to recover his money. Which best describes this situation?

A) Mrs. Smith wins; the risk of loss passed to George as soon as the contract was made.
B) Mrs. Smith wins; the risk of loss passed to George when Mrs. Smith said he could take the piano.
C) George wins; the risk of loss does not pass until George takes delivery of the piano.
D) George wins; the risk of loss does not pass until George receives a negotiable warehouse receipt.
E) George wins; the risk of loss stays on Mrs. Smith because the goods were not conforming.

Answer: B
Diff: 3
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application
77) Seller agrees to sell and deliver goods to the buyer. The terms were F.O.B. destination. The goods were delivered to the common carrier, but were destroyed in transit. Both parties have insurance policies that will cover the loss, if they have an insurable interest. Which of the following statements best describes this situation?

A) The seller has an insurable interest in the goods until they are delivered to the buyer.
B) The buyer had an insurable interest in the goods ever since they were identified to this contract.
C) Since the seller has the risk of loss, only the seller will be able to collect insurance proceeds.
D) A, B, and C are true.
E) A and C only are true.

Answer: D
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application

78) Cybermakers has contracted with a computer chip manufacturer to buy a quantity of computer chips for delivery the following month. These computer chips are in the seller's warehouse, and the contract's shipping terms are F.O.B shipping point. At this point, prior to the chips being shipped, who has an insurable interest in the computer chips?

A) the buyer only
B) the seller only
C) both the buyer and seller
D) neither the buyer nor seller

Answer: C
Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application

79) Mary runs a ski shop at a popular ski resort. She is approached by Sandy who has several hundred ski hats she would like Mary to buy for her shop. These hats are very funky and artistic. From Mary's experience, she believes that they will either be a big hit and will sell out quickly, or people will look at them and say, "how interesting" and move on. Mary says she does not want to be stuck with a bunch of the hats. Mary says that she will buy them, but wants Sandy to agree to take any back at the end of the season if they didn't sell and Mary decides to not keep them until the following season. This arrangement is:

A) a sale or return
B) a sale on approval
C) a consignment
D) not a contract because Mary has made an illusory promise

Answer: A
Diff: 2
Topic: Conditional Sales
Skill: Factual Application
80) Seller contracts to sell goods to the buyer. This was a destination contract. However, the buyer refused to accept these goods and returned them to the seller, even though they were the proper goods under the contract. Before the seller received them, the goods were destroyed by fire. Which of the following best describes this situation?
   A) The risk of loss passes to the buyer when the contract was made.
   B) The risk of loss passes to the buyer when the goods were delivered to the common carrier.
   C) The risk of loss is on the seller because the goods were nonconforming goods.
   D) The risk of loss is on the buyer because the goods were conforming goods.

Answer: D
Diff: 3
Topic: Risk of Loss - Breach of Sales Contract
Skill: Factual Application

81) Ralph purchases a car from a minor and subsequently sells it to Jack, another adult who had no reason to know of the previous transaction and who paid full value for the car. Which of the following best describes this situation?
   A) Ralph had good title and Jack gets good title.
   B) Ralph had good title and Jack gets voidable title.
   C) Ralph had voidable title and Jack gets good title.
   D) Ralph had voidable title and Jack gets voidable title.

Answer: C
Diff: 2
Topic: Sales by Nonowners
Skill: Factual Application

82) Josh had a computer that needed repair. He took the computer to a used computer dealer that also repaired computers. While talking with the owner, Josh learned that the owner also knew how to repair bicycles. Josh happened to need some repairs done on his bike, so he left it at the computer shop too. A week later, Josh went to pick up his bike and computer. When he got to the store, the owner said he had bad news. He had hired a new employee. The new employee had major difficulties and sold a number of items that were in for repair. He sold both Josh's computer and his bike. The store owner knows who purchased them from the credit card records. In this situation, Josh can recover:
   A) his computer, but not his bike
   B) his bike, but not his computer
   C) both his bike and his computer
   D) neither his bike nor his computer

Answer: B
Diff: 3
Topic: Sales by Nonowners
Skill: Factual Application
83) Theona Thief stole an expensive watch. Theona then sold it through the classified ads to Andy. Andy had no reason to know it had been stolen. Andy took it to a watch dealer to be cleaned and appraised. He left it at the dealer on May 2, and he was told it would be ready on May 6. On May 8, an employee at the watch store sold the watch to Billy. On May 10, Valerie Victim notices the watch on Billy's wrist and demands its return. Who gets the watch?
   A) Theona
   B) Andy
   C) Billy
   D) the watch dealer
   E) Valerie

Answer: E
Diff: 3
Topic: Sales by Nonowners
Skill: Factual Application

84) Archie pretended to be John Jones, a well-known art dealer from Chicago, in order to get Lucy to sell him a rare Ethiopian vase. Later Archie sells the vase to Veronica who honestly believes Archie has good title to the goods. Thereafter Lucy discovers that Archie was not John Jones and now wants to reclaim the vase from Veronica. The most likely outcome will be which of the following?
   A) Archie will be able to get the vase from Veronica and give it back to Lucy.
   B) Lucy will be required to allow Veronica to keep the vase.
   C) Veronica must sell the vase and give the proceeds to Lucy.
   D) Lucy will be able to reclaim the goods from Veronica.

Answer: C
Diff: 2
Topic: Sales by Nonowners
Skill: Factual Application

85) Sean Sanders brings his ceramic clock to Bill's Clock Repair to be repaired. Sean leaves his clock at the clock repair store until it is repaired. Bill's Clock Repair sells Sean's clock to Ralph Rosco, a buyer in the ordinary course of business. Who can Sean seek recourse against?
   A) no one
   B) Ralph Rosco
   C) Ralph Rosco and Bill's Clock Repair
   D) Bill's Clock Repair

Answer: D
Diff: 2
Topic: Sales by Nonowners
Skill: Factual Application
86) In a contract for the sale of unborn cattle or livestock, at what point are the goods identified?  
A) when the cattle or livestock are conceived  
B) when the cattle or livestock are born  
C) when the cattle or livestock are selected for delivery  
D) when the cattle or livestock are delivered  

Answer: A  
Diff: 2  
Skill: Factual Application

87) A famous designer enters into a contract with a boutique store for the delivery of certain clothing valued at $20,000. The boutique sells $10,000 worth of the merchandise within a few months. The remaining merchandise is destroyed within the store, through no fault of the boutique owner. What does the boutique owe the designer?  
A) $20,000  
B) $10,000 and a return of the damaged merchandise  
C) $10,000  
D) nothing  

Answer: A  
Diff: 2  
Skill: Factual Application

88) Thief steals a truckload of appliances from the back of an electronics store. He delivers the property to another store and accepts payment. Representatives from the original electronic store show up and demand that the products be removed from the shelves and returned. What happens?  
A) The second store may keep the goods because they are innocent purchasers.  
B) The original owners may take the goods, but must pay the second store for them.  
C) The original owners may take the goods, and the second store is entitled to no recourse.  
D) The original owners may take the goods, and the second store is entitled to recourse against Thief only.  

Answer: D  
Diff: 2  
Skill: Factual Application
89) The entrustment rule can have harsh results. Why should the owner not be able to get back the property when it was sold by the merchant with no authorization of the owner? Should the rule be changed? What steps can an entrustor take to minimize the risk of losing the property?

Answer: The rule is designed to encourage commerce by minimizing the fears of buyers that they won't get title to the item purchased. The entrustor can minimize this risk by dealing only with reputable merchants and picking items up promptly when they are ready. Also, when possible, taking an item to be repaired at a place that is not also a merchant will eliminate the risk because the rule applies only where the party who wrongfully sold the item was a merchant. In addition, for items such as appraisals, the owner can schedule an appointment or otherwise arrange so that the item is never entrusted.

Diff: 2
Skill: Ethics and Policy

90) When consumers enter into contracts to purchase goods that will be delivered by common carrier, should the seller be required to insure the item until it reaches the purchaser? Many consumers are not aware of risk of loss rules and would be surprised to know that they must pay for an item that never reaches them. Given the increasing number of consumer purchase contracts over the Internet that involve a carrier, should such a rule be implemented, or should the parties be free to contract as they wish?

Answer: Under a shipment contract, the seller's duty related to delivery ends when placed in the hands of the common carrier. In addition to the unpleasant surprise that faces many consumers, the seller can usually easily purchase inexpensive insurance when the item is shipped. It is difficult for a buyer who does not already have insurance to purchase such insurance covering such losses.

Diff: 3
Skill: Ethics and Policy

91) Frank is a secondhand furniture dealer. Frank goes to yard sales early every Saturday morning in search of items for his store. One Saturday, Frank finds several items that he likes at one sale. One item is a large, heavy leather sofa that he cannot take with him because it won't quite fit into his van. He arranges with the seller to return that evening when he could borrow a truck and get the sofa. Unfortunately, there was a huge sudden downpour in the late afternoon, the seller could not move the sofa inside, and it was ruined. Who bears the risk of loss?

Answer: Assuming that the seller is not a merchant, the risk of loss passed to Frank upon the tender of delivery in the morning.

Diff: 2
Topic: Risk of Loss - No Breach of Sales Contract
Skill: Factual Application
92) Margie runs an eclectic furniture gallery in an upscale area in a college town. Margie purchases her inventory from numerous sources. Margie has been having financial difficulties of late, and is not able to pay for her two most recent purchases. On May 5 she decides that she will not pay for these. The first shipment of a few tables has already been delivered. These were tables out of the seller's ordinary stock. Margie will have to ship them back. They were received on April 15 and payment is due on May 15. Margie sends an e-mail to the supplier saying that she will not be keeping the tables and will send them back soon. The second purchase has not yet been shipped. These chairs were custom designed by Margie and a friend and then built-to-order by a furniture maker. They are in the warehouse awaiting shipment. Margie sends the sales rep at the furniture maker an e-mail on May 5 saying that she cannot accept shipment because she cannot pay. Discuss the risk of loss status for both groups of items.

Answer: The risk of loss for the tables was on Margie because she had already received them. As a breaching buyer, the risk of loss will be on Margie for a commercially reasonable time. This would probably mean until the tables get back into the inventory at the seller's place of business. The risk of loss was still on the seller for the chairs. When Margie breaches, the risk will shift to her, even though the goods remain in the seller's warehouse. There could be a question of when Margie breaches, but her e-mail would probably be treated as an anticipatory breach, resulting in the risk of loss shifting to her. It would remain on her for a commercially reasonable time. Because these chairs might be difficult for the seller to resell, the commercially reasonable time might be longer than for standard items.

Diff: 3
Topic: Risk of Loss - Breach of Sales Contract
Skill: Factual Application

93) Barb answers a classified advertisement for the sale of a Honda Accord. Barb has been shopping for 2 months for a used Accord, and answers this ad because the asking price is $9,500 for a car that has a retail book value of $13,000. The seller, Sam, says the price is low because he is moving out of the country in 3 days to start a new job and must have the cash from the car before he leaves. Barb buys the car and pays the full price, only to learn that Sam had just purchased the car from another individual. The check that Sam used to purchase the car was written on an account that Sam had closed several months earlier. Sam has disappeared. Discuss who will get to keep the car and all factors the court will use in reaching its decision.

Answer: Barb keeps the car if she was a good faith purchaser for value. Sam had a voidable title, but he can still transfer good title to Barb as a good faith purchaser for value. As between Barb and the original owner who "sold" the car to Sam, Barb has priority. The case is further complicated by the fact that the sale in question is of an automobile. All states in the United States have vehicle registration and title laws that probably take priority over the rules in Article 2 of the UCC. Buying a car from an individual in this manner is common, so the court would likely focus on whether Barb should have been suspicious given the low price and given Sam's statements and behavior.

Diff: 2
Topic: Sales by Nonowners
Skill: Factual Application
1) Tender of delivery under the UCC requires the seller to transfer and deliver goods to the buyer in accordance with a sales or lease contract.

Answer: FALSE  
Diff: 1  
Topic: Seller's and Lessor's Obligations

2) Unless otherwise agreed or circumstances permit, the seller must deliver all goods named in a contract in a single shipment.

Answer: TRUE  
Diff: 1  
Topic: Seller's and Lessor's Obligations

3) When goods named in a contract are held by a bailee, tender of delivery occurs when the buyer receives the goods from the bailee.

Answer: FALSE  
Diff: 1  
Topic: Seller's and Lessor's Obligations

4) If a contract does not expressly state where the delivery will take place, the UCC relieves the seller of any obligation to tender goods to the buyer.

Answer: FALSE  
Diff: 1  
Topic: Seller's and Lessor's Obligations

5) Generally, a buyer may take physical possession of the goods and inspect them within a reasonable time without having accepted the goods.

Answer: TRUE  
Diff: 1  
Topic: Seller's and Lessor's Obligations
6) A sales contract requires the seller to deliver 100 shirts to the buyer. Upon inspection the buyer discovers that 99 shirts conform to the contract but one does not. The buyer must return the entire shipment and either ask for a refund or replace the order with the seller.

Answer: FALSE
Diff: 2
Topic: Seller's and Lessor's Obligations

7) The right to cure refers to the seller or lessor's right to repair or replace defective or nonconforming goods.

Answer: TRUE
Diff: 2
Topic: Seller's and Lessor's Obligations

8) If a seller delivers nonconforming goods under an installment contract, the buyer or lessee may reject any noncomforming installment if the value of the installment is impaired and the defect cannot be cured.

Answer: TRUE
Diff: 2
Topic: Seller's and Lessor's Obligations

9) A buyer who agrees to C.O.D. payment terms continues to have the right to inspect goods before paying for them.

Answer: FALSE
Diff: 2
Topic: Buyer's and Lessee's Obligations

10) If a seller requires cash as payment, the buyer must be allowed an extension of time to be able to procure the cash.

Answer: TRUE
Diff: 2
Topic: Buyer's and Lessee's Obligations

11) When there is an anticipatory repudiation, the aggrieved party will not have a cause of action until the time that performance was due.

Answer: FALSE
Diff: 2
Topic: Anticipatory Repudiation
12) A party requesting assurance of performance from the other party remains obligated to perform its own obligations even if adequate assurance is not received from the other party.

Answer: FALSE
Diff: 1
Topic: Assurance of Performance

13) If there is an anticipatory repudiation of a contract for the sale of goods, the nonbreaching party may choose whether to await performance or treat the contract as breached at the time of the repudiation.

Answer: TRUE
Diff: 2
Topic: Anticipatory Repudiation

14) If goods are already in transit when a buyer breaches, the seller may stop their delivery.

Answer: TRUE
Diff: 1
Topic: Seller's and Lessor's Remedies

15) If a seller "resells" the goods after a breach by the buyer, the resale must be at a public auction.

Answer: FALSE
Diff: 1
Topic: Seller's and Lessor's Remedies

16) If a seller gives notice to a buyer to return goods sold to him or her, and the buyer refuses the demand, then the seller or lessor may use self-help to reclaim the goods.

Answer: FALSE
Diff: 2
Topic: Seller's and Lessor's Remedies

17) If a seller cancels a sales or lease contract with a buyer, the cancellation may refer only to the affected goods.

Answer: FALSE
Diff: 2
Topic: Seller's and Lessor's Remedies

18) A buyer who rightfully rejects goods must notify the seller of the reasons for rejection to preserve the buyer's rights.

Answer: TRUE
Diff: 1
Topic: Buyer's and Lessee's Remedies
19) If a buyer purchases similar goods elsewhere after a breach by the seller, this is known as cover.

Answer: TRUE
Diff: 1
Topic: Buyer's and Lessee's Remedies

20) A replevin action is available whenever the seller or lessor is wrongfully withholding goods.

Answer: TRUE
Diff: 2
Topic: Buyer's and Lessee's Remedies

21) Under the UCC, the parties are free to set the statute of limitations applicable to a contract to whatever length of time that they agree to.

Answer: FALSE
Diff: 2
Topic: Buyer's and Lessee's Remedies

22) The buyer or lessee may obtain specific performance of a sales or lease contract if the goods are unique or the remedy at law is inadequate.

Answer: TRUE
Diff: 1
Topic: Buyer's and Lessee's Remedies

23) With consumer goods, a limitation of consequential damages for personal injuries is prima facie unconscionable.

Answer: TRUE
Diff: 2
Topic: Agreements Affecting Remedies

24) The basic obligation of a seller of goods to transfer and deliver goods to the buyer in accordance with the terms of the contract is known as:

   A) performance of delivery
   B) tender of delivery
   C) delivery as agreed
   D) anticipatory delivery

Answer: B
Diff: 1
Topic: Seller's and Lessor's Obligations
Skill: Legal Concepts
25) In a noncarrier contract for the sale of goods where the goods are held by a bailee, tender of delivery can occur upon the happening of the following **EXCEPT** which of the following?
   A) The seller tenders to the buyer a negotiable document of title covering the goods.
   B) The seller tenders to the buyer acknowledgment from the seller's bank that the goods have been sold.
   C) The seller procures acknowledgment from the bailee of the buyer's right to possession of the goods.
   D) The seller tenders to the buyer a nonnegotiable document of title.
   E) The seller tenders to the buyer a written direction to the bailee to deliver the goods to the buyer.

Answer: B
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Legal Concepts

26) In a shipment contract, the buyer must do all of the following **EXCEPT**:
   A) locate the most cost-effective common carrier for the shipment of the goods
   B) place the goods in the possession of the carrier
   C) contract for the proper and safe transportation of the goods
   D) obtain and deliver any appropriate documents related to the sale and shipment
   E) notify the buyer of the shipment

Answer: A
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Legal Concepts

27) A destination contract requires that the seller:
   A) deliver the goods to a common carrier
   B) deliver the goods to the buyer
   C) give proper and adequate notice to the buyer
   D) A and C
   E) B and C

Answer: E
Diff: 1
Topic: Seller's and Lessor's Obligations
Skill: Legal Concepts
28) The requirement that goods tendered to a buyer must conform in all ways to the terms of the contract is called the:
   A) complete performance rule  
   B) perfect tender rule  
   C) no right to cure rule  
   D) substantial performance rule

Answer: B  
Diff: 1  
Topic: Seller's and Lessor's Obligations  
Skill: Legal Concepts

29) Under the perfect tender rule, when a buyer receives a shipment of 1,000 identical items, 20 of which are nonconforming, which ones can the buyer reject?
   A) none, because the quantity that do not conform is immaterial  
   B) the 20 nonconforming units  
   C) all 1,000 units  
   D) seven of the nonconforming units and 150 of the conforming units  
   E) A, B, C, or D

Answer: E  
Diff: 3  
Topic: Seller's and Lessor's Obligations  
Skill: Legal Concepts

30) Common provisions in contracts that modify the perfect tender rule include the following EXCEPT which of the following?
   A) Only the defective goods can be rejected.  
   B) The seller has the opportunity to replace nonconforming goods.  
   C) The seller has the opportunity to repair defective goods.  
   D) The buyer can reject any or all goods in a nonconforming shipment.  
   E) The buyer will accept nonconforming goods with an appropriate price concession from the seller.

Answer: D  
Diff: 2  
Topic: Seller's and Lessor's Obligations  
Skill: Legal Concepts
31) If a seller delivers nonconforming goods prior to the date that delivery is due, the seller has the opportunity to make the shipment conform under the:
   A) time to conform rule
   B) right to make perfect
   C) reasonable delay doctrine
   D) right to cure

Answer: D
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Legal Concepts

32) If a seller has delivered nonconforming goods that have been rejected by the buyer, the seller has a right to cure:
   A) only if the time for performance has not yet expired
   B) under some circumstances, even if the original time for performance has passed
   C) only if the contract specifically allows for cure
   D) only if the buyer agrees
   E) only if the seller can do so within 10 days

Answer: B
Diff: 3
Topic: Seller's and Lessor's Obligations
Skill: Legal Concepts

33) The right to cure extends beyond the date that delivery is called for under the contract:
   A) only if the contract allows
   B) in all contracts covered by the UCC
   C) in any situation where it is commercially reasonable that it extend
   D) in any situation where cure by the original delivery date would impose a hardship on the seller
   E) in any situation where the seller reasonably believed that the buyer would accept the nonconforming goods

Answer: E
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Legal Concepts
34) Which of the following statements is true regarding installment contracts?
   A) To be an installment contract, the contract must state that each delivery is a separate contract or words to that effect.
   B) The buyer may reject the entire contract for any nonconformity.
   C) The buyer may reject the entire contract only if the nonconformity of one shipment affects the value of the entire contract.
   D) A, B, and C are true.
   E) A and C only are true.

Answer: E  
Diff: 3  
Topic: Seller's and Lessor's Obligations  
Skill: Legal Concepts

35) When the goods identified to a contract are totally destroyed through the fault of neither party before risk of loss passes to the buyer, which of the following is true?
   A) The contract is void.
   B) The seller is obligated to find replacement goods.
   C) The contract is voidable by the buyer.
   D) The seller is liable to the buyer for damages.

Answer: A  
Diff: 2  
Topic: Seller's and Lessor's Obligations  
Skill: Legal Concepts

36) Which of the following is true about a buyer's right of inspection?
   A) This right must be agreed to in the contract in order for it to apply.
   B) This right exists even if not mentioned in the contract, and the seller has the sole right to determine the time and place the right may be exercised.
   C) This right exists even if not mentioned in the contract, and the buyer has the sole right to determine the time and place the right may be exercised.
   D) If not mentioned in the contract, the buyer has the right to inspect goods in a reasonable time, place, and manner prior to accepting or paying for them.
   E) If not mentioned in the contract, the buyer has the right to inspect goods in a reasonable time, place, and manner once the goods have been accepted.

Answer: D  
Diff: 2  
Topic: Buyer's and Lessee's Obligations  
Skill: Legal Concepts
37) Which of the following would constitute a valid acceptance of goods?
   A) The buyer tells the seller that the nonconforming goods that were shipped will be kept and paid for.
   B) The buyer waits for 3 months before notifying the seller that the goods are nonconforming.
   C) The buyer immediately resells the nonconforming goods.
   D) A, B, and C
   E) A and C only

Answer: D
Diff: 2
Topic: Buyer's and Lessee's Obligations
Skill: Legal Concepts

38) Which of the following must be met in every instance in order to revoke an acceptance of goods?
   A) The nonconformity must substantially impair the value of the goods.
   B) The seller's promise to cure the nonconformity must not have not been met.
   C) The goods must have been accepted before discovery of the nonconformity and the nonconformity must have been one that was difficult to discover.
   D) The goods must have been accepted before discovery of the nonconformity and the seller must have assured the buyer that the goods were conforming.

Answer: A
Diff: 3
Topic: Buyer's and Lessee's Obligations
Skill: Legal Concepts

39) Assuming that goods are nonconforming and that the nonconformity substantially impairs their value to the buyer, which of the following additional factors must be present for a valid revocation of the acceptance of goods?
   A) Nothing else is needed.
   B) The goods must have been accepted before the nonconformity was discovered, and the nonconformity must have been difficult to discover.
   C) The goods must have been accepted on the reasonable assumption that the seller could and would cure the nonconformity.
   D) Both B and C are required to revoke the acceptance of the goods.
   E) If either B or C is present, the acceptance of the goods can be revoked.

Answer: E
Diff: 2
Topic: Buyer's and Lessee's Obligations
Skill: Legal Concepts
40) Which of the following statements is true about acceptance of goods and the revocation of that acceptance?
   A) In order to reject nonconforming goods, the nonconformity must be one that substantially
      impairs the value of the goods to the buyer.
   B) An acceptance of goods can be revoked in any circumstance where the goods could have
      been rejected initially.
   C) Goods can be rejected in more circumstances than those where an acceptance of goods
      can be revoked.
   D) If the buyer actually saw and inspected the goods prior to acceptance, the acceptance of
      those goods cannot be revoked.

Answer:  C  
Diff: 3  
Topic:  Buyer's and Lessee's Obligations  
Skill:  Legal Concepts

41) If one party to a contract anticipatorily repudiates the contract, the aggrieved party may:
   A) treat the repudiation as a breach at that time
   B) await performance for a commercially reasonable time
   C) suspend his/her own performance
   D) all of the above

Answer:  D  
Diff: 2  
Topic:  Anticipatory Repudiation  
Skill:  Legal Concepts

42) If a party to a contract anticipatorily repudiates a contract, then:
   A) that repudiation may not be retracted
   B) that repudiation may be retracted under any circumstances
   C) that repudiation may be retracted only if the aggrieved party has not changed its position,
      canceled the contract, or otherwise indicated that the repudiation is final
   D) that repudiation may be retracted only with the consent of the other party

Answer:  C  
Diff: 2  
Topic:  Anticipatory Repudiation  
Skill:  Legal Concepts
43) When a party retracts an anticipatory repudiation, it means that the party:
   A) performed the contract, but is now taking back that performance
   B) breached a similar contract in the past, but will perform the current contract
   C) is breaching the current contract due to circumstances beyond its control, but will be able
to perform all similar contracts in the future
   D) had previously indicated that it would not perform the current contract, but has now
      indicated that it will perform the current contract
   E) is demanding that the other party to a contract live up to its obligations

Answer: D
Diff: 2
Topic: Anticipatory Repudiation
Skill: Legal Concepts

44) Which of the following is not a seller's remedy?
   A) right to withhold delivery
   B) right to resell goods
   C) right to cancel the contract
   D) right to cover
   E) Neither C nor D is a seller's remedy.

Answer: D
Diff: 1
Topic: Seller's and Lessor's Remedies
Skill: Legal Concepts

45) Which of the following statements is NOT true regarding the seller's right to withhold a
shipment of goods?
   A) If a seller learns of the buyer's insolvency, the seller can stop a shipment of any size.
   B) If a solvent buyer repudiates the contract, the seller can stop shipment only of a full
      carload, truckload, or other type of delivery.
   C) The carrier must be given adequate notice for the shipment to be stopped prior to
delivery.
   D) The seller can stop a shipment even if a negotiable bill of lading has been issued and is
      outstanding.

Answer: D
Diff: 2
Topic: Seller's and Lessor's Remedies
Skill: Legal Concepts
46) If the seller or lessor tenders nonconforming goods and the buyer or lessee accepts them, what remedies are available to the buyer?
   A) sue for ordinary damages
   B) deduct damages from the unpaid purchase price
   C) punitive damages
   D) A only
   E) A and B only

Answer: E
Diff: 1
Topic: Seller's and Lessor's Remedies
Skill: Legal Concepts

47) The seller can recover the purchase price for the goods only under certain circumstances, including which of the following situations?
   A) The buyer accepts, but fails to pay for the goods.
   B) The goods are destroyed after risk of loss passes to the buyer.
   C) The buyer rejects specially manufactured goods that cannot be resold.
   D) A, B, and C
   E) A and B only

Answer: D
Diff: 2
Topic: Seller's and Lessor's Remedies
Skill: Legal Concepts

48) In a contract for the sale of a unique good such as an antique, specific performance would be available as a remedy for which party(ies)?
   A) buyer only
   B) seller only
   C) both the seller and the buyer
   D) neither the seller nor the buyer

Answer: A
Diff: 2
Topic: Buyer's and Lessee's Remedies
Skill: Legal Concepts
49) Which of the following is NOT a buyer's remedy?
   A) right to reject
   B) right to specific performance
   C) right to cancel the contract
   D) right to recover damages
   E) right to resell

Answer: E
Diff: 2
Topic: Buyer's and Lessee's Remedies
Skill: Legal Concepts

50) If a seller breaches a contract for the sale of goods and the buyer then acquires similar goods from another supplier, this is known as the right of:
   A) alternate acquisition
   B) specific performance
   C) cover
   D) contract cancellation

Answer: C
Diff: 1
Topic: Buyer's and Lessee's Remedies
Skill: Legal Concepts

51) If a merchant buyer rejects goods, and the seller does not have an agent or place of business at the market where the goods were rejected, the buyer must:
   A) follow any reasonable instructions from the seller
   B) if no instructions come from the seller, sell the goods
   C) if the goods are not perishable, sell the goods
   D) A and B only
   E) A and C only

Answer: A
Diff: 2
Topic: Buyer's and Lessee's Remedies
Skill: Legal Concepts

52) What is the right to replevy goods?
   A) It is a seller's remedy to find an alternate buyer for goods.
   B) It is a seller's right to make nonconforming goods conforming.
   C) It is a buyer's right to seek specific performance for unique goods.
   D) It is a buyer's right to recover scarce goods improperly being held by a seller.
   E) It is available only if the contract provides.

Answer: D
Diff: 2
Topic: Buyer's and Lessee's Remedies
Skill: Legal Concepts
53) If a seller fails to deliver conforming goods, which of the following remedies is NOT available to the buyer?
   A) cover and collect damages equal to the cover price less the contract price
   B) not cover, but collect damages equal to the fair market value of the goods less the contract price
   C) cover and collect damages equal to the contract price less the cover price
   D) sue and collect for lost profits

   Answer: C
   Diff: 3
   Topic: Buyer's and Lessee's Remedies
   Skill: Legal Concepts

54) Which of the following statements is not true regarding the buyer's right to cover?
   A) The buyer must cover.
   B) The measure of damages in a cover is cover price less contract price.
   C) Cover must be done in a commercially reasonable manner and without undue delay.
   D) Consequential damages can be recovered in addition to the cover damages.
   E) The seller may not cover.

   Answer: A
   Diff: 2
   Topic: Buyer's and Lessee's Remedies
   Skill: Legal Concepts

55) A buyer who has knowingly accepted nonconforming goods with no assurance of cure:
   A) has given up any right to later reject the good for this nonconformity
   B) may nonetheless recover damages resulting from the nonconformity
   C) may recover damages only if the buyer covers
   D) may recover damages only if the buyer can prove lost profits

   Answer: A
   Diff: 2
   Topic: Buyer's and Lessee's Remedies
   Skill: Legal Concepts

56) Which of the following is true about the statute of limitations under the UCC?
   A) The statute of limitations is always 4 years.
   B) The statute of limitations cannot exceed 4 years.
   C) The statute of limitations cannot be less than 2 years.
   D) The statute of limitations depends only on the terms of the specific contract.

   Answer: B
   Diff: 3
   Topic: Statute of Limitations
   Skill: Legal Concepts

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57) Liquidated damages under the UCC:
   A) are not permissible
   B) are not permissible anytime both parties have agreed to them
   C) are permissible only if other remedies are inadequate
   D) are permissible if reasonable, considering actual damages and the difficulties in computing actual damages

Answer: D
Diff: 2
Topic: Agreements Affecting Remedies
Skill: Legal Concepts

58) Which of the following is generally true about provisions in a contract under the UCC that provide specific remedies?
   A) These specific remedies are always in addition to those provided by the UCC.
   B) These specific remedies are unenforceable because the UCC remedy provisions control.
   C) The UCC remedies also apply unless the contract states that the contract remedies are exclusive.
   D) The specific contract remedies will be considered to be unconscionable.

Answer: C
Diff: 2
Topic: Agreements Affecting Remedies
Skill: Legal Concepts

59) A computer dealer whose place of business is in Chicago contracts on March 15 to sell 100 personal computers to a CPA firm whose place of business is in Milwaukee. The contract does not mention anything about the time or place of delivery. What are the delivery requirements for this contract?
   A) at a reasonable place within a reasonable time from March 15
   B) at a reasonable place on March 15
   C) at the computer dealer within a reasonable time from March 15
   D) at the CPA firm within a reasonable time from March 15
   E) The parties are obligated to reach an agreement for delivery, and its terms will be controlling.

Answer: C
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Factual Application
60) A ski shop orders 500 pairs of downhill ski boots from a ski equipment manufacturer to be delivered to the ski shop on November 1. Late in the day on November 1, the ski shop receives a delivery. After the shop closes for the day, shop employees notice that the shipment consists of 500 pairs of skis, not ski boots. Which is true regarding the manufacturer's right to cure?

A) The manufacturer has a reasonable time to cure.
B) There is no right to cure because this breach was substantial.
C) There is no right to cure because the time for performance has passed.
D) The manufacturer has a right to cure, but only if the value of the skis received is at least as great as the value of the ski boots that were ordered.

Answer: C
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Factual Application

61) An outdoor clothing store ordered 1,000 pairs of hiking shorts in various sizes and two colors. The color mix was 48 percent khaki and 52 percent olive green. The supplier delivered the proper size mix on the date called for in the contract, but delivered 50 percent khaki and 50 percent olive green. In this circumstance, the buyer can:

A) not reject any of the shipment because there is substantial performance
B) reject only the portion of the shipment that was incorrect
C) reject the whole shipment, but only if the buyer covers within a reasonable time
D) reject the entire shipment, or part of the shipment

Answer: D
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Factual Application

62) Seller, a television manufacturer, contracts to deliver one hundred 20" color televisions sets with silver cabinets to the buyer on or before December 1 at a stated price. On November 25, seller delivers the sets to the buyer, but all have black cabinets. The buyer rejects these goods. Which of the following best describes this situation?

A) The buyer cannot reject these goods because the nonconformity does not significantly impair the value of the sets.
B) The seller has a right to cure, but only on or before December 1.
C) The seller has a right to cure, and may make a conforming delivery within a reasonable time.
D) The seller may cure, but only if the buyer agrees.
E) This is an anticipatory repudiation.

Answer: B
Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Factual Application
63) Sustainable Earth Clothiers is a retailer who sells only natural fiber clothing made from fibers that are organically raised. Because of the store's heavy advertising that it sells only products made from organically raised fibers, it simply cannot sell any clothing that is not made from such fibers. Sustainable Earth buys 1,000 cotton shirts that are delivered and accepted after an inspection. Three weeks later it is learned that these shirts were made from cotton that was not organically grown. The market value of the shirts is not affected by the fact that the cotton is nonorganic. Assuming that it is difficult to determine by observing the shirts that they were made from nonorganic cotton, which of the following is true?

A) Sustainable Earth must keep the shirts because it accepted them after the inspection.
B) Sustainable Earth must keep the shirts because the market value of the nonconforming shirts is the same as that for conforming shirts.
C) Sustainable Earth will be able to revoke acceptance of the nonconforming shirts.
D) Sustainable Earth will be able to revoke acceptance of the shirts only if it can show that the contract would be unconscionable if it were not allowed to revoke the acceptance.

Answer: C
Diff: 3
Topic: Seller's and Lessor's Obligations
Skill: Factual Application

64) On March 15, a buyer received goods under a contract calling for delivery by March 20. The buyer immediately noticed that the goods contained a nonconformity that substantially impaired their value to the buyer. The buyer accepted the goods when received even though they were nonconforming and the seller made no promise to cure the nonconformity. If the buyer wants to revoke its acceptance of these nonconforming goods:

A) it must do so by March 20
B) it must do so within a reasonable time
C) it may do so only if the seller fails to cure
D) it cannot revoke its acceptance in this situation

Answer: D
Diff: 2
Topic: Buyer's and Lessee's Obligations
Skill: Factual Application
65) A seller, a manufacturer of videocassette recorders (VCRs), contracts to deliver 100 VCRs to a buyer. The VCRs are delivered at 5 p.m. on a Friday. The buyer unloads the VCRs onto his dock. About 1 month later, the goods are inspected. It is discovered that all the VCRs have a defect, so the buyer notifies the seller of its rejection of the VCRs. The seller claims that the buyer has already accepted the shipment. Which of the following best describes this situation?
   A) The unloading of the VCRs onto its dock constitutes an acceptance by the buyer.
   B) The rejection was not made within a reasonable time, which constitutes an acceptance.
   C) The buyer cannot reject this shipment unless the nonconformity significantly impairs the value of the goods.
   D) Keeping the VCRs for over a month was an act inconsistent with the seller's ownership, which constitutes an acceptance.
   E) The buyer has the right to inspect, this delay was reasonable, and the buyer may reject this shipment.

Answer: B
Diff: 2
Topic: Buyer's and Lessee's Obligations
Skill: Factual Application

66) A buyer and seller have contracted for goods that are to be delivered C.O.D. Which is true?
   A) The C.O.D. clause is unconscionable unless there were past payment problems.
   B) The seller is unable to inspect the goods prior to paying for them, but remains able to reject them if inspection after payment uncovers nonconformities.
   C) The seller is unable to reject the goods or to inspect the goods prior to paying for them
   D) The payment of the C.O.D. amount is an irrevocable acceptance of the goods.

Answer: B
Diff: 3
Topic: Buyer's and Lessee's Obligations
Skill: Factual Application

67) An oil refiner in the United States contracts on April 1 with a broker to buy crude oil from a specific foreign country with delivery to be made on July 15. On June 15, civil war breaks out in the nation that is the source of the oil, disrupting most exports. The oil refiner immediately writes to the broker demanding assurance of performance, and gets no reply. In this situation, which of the following is true?
   A) The oil refiner must wait until July 15 before suspending its own performance.
   B) The oil refiner can suspend its performance and consider the contract to be repudiated.
   C) The oil refiner can suspend its performance before July 15 only if the broker confirms that it will not be able to deliver the crude oil.
   D) The oil refiner must cover at this point in order to be able to suspend its performance on the original contract.

Answer: B
Diff: 2
Topic: Assurance of Performance
Skill: Factual Application
68) LMN contracts to deliver 1,000 barrels of lubrication oil to the buyer on or before June 15. On May 15, LMN informs the buyer that it will be unable to deliver the oil as required. The buyer demands that LMN perform the contract, but to no avail. Which of the following best describes the buyer's rights in this situation?
   A) The buyer must treat the contract as breached on May 15.
   B) The buyer must wait until June 15 to determine if there has been a breach.
   C) The buyer may treat the contract as breached on May 15.
   D) The buyer may wait until June 15 to see if the seller performs.
   E) either C or D

Answer: E
Diff: 2
Topic: Anticipatory Repudiation
Skill: Factual Application

69) A buyer contracts to buy an automobile from a seller (an individual who is not a car dealer) for $1,000. The buyer fails to accept and pay for this car, so the seller sells it to another party for $1,200. This second sale cost the seller an extra $50 in advertising. The seller sues the buyer for damages for breach of contract. In this situation, which of the following is true?
   A) The seller can collect $250.
   B) The seller can collect $200.
   C) The seller can collect $50.
   D) The seller collects nothing, but keeps the extra amount received.
   E) The seller collects nothing, but must give buyer the extra $150.

Answer: D
Diff: 2
Topic: Seller's and Lessor's Remedies
Skill: Factual Application

70) A seller hears that one of its customers has filed for bankruptcy. The seller demands in writing assurance of performance by the buyer. If the buyer does give written assurance that it will perform, which of the following is true?
   A) The written assurance will require that the seller deliver the goods.
   B) The seller may withhold delivery of the goods despite the assurance of performance.
   C) The seller may withhold delivery only if the insolvency will prevent payment of this debt.
   D) The seller must deliver the goods to the custody of the bankruptcy trustee.

Answer: B
Diff: 3
Topic: Seller's and Lessor's Remedies
Skill: Factual Application
71) Avco Restaurants contracts to purchase $10,000 worth of specially manufactured tablecloths and napkins with its distinctive logo on them. After the seller completes them, Avco wrongfully refuses to accept or pay for these goods. These goods cannot be sold in the open market. If the seller sues Avco, what is the proper measure of damages?
   A) contract price less resale price  
   B) fair market value less contract price  
   C) contract price  
   D) cover price less contract price  
   E) lost profits

Answer: C
Diff: 2
Topic: Seller's and Lessor's Remedies
Skill: Factual Application

72) Jane, a private individual, has her only piano for sale. Roger contracts to buy it for $500; however, Roger never accepts or pays for it. Jane then sells it to Mark for $550. Jane had no additional costs or expenses. If Jane sues Roger for breach of contract, the proper measure of Jane's damages would be which of the following?
   A) contract price less resale price  
   B) contract price less fair market value  
   C) contract price  
   D) lost profits  
   E) Jane suffered no damage.

Answer: E
Diff: 2
Topic: Seller's and Lessor's Remedies
Skill: Factual Application

73) Roger contracts with Music Company to buy one of its pianos for $2,000. Music Company has several of these pianos in stock and can buy an unlimited number from the manufacturer. Roger refuses to accept this piano, and Music sells it to another customer for $1,900. If Music sues Roger for breach of contract, the proper measure of Music's damages would be which of the following?
   A) contract price less resale price  
   B) contract price less fair market value  
   C) contract price  
   D) lost profits  
   E) Music suffered no damage.

Answer: D
Diff: 2
Topic: Seller's and Lessor's Remedies
Skill: Factual Application
74) John needs a new car and goes to the local dealer for Worldwide Motors, a global car manufacturer. John negotiates a deal with the local dealer to buy a new midsize model, the Albatross, for $22,000. The dealer cost on this car is $19,000. John then decided against the Albatross and breached the contract. Later the dealer sold this car to another customer for $21,600. The dealer also incurred $200 in costs connected with John's canceled order. Assuming that the dealer can get as many Albatrosses as it wants, how much can it recover in damages from John? Assume that John has not paid anything to the dealer.

A) $400  
B) $600  
C) $3,000  
D) $3,200  
E) $2,600

Answer: B  
Diff: 3  
Topic: Seller's and Lessor's Remedies  
Skill: Factual Application

75) John needs a new car and goes to the local dealer for Worldwide Motors, a global car manufacturer. John negotiates a deal with the local dealer to buy a new midsize model, the Albatross, for $22,000. The dealer cost on this car is $19,000. John then decided against the Albatross and breached the contract. Later, the dealer sold this car to another customer for $21,600. The dealer also incurred $200 in costs connected with John's canceled order. Assuming that the dealer is allocated only 12 Albatrosses for the year and can get no more, how much can it recover in damages from John? Assume that John has not paid anything to the dealer.

A) $400  
B) $600  
C) $3,000  
D) $3,200  
E) $2,600

Answer: D  
Diff: 3  
Topic: Seller's and Lessor's Remedies  
Skill: Factual Application
76) A seller contracted to deliver goods for a contract price of $20,000. At the time of delivery, the seller delivered nonconforming goods, worth only $12,000. If the buyer covers, its cost would be $22,000. If the buyer does not cover, the fair market value of conforming goods is $25,000. Which of the following remedies is NOT available to the buyer?

A) return the nonconforming goods, cover, and collect $2,000 in damages
B) return the nonconforming goods, not cover, and collect $5,000 in damages
C) accept the nonconforming goods and collect $8,000 in damages
D) return the nonconforming goods, not cover, and collect $20,000 in damages

Answer: D
Diff: 3
Topic: Buyer's and Lessee's Remedies
Skill: Factual Application

77) A seller contracts to sell some rare coins to a collector for $10,000, to be delivered 2 months after the date of the contract. On the date that delivery is due, the coins are worth $12,000, but the seller refuses to deliver. The collector acquires similar coins the following week for $13,000, the best price he can find. What can the collector recover from the seller?

A) $1,000
B) $2,000
C) $3,000
D) $5,000
E) Nothing, because she chose to enter into a separate contract for the purchase of coins from another seller.

Answer: C
Diff: 3
Topic: Buyer's and Lessee's Remedies
Skill: Factual Application

78) John buys some vinyl siding from JKL Construction Company, which installs it on John's house. The siding comes with a 10-year warranty against peeling and chipping. During the fifth year after installation, the siding starts to peel and chip excessively. John sues JKL in the sixth year, but JKL claims that the statute of limitations has run. In these circumstances, which of the following is true?

A) JKL wins; the statute of limitations is 4 years.
B) JKL wins; the statute of limitations is 2 years.
C) John wins; the statute of limitations is 6 years.
D) John wins; the statute of limitations does not start to run until the warranty is breached.
E) John wins; the statute of limitations does not start to run until John files a lawsuit.

Answer: D
Diff: 2
Topic: Statute of Limitations
Skill: Factual Application
79) A food processing plant enters into a contract with a farmers' cooperative for the purchase of several thousand bushels of wheat at $6.50 per bushel to be delivered on November 15. The contract provides that there will be liquidated damages of $10,000 for each bushel of wheat that the cooperative fails to deliver. Which is true?

A) Liquidated damages clauses are always valid if entered into before the actual breach.
B) Because $10,000 is a relatively small amount, this liquidated damages clause is valid.
C) This liquidated damages clause is invalid because it is excessive and because actual damages would be easy to compute if the wheat is not delivered.
D) The liquidated damages clause would be reformed to $6.50 per undelivered bushel.

Answer: C
Diff: 2
Topic: Agreements Affecting Remedies
Skill: Factual Application

80) A store orders 100 bicycles from a manufacturer. Upon delivery, it is discovered that 75 bicycles conform to the contract specifications and 25 do not. According to the perfect tender rule, what are the options available to the store?

A) It may reject the entire shipment.
B) It may accept 75 and reject 25.
C) It may accept the entire shipment and seek remedies from the manufacturer.
D) All of the above are true.

Answer: D
Diff: 2
Skill: Factual Application

81) Lessee contracts to deliver 50 luxury automobiles to lessor no later than August 15th. On August 1st, Lessee delivers the wrong model of automobile. How much time will the lessee have to cure the defect?

A) None. Once delivery is made, it must be perfect tender.
B) Ten days from the date of the original delivery (August 11th).
C) At least until August 15th.
D) Ten days after August 15th (August 25th).

Answer: C
Diff: 2
Skill: Factual Application
82) What is the purpose of giving breaching sellers a right to cure? What is the time limit for a seller to cure? Should that time limit be made longer or shorter? What effect does the perfect tender rule have on your analysis?

Answer: Under the rule, as long as there is time remaining until the performance is due, the rule allows the seller to cure. This is reasonable given that the seller could have waited until that time to deliver. To extend the right in all cases beyond the delivery date could rob the buyer of the benefit (delivery by the due date) of his bargain. This would also reduce the effectiveness of the perfect tender rule.
Diff: 2
Skill: Ethics and Policy

83) Why are there so many different options available to a nonbreaching party under the UCC in contracts for the sale of goods? Would it be better to limit the number of remedies so that a party contemplating whether or not to breach will be better able to predict the cost and consequences of a breach?

Answer: There is an infinite variety of contract terms and the ways in which contracts can be breached. Thus, no single remedy would work in all situations. Furthermore, the goal of providing the nonbreaching party with the "benefit of the bargain" calls for a variety of remedies to fit the different types of breaches and the different actions that nonbreaching parties take in consequence of breaches.
Diff: 2
Skill: Ethics and Policy

84) Is the perfect tender rule too harsh? Why should a party be able to reject an entire shipment for a very minor nonconformity? Does this work against one of the main policies of the UCC, namely to encourage the formation and performance of contracts?

Answer: Some have criticized it as being too favorable to the buyer. The effect of this is mitigated by the fact that the parties can (and often do) limit the effect of the rule in their contracts. Although harsh for the seller, one can argue that the rule encourages buyers to enter into contracts secure in the knowledge that they are entitled to receive the exact contracted-for goods.
Diff: 2
Skill: Ethics and Policy

85) Does the great increase in the sale of goods over the Internet have any implications for the perfect tender rule?

Answer: With respect to merchants selling new goods, the issues are similar to those for mail order sales. The Internet has brought large numbers of nonmerchant sellers, many selling used goods. With used goods, many more issues can arise about incorrect descriptions, including, for certain collectibles, the grading of the item's description. For example, a dispute could arise over whether a doll is in good versus very good condition.
Diff: 2
Skill: Ethics and Policy
86) What special consideration should parties to international contracts for the sale of goods give to the availability of remedies? Should such parties limit the kinds of remedies available? What additional risks to breaching parties exist in the exercise by nonbreaching parties of the various remedies available? In other words, what characteristics of international transactions might let a nonbreaching party exploit the situation?

Answer: Where the nonbreaching party obtains alternate performance (cover for buyers, or reselling the goods for sellers), it will often be more difficult to determine if the alternate performance was reasonable. This is one of the reasons that arbitration is widely used in such contracts. Arbitration helps, though does not eliminate, the problem.

Diff: 2
Skill: Ethics and Policy

87) Seller, a manufacturer of radios, contracts to deliver 1,000 radios to the buyer. The radios are delivered at the proper time. The buyer inspected the goods as much as she thought necessary. Some of the radios were sold. Later, it was determined that the radios had two defects. First, the coating on the radios had run, making them somewhat unsightly. Second, a few units were improperly manufactured, so they would not play. The buyer attempts to return all the radios. Discuss the rights and duties of both the buyer and seller in this situation.

Answer: The buyer, by reselling, has accepted the radios. The next issue is whether the buyer can still revoke its acceptance. The buyer probably cannot revoke based on the coating on the covers, but could because of the defect causing some to not play properly. Assuming that the right to cure has expired, the difficulty of discovering that a small percentage of the radios did not play properly would allow the buyer to revoke the earlier acceptance and reject some or all pursuant to the perfect tender rule.

Diff: 2
Topic: Seller's and Lessor's Obligations
Skill: Factual Application
88) Fashion Futures is an upper end retail clothing store that specializes in clothing for aging baby boomers who don't want to admit that they are aging. Fashion Futures entered into a contract to purchase 100 pairs of designer pants each month for the 2001 calendar year. The pants were to be delivered by the tenth day of each month. For the January order, Fashion Futures ordered 50 pairs of black pants and 50 pairs of navy blue pants. When delivered, the order contained 60 pairs of black pants, 10 pairs of navy blue pants, and 30 pairs of olive green pants. The order was delivered late in the day on January 10. Fashion Futures is upset because the proper goods were not delivered. On January 12, Fashion Futures sent a letter to the supplier saying that it was keeping 20 pairs of the olive green pants and 20 pairs of the black pants, and rejecting all the others, including all the pants for the other 11 shipments. Discuss the legal issues likely to arise when the supplier objects to these actions. Assume that there are no contract provisions addressing any of the legal issues that might arise.

Answer: Under the perfect tender rule, when the tender is not perfect, the buyer can reject all, accept all, or anything in between, including seemingly illogical combinations such as the situation here. The supplier might claim that this is an installment contract, meaning that the buyer could reject only items on this shipment. However, without a contract provision stating that it is an installment contract, or that each shipment is a separate contract, Fashion Futures is within its rights to reject all items in the future shipments because this would not be an installment contract. The right to cure had expired at the time of delivery.

Diff: 2
Topic: Buyer's and Lessee's Obligations
Skill: Factual Application
Brittany runs a store called "Miatas Only" that sells parts and accessories for the popular Mazda Miata sports car. The store purchases parts and accessories from many manufacturers, but, as its name indicates, sells parts only for Miatas. The store received shipment of a large order from Worldwide Sportscar Accessories late on a Saturday afternoon. After a quick count of the boxes, the store accepted the shipment. The following week when stocking the items, the following problems were found with the order:

1. Some sheepskin seat covers were the wrong color. The store had ordered 50 of these in four different colors, but all 50 were black. The value of the seat covers was the same regardless of color.
2. The store had ordered 100 sets of floor mats with the name "Miata" embossed on them, but instead received 100 sets with "SLK" that were sized for the Mercedes-Benz sports car of that name. The Miata mats cost the store $60 per pair and can be sold for $90, whereas the SLK mats cost $70 and can be sold for $110.
3. The store had ordered 100 blankets embossed with "Miata" and received the blankets ordered, but without "Miata" embossed. The plain blankets cost $10 less and sell for $10 less.

Can "Miatas Only" revoke its acceptance of these items?

Answer: To revoke an acceptance, the nonconformity must be one that substantially impairs the value to the buyer. For the seat covers, the question is whether the store could sell all of them at the same prices as if the ordered colors had been received. For the floor mats, the nonconformity would likely substantially impair the value because "Miatas Only" would have a difficult time selling accessories for a Mercedes. For the blankets, if the charge from Worldwide was adjusted down by $10 and if "Miatas Only" could sell them for $10 less, the value to "Miatas Only" would likely not be impaired; they would make the same profit on each item. Of the three ways to meet the third requirement, only the difficulty of discovery of the defect is available. None of these defects meet that requirement, thus the acceptance could not be revoked.

Diff: 3
Topic: Buyer's and Lessee's Obligations
Skill: Factual Application

90) Seller contracts to deliver 25 vans to buyer on or before March 1. All the other terms to the contract are fixed. On January 2, the seller informs the buyer that the seller will not be able to deliver the goods as promised. The buyer immediately contracts with someone else for the vans. On February 1, the original seller informs the buyer that the vans will be delivered per the original contract. The buyer refuses to accept these vans, and the original seller sues. Discuss the most likely outcome to the suit, fully developing the legal rights of each party.

Answer: Following the anticipatory repudiation by the seller, the buyer could seek alternate performance. The attempted retraction of the anticipatory repudiation is ineffective because the buyer here has materially changed its position by purchasing the vans from another seller.

Diff: 2
Topic: Anticipatory Repudiation
Skill: Factual Application
91) An appliance manufacturer contracts to purchase a quantity of steel from Megasteel Corporation to be delivered to the appliance manufacturer on June 1, 2002. On April 1, 2002, there is a massive explosion at Megasteel's only steel mill that destroys the mill. According to newspaper reports, the mill will take at least one year to be rebuilt and put back into operation. The appliance company purchasing manager makes a frantic phone call to Megasteel asking, "Is it true you won't be making any more steel for at least a year?" The Megasteel representative says that it is true it will not be able to make any steel for at least a year. The appliance manufacturer immediately contracts with another steel company to deliver similar steel on June 1. A shipment of steel is received from each company on June 1. Has the appliance manufacturer breached its contract with Megasteel if it refuses to accept and pay for the Megasteel steel?

Answer: The explosion, by itself, was not an anticipatory repudiation. The appliance company's question to Megasteel was not a demand for adequate assurance because it was not in writing and because the question did not demand assurance. Megasteel might have already manufactured the steel for this contract, or could have performed by acquiring it elsewhere. The appliance store is obligated to accept the Megasteel steel.

Diff: 3
Topic: Anticipatory Repudiation
Skill: Factual Application

92) Peach Motors is a factory-authorized dealer for the manufacturer of the Zebra, a popular luxury sport model that is a leading seller. The Zebra comes with almost every conceivable piece of equipment standard. The only option is an automatic transmission. Thus, the only differences in individual cars are the type of transmission and color of the car. Peach Motors orders 30 Zebras from the factory. The cars ordered are various colors and include some with automatic transmission and some with manual transmission. The factory delivers only five Zebras, all with manual transmission, all in orange, the slowest selling color. Peach had ordered no orange Zebras. Discuss Peach's remedies.

Answer: Cover is probably not an option here since there is probably only one source for these cars. The cars are not unique, but, even though many are on the road, they would be considered scarce items from Peach's standpoint, allowing Peach to get replevin. Otherwise, Peach could recover lost profits.

Diff: 3
Topic: Buyer's and Lessee's Remedies
Skill: Factual Application
93) Seller entered into a contract to sell goods at a contract price of $2,000. At the delivery date, the seller refuses to deliver the goods. If the buyer covers on the date delivery is supposed to occur, the cost to acquire alternate goods, also the fair market value, is $2,200. One week later the fair market value is $2,500. Discuss the remedies available to the buyer.

Answer: The buyer could rescind the contract, recover any amounts already paid, and possibly also recover damages. In such a case, the measure of damages would be measured as of the contract performance date, or $200, given that the buyer had agreed to pay $2,000 for an item worth $2,200. If the buyer could prove a plan to hold the asset, and show knowledge that the asset would increase in value, and show that he could not have purchased a similar item on the original performance date from another supplier (perhaps because the buyer had already paid the original seller), the buyer might be able to recover damages based on the increase in market value. If the buyer covered, the buyer could collect as damages the amount paid over and above the contract price. The buyer would have to show that the buyer covered within a reasonable time, and met the duty to mitigate damages.

Diff: 3
Topic: Buyer's and Lessee's Remedies
Skill: Factual Application
1) It is not necessary to use formal words such as "warrant" or "guarantee" in order to create an express warranty.

Answer: TRUE  
Diff: 2  
Topic: Express Warranties

2) Intent is necessary in order to create an express warranty.

Answer: FALSE  
Diff: 2  
Topic: Express Warranties

3) The statement "This car has a six-cylinder engine" is a statement of fact, but not a warranty.

Answer: FALSE  
Diff: 2  
Topic: Express Warranties

4) The statement "This house paint will last five years" can be an express warranty.

Answer: TRUE  
Diff: 1  
Topic: Express Warranties

5) A model used in connection with selling goods will usually amount to a warranty that the goods will be as the model indicates.

Answer: TRUE  
Diff: 1  
Topic: Express Warranties

6) A statement that a trailer has a capacity of 3,000 pounds would be treated as an affirmation of fact and would become a warranty.

Answer: TRUE  
Diff: 2  
Topic: Express Warranties
7) A statement of opinion is considered to be a warranty.

Answer: FALSE
Diff: 1
Topic: Express Warranties

8) The statement "This painting is worth $10,000" does not create a warranty.

Answer: TRUE
Diff: 1
Topic: Express Warranties

9) The statement "This car has an actual mileage of 25,000 miles" is an express warranty.

Answer: TRUE
Diff: 1
Topic: Express Warranties

10) The term "basis of the bargain" is a test that is strictly applied by the courts as per the UCC.

Answer: FALSE
Diff: 2
Topic: Express Warranties

11) Manufacturers are liable for express warranties made by wholesalers.

Answer: FALSE
Diff: 2
Topic: Express Warranties

12) The implied warranty of merchantability requires that goods be fit for the ordinary purposes for which they are intended.

Answer: TRUE
Diff: 1
Topic: Implied Warranty of Merchantability

13) The implied warranty of merchantability includes a warranty that goods delivered in groups are of a consistent quality.

Answer: TRUE
Diff: 1
Topic: Implied Warranty of Merchantability
14) The implied warranty of merchantability applies to the goods themselves, and not to the manner in which they are packaged.

Answer: FALSE
Diff: 2
Topic: Implied Warranty of Merchantability

15) The warranty of merchantability applies only to sales or leases by merchants.

Answer: TRUE
Diff: 1
Topic: Implied Warranty of Merchantability

16) Sam is a high school English teacher who holds a garage sale at which he sells an old cordless drill to a neighbor. When the neighbor uses the drill, he is injured because the drill is defective. The neighbor can sue Sam for a breach of the implied warranty of merchantability.

Answer: FALSE
Diff: 2
Topic: Implied Warranty of Merchantability

17) Tom owns a hardware store at which he sells power tools. He sells a cordless drill to Victor who takes it home and is injured when he uses it, because the drill is defective. Victor can sue Tom for a breach of the implied warranty of merchantability.

Answer: TRUE
Diff: 2
Topic: Implied Warranty of Merchantability

18) Under the implied warranty of merchantability, fungible goods need only meet the highest level of quality.

Answer: FALSE
Diff: 2
Topic: Implied Warranty of Merchantability

19) The implied warranty of fitness for a particular purpose applies only to merchant sellers and lessors.

Answer: FALSE
Diff: 1
Topic: Implied Warranty of Fitness for a Particular Purpose
20) The implied warranty of fitness for a particular purpose need not meet with the buyer's or lessee's expressed needs.

Answer: FALSE  
Diff: 1  
Topic: Implied Warranty of Fitness for a Particular Purpose

21) Warranties may not be disclaimed.

Answer: FALSE  
Diff: 1  
Topic: Warranty Disclaimers

22) The title warranties may be excluded with general language, such as "as is" or "with all faults."

Answer: FALSE  
Diff: 2  
Topic: Warranty Disclaimers

23) Language such as "there are no warranties that extend beyond the description on the face hereof" is insufficient to disclaim the fitness warranty.

Answer: FALSE  
Diff: 2  
Topic: Warranty Disclaimers

24) Written disclaimers must be conspicuously displayed to be valid.

Answer: TRUE  
Diff: 1  
Topic: Warranty Disclaimers

25) Software licenses may not contain disclaimers that limit the licensor's liability if the software malfunctions.

Answer: FALSE  
Diff: 2  
Topic: Warranty Disclaimers


Answer: TRUE  
Diff: 1  
Topic: Magnuson-Moss Warranty Act
27) A full warranty is a guaranty by the warrantor that the product will be repaired for free or replaced.

Answer: TRUE
Diff: 1
Topic: Magnuson-Moss Warranty Act

28) The Magnuson-Moss Warranty Act also covers implied warranties.

Answer: FALSE
Diff: 2
Topic: Magnuson-Moss Warranty Act

29) A seller need not warrant the validity of the title to the goods it is selling as long as the transfer of title is rightful.

Answer: FALSE
Diff: 2
Topic: Warranty of Good Title

30) Sellers of goods warrant that the goods they sell are delivered free from any third-party security interests.

Answer: TRUE
Diff: 1
Topic: Warranty of No Security Interests

31) Goods may be delivered to a buyer with a third-party trademark claim.

Answer: FALSE
Diff: 2
Topic: Warranty Against Infringements

32) The warranty against interference is the same as the warranty of quiet possession.

Answer: TRUE
Diff: 2
Topic: Warranty Against Interference

33) Under the implied warranty of fitness for human consumption, it is implied that the food served is fit for human consumption.

Answer: TRUE
Diff: 2
Topic: Implied Warranty of Fitness for Human Consumption
34) The warranty of title, which is automatically imposed by the UCC, includes the following elements:
   A) a warranty of good title
   B) a warranty of no security interests
   C) a warranty of no infringements, if the seller is a merchant
   D) A, B, and C
   E) A and B only

Answer: D  
Diff: 1  
Topic: Warranties of Title and No Infringements  
Skill: Legal Concepts

35) The doctrine of caveat emptor means:
   A) "Let the seller beware"
   B) "Let the seller be liable for all damages"
   C) "Let the buyer beware"
   D) "That the legal remedy must be just and fair"

Answer: C  
Diff: 1  
Topic: Warranties of Title and No Infringements  
Skill: Legal Concepts

36) The term "warranty" may be defined as:
   A) a contractual default
   B) a contractual promise
   C) caveat emptor
   D) a tender of performance

Answer: B  
Diff: 1  
Topic: Warranties of Title and No Infringements  
Skill: Legal Concepts

37) The warranty of no infringement applies:
   A) by operation of law, but only to merchant sellers
   B) by operation of law to both merchant and nonmerchant sellers
   C) only if expressly stated, and even then only to merchant sellers
   D) only if expressly stated, but it can apply to both merchant and nonmerchant sellers

Answer: A  
Diff: 2  
Topic: Warranties of Title and No Infringements  
Skill: Legal Concepts
38) Which of the following best describes the warranty of title in connection with a leasing transaction?
   A) Because ownership does not transfer, there is no warranty of title nor is there any similar warranty.
   B) For lessees, the warranty of no infringements takes the place of the warranty of title.
   C) For lessees, the warranty of title is replaced by a warranty against interference.
   D) In a leasing transaction, the ownership status of the leased property is not of concern to the lessee, thus there is no warranty of title.

Answer: C
Diff: 2
Topic: Warranties of Title and No Infringements
Skill: Legal Concepts

39) Which of the following is presumed to become "part of the basis of the bargain?"
   A) all statements of fact by the seller at the time the contract is made
   B) all statements of opinion by the seller
   C) most statements of value by the buyer
   D) A and C only
   E) A and B only

Answer: A
Diff: 2
Topic: Express Warranties
Skill: Legal Concepts

40) Which of the following best describes an express warranty?
   A) It is a written provision obligating the seller to repair or replace goods for a specified period of time.
   B) It is any promise, oral or written, obligating the seller to repair or replace goods for a specified period of time.
   C) It is any statement or other representation made with respect to goods.
   D) It is any guarantee that the goods will pass without objection in the trade.

Answer: C
Diff: 2
Topic: Express Warranties
Skill: Legal Concepts

41) The following will create an express warranty EXCEPT:
   A) an affirmation of fact
   B) a description of the item
   C) an endorsement by a third party, such as the magazine Consumer Reports
   D) a sample of the item

Answer: C
Diff: 2
Topic: Express Warranties
Skill: Legal Concepts
42) Which of the following is true about express warranties?
   A) A retailer is generally liable for any express warranties made by the manufacturer for products sold by the retailer.
   B) A manufacturer is generally liable for any express warranties made by the retailer in connection with the sale of the product.
   C) A buyer of goods can recover for breach of warranty only if he can show that the warranty was the primary factor for buying the good.
   D) A statement of opinion can form the basis of a breach of warranty claim if the opinion was not made on reasonable assumptions.

Answer: A
Diff: 2
Topic: Express Warranties
Skill: Legal Concepts

43) Which of the following is correct with regard to express warranties?
   A) Commendations, or puffing, of the goods do not create an express warranty.
   B) It is always easy to distinguish between a statement of fact and an opinion.
   C) A statement of the value of goods will create an express warranty.
   D) Manufacturers are usually liable for express warranties made by retailers.

Answer: A
Diff: 2
Topic: Express Warranties
Skill: Legal Concepts

44) Which of the following warranties apply to merchants only?
   A) warranty of no infringements and warranty of merchantability
   B) warranty of no security interests and warranty of merchantability
   C) warranty of merchantability and warranty of fitness for a particular purpose
   D) warranty of merchantability and warranties of quality

Answer: A
Diff: 3
Topic: Implied Warranty of Merchantability
Skill: Legal Concepts

45) Which of the following is not one of the aspects of the implied warranty of merchantability?
   A) The goods are fit for the ordinary purposes for which they are used.
   B) The goods are adequately contained, packaged, and labeled.
   C) The price of the goods is not excessive, taking into account the goods' grade and quality.
   D) The goods are of such quality that they pass without objection in the trade.
   E) The goods within each unit are of an even quality.

Answer: C
Diff: 2
Topic: Implied Warranty of Merchantability
Skill: Legal Concepts
46) Under the implied warranty of merchantability, which of the following is true?
A) Fungible goods must be of the highest quality unless otherwise stated.
B) Both merchants and nonmerchants can generally be held liable.
C) The warranty applies to the intended uses of a product as well as the foreseeable misuse of the product.
D) A lot (group) of goods meets the warranty requirement so long as, on average, the goods are of sufficient quality, even if there is considerable variation and some of them are of inferior quality.
E) The warranty includes a requirement that the goods be adequately contained and packaged.

Answer: E
Diff: 2
Topic: Implied Warranty of Merchantability
Skill: Legal Concepts

47) For which of the following warranties must the seller be a merchant?
A) express warranties
B) implied warranty of merchantability
C) implied warranty of fitness for a particular purpose
D) implied warranty of title

Answer: B
Diff: 2
Topic: Implied Warranty of Fitness for a Particular Purpose
Skill: Legal Concepts

48) Which of the following is not necessary in order for the implied warranty of fitness for a particular purpose to apply?
A) The seller knows or has reason to know of the buyer's intended use of the good.
B) The seller is a merchant.
C) The seller states that the goods will serve the purpose of the buyer's intended use.
D) The buyer buys in reliance on the seller's skill and judgment.

Answer: B
Diff: 2
Topic: Implied Warranty of Fitness for a Particular Purpose
Skill: Legal Concepts
49) The implied warranty of fitness for a particular purpose is applicable to:
   A) all sales made by merchants, unless disclaimed
   B) all sales made by merchants or nonmerchants, unless disclaimed
   C) sales made by merchants only, but only if certain other requirements are met
   D) sales made by either merchants or nonmerchants, but only if certain other requirements are met
   E) sales made by either merchants or nonmerchants, but only if the terms of the contract expressly state that the warranty applies

Answer: D
Diff: 2
Topic: Implied Warranty of Fitness for a Particular Purpose
Skill: Legal Concepts

50) Which of the following is true about the difference between express and implied warranties?
   A) Express warranties apply to merchants and implied warranties apply to all sellers of goods.
   B) Express warranties apply to merchants and implied warranties apply to nonmerchants.
   C) Express warranties arise from conduct of the parties and implied warranties arise automatically by operation of law.
   D) Express warranties cannot be disclaimed, but implied warranties can be disclaimed.
   E) Implied warranties cannot be disclaimed, but express warranties can be disclaimed.

Answer: C
Diff: 3
Topic: Warranty Disclaimers
Skill: Legal Concepts

51) Which of the following is true about warranty disclaimers?
   A) All disclaimers are ineffective in transactions with an express warranty.
   B) A contract with both an express warranty and an inconsistent disclaimer will be unenforceable due to vagueness.
   C) Express warranties will control over inconsistent disclaimers.
   D) Warranty disclaimers are generally considered unconscionable.
   E) Warranty disclaimers can never apply to the implied warranty of title.

Answer: C
Diff: 3
Topic: Warranty Disclaimers
Skill: Legal Concepts
52) Which of the following is true about warranty disclaimers?
   A) The only way to disclaim the warranty of merchantability is to use the word
      merchantability in the disclaimer.
   B) The words, "there are no warranties in connection with this sale" will effectively disclaim
      all warranties.
   C) The word "fitness" must be used in order to claim the warranty of fitness for a particular
      purpose.
   D) In order to disclaim the warranty of title, the word "title" must be used or there must be
      language clearly indicating that the seller is transferring only the interest that the seller
      has in the goods.

   Answer: D
   Diff: 2
   Topic: Warranty Disclaimers
   Skill: Legal Concepts

53) Which of the following is true about the effect on warranties of an examination of the goods.
   A) If the buyer had the opportunity to inspect goods, but did not, there are no warranties with
      respect to defects that the inspection would have revealed.
   B) If the goods are actually inspected, there are no implied warranties with any defects in the
      goods.
   C) The refusal to inspect goods can operate to eliminate implied warranties only if the seller
      made an actual demand that the buyer inspect the goods.
   D) An inspection of goods will eliminate both express and implied warranties.

   Answer: C
   Diff: 3
   Topic: Warranty Disclaimers
   Skill: Legal Concepts

54) When a court finds that a warranty disclaimer is unconscionable, it can do the following
   EXCEPT:
   A) not enforce the disclaimer clause
   B) order specific performance
   C) refuse to enforce the entire contract
   D) limit the application of the disclaimer clause

   Answer: B
   Diff: 2
   Topic: Warranty Disclaimers
   Skill: Legal Concepts
55) Which of the following statements regarding the Magnuson-Moss Warranty Act is NOT true?
   A) It is a federal law.
   B) It requires a seller who gives an express warranty to label that warranty as either full or limited.
   C) It applies to all goods.
   D) It prohibits a seller who gives an express warranty from disclaiming the implied warranties.
   E) A and C only are NOT true.

   Answer: C
   Diff: 3
   Topic: Other Issues Concerning Warranties
   Skill: Legal Concepts

56) Where a seller has breached a warranty, what is the buyer's normal measure of damages?
   A) The difference in the contract price, and the value of the good as it actually is.
   B) The difference in the contract price, and the value of the good as it was warranted.
   C) The difference in the contract price, and the amount that the buyer could receive by reselling the good.
   D) The difference in the value of the good as warranted, and the value of the good as it actually is.
   E) The difference in the value of the good before it was purchased, and the value in the buyer's hands after purchase.

   Answer: D
   Diff: 2
   Topic: Other Issues Concerning Warranties
   Skill: Legal Concepts

57) What is the UCC Statute of Limitations for warranties in connection with the sale of goods?
   A) 1 year from the date of the sale
   B) 2 years from the date of the sale
   C) 3 years from the date of the sale
   D) 4 years from the date of the sale
   E) 4 years from the date of the sale unless the parties agree to reduce the period to not less than 1 year

   Answer: E
   Diff: 2
   Topic: Other Issues Concerning Warranties
   Skill: Legal Concepts
58) Seller, a merchant, sells and delivers 1,000 units of product X to Buyer. Later, it is discovered that product X infringes upon a patent owned by XYZ, Inc. Further, all 1,000 units of product X were subject to a security interest in favor of RST Corp. Buyer sues the Seller for breach of warranty. In this situation, which of the following is true?

A) Seller wins; there was no warranty given in this transaction.
B) Seller wins; the only relevant warranty was one of title, and the seller had good title to the goods.
C) Buyer wins; there is a breach of warranty of no security interests only.
D) Buyer wins; there is a breach of the warranty of no infringements only.
E) Buyer wins; there is a breach of both the warranty of no infringements and of no security interests.

Answer: E
Diff: 2
Topic: Warranties of Title and No Infringements
Skill: Factual Application

59) Which of the following statements could create an express warranty?

A) "This is the best car available in town."
B) "This car is worth twice the price."
C) "This car was overhauled last year."
D) "This car is quite a bargain."
E) "This car is a steal."

Answer: C
Diff: 2
Topic: Express Warranties
Skill: Factual Application

60) Which of the following creates an express warranty?

A) "It's a real buy."
B) "I plan to buy one myself."
C) "This car is the greatest thing on the road today."
D) "This car has had only one owner."

Answer: D
Diff: 2
Topic: Express Warranties
Skill: Factual Application
61) Which of the following would create an express warranty?
A) A seller promising at the time of sale that he will repair any defects or problems for a year from the sale.
B) A seller showing the buyer a model and saying, "Yours will be just like this only blue instead of red."
C) A seller taking a sample from a bin and indicating the purchase will conform to the sample.
D) All of the above create warranties.
E) None of the above create warranties.

Answer: D
Diff: 2
Topic: Express Warranties
Skill: Factual Application

62) Which of the following would be a breach of the implied warranty of merchantability?
A) a lawn mower that does not cut the grass
B) a cherry pit in a cherry pie, if using the foreign substance test
C) a wall paint that works fine for all walls, except for stucco, which is what the buyer bought it for
D) a stereo that had been stolen by the seller

Answer: A
Diff: 3
Topic: Implied Warranty of Merchantability
Skill: Factual Application

63) To which of the following transactions would the implied warranty of merchantability apply?
A) the sale of a used toaster by a homeowner at a garage sale
B) the purchase of a bag of potato chips from a vending machine
C) the sale of a new house by a contractor
D) all of the above
E) none of the above

Answer: B
Diff: 2
Topic: Implied Warranty of Merchantability
Skill: Factual Application
64) Buyer enters a paint store and tells the clerk that she needs paint that will cover and stick to a stucco wall. The seller tells her that brand X paint will do the trick. Buyer purchases brand X paint and paints her stucco wall, but three weeks later the paint peels off. This would be a breach of which kind of warranty?
   A) implied warranty of merchantability
   B) implied warranty of fitness for a particular purpose
   C) an express warranty
   D) implied warranty of no infringements

Answer: B
Diff: 2
Topic: Implied Warranty of Fitness for a Particular Purpose
Skill: Factual Application

65) A written contract contains an express warranty that the goods will be of "quality grade A." The seller wishes to disclaim this express warranty. How may the seller accomplish this?
   A) This express warranty may not be disclaimed.
   B) By language stating that no warranties, express or implied, are contained in this contract.
   C) By general language, such as "as is" or "with all faults."
   D) By specifically mentioning "merchantability."
   E) By specifically mentioning "fitness for a particular purpose."

Answer: A
Diff: 3
Topic: Warranty Disclaimers
Skill: Factual Application

66) Sally buys a used riding lawn mower from the local mower dealership. The lawn mower had a sign on it that said "as is." The dealer made no promises concerning the performance of the lawn mower. When Sally attempts to use the lawn mower, the brakes fail, the lawn mower crashes into a wall, and Sally is injured. When Sally sues the dealer, what is the outcome?
   A) The dealer wins; there were no express warranties and all implied warranties have been successfully disclaimed.
   B) Sally wins; she can recover on the basis of express warranties only.
   C) Sally wins; she can recover on the basis of implied warranties only.
   D) Sally wins; she can recover on the basis of either express or implied warranties.
   E) None of these are correct.

Answer: A
Diff: 2
Topic: Warranty Disclaimers
Skill: Factual Application
67) JKL Company manufactures and sells home theater equipment for home use. The company is contemplating what type of warranty it should place on its products, and wishes to know the ramifications of the Magnuson-Moss Warranty Act. Which of the following statements is true?
   A) Magnuson-Moss applies only to commercial goods, so JKL will not be affected.
   B) Magnuson-Moss requires that JKL give a written warranty on its goods.
   C) Magnuson-Moss will not affect implied warranties.
   D) Magnuson-Moss requires that any written warranty be labeled as either full or limited.
   E) None of the above are true.

Answer: D
Diff: 2
Topic: Other Issues Concerning Warranties
Skill: Factual Application

68) Greencutter Lawn Equipment sells lawn mowers and other lawn-care equipment. Greencutter wants to provide a written warranty with its equipment under which it will repair the equipment for 2 years from the date of purchase. Which of the following is true in this circumstance under the Magnuson-Moss Warranty Act?
   A) Greencutter should call this a full warranty if the repair obligation covers all parts of the lawn mower.
   B) Greencutter is unable to modify or limit the implied warranties on the mower.
   C) The Act requires that the length of any express warranty be reasonable considering the type of product.
   D) Greencutter must clearly indicate whether any warranty is full or limited.
   E) A and D are both true.

Answer: D
Diff: 3
Topic: Other Issues Concerning Warranties
Skill: Factual Application

69) Which of the following statements would create an express warranty?
   A) "This is the best used car in town."
   B) "This car has been driven only 12,000 miles."
   C) "This car may be worth a fortune soon."
   D) "Other people would consider paying nearly double this amount for this car!"

Answer: B
Diff: 3
Skill: Factual Application
70) Steve was eating a chicken salad sandwich at a restaurant and began choking on a chicken bone. Which of the following is correct?
   A) Steve would not be able to recover under either the Foreign Substance Test or the Consumer Expectation Test.
   B) Steve would be able to recover under the Foreign Substance Test, but not the Consumer Expectation Test.
   C) Steve would not be able to recover under the Foreign Substance Test, but would be able to recover under the Consumer Expectation Test.
   D) Steve could recover under both the Foreign Substance Test and the Consumer Expectation Test.

Answer: C
Diff: 3
Skill: Factual Application

71) Why do you think there are so many rules and laws regarding warranties, their language, and how they arise and can be disclaimed? If you were to simplify these rules, how would you do so?

Answer: Warranties are subject to negotiation between the parties, thus there are unlimited possible terms. Furthermore, parties often do not pay close attention to warranty provisions because they do not expect to actually need them. In many cases, the warranty issue comes up long after the terms were negotiated in the contract.
Diff: 2
Skill: Ethics and Policy

72) States apply two tests when deciding whether there has been a breach of the warranty of fitness for human consumption. What are these two tests and how do they differ? Which test is better? Should one or the other apply in all situations, or should one test apply in some situations and the other apply in other situations?

Answer: The consumer expectation test is broader than the foreign substance test, and thus gives the buyer additional situations in which to recover. The consumer expectation test probably makes more sense today because advanced food processing techniques have led consumers to not expect unintended parts of food inputs, such as bones, to be present in many foods.
Diff: 2
Skill: Ethics and Policy

73) Is the Magnuson-Moss Warranty Act tilted too much in favor of the consumer? If you think so, how would you change it?

Answer: Although the act is strict on the labeling of full and limited warranties, it does not require any seller to provide a warranty. One of its primary purposes is to prevent consumers from thinking that they have greater protections than they actually have.
Diff: 2
Skill: Ethics and Policy
74) New car warranties include a provision that the automaker's sole obligation under the warranty is to make covered repairs. What is the significance of such a provision? How do state lemon laws come into play here?

Answer: The provision operates to eliminate any damages claims (other than those allowed in the express warranty), thus limiting the car buyer to having the vehicle repaired. State lemon laws were passed in order to allow another remedy where repeated repairs do not solve the particular problem, essentially negating the limitation of remedies provision.

Diff: 2
Skill: Ethics and Policy

75) Should the size of a package amount to a warranty that the contents fill the container as much as practicable? There are numerous products where the packaging contains much dead space, such as a useless pedestal inside the box. What do you think?

Answer: In some circumstances, the space is needed to reduce the risk of breakage. Sellers argue that where the amount of product is clearly stated on the package, there is no breach of warranty. On the other hand, many buyers assume the package size indicates product size.

Diff: 2
Skill: Ethics and Policy

76) John bought a used bicycle from a bicycle dealer for $600. The sale was made "as is, without warranties of any kind" with no other mention of warranties. John had some problems with the gears shifting, so he took it back to the store, at which point a store employee refused to return it because it was stolen before the store received it. Have any warranties been breached?

Answer: This disclaimer did not disclaim the warranty of title, thus it was breached. More specific language is needed.

Diff: 1

Topic: Warranties of Title and No Infringements
Skill: Factual Application
77) Elvira went to the local discount store for her weekly shopping, picking up a number of items. Over the next few days, she had problems with several items. She had purchased a combination phone and answering machine, but when she opened the box, she noticed that the one inside was different than the one pictured on the package. The one inside was lacking several features of the one pictured on the box. When she opened a box of crackers to snack on before dinner, they did not look nearly as appetizing as the ones pictured on the box. Also, she prepared some brownies from a mix, but her brownies looked nothing like the ones pictured on the box. Upon closer inspection, she noticed that on the bottom of the box for the phone, it said, "The picture is for illustration purposes only. The picture might show features not included on this particular phone. Please refer to the features list on the side panel for the features on this model." Discuss whether any warranties were breached.

Answer: The pictures are usually an express warranty that the contents are as the picture shows. The picture of the phone answering machine is most likely a breach, as the disclaimer was not conspicuous, and the photo was clearly of something different from the contents. The cracker box was a breach only if the photo was incorrect in some way. Lastly, the brownie picture was probably not a breach because it was not a photo of the contents, but of what could be done with the contents, and Elvira's actions would influence the final appearance.

Diff: 2
Topic: Express Warranties
Skill: Factual Application

78) Molly bought a used car from Best Auto Co. While Molly was shopping there, the salesman showed her a car, which he said was a 1998 Chrysler. The salesman also said, "This is the best car in town," and, "This car is worth at least $9,000. I had it appraised last week for $9,200. Any other appraiser would say it is worth $9,500, at least. The engine is in great shape, and it has just had a tune-up." Molly paid $8,000 for the car. Shortly after purchasing the car, when receiving the paperwork, Molly learned that it was a 1997 Chrysler, that it was worth only $6,000, and that it was not the best car in town. Discuss whether any express or implied warranties apply here.

Answer: The statement that it was a 1998 Chrysler was part of the basis of the bargain and an express warranty. In addition, the statement about the tune-up is probably also a warranty. The other statements are opinion or puffing and would not create warranties. There are implied warranties of title and merchantability.

Diff: 2
Topic: Express Warranties
Skill: Factual Application
79) A seller agrees to deliver to a buyer certain carpet. The written contract calls for "1,000 square yards of carpeting, strands to be one-half inch long and twisted, 400 strands per square inch, made from our nylon-wool blend, color navy blue." The contract, at the bottom, contained the following clause: "This contract contains no warranties, either express or implied." When the carpeting is delivered, the strands are only three-eighths inch long, are not twisted, and there are only 350 strands per square inch. The buyer sues the seller for breach of express and implied warranties. Discuss the buyer's contentions and the seller's response.

Answer: The disclaimer is inconsistent with the express warranty arising from the description and thus is ineffective. The implied warranty of merchantability was not disclaimed, but was not breached.
Diff: 2
Topic: Warranty Disclaimers
Skill: Factual Application

80) Hank was shopping for a new bike when he saw a used one at a local shop that interested him. He asked to take it for a test ride for an hour, and the shop's owner responded by telling him he could try it out all day if he wanted to. The shop's owner also invited Hank to have it checked out at another shop if he wanted to. Hank took the bike for several hours, riding on the city streets near the bike shop. He never rode it really fast, nor took it down any really steep hills. Hank noticed that the back tire was worn, but decided he wanted the bike anyway, and purchased a new tire at the time he got the bike. There was no mention of any warranty or disclaimers of warranty. Hank rode the bike a few days and it performed to his liking. On Saturday, Hank headed into the mountains on the edge of town. After climbing for over an hour, he turned for the coast home. He soon found out that the brakes were in bad shape, and barely stopped him on one steep section. Furthermore, the wheels were out of balance at high speeds. After getting home, Hank was inspecting the brakes and noticed that the frame had a small crack in it. He took the bike to another shop for an inspection and evaluation and learned that the crack had occurred where the frame had rusted from the inside out. Discuss whether Hank has any breach of warranty claims against the shop where he purchased the bike.

Answer: Because he bought the bike from a merchant, the implied warranty of merchantability would apply. That is, unless his inspection would eliminate this implied warranty. Because he inspected the bike as much as he wanted to, any defects that would be obvious in such an inspection would not be covered by the implied warranty of merchantability. Because Hank had the opportunity to ride the bike on steep terrain, he could have probably discovered the wheel and brake problems. Even if the crack in the frame was small, that would likely be considered something that an inspection could have turned up. This is because it was visible, and is one of the problems that someone considering a used bike would be expected to look for.
Diff: 2
Topic: Warranty Disclaimers
Skill: Factual Application
81) Mary contracted to buy a used tractor for $12,000. Mary was told that the engine on the tractor had been used 1,100 hours, when if fact it had been used 2,500 hours. If the tractor's engine had actually been used only 1,100 hours, it would have been worth $14,000 when she bought it. Given the 2,500 hours, the tractor was worth only $9,000 when she bought it. Mary used it for most of a season before it began having problems. She discovered the discrepancy in hours from maintenance records at another dealership. When discovered, the tractor had 2,950 hours, and it was worth only $7,500. How much can Mary recover on a breach of warranty claim?

Answer: The basic measure of damages is the difference in the value of the good as warranted ($14,000) and the value in its actual condition ($9,000) when purchased. The contract price is not relevant.

Diff: 2
Topic: Other Issues Concerning Warranties
Skill: Factual Application
1) The Revised Article 3 of the Uniform Commercial Code is called "Negotiable Instruments" rather than "Commercial Paper."

Answer: TRUE
Diff: 1
Topic: Functions of Negotiable Instruments

2) Negotiable instruments may not act as a substitute for money.

Answer: FALSE
Diff: 2
Topic: Functions of Negotiable Instruments

3) Negotiable instruments serve as a record-keeping device.

Answer: TRUE
Diff: 1
Topic: Functions of Negotiable Instruments

4) Negotiable instruments enable the credit economy of the United States.

Answer: TRUE
Diff: 2
Topic: Functions of Negotiable Instruments

5) The revised Article 3 of the UCC replaced the words "Commercial Paper" with "Negotiable Instruments."

Answer: TRUE
Diff: 2
Topic: Revised Article 3 of the UCC

6) A promissory note for the purchase of an automobile qualifies as a negotiable instrument.

Answer: TRUE
Diff: 1
Topic: Types of Negotiable Instruments
7) A drawee is not liable on a draft until the drawee has accepted it.

Answer: TRUE
Diff: 2
Topic: Types of Negotiable Instruments

8) Both a sight draft and a time draft are payable on demand.

Answer: FALSE
Diff: 2
Topic: Types of Negotiable Instruments

9) A check is a form of draft that is drawn on a bank.

Answer: TRUE
Diff: 2
Topic: Types of Negotiable Instruments

10) Both a note and a draft may be payable at a designated future time or on demand.

Answer: TRUE
Diff: 1
Topic: Types of Negotiable Instruments

11) Both checks and notes have makers.

Answer: FALSE
Diff: 2
Topic: Types of Negotiable Instruments

12) Checks normally are three-party instruments.

Answer: TRUE
Diff: 2
Topic: Types of Negotiable Instruments

13) A certificate of deposit is a form of note in which the bank is the maker.

Answer: TRUE
Diff: 1
Topic: Types of Negotiable Instruments

14) A negotiable instrument must be typewritten.

Answer: FALSE
Diff: 1
Topic: Creating a Negotiable Instrument
15) The signature of the drawer or maker of a negotiable instrument must be the drawer or maker's full legal name.

Answer: FALSE
Diff: 1
Topic: Creating a Negotiable Instrument

16) An I.O.U. is another form of note that is considered to be a promise to pay.

Answer: FALSE
Diff: 1
Topic: Creating a Negotiable Instrument

17) To be unconditional, a promise to pay cannot refer to another document.

Answer: FALSE
Diff: 2
Topic: Creating a Negotiable Instrument

18) The essence of the fixed amount requirement is that a holder of an instrument can calculate the payment required from the face of the instrument.

Answer: TRUE
Diff: 1
Topic: Creating a Negotiable Instrument

19) A note that requires the performance of services is negotiable so long as there is also a requirement for payment of a fixed amount of money.

Answer: FALSE
Diff: 2
Topic: Creating a Negotiable Instrument

20) A regular passbook savings account is a form of negotiable instrument.

Answer: FALSE
Diff: 1
Topic: Creating a Negotiable Instrument

21) A promise to pay engraved in a mile-long steel pipe would qualify as a negotiable instrument as the promise would meet the permanency requirement.

Answer: FALSE
Diff: 1
Topic: Creating a Negotiable Instrument
22) A variable interest rate note is considered a negotiable instrument under the Revised Article 3 of the UCC.

Answer: TRUE
Diff: 2
Topic: Creating a Negotiable Instrument

23) An acceleration clause allows the date of maturity of an instrument to be extended to some time in the future.

Answer: FALSE
Diff: 1
Topic: Prepayment or Extension Clause

24) A nonnegotiable contract is unenforceable.

Answer: FALSE
Diff: 2
Topic: Nonnegotiable Contracts

25) In an assignment, the assignee cannot receive greater rights than those held by the assignor.

Answer: TRUE
Diff: 1
Topic: Transfer by Assignment or Negotiation

26) In negotiable instruments, negotiation refers to the process of reaching agreement on the terms of a negotiable instrument.

Answer: FALSE
Diff: 1
Topic: Transfer by Assignment or Negotiation

27) Because an indorsement is not required on bearer paper to deliver it, the indorsement has no legal effect.

Answer: FALSE
Diff: 2
Topic: Transfer by Assignment or Negotiation

28) An instrument that is bearer paper can be changed to order paper by a later indorsement.

Answer: TRUE
Diff: 2
Topic: Transfer by Assignment or Negotiation
29) Which of the following is true about the law governing negotiable instruments?
   A) Somewhat fewer than half the states adopted the original version of Article 3 of the UCC.
   B) Most negotiable instruments law is contained in federal statutes.
   C) The most recent version of Article 3 of the UCC was released in 1990.
   D) Negotiable instruments law comes primarily from common law.
   E) Both A and C are true.

Answer: C
Diff: 2
Topic: Functions of Negotiable Instruments
Skill: Legal Concepts

30) Which of the following is not one of the general purposes of negotiable instruments?
   A) to operate as a substitute for money
   B) to be a record-keeping device
   C) to provide flexible remedies for the nonbreaching party in the event of a breach
   D) to facilitate the extension of credit

Answer: C
Diff: 2
Topic: Functions of Negotiable Instruments
Skill: Legal Concepts

31) Which of the following is not one of the four general types of negotiable instruments?
   A) notes
   B) drafts
   C) certificates of deposit
   D) money orders
   E) checks

Answer: D
Diff: 1
Topic: Types of Negotiable Instruments
Skill: Legal Concepts

32) Which of the following is true about drafts?
   A) Drafts are two-party paper.
   B) A draft must have a bank as the drawee.
   C) A draft contains an order to pay.
   D) All drafts are payable on demand.

Answer: C
Diff: 2
Topic: Types of Negotiable Instruments
Skill: Legal Concepts
33) When does the drawee become liable for payment of a draft?
   A) when the drawer signs it
   B) automatically upon its creation
   C) upon accepting it
   D) upon the performance of the underlying obligation

   Answer: C
   Diff: 2
   Topic: Types of Negotiable Instruments
   Skill: Legal Concepts

34) A sight draft that arises when credit is extended with the sale of the goods is known as:
   A) a time draft
   B) a trade acceptance
   C) a check
   D) a time note
   E) a demand note

   Answer: B
   Diff: 2
   Topic: Types of Negotiable Instruments
   Skill: Legal Concepts

35) What characteristics are necessary for a draft to be a check?
   A) It contains an indorsement in blank.
   B) It is payable on demand, and the drawee is a bank.
   C) It is payable at a specific time and the drawee is a bank.
   D) It is a bearer paper.
   E) There are no separate requirements; the requirements for a draft and a check are the same.

   Answer: B
   Diff: 2
   Topic: Types of Negotiable Instruments
   Skill: Legal Concepts
36) Which of the following best describes a negotiable promissory note?
   A) It is any promise to pay a fixed amount of money.
   B) It is an unconditional promise to pay a sum of money.
   C) It is a promise to pay a sum of money upon the happening of an event outside the control
       of the promisor.
   D) It is an order to a third party to make a payment in order to discharge an obligation of the
       promisor.
   E) Both B and C are true.

Answer: B
Diff: 2
Topic: Types of Negotiable Instruments
Skill: Legal Concepts

37) Which of the following correctly describes a certificate of deposit?
   A) It is a draft that is payable by a bank.
   B) It is not considered to be a negotiable instrument.
   C) It is a note that is payable on demand.
   D) It is a note where the maker is a bank.
   E) It is a money order where the maker is a bank.

Answer: D
Diff: 2
Topic: Types of Negotiable Instruments
Skill: Legal Concepts

38) All negotiable instruments can be classified into which two general categories?
   A) checks and drafts
   B) checks and notes
   C) notes and certificates of deposit
   D) notes and drafts
   E) checks and certificates of deposit

Answer: D
Diff: 2
Topic: Types of Negotiable Instruments
Skill: Legal Concepts

39) Which of the following is not a requirement of negotiability?
   A) The instrument must be in writing.
   B) The instrument must be signed by the maker or drawer.
   C) The instrument must state a fixed amount of money.
   D) The instrument must contain an indorsement.
   E) The instrument must contain an unconditional order or promise to pay.

Answer: D
Diff: 2
Topic: Creating a Negotiable Instrument
Skill: Legal Concepts
40) In order to meet the writing requirement of a negotiable instrument, the writing must:
   A) be written in clear English
   B) be permanent and portable
   C) be prepared in duplicate
   D) all appear above any signature
   E) be typewritten rather than handwritten

Answer:  B
Diff: 2
Topic:  Creating a Negotiable Instrument
Skill:  Legal Concepts

41) Where must the signature appear on a negotiable instrument in order to meet the signature requirement?
   A) anywhere on the face of the instrument
   B) anywhere on the face of the instrument or anywhere on the back of the instrument
   C) on the face only, and only at the end of the instrument
   D) anywhere on the face, or in the proper indorsement place on the back
   E) at the end of the instrument on the face, or in the proper indorsement place on the back

Answer:  A
Diff: 2
Topic:  Creating a Negotiable Instrument
Skill:  Legal Concepts

42) Which of the following will result in an instrument being nonnegotiable?
   A) It contains a variable interest rate such that the amount of interest that will be due cannot be determined at the time the note is created.
   B) It states that the payment of funds will come from the proceeds of a specific contract.
   C) It states that the entire balance will become immediately due in the event of a default by the maker.
   D) It states that the rights of the payee to receive payment are subject to the terms of a separate agreement.
   E) It is secured by collateral, and the agreement about the collateral is in a separate agreement.

Answer:  D
Diff: 3
Topic:  Creating a Negotiable Instrument
Skill:  Legal Concepts
43) Under Article 3 of the UCC, what is the effect of a note not stating a time for payment?
   A) The note is void and unenforceable due to vagueness.
   B) The note is considered nonnegotiable, but might nonetheless be enforceable.
   C) The note is considered a time instrument with payment due at a reasonable time.
   D) The note is considered a demand instrument with payment due on demand.

   Answer: D
   Diff: 2
   Topic: Creating a Negotiable Instrument
   Skill: Legal Concepts

44) An instrument that is payable "to the order of bearer" is:
   A) order paper
   B) bearer paper
   C) nonnegotiable because of ambiguity
   D) nonnegotiable because of a condition

   Answer: B
   Diff: 2
   Topic: Creating a Negotiable Instrument
   Skill: Legal Concepts

45) What is the effect of a promissory note containing a conditional promise?
   A) The note is void.
   B) The note is voidable.
   C) The note is enforceable even though it is nonnegotiable.
   D) The note becomes negotiable once the condition is met.
   E) The note is negotiable even though the promise is conditional.

   Answer: C
   Diff: 2
   Topic: Nonnegotiable Contracts
   Skill: Legal Concepts

46) The transfer of a negotiable instrument in such a manner that the transferee becomes a holder
    is known as:
    A) indorsement
    B) negotiation
    C) assignment
    D) invalidation

   Answer: C
   Diff: 1
   Topic: Transfer by Assignment or Negotiation
   Skill: Legal Concepts
47) Which of the following is true about the assignment and the negotiation of a negotiable instrument?
   A) An assignment does not require a signature whereas a negotiation does.
   B) A negotiation results in a transfer of rights, but an assignment does not.
   C) An assignment applies to bearer paper, and a negotiation applies to order paper.
   D) An assignment can transfer no greater rights than those held by the transferor, whereas
      the transferee in a negotiation can receive greater rights than those held by the transferor.

Answer: D  
Diff: 2  
Topic: Transfer by Assignment or Negotiation  
Skill: Legal Concepts

48) The negotiation of an order instrument requires:
   A) delivery only  
   B) indorsement only  
   C) delivery and indorsement  
   D) delivery, indorsement, and acceptance  
   E) delivery and acceptance

Answer: C  
Diff: 1  
Topic: Transfer by Assignment or Negotiation  
Skill: Legal Concepts

49) Negotiation of which type(s) of instrument requires indorsement?
   A) bearer instruments only  
   B) order instruments only  
   C) both bearer and order instruments  
   D) neither bearer nor order instruments

Answer: B  
Diff: 1  
Topic: Transfer by Assignment or Negotiation  
Skill: Legal Concepts

50) What effect can indorsements have on the character of negotiable instruments?
   A) Indorsements can convert bearer paper to order paper, but not vice versa.  
   B) Indorsements can convert order paper to bearer paper, but not vice versa.  
   C) Indorsements can convert order paper to bearer paper, and can convert bearer paper to
      order paper.  
   D) Indorsements can convert order paper to bearer paper, and can convert bearer paper to
      order paper, so long as the instrument expressly allows such conversions.  
   E) Indorsement cannot change either bearer or order paper to the other classification.

Answer: C  
Diff: 2  
Topic: Transfer by Assignment or Negotiation  
Skill: Legal Concepts
51) Which of the following is the best description of an indorsement?
   A) A signature that creates no new legal obligations.
   B) A signature that often creates potential liability for the indorser.
   C) A transfer that creates no new legal obligations.
   D) A transfer that usually creates potential liability.
   E) A payment of an instrument that discharges the liability of the maker or drawer.

   Answer: B
   Diff: 3
   Topic: Transfer by Assignment or Negotiation
   Skill: Legal Concepts

52) Karen has a checking account at First Bank. Karen writes a check to Bonanza Apartments for her rent. In this situation:
   A) Karen is the drawer; First Bank is the drawee; Bonanza is the payee
   B) Karen is the drawee; First Bank is the drawer; Bonanza is the payee
   C) Karen is the payee; First Bank is the drawee; Bonanza is the drawee
   D) Karen is the payee; First Bank is the drawer; Bonanza is the drawee
   E) Karen is the maker; First Bank is the drawee; Bonanza is the payee

   Answer: A
   Diff: 1
   Topic: Types of Negotiable Instruments
   Skill: Factual Application

53) Sandy signs a negotiable instrument that orders Sally to pay $1,000 to the order of Pat on May 4, 2001. What type of instrument is this?
   A) promissory note
   B) time draft
   C) check
   D) sight draft
   E) money order

   Answer: B
   Diff: 2
   Topic: Types of Negotiable Instruments
   Skill: Factual Application
54) Jane owes Bob $500. Bob requests that Jane sign a document, so Jane signs the following document: "I owe Bob $500. (Signed) Jane." This document is:
   A) a draft
   B) a check
   C) a note
   D) a certificate of deposit
   E) not a negotiable instrument

Answer: E
Diff: 1
Topic: Creating a Negotiable Instrument
Skill: Factual Application

55) Which of the following statements, if it appeared on a negotiable instrument, would destroy the negotiability of that instrument?
   A) "Payment for tuition."
   B) "This instrument arises out of a sales contract between Sam and Sandy."
   C) "This instrument hereby incorporates by reference the sales contract between Sam and Sandy."
   D) "This note is secured by a mortgage."
   E) "Charge to miscellaneous expense."

Answer: C
Diff: 3
Topic: Creating a Negotiable Instrument
Skill: Factual Application

56) Alice Johnson issued a note payable over 24 equal monthly installments. The note contained a provision making the entire balance due immediately if Alice defaulted on two consecutive installments. The note contained:
   A) an acceleration clause
   B) a liquidated damages provision
   C) a guarantee of prompt payment
   D) a contingent executory payment

Answer: A
Diff: 2
Topic: Creating a Negotiable Instrument
Skill: Factual Application
57) Is the following instrument negotiable?

"I promise to pay to the order of Mary Atkins the sum of $500 plus interest at the legal rate, on January 3, 2003. The interest rate shall be 15 percent per year after January 3, 2003. Further, I will pay the costs of collection if legal action is necessary to collect this amount. Dated this January 3, 2001. (Signed) Colleen Smith."

A) Yes; this is a negotiable instrument.
B) No; there is not an unconditional promise or order to pay.
C) No; interest at the legal rates does not constitute a fixed amount.
D) No; the different interest rate after default destroys negotiability.
E) No; the additional promise to pay collection costs destroys negotiability.

Answer: A
Diff: 3
Topic: Creating a Negotiable Instrument
Skill: Factual Application

58) Wayne issues a draft payable to Molly. Molly indorses the draft in blank on the back and gives it to Jerry. Which of the following statements correctly describes the status of this instrument?

A) The draft started out as bearer paper, but Molly converted it to order paper.
B) The draft started out as order paper, but Molly converted it to bearer paper.
C) The draft started out as bearer paper and it is still bearer paper.
D) The draft started out as order paper and it is still order paper.

Answer: B
Diff: 3
Topic: Transfer by Assignment or Negotiation
Skill: Factual Application

59) Which of the following would NOT create an express promise to pay?

A) "I owe you $100."
B) "I promise to pay you $100."
C) "The undersigned agrees to pay you $100."
D) "The signor agrees to pay you $100."

Answer: A
Diff: 3
Skill: Factual Application

60) If one instrument stated, "Pay to the Order of IBM," and the other stated, "Pay to IBM," which instrument would be negotiable?

A) Both would be negotiable instruments.
B) Neither would be a negotiable instrument.
C) "Pay to the Order of IBM" creates a negotiable instrument.
D) "Pay to IBM" creates a negotiable instrument.

Answer: C
Diff: 3
Skill: Factual Application
61) Which of the following would qualify as a negotiable instrument?
   A) an instrument paid in gold
   B) an instrument paid in diamonds
   C) an instrument paid in Japanese currency
   D) an instrument paid in stocks

Answer: C
Diff: 3
Skill: Factual Application

62) Madolyn's father executes a promissory note stating, "I promise to pay to the order of my daughter, Madolyn, $50,000, on the date that she marries Robbie Roberts." Is the note negotiable?
   A) Yes
   B) No, because the date of the marriage is uncertain.
   C) No, because the act of marriage is uncertain.
   D) No, because neither the date nor the act are certain.

Answer: D
Diff: 3
Skill: Factual Application

63) Why are there so many different kinds of indorsements? Why is a restriction in an indorsement that limits payment to the named payee not effective? Shouldn't the parties be allowed to set these terms between themselves?

Answer: The different kinds of indorsements allow holders some control over the indorser's liability in connection with the instrument and over what happens with the instrument after it leaves the indorser's hands. But some restrictions in indorsements are not valid. Enforcing a restriction in an endorsement that limits further negotiation would negate the general purpose of negotiable instruments functioning as a substitute for money. Thus, such restrictions are invalid and the indorsee is free to further transfer the instrument.

Diff: 3
Skill: Ethics and Policy

64) What problems hinder any efforts to establish uniform international rules for negotiable instruments? What additional variables are there in trying to establish a uniform international set of rules for negotiable instruments compared to doing so solely within the United States?

Answer: Different business customs and practices, and differences in banking systems, are major roadblocks to creating a comprehensive system used by all nations. There would probably need to be rules for handling fluctuating exchange rates.

Diff: 2
Skill: Ethics and Policy
65) The law of negotiable instruments was designed to create a substitute for cash and to facilitate commerce. Has the importance of negotiable instruments in commerce increased or decreased in recent years? How will increased online commerce affect the importance of negotiable instruments?

Answer: Drafts and checks have been replaced in many circumstances by the use of credit cards and the various electronic means of transferring money. Notes, in one form or another, are generally still used to evidence promises of payment and the terms of those promises. For much online commerce, negotiable instruments will not be necessary. Where they are used, the rules, such as those relating to signatures, might need to be changed to reflect the differences of online commerce.

Diff: 2
Skill: Ethics and Policy

66) Identify the following instrument, identify the role of each party, and identify the characteristics of the instrument.

To: Morgan Associates
Date: May 7, 2003
Pay to the order of Henry H. Higgins,
One thousand and 00/100 Dollars, on June 7, 2003.

Mareena Kaluchi

Answer: This is a time draft, payable at a definite time. As with all drafts, it is a three-party instrument, and is an order instrument because it is payable to a specified payee. Mareena Kaluchi is the drawer, Morgan Associates is the drawee, and Henry Higgins is the payee.

Diff: 1
Topic: Types of Negotiable Instruments
Skill: Factual Application
67) Determine whether the following instrument is a negotiable instrument, addressing all the requirements of negotiability in your response.

"I, Orville Wright, promise to pay $5,000 to Billy's Bicycle Parts in four equal installments of principal, beginning on January 1, 2004, and on the same day in each of the next 3 years. Each payment will consist of $1,250 in principal, plus interest accrued since the date of this note, in the case of the first payment, or since the prior payment in the case of all other payments. Interest shall accrue at the rate of 8% per annum, or in the event of default, at the maximum rate allowed by law until the default is cured. This note is secured by collateral consisting of various experimental flying machines. This note may be paid in whole or in part prior to the due dates, and the interest accrued will be reduced accordingly. The due date for any payment under this note may be extended by mutual agreement of the parties up to 6 months from the due date as stated herein. The proceeds of this note will be used by Orville Wright to further his aviation experiments, and in the event those experiments are unsuccessful, the payment obligation is canceled.

Signed, Orville Wright 1/1/03

Answer: This instrument is in writing, and is signed by the maker, Orville Wright. The promise to pay is conditioned on the success of Orville's aviation experiments, which makes the note nonnegotiable. The note states a fixed amount of money, which is true even though the dollar amount of interest is not stated. There are no obligations other than the payment of money, and it is payable at a definite time, even with the acceleration clause and the possibility of extension. It is not payable to order or bearer, also destroying negotiability. This is a nonnegotiable note.

Diff: 2
Topic: Creating a Negotiable Instrument
Skill: Factual Application
1) An assignment occurs when a nonnegotiable contract is transferred.

Answer: TRUE
Diff: 2
Topic: Transfer by Assignment

2) When a negotiable instrument is transferred, the holder has greater rights because he or she is not subject to some of the defenses that could otherwise have been raised against the transferor.

Answer: TRUE
Diff: 3
Topic: Transfer by Negotiation

3) An instrument that is payable to a specific payee or indorsee is bearer paper.

Answer: FALSE
Diff: 2
Topic: Negotiating Bearer Paper

4) Bearer paper cannot be converted from order paper, but order paper may be converted to bearer paper.

Answer: FALSE
Diff: 2
Topic: Negotiating Bearer Paper

5) An indorsement is the signature of a signer, who is also the maker, that is placed on the instrument to negotiate it to another person.

Answer: FALSE
Diff: 1
Topic: Indorsement

6) When an instrument has no room for an indorsement, it may be written on an allonge.

Answer: TRUE
Diff: 2
Topic: Indorsement
7) A blank indorsement is one that does not indicate a particular indorsee, and it also creates bearer paper.

Answer: TRUE  
Diff: 1  
Topic: Types of Indorsement

8) A blank indorsement is preferred over a special indorsement, as a blank indorsement prevents against theft.

Answer: FALSE  
Diff: 2  
Topic: Types of Indorsement

9) According to the UCC, a qualified indorsement is one that disclaims or limits liability on the instrument.

Answer: TRUE  
Diff: 2  
Topic: Types of Indorsement

10) A restrictive indorsement is one that has no instructions or conditions attached to the payment of the funds.

Answer: FALSE  
Diff: 2  
Topic: Types of Indorsement

11) If a payee's name is misspelled, the payee will be prevented from indorsing the instrument, as it may amount to fraud, depending on the jurisdiction the payee resides in.

Answer: FALSE  
Diff: 2  
Topic: Types of Indorsement

12) If Joe Johnson gives an instrument to Sally Smith that reads, "payable to Sally Smith and Roger Reed," either person's indorsement is sufficient to negotiate the instrument.

Answer: FALSE  
Diff: 1  
Topic: Multiple Payees or Indorsees

13) If a virgule slash mark is used between two names listed on an instrument, this means that either person may individually indorse and negotiate the instrument.

Answer: TRUE  
Diff: 2  
Topic: Multiple Payees or Indorsees

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14) A holder is a person in possession of a negotiable instrument regardless of whether it has been properly indorsed to him or to his order.

Answer: FALSE  
Diff: 2  
Topic:  Holder Versus Holder in Due Course

15) A holder in due course can acquire greater rights than his transferor had.

Answer: TRUE  
Diff: 1  
Topic:  Holder Versus Holder in Due Course

16) A holder is the same as a holder in due course.

Answer: FALSE  
Diff: 1  
Topic:  Holder Versus Holder in Due Course

17) Being a holder is a prerequisite to being a holder in due course.

Answer: TRUE  
Diff: 1  
Topic:  Requirements for HDC Status

18) Under the red light doctrine a person cannot become a holder in due course of an instrument if there is obvious evidence of an irregularity in the instrument.

Answer: TRUE  
Diff: 1  
Topic:  Requirements for HDC Status

19) Even though an unperformed promise qualifies as consideration, it does not meet the value requirement for qualifying as a holder in due course.

Answer: TRUE  
Diff: 3  
Topic:  Requirements for HDC Status

20) If a check has been marked "payment refused not sufficient funds" a person in possession of it can qualify as a holder in due course.

Answer: FALSE  
Diff: 1  
Topic:  Requirements for HDC Status
21) A holder cannot become a holder in due course to an instrument that is forged or altered.

Answer: TRUE
Diff: 1
Topic: Requirements for HDC Status

22) With respect to negotiable instruments, the "red light doctrine" prevents a holder from being a holder in due course if the holder has knowledge of a defense to the payment of the instrument.

Answer: TRUE
Diff: 1
Topic: Requirements for HDC Status

23) A holder, through a holder in due course, qualifies for the rights of a holder in due course under the shelter principle.

Answer: TRUE
Diff: 1
Topic: Requirements for HDC Status

24) A party can incur contract liability on a negotiable instrument only if that party's signature appears on the instrument.

Answer: TRUE
Diff: 2
Topic: Signature Liability of Parties

25) Contract liability is another term used to refer to signature liability.

Answer: TRUE
Diff: 1
Topic: Signature Liability of Parties

26) If an unauthorized agent signs a note on behalf of a principal, then only the agent is liable on the note.

Answer: TRUE
Diff: 2
Topic: Signature Liability of Parties

27) When a drawee accepts a draft, the drawee becomes secondarily liable on the draft, because the drawer has the primary liability for payment.

Answer: FALSE
Diff: 2
Topic: Signature Liability of Parties
28) The drawer of a draft has primary liability on the draft when it is issued.

Answer: FALSE
Diff: 2
Topic: Signature Liability of Parties

29) Certification of a check by the drawee bank makes the bank primarily liable.

Answer: TRUE
Diff: 2
Topic: Signature Liability of Parties

30) Drawers of checks and drafts and unqualified indorsers are secondarily liable on negotiable instruments.

Answer: TRUE
Diff: 1
Topic: Signature Liability of Parties

31) A qualified indorser will incur secondary, rather than primary, liability.

Answer: FALSE
Diff: 1
Topic: Signature Liability of Parties

32) Before a party can be held secondarily liable on an instrument, that party must have received a timely notice that the instrument was dishonored.

Answer: TRUE
Diff: 1
Topic: Signature Liability of Parties

33) An accommodation party who signs an instrument guaranteeing payment is secondarily liable on the instrument.

Answer: FALSE
Diff: 2
Topic: Signature Liability of Parties
34) A holder of a negotiable instrument is:
   A) anyone who has possession of an instrument
   B) anyone who is rightfully in possession of an instrument
   C) anyone who is in possession of a bearer instrument or anyone who is in possession of an instrument payable to that person
   D) anyone who is in possession of an instrument payable to that person
   E) anyone who is in possession of an instrument payable to that person if the person has indorsed the instrument

Answer: C
Diff: 3
Topic: Holder Versus Holder in Due Course
Skill: Legal Concepts

35) Which of the following is correct with regard to a holder in due course?
   A) A holder in due course is primarily liable on an instrument.
   B) A holder in due course must notify subsequent transferees of his holder in due course status.
   C) A holder in due course can obtain greater rights to payment of an instrument than his transferor had.
   D) A holder in due course can give greater rights to a transferee than he has as a holder in due course.

Answer: C
Diff: 3
Topic: Holder Versus Holder in Due Course
Skill: Legal Concepts

36) The advantage of a holder in due course over a simple holder of an instrument is that the holder in due course can:
   A) indorse the instrument "without recourse," thus limiting his liability
   B) transfer the instrument to others, thus using it as a substitute for money
   C) collect on the instrument even if it has been forged
   D) collect on the instrument if the maker or drawer asserts a personal defense
   E) collect punitive damages from a party who wrongly does not pay a negotiable instrument

Answer: D
Diff: 3
Topic: Holder Versus Holder in Due Course
Skill: Legal Concepts
37) A holder in due course takes an instrument free of which defenses?
   A) personal only
   B) real only
   C) free of all defenses
   D) free of no defenses

Answer: A
Diff: 1
Topic: Holder Versus Holder in Due Course
Skill: Legal Concepts

38) To qualify as a holder in due course what must a holder do?
   A) take the instrument in good faith
   B) take the instrument for value
   C) take the instrument without notice that it is overdue or defective
   D) A, B, and C
   E) B and C only

Answer: D
Diff: 1
Topic: Requirements for HDC Status
Skill: Legal Concepts

39) Which of the following is not required in order for someone to be a holder in due course of a negotiable instrument?
   A) taking the instrument directly from the maker or drawer
   B) taking the instrument in good faith
   C) taking the instrument without notice of any defenses
   D) taking the instrument for value

Answer: A
Diff: 2
Topic: Requirements for HDC Status
Skill: Legal Concepts
40) Which of the following is true about the requirement for a holder in due course to give value for an instrument?
   A) It can be met in any way that the consideration requirement can be met in an ordinary contract.
   B) It can be met only if the holder has paid cash for the instrument.
   C) In order to meet the requirement to give value, the value given must be comparable to the value of the instrument received.
   D) Acceptance of the instrument in settlement of a preexisting claim meets the value requirement.
   E) An unperformed promise meets the value-given requirement so long as the promise is performed prior to the actual collection of any amount on the instrument.

Answer: D
Diff: 3
Topic: Requirements for HDC Status
Skill: Legal Concepts

41) Which of the following is true about the good faith requirement for becoming a holder in due course?
   A) It applies to both the transferor and the transferee of a negotiable instrument.
   B) The UCC contains detailed requirements for meeting good faith.
   C) It is an objective test applied using the reasonable person standard.
   D) It means honesty in fact in the conduct of the transaction in question.
   E) It is an objective test based on a reasonable person.

Answer: D
Diff: 2
Topic: Requirements for HDC Status
Skill: Legal Concepts

42) In order to become a holder in due course, one must take a negotiable instrument without notice of the following EXCEPT:
   A) that the instrument is overdue
   B) that the instrument has been dishonored
   C) that the instrument was signed by an agent
   D) that there was a claim to it by another person
   E) that there is a defense against it

Answer: C
Diff: 2
Topic: Requirements for HDC Status
Skill: Legal Concepts
43) What is dishonor in connection with a negotiable instrument?
   A) an instrument being created in connection with a fraudulent transaction
   B) any potential transferee refusing to accept the instrument
   C) the refusal of the maker or drawer to pay the instrument when it is presented for payment
   D) the transfer of an order instrument without the proper indorsement

Answer: C
Diff: 2
Topic: Requirements for HDC Status
Skill: Legal Concepts

44) Which of the following would constitute "notice" of a fact for the holder in due course purposes?
   A) actual knowledge of the fact
   B) having received notice or notification of the fact
   C) having reason to know from facts and circumstances of the fact
   D) A, B, and C
   E) A and B only

Answer: D
Diff: 1
Topic: Requirements for HDC Status
Skill: Legal Concepts

45) A person can become a holder in due course of an instrument that has been altered:
   A) in all circumstances
   B) in all circumstances so long as the person did not know of the alteration
   C) only if the alteration could not reasonably be detected
   D) only if the alteration was not done by the person's immediate transferor
   E) under no circumstances

Answer: C
Diff: 3
Topic: Requirements for HDC Status
Skill: Legal Concepts

46) Can the payee of a negotiable instrument be a holder in due course?
   A) Yes; the payee is always a holder in due course.
   B) Yes; for notes but not for drafts.
   C) No; not under any circumstances.
   D) Usually not, because the payee is usually aware of defenses or irregularities.

Answer: D
Diff: 2
Topic: Requirements for HDC Status
Skill: Legal Concepts
47) Under what doctrine could a party who is aware that an instrument is overdue take that instrument and acquire the rights of a holder in due course?
   A) The shelter principle.
   B) The indorsement protection doctrine.
   C) The personal defense doctrine.
   D) The public policy exception.
   E) The taking for value doctrine.

   Answer: A
   Diff: 2
   Topic: Requirements for HDC Status
   Skill: Legal Concepts

48) Which of the following describes the shelter principle?
   A) In order to receive the benefits of a holder in due course status, all holders must qualify as holders in due course.
   B) Anyone who does not meet holder in due course requirements can obtain the same rights as a holder in due course through the shelter principle.
   C) The shelter principle gives additional special rights to only those who qualify as a holder in due course.
   D) One who takes an instrument from a holder in due course can often obtain the rights of a holder in due course, even if that transferee does not meet the requirements of a holder in due course.

   Answer: D
   Diff: 3
   Topic: Requirements for HDC Status
   Skill: Legal Concepts

49) Signature liability on a negotiable instrument is also known as:
   A) contract liability
   B) agent liability
   C) warranty liability
   D) secondary liability
   E) shelter liability

   Answer: A
   Diff: 2
   Topic: Signature Liability of Parties
   Skill: Legal Concepts
50) Of the following roles that persons who sign a negotiable instrument can play, which do not have signature liability on the instrument?
   A) accommodation signers and qualified indorsers
   B) qualified indorsers and those signing properly as an authorized agent
   C) accommodation signers, qualified indorsers, and those signing properly as an authorized agent
   D) authorized signers, qualified indorsers, and those signing properly as an authorized agent
   E) None of the above is correct because anyone who signs an instrument incurs signature liability.

Answer: B
Diff: 3
Topic: Signature Liability of Parties
Skill: Legal Concepts

51) Andy Anderson is an agent for Peterson Corporation, whose name does not appear on its checks. If Andy signs a check as the drawer, for which of the following signatures could Andy be personally liable on the instrument?
   A) "Peterson, Andy Anderson"
   B) "Peterson, by Andy Anderson, agent"
   C) "Andy Anderson"
   D) A and C
   E) A, B, and C

Answer: D
Diff: 2
Topic: Signature Liability of Parties
Skill: Legal Concepts

52) Which of the following is true?
   A) The maker of a note has primary liability upon signing a note, but the drawer of a check does not have primary liability upon signing the check.
   B) The maker of a note has primary liability upon signing the note and the drawer of a check has primary liability upon signing the check.
   C) The maker of a note has primary liability upon signing the note, and the drawee of a check has primary liability upon the drawer's signing of the check.
   D) The drawer of a check has primary liability upon signing the check, but the maker of a note does not have primary liability upon signing the note.
   E) The maker of a note does not have primary liability upon signing the note, nor does the drawer of a check upon signing the check.

Answer: A
Diff: 3
Topic: Signature Liability of Parties
Skill: Legal Concepts
53) Which of the following is true about primary liability on a check?
   A) No one has primary liability on a check when it is written, and no one can have primary liability until it is paid.
   B) No one has primary liability on a check when it is written, but the drawee incurs primary liability if the check becomes certified.
   C) No one has primary liability on a check when it is written, but the drawer incurs primary liability if the check is certified.
   D) The drawee has primary liability when the check is written.
   E) The drawer has primary liability when the check is written.

   Answer: B
   Diff: 3
   Topic: Signature Liability of Parties
   Skill: Legal Concepts

54) What does it mean for liability on a negotiable instrument to be secondary liability?
   A) The liability is for a small amount.
   B) The liability arises only if the party with primary liability defaults and does not pay.
   C) There are two parties to share the secondary liability.
   D) It means that the liability relates to a two-party negotiable instrument.

   Answer: B
   Diff: 2
   Topic: Signature Liability of Parties
   Skill: Legal Concepts

55) Which of the following parties are liable only after a negotiable instrument has been presented and dishonored, and proper notice has been given?
   A) drawer, maker, acceptor, and qualified indorser
   B) maker, acceptor, and unqualified indorser
   C) acceptor and qualified indorser
   D) drawer and unqualified indorser
   E) maker and unqualified indorser

   Answer: D
   Diff: 2
   Topic: Signature Liability of Parties
   Skill: Legal Concepts
56) Against whom can the maker of a note successfully assert a personal defense?
   A) the payee
   B) a holder in due course
   C) a holder who is not a holder in due course
   D) A and B only
   E) A and C only

Answer: E
Diff: 2
Topic: Signature Liability of Parties
Skill: Legal Concepts

57) Don, who owed Dan $1,000 for his share of the cost of a fishing trip they took together 2
    years ago, transferred to Dan a check for $700 that he had just received from a customer. Has
    Dan given value for holder in due course purposes?
   A) Yes, because accepting an instrument in payment of a prior debt is considered to be value
      given for holder in due course purposes.
   B) Yes, but only if Dan still intends to collect the remaining $300 from Don.
   C) No, because the check was less than the amount of the debt.
   D) No, because the check was from a business transaction and the debt was personal.
   E) No, because Don had a preexisting duty to pay Dan the $1,000.

Answer: A
Diff: 3
Topic: Requirements for HDC Status
Skill: Factual Application

58) Billy, a minor, buys a car form Ajax Auto Dealers, signing a $2,000 negotiable installment
    note in payment. Ajax needs the cash, so it sells the note to Acme Finance Company, for its fair
    market value, indorsing the note in blank. The owner of Acme, who personally purchased the
    note, knew that Billy was a minor. Circumstances occur such that Acme can collect the note only
    if it is a holder in due course. Is Acme a holder in due course with respect to this note?
   A) Yes; Acme is a holder in due course.
   B) No, because the note was not properly negotiated to Acme.
   C) No, because Acme did not take the note in good faith.
   D) No, because Acme took the note with notice that there was a defense to its payment.
   E) No; Acme is not a holder in due course because of some other reason.

Answer: D
Diff: 3
Topic: Requirements for HDC Status
Skill: Factual Application
59) Dad has a negotiable instrument that he gives to his daughter as a birthday present. Dad is a holder in due course of that instrument. Circumstances arise such that the daughter can collect that instrument only if she has holder in due course status. Which of the following best describes this situation?

A) The daughter is not a holder in due course, so she cannot collect on this instrument.
B) The daughter qualifies as a holder in due course, so she can collect on this instrument.
C) The daughter does not qualify as a holder in due course, but she can claim the holder in due course status of her father and collect the instrument.
D) The shelter provision cannot apply to the daughter in this situation.

Answer: C
Diff: 3
Topic: Requirements for HDC Status
Skill: Factual Application

60) If Stanley Starre receives a check payable to "Stanley Starr," how can he endorse the check?

A) He can indorse the check using "Stanley Starr."
B) He can indorse the check using "Stanley Starre."
C) He can indorse the check as both "Stanley Starre" and "Stanley Starr."
D) A, B, and C are correct.

Answer: D
Diff: 3
Skill: Factual Application

61) How does the definition of value for purposes of holder in due course differ from the definition of consideration? Why do you think there is a difference? Should there be a difference?

Answer: An unfulfilled promise qualifies as consideration, but is not considered value given under Article 3 of the UCC. This is because a holder has not actually performed the promise, and thus has lost nothing yet, and therefore does not need the protections that a holder in due course receives.
Diff: 2
Skill: Ethics and Policy

62) Why is fraud in the inducement treated as a personal defense and fraud in the inception treated as a real defense? Is this distinction justifiable? On what grounds?

Answer: The assumption is that the victim of fraud in the inducement is in the best position to avoid the fraud by knowing the other party, verifying claims, and so forth before entering into the contract. The same might apply to fraud in the inducement, but the law treats fraud in the inducement as a real defense.
Diff: 2
Skill: Ethics and Policy
63) What is the purpose and effect of eliminating the holder in due course provisions for consumer credit transactions? Will doing so raise the cost of borrowing for these consumers?

Answer: The holder in due course rule allowed a merchant to sell defective merchandise to a consumer on credit, then sell the note to a holder in due course who would be entitled to collect from the consumer even though the merchandise was defective. This change might make the promissory notes of a seller's customers less valuable when trying to sell them to other parties.

Diff: 2
Skill: Ethics and Policy

64) Paul Painter agreed to paint Harry Homeowner's house for $5,000. Paul never planned to actually paint the house, but made a habit of entering into contracts, taking partial or complete payment in advance, and never doing the work. Paul got his friend, Beth, to talk to Harry about how competent and honest Paul was, and explain that Harry should not be concerned about the quality of work or paying Paul in advance. Harry wrote Paul a $3,000 check 1 week before the painting was to be started. Paul transferred the check to Allison in exchange for Allison's car, which was worth $2,800. Before Allison had a chance to deposit the check, there were several news stories about Paul and all the fraud he had been committing. Allison then transferred the check to Beth, who then transferred it to Cathy. Beth gave Allison value for the check, and Cathy gave Beth value. Explain the applicability of the shelter principle in this situation.

Answer: Assuming that Allison is a holder in due course (HDC), Allison can pass on the rights of an HDC to persons who would not qualify on their own as an HDC. Beth could not get Allison's HDC rights because she was a party to Paul's fraud. Cathy could acquire Allison's HDC rights so long as she did not know of the defense to the instrument.

Diff: 3
Topic: Requirements for HDC Status
Skill: Factual Application

65) A check is drawn "payable to Tami Thomas, M.D., in trust for Cathy Wilson." Dr. Thomas indorses the check to a computer store in payment for a computer that she personally purchased. The computer store as indorsee has not adhered to the instructions on the check. Who is the computer store liable to and why?

Answer: The computer store is liable to Cathy Wilson for any losses that arose because of its noncompliance with the restrictive indorsement in trust as indicated on the check. This type of indorsement is sometimes referred to as a trust indorsement or an agency indorsement.

Diff: 3
Topic: Requirements for HDC Status
Skill: Factual Application
1) A party can incur contract liability on a negotiable instrument only if that party's signature appears on the instrument.

Answer: TRUE
Diff: 2
Topic: Signature Liability of Parties

2) Contract liability is another term used to refer to signature liability.

Answer: TRUE
Diff: 1
Topic: Signature Liability of Parties

3) If an unauthorized agent signs a note on behalf of a principal, then only the agent is liable on the note.

Answer: TRUE
Diff: 2
Topic: Signature Liability of Parties

4) When a drawee accepts a draft, the drawee becomes secondarily liable on the draft, because the drawer has the primary liability for payment.

Answer: FALSE
Diff: 2
Topic: Signature Liability of Parties

5) The drawer of a draft has primary liability on the draft when it is issued.

Answer: FALSE
Diff: 2
Topic: Signature Liability of Parties

6) Certification of a check by the drawee bank makes the bank primarily liable.

Answer: TRUE
Diff: 2
Topic: Signature Liability of Parties
7) Drawers of checks and drafts and unqualified indorsers are secondarily liable on negotiable instruments.

Answer: TRUE  
Diff: 1  
Topic: Signature Liability of Parties

8) A qualified indorser will incur secondary, rather than primary, liability.

Answer: FALSE  
Diff: 1  
Topic: Signature Liability of Parties

9) Before a party can be held secondarily liable on an instrument, that party must have received a timely notice that the instrument was dishonored.

Answer: TRUE  
Diff: 1  
Topic: Signature Liability of Parties

10) An accommodation party who signs an instrument guaranteeing payment is secondarily liable on the instrument.

Answer: FALSE  
Diff: 2  
Topic: Signature Liability of Parties

11) The location of a person's signature on an instrument generally determines the signer's capacity.

Answer: TRUE  
Diff: 2  
Topic: Signature Liability of Parties

12) Qualified indorsers and agents that properly sign a negotiable instrument are not primarily or secondarily liable on the instrument.

Answer: TRUE  
Diff: 2  
Topic: Signature Liability of Parties

13) An unauthorized signature may be ratified.

Answer: TRUE  
Diff: 2  
Topic: Signature Liability of Parties
14) Primary liability occurs when a draft or check is issued, as such instruments are orders to pay.

Answer: FALSE
Diff: 2
Topic: Primary Liability

15) A check, which is a special form of a draft, is accepted when it is certified by a bank.

Answer: TRUE
Diff: 1
Topic: Primary Liability

16) Drawers of checks and drafts have secondary liability on the instruments.

Answer: TRUE
Diff: 1
Topic: Secondary Liability

17) Unqualified indorsers must pay any dishonored instrument to the holder or to any subsequent according to its terms, when issued or properly completed.

Answer: TRUE
Diff: 3
Topic: Secondary Liability

18) Unqualified indorsers have no liability on negotiable instruments, as banks usually insure their customers accounts.

Answer: FALSE
Diff: 2
Topic: Secondary Liability

19) Qualified indorsers are secondarily liable on instruments because they have not expressly disclaimed liability.

Answer: FALSE
Diff: 2
Topic: Secondary Liability

20) An accommodation party who pays an instrument can recover reimbursement from the accommodated party and enforce the instrument against him or her.

Answer: TRUE
Diff: 2
Topic: Accommodation Party
21) The accommodation indorser is primarily liable on the instrument.

Answer: FALSE
Diff: 1
Topic: Accommodation Party

22) A special form of appointment is necessary in order to grant an agent authority to sign an instrument.

Answer: FALSE
Diff: 1
Topic: Agent's Signatures

23) A principal will be held liable for ratifying an agent's unauthorized signature.

Answer: TRUE
Diff: 1
Topic: Agent's Signatures

24) Someone can have warranty liability on an instrument without having signed it.

Answer: TRUE
Diff: 1
Topic: Warranty Liability of Parties

25) Transferors cannot be held liable for breaching implied warranties when negotiating instruments.

Answer: FALSE
Diff: 2
Topic: Warranty Liability of Parties

26) Any passage of an instrument other than its issuance and presentment for payment is considered a transfer.

Answer: TRUE
Diff: 2
Topic: Warranty Liability of Parties

27) A maker's discharge in bankruptcy is considered to be a real defense.

Answer: TRUE
Diff: 1
Topic: Universal Defenses
28) Fraud in the inception occurs when a party is tricked into signing a negotiable instrument while thinking he/she is signing something else.

Answer: TRUE
Diff: 1
Topic: Universal Defenses

29) Personal defenses are effective against all holders, whether or not the holder is a holder in due course.

Answer: FALSE
Diff: 2
Topic: Universal Defenses

30) Breach of contract is a real defense.

Answer: FALSE
Diff: 2
Topic: Universal Defenses

31) The fact that the Federal Trade Commission has eliminated holder in due course status in connection with consumer credit transactions is a disadvantage for consumers.

Answer: FALSE
Diff: 3
Topic: Universal Defenses

32) Cancellation of a negotiable instrument will discharge any party with primary liability as well as any party with secondary liability.

Answer: TRUE
Diff: 2
Topic: Discharge

33) Which of the following applies to signers when determining signature liability?
   A) The location of the signature on an instrument usually determines the signer's capacity.
   B) Qualified indorsers and agents are primarily or secondarily liable on the instrument.
   C) Most indorsements appear on the front side of the instrument.
   D) It is usually presumed that the indorsement is someone else's signature unless the instrument clearly indicates that it is that of the indorser.

Answer: A
Diff: 3
Topic: Signature Liability
Skill: Legal Concepts
34) Signature liability on a negotiable instrument is also known as:
   A) contract liability
   B) agent liability
   C) warranty liability
   D) secondary liability
   E) shelter liability

Answer: A
Diff: 2
Topic: Signature Liability
Skill: Legal Concepts

35) Of the following roles that persons who sign a negotiable instrument can play, which do not have signature liability on the instrument?
   A) accommodation signers and qualified indorsers
   B) qualified indorsers and those signing properly as an authorized agent
   C) authorized signers, qualified indorsers, and those signing properly as an authorized agent
   D) accommodation signers, qualified indorsers, and those signing properly as an authorized agent
   E) None of these is correct because anyone who signs an instrument incurs signature liability.

Answer: B
Diff: 3
Topic: Signature Liability
Skill: Legal Concepts

36) Which of the following is true?
   A) The maker of a note has primary liability upon signing a note, but the drawer of a check does not have primary liability upon signing the check.
   B) The maker of a note has primary liability upon signing the note and the drawer of a check has primary liability upon signing the check.
   C) The maker of a note has primary liability upon signing the note, and the drawee of a check has primary liability upon the drawer's signing of the check.
   D) The drawer of check has primary liability upon signing the check, but the maker of a note does not have primary liability upon signing the note.
   E) The maker of a note does not have primary liability upon signing the note, nor does the drawer of a check upon signing the check.

Answer: A
Diff: 3
Topic: Signature Liability
Skill: Legal Concepts
37) When does acceptance of a draft occur?
   A) Acceptance occurs if an accommodation has occurred.
   B) Acceptance occurs if an unqualified indorser is involved.
   C) Acceptance of a draft occurs when the drawee writes the word acceptance across the face of the draft.
   D) All of these are correct.
   Answer: C
   Diff: 3
   Topic: Primary Liability
   Skill: Legal Concepts

38) Which of the following is true about primary liability on a check?
   A) No one has primary liability on a check when it is written, and no one can have primary liability until it is paid.
   B) No one has primary liability on a check when it is written, but the drawee incurs primary liability if the check becomes certified.
   C) No one has primary liability on a check when it is written, but the drawer incurs primary liability if the check is certified.
   D) The drawee has primary liability when the check is written.
   E) The drawer has primary liability when the check is written.
   Answer: B
   Diff: 3
   Topic: Primary Liability
   Skill: Legal Concepts

39) What is needed for a party to be considered secondarily liable on an instrument?
   A) The instrument must be properly presented for payment.
   B) The instrument is dishonored.
   C) The notice of dishonor must be timely.
   D) The notice of dishonor must be given to the person to be held secondarily liable.
   E) All of these are correct.
   Answer: E
   Diff: 3
   Topic: Secondary Liability
   Skill: Legal Concepts

40) What does it mean for liability on a negotiable instrument to be secondary liability?
   A) The liability is for a small amount.
   B) The liability arises only if the party with primary liability defaults and does not pay.
   C) There are two parties to share the secondary liability.
   D) It means that the liability relates to a two-party negotiable instrument.
   Answer: B
   Diff: 2
   Topic: Secondary Liability
   Skill: Legal Concepts
41) In order to impose secondary liability, the following requirements must be met EXCEPT for which of the following?
   A) The instrument is properly presented for payment.
   B) The instrument is dishonored.
   C) The reason that the instrument was dishonored is justified.
   D) Timely notice of the dishonor is given to the party with secondary liability.

Answer: C
Diff: 2
Topic: Secondary Liability
Skill: Legal Concepts

42) Alan guarantees Visa that he will pay for his daughter Florence's debt with Visa. If Alan fails to pay Visa, who is liable for Florence's debt?
   A) Alan is primarily liable to Visa, the accommodation maker.
   B) Florence is primarily liable to Visa, as she was the party who used the credit in the first place.
   C) Both Alan and Florence are primarily liable to Visa for Florence's debt.
   D) Neither is liable to Visa.

Answer: A
Diff: 2
Topic: Accommodation Party
Skill: Legal Concepts

43) An accommodation party can sign:
   A) only as maker or drawer
   B) only as maker or indorser
   C) only as maker, drawer, or indorser
   D) only as acceptor or indorser
   E) as maker, drawer, indorser, or acceptor

Answer: E
Diff: 2
Topic: Accommodation Party
Skill: Legal Concepts
44) Betty Bongo, a real estate agent working for ABC Realty sells a home to Jason Biggs. Upon escrow closing, Betty signs the paperwork, "ABC Realty, by Betty Bogo, agent." Later it was determined that the home had Jason bought had a mold problem that should have been disclosed. Who is personally responsible on the instrument?
   A) Betty Bongo, as agent for ABC Realty
   B) ABC Realty
   C) both Betty Bongo and ABC Realty
   D) All of these are correct.
   E) None of these are correct.

Answer: B
Diff: 2
Topic: Agent's Signatures
Skill: Legal Concepts

45) Betty Bongo, a real estate agent working for ABC Realty sells a home to Jason Biggs. Upon escrow closing, Betty signs the paperwork, "ABC Realty, by Betty Bogo, agent." Later it was determined that the home had Jason bought had a mold problem that should have been disclosed. If Betty Bongo did not show that her signature was made in a representative capacity and she cannot prove that the original parties did not intend her to be liable, who is liable?
   A) ABC Realty
   B) Visa
   C) Betty Bongo
   D) All of these are correct.

Answer: C
Diff: 2
Topic: Agent's Signatures
Skill: Legal Concepts

46) Which of the following would be considered an exception to the rule that the loss from a forged instrument falls on the party who first takes the forged instrument after the forgery?
   A) where a drawer or maker bears the loss
   B) where an indorsement is forged
   C) where there has been no forgery
   D) A and B
   E) A, B, and C

Answer: D
Diff: 3
Topic: Forged Instrument
Skill: Legal Concepts
47) Which of the following best describes what a transfer is?
   A) A transfer is when one bank account is shifted to another bank account.
   B) A transfer is a holder who takes an instrument free from personal defenses.
   C) A transfer is any passage of an instrument other than its issuance and presentment for payment.
   D) A transfer is a universal defense to a negotiable instrument.
   
   Answer: C
   Diff: 2
   Topic: Warranty Liability
   Skill: Legal Concepts

48) Which kind(s) of liability can be imposed only if a party has signed an instrument?
   A) warranty liability only
   B) contract liability only
   C) both contract liability and warranty liability
   D) neither contract liability nor warranty
   
   Answer: B
   Diff: 2
   Topic: Warranty Liability
   Skill: Legal Concepts

49) What are the two general kinds of implied warranties for which warranty liability can be imposed in connection with a negotiable instrument?
   A) transfer and contract
   B) signature and contract
   C) transfer and secondary
   D) with recourse and without recourse
   E) transfer and presentment
   
   Answer: E
   Diff: 1
   Topic: Warranty Liability
   Skill: Legal Concepts

50) When a person transfers a negotiable instrument, to whom does this transferor make transfer warranties?
   A) only parties to whom the transferor makes a written assertion in connection with the transfer
   B) for all transfers, to the immediate transferee only
   C) for all transfers, to the immediate transferee and all subsequent transferees
   D) for transfers for consideration, to the immediate transferee, and if the transfer is by indorsement, to all subsequent transferees as well
   
   Answer: D
   Diff: 3
   Topic: Warranty Liability
   Skill: Legal Concepts
51) Which of the following warranties is given by the transferor of a negotiable instrument?
   A) All signatures are genuine or authorized.
   B) There is no knowledge of a material alteration.
   C) There is no knowledge that any defense is good against him.
   D) A, B, and C are given.
   E) B and C only are given.

Answer: D
Diff: 2
Topic: Warranty Liability
Skill: Legal Concepts

52) Can transfer warranties be disclaimed?
   A) No; they cannot be disclaimed for any negotiable instruments.
   B) Yes; they can be disclaimed for any negotiable instruments.
   C) Yes; they can be disclaimed, but only by holders in due course.
   D) Yes; they can be disclaimed, but only for bearer instruments.
   E) Yes; they can be disclaimed, but only for instruments other than checks.

Answer: E
Diff: 3
Topic: Warranty Liability
Skill: Legal Concepts

53) The transferor of a negotiable instrument warrants that the transferor has good title or is authorized to obtain payment of acceptance of one who has good title as part of:
   A) the transfer warranties
   B) the presentment warranties
   C) both transfer and presentment warranties
   D) neither transfer nor presentment warranties

Answer: C
Diff: 2
Topic: Warranty Liability
Skill: Legal Concepts
54) If Bill Snick presents a draft or check for payment of acceptance, which of the following presentment warranties is Bill Snick making?
   A) That he had good title to the check or is authorized to obtain payment or acceptance of the person who has good title.
   B) That the instrument has not been materially altered.
   C) That the presenter has no knowledge that the signature of the maker or drawer is unauthorized.
   D) All of these are correct.

Answer: D
Diff: 3
Topic: Presentment Warranties
Skill: Legal Concepts

55) If Royce wanted to know which universal defenses against the payment of a negotiable instrument that he could use, which of the following would he have available to him?
   A) infancy or minority
   B) extreme duress
   C) discharge in bankruptcy
   D) material alteration
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Universal Defenses
Skill: Legal Concepts

56) If Royce comes to you and asks what type of personal defenses can he raise against enforcement of a negotiable instrument by an ordinary holder, which of the following would you say qualify as such?
   A) mental illness
   B) illegality of a contract
   C) undue influence
   D) discharge of an instrument by payment or cancellation
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Universal Defenses
Skill: Legal Concepts
57) Which of the following parties are liable only after a negotiable instrument has been presented and dishonored, and proper notice has been given?
   A) drawer, maker, acceptor, and qualified indorser
   B) maker, acceptor, and unqualified indorser
   C) acceptor and qualified indorser
   D) drawer and unqualified indorser
   E) maker and unqualified indorser

Answer: D
Diff: 2
Topic: Universal Defenses
Skill: Legal Concepts

58) What is the effect of the presence of a defense in connection with a negotiable instrument?
   A) Payment of the instrument can be avoided.
   B) The instrument becomes null and void.
   C) The transfer warranties are no longer applicable.
   D) The maker or drawer becomes liable for damages.

Answer: A
Diff: 2
Topic: Universal Defenses
Skill: Legal Concepts

59) What is the significance of a defense being a real defense rather than a personal defense?
   A) A real defense applies to order instruments whereas a personal defense applies to bearer instruments.
   B) A real defense applies where the negotiable instrument arose out of a business transaction whereas a personal defense applies where the negotiable instrument arose out of a nonbusiness transaction.
   C) A real defense applies to a holder in due course whereas a personal defense does not.
   D) A real defense can be asserted at any time whereas a personal defense must be asserted within 90 days of notice.
   E) A real defense entitles the plaintiff to receive punitive damages whereas a personal defense does not.

Answer: C
Diff: 3
Topic: Universal Defenses
Skill: Legal Concepts
60) What is the consequence of a defense to a negotiable instrument being a personal defense?
   A) The instrument must be paid to any holder.
   B) The maker or drawer has personal liability on the instrument.
   C) The instrument must be paid despite the defense if the defense is being asserted against a
      holder in due course.
   D) The instrument must be paid to any party presenting it for payment.
   E) The defense is not effective against a holder of any kind.

Answer:  C  
Diff: 3  
Topic: Universal Defenses  
Skill: Legal Concepts

61) What is the purpose of the Federal Trade Commission rule that eliminates the benefits of
    holder in due course status in certain consumer credit transactions?
   A) to protect merchants of goods from consumers improperly refusing to pay
   B) to protect subsequent holders of consumer credit contracts from consumers improperly
      refusing to pay
   C) to protect consumers from having to pay a holder in due course of a promissory note if
      the goods that gave rise to the note are defective
   D) to encourage merchants to extend credit to consumers

Answer:  C  
Diff: 3  
Topic: Universal Defenses  
Skill: Legal Concepts

62) Which of the following will not discharge a party from liability on a negotiable instrument?
   A) payment by the party who is primarily liable
   B) cancellation of the instrument
   C) a subsequent holder releasing collateral securing the instrument
   D) failing to comply with a restrictive indorsement

Answer:  D  
Diff: 2  
Topic: Discharge  
Skill: Legal Concepts

63) Who is discharged if a holder strikes out a prior indorsement on a negotiable instrument?
   A) only the party whose name was stricken
   B) the party whose name was stricken and all prior indorsers
   C) the party whose name was stricken and all subsequent indorsers
   D) all indorsers

Answer:  C  
Diff: 2  
Topic: Discharge  
Skill: Legal Concepts
64) Stan Johnson is the secretary of Balzene's, Inc., a small corporation. Before an important meeting with some potential clients, Stan purchases some supplies from a local office supply store. Stan takes one of the company's checks that are imprinted with the company's name to pay for this merchandise. In his rush before the meeting, Stan simply signs the check "Stan Johnson." Which of the following is true in this situation?

A) Stan is not an agent of Balzene's because he did not sign as an agent.
B) Stan will have exclusive primary liability on this check.
C) Stan and Balzene's will share primary liability on this check.
D) Stan will not have any liability on this check because the check was imprinted with Balzene's name.
E) Balzene's has exclusive primary liability at the time the check is written.

Answer: D
Diff: 3
Topic: Signature Liability of Parties
Skill: Factual Application

65) Marti issues a check payable to the order of John, who indorses the check in blank and transfers the check to Amy, who transfers the check to Bill without indorsement. Bill wishes to cash the check. Which of the following best describes the liabilities of the parties?

A) The drawee bank is primarily liable on the check.
B) At this point, no one is primarily liable on the check.
C) The drawee bank is not primarily liable on the check until it accepts the check.
D) Marti is primarily liable on the check.
E) B and C only are correct.

Answer: E
Diff: 3
Topic: Signature Liability of Parties
Skill: Factual Application

66) Martha is elderly, does not speak or read English very well, and is unsophisticated in business matters. A salesman convinces her to sign a negotiable note by telling Martha that it is a receipt for his visit. The salesman properly negotiates this note to a holder in due course, who tries to collect from Martha. Martha's defense to this note is:

A) breach of contract; a personal defense
B) fraud in the inducement; a real defense
C) fraud in the inception; a real defense
D) extreme duress; a real defense
E) illegality; a real defense

Answer: C
Diff: 2
Topic: Defenses
Skill: Factual Application
67) Betty issues a note payable to the order of John for $2,000. John properly indorses the note, but raises the amount to $20,000, and negotiates it to Mary. On the due date, Mary attempts to collect $20,000 from Betty. Betty refuses to pay. Assuming that Mary is a holder in due course, which parties can Mary recover from in a lawsuit?
   A) $20,000 from Betty; nothing from anyone else
   B) $2,000 from Betty; nothing from anyone else
   C) $2,000 from Betty; $18,000 from John
   D) $20,000 from John; nothing from anyone else
   E) nothing from anyone

Answer: C
Diff: 3
Topic: Defenses
Skill: Factual Application

68) Lisa purchases a home theater system from Homeplace Cinema. Lisa signs a $10,000 negotiable promissory note in connection with this purchase. This note requires monthly payments for 5 years. After the system is installed, Lisa begins to have trouble with it. It turns out that there are defective components in both the video and audio aspects of the system. Meanwhile, Homeplace Cinema has sold Lisa's promissory note to Amalgamated Finance, which meets all the requirements of a holder in due course. Lisa refuses to make any further payments on the notes due to the breach of contract by Homeplace Cinema. Which of the following is true?
   A) Lisa has no further obligation to pay because the breach of contract is a real defense.
   B) Lisa must pay the note to the extent of the fair market value of the home theater system in its current condition.
   C) Lisa does not have to pay because federal legislation has eliminated holder in due course protection for negotiable instruments that are part of a consumer credit transaction.
   D) Lisa must pay because the obligation of a promissory note is always unconditional.

Answer: C
Diff: 3
Topic: Defenses
Skill: Factual Application

69) An accommodation party that signs an instrument guaranteeing payment is ________ on the instrument.
   A) not liable
   B) primarily liable
   C) secondarily liable
   D) limited with respect to liability

Answer: B
Diff: 3
Skill: Factual Application
70) An accommodating party that signs an instrument guaranteeing collection is ________ on
the instrument.
   A) not liable
   B) primarily liable
   C) secondarily liable
   D) limited with respect to liability

Answer:  C
Diff: 3
Skill:  Factual Application

71) How does the definition of value for purposes of holder in due course differ from the
definition of consideration? Why do you think there is a difference? Should there be a
difference?

Answer:  An unfulfilled promise qualifies as consideration, but is not considered value given
under Article 3 of the UCC. This is because a holder has not actually performed the promise, and
thus has lost nothing yet, and therefore does not need the protections that a holder in due course
receives.
Diff: 2
Skill:  Ethics and Policy

72) Why is fraud in the inducement treated as a personal defense and fraud in the inception
treated as a real defense? Is this distinction justifiable? On what grounds?

Answer:  The assumption is that the victim of fraud in the inducement is in the best position to
avoid the fraud by knowing the other party, verifying claims, and so forth before entering into
the contract. The same might apply to fraud in the inducement, but the law treats fraud in the
inducement as a real defense.
Diff: 2
Skill:  Ethics and Policy

73) What is the purpose and effect of eliminating the holder in due course provisions for
consumer credit transactions? Will doing so raise the cost of borrowing for these consumers?

Answer:  The holder in due course rule allowed a merchant to sell defective merchandise to a
consumer on credit, then sell the note to a holder in due course who would be entitled to collect
from the consumer even though the merchandise was defective. This change might make the
promissory notes of a seller's customers less valuable when trying to sell them to other parties.
Diff: 2
Skill:  Ethics and Policy
74) Forger drafted a promissory note and forged Fred's signature on it. Before he could do anything with it, Thief stole it and transferred it to Commercial Loan Co., for value. Commercial usually did not buy commercial paper from people who walk in off the street, but business was slow, so the company took the note. Commercial had no notice of the forgery. On the note's due date, Commercial demanded payment from Fred. Obviously, Fred refused to pay. Commercial sues Fred on the note. Assuming the note qualifies as a negotiable instrument in all aspects not mentioned above, discuss the probable outcome of this suit.

Answer: This is forgery and is a real defense, good against everyone, including a holder in due course. Commercial might have trouble qualifying as a holder in due course if the transaction was considered not to be in the ordinary course of business. Commercial loses, whether or not it is an HDC.

Diff: 2
Topic: Defenses
Skill: Factual Application

75) Carl is the maker of a note on which David is the payee. David indorses the note in blank and delivers it to Edward, who then transfers it to Fred without indorsement. Fred then presents it to Carl for payment when it becomes due, but Carl claims he signed the note base upon fraud in the inducement. If all of the transfers in question were for value and there are no other defenses available:

a. Who has primary liability of the instrument? Who is secondarily liable on the instrument?
c. From whom can Fred try to collect now that Carl has refused to pay?

Answer: a. Carl has primary liability on the instrument. His defense is personal defense that cannot be used against a holder in due course. Fred would seem to be a holder in due course. Anyone who indorses an instrument has secondary liability, so David would have secondary liability.

b. David has warranty liability as does Edward, even though he did not indorse the instrument.
c. If Fred cannot collect from Carl, he can collect from David based on his secondary liability or from Edward based upon warranty liability. If David or Edward pays, either can recoup their payment from Carl.

Diff: 3
Topic: Defenses
Skill: Factual Application
76) Terry has a business in which he visits with client's pet cats in the client's home while the client is out of town. The primary purpose is to prevent the cats from becoming psychotic due to the owner's absence. Terry contracted to visit Valerie's cat daily for a 2-week period when Valerie was on vacation. Because Terry charged by the hour, Valerie gave Terry a signed check with the amount blank for Terry to fill in based on $10 per hour. While visiting with Valerie's cat, Terry noticed a check on Valerie's desk that had the amount of $100 filled in, but no payee and no signature. Terry took the check, converted the $100 to $1,000 and signed Valerie's name. Terry then filled out the check that Valerie had given him in the amount of $10,000, rather than the $200 he had earned at $10 per hour. Terry transferred both checks to a holder in due course, who later seeks payment from Valerie. How much must Valerie pay on each of these checks?

Answer: For the check that Valerie had given to Terry, Valerie must pay the full amount. Her defense of unauthorized completion is a personal defense that is not valid against a holder in due course. Valerie pays nothing on the check taken from her desk, as this is forgery, a real defense, even though Terry changed the amount. Valerie might be found liable for this check if she is determined to have been negligent for leaving the check out.

Diff: 3
Topic: Defenses
Skill: Factual Application
1) When a customer makes a deposit into the bank, the customer is the debtor and the bank is the creditor.

Answer: FALSE
Diff: 1
Topic: The Bank - Customer Relationship

2) Bank deposits and collections are covered under Article 3 of the Uniform Commercial Code.

Answer: FALSE
Diff: 1
Topic: The Bank - Customer Relationship

3) Electronic Funds Transfers are covered under Article 4A of the Uniform Commercial Code.

Answer: TRUE
Diff: 1
Topic: The Bank - Customer Relationship

4) As a holder, the payee of a check can either demand payment or indorse the check to another person.

Answer: TRUE
Diff: 1
Topic: Ordinary Checks

5) Checks that have more than one indorser have no validity.

Answer: FALSE
Diff: 1
Topic: Ordinary Checks

6) The draw is the customer who maintains the checking account.

Answer: FALSE
Diff: 2
Topic: Parties to a Check
7) The payee is the bank on which the check is drawn.

Answer: FALSE  
Diff: 2  
Topic: Parties to a Check

8) The person to whom the check is indorsed is the indorsee.

Answer: TRUE  
Diff: 1  
Topic: Indorsement of a Check

9) A payee has the right to demand payment of the check.

Answer: TRUE  
Diff: 1  
Topic: Indorsement of a Check

10) With a certified check, the certification expires when the check becomes stale.

Answer: FALSE  
Diff: 1  
Topic: Special Types of Checks

11) The drawer is discharged from liability on a check upon certification by the drawee bank if presented by the drawer for certification, but not if presented by the payee.

Answer: FALSE  
Diff: 2  
Topic: Special Types of Checks

12) The major purpose of certified cashier's and traveler's checks is to make the bank primarily liable, so third parties will be more willing to accept the checks.

Answer: TRUE  
Diff: 1  
Topic: Special Types of Checks

13) The drawee bank is not obligated to certify a check.

Answer: TRUE  
Diff: 1  
Topic: Special Types of Checks
14) The issuing bank serves as both the drawer and drawee of a cashier's check.

Answer: TRUE
Diff: 2
Topic: Special Types of Checks

15) A traveler's check becomes a negotiable instrument when it is signed the first time by the purchaser.

Answer: FALSE
Diff: 1
Topic: Special Types of Checks

16) Notifying a bank within 2 days of discovering a lost debit card limits liability to $50.

Answer: TRUE
Diff: 1
Topic: Special Types of Checks

17) If the drawee's bank certifies a check, the drawer is discharged from liability on the check.

Answer: TRUE
Diff: 2
Topic: Special Types of Checks

18) The Electronic Fund Transfer Act regulates consumer electronic funds transfers.

Answer: TRUE
Diff: 1
Topic: Internet Law Online Commerce

19) If a customer notifies the bank within 2 days of learning that his or her debit card has been lost or stolen, the customer is liable for only $50 of unauthorized use.

Answer: TRUE
Diff: 2
Topic: Internet Law Online Commerce

20) Once a check becomes stale, the bank is no longer obligated to pay it.

Answer: TRUE
Diff: 1
Topic: Honoring Checks
21) When a drawer gives an incomplete check to a payee, and the payee completes the check contrary to the instructions of the drawer, if the bank pays the check according to the unauthorized terms, the drawer is generally liable for payment of the check as completed.

Answer: TRUE
Diff: 2
Topic: Honoring Checks

22) A bank can pay checks of a deceased drawer for up to 10 days after the drawer's death even if the bank is aware of the death, so long as no one claiming an interest in the account orders the bank to stop payment.

Answer: TRUE
Diff: 2
Topic: Honoring Checks

23) Under the most recent version of the UCC, banks are liable for any damages caused by paying any postdated check prior to its date.

Answer: FALSE
Diff: 2
Topic: Honoring Checks

24) An oral stop-payment order is effective for only 7 days.

Answer: FALSE
Diff: 1
Topic: Honoring Checks

25) A bank is not permitted to pay a check where sufficient funds are not in the customer's account unless prior arrangements, such as an overdraft protection line of credit, have been made.

Answer: FALSE
Diff: 2
Topic: Honoring Checks

26) Banks cannot charge interest on the overdrafts of its customers.

Answer: FALSE
Diff: 2
Topic: Honoring Checks
27) When a bank wrongfully dishonors a check, both the drawer and the payee can recover reasonable damages from the bank.

Answer: FALSE
Diff: 2
Topic: Honoring Checks

28) A check that has been outstanding for more than 1 month is considered stale.

Answer: FALSE
Diff: 1
Topic: Stale Checks

29) When a check is incomplete, the UCC places the risk of loss of an incomplete item on the drawer.

Answer: TRUE
Diff: 2
Topic: Incomplete Checks

30) A bank may pay or certify checks drawn on a deceased customer's account on or prior to the date of death for 10 days after the date of death.

Answer: TRUE
Diff: 1
Topic: Death or Incompetence of a Drawer

31) A postdated check is one in which the buyer fills in the date on the check after he or she has written to whom the check is payable to.

Answer: FALSE
Diff: 1
Topic: Postdated Checks

32) An oral stop-payment order is effective for 6 months and may be renewed orally for an additional 6 months.

Answer: FALSE
Diff: 2
Topic: Stop-Payment Orders

33) An overdraft is an amount of money a drawer owes a bank after it has paid a check despite insufficient funds in the drawer's account.

Answer: TRUE
Diff: 1
Topic: Overdrafts
34) If a bank does not honor funds when there is a sufficient amount of funds in a drawer's account to pay a properly payable check, it is liable for wrongful dishonor.

Answer: TRUE
Diff: 2
Topic: Wrongful Dishonor

35) If a bank pays a check with a forged drawer's signature, the bank must recredit the drawer's account, so the loss usually falls on the bank.

Answer: TRUE
Diff: 1
Topic: Forged Signatures and Altered Checks

36) When the amount of a check has been raised to a higher amount than it was originally for, the drawer is generally liable only for the original amount of the check.

Answer: TRUE
Diff: 1
Topic: Forged Signatures and Altered Checks

37) The drawer's bank is also known as the payor bank.

Answer: TRUE
Diff: 1
Topic: The Collection Process

38) Banks must credit all customers' deposits to their accounts on the same day that the deposits are received.

Answer: FALSE
Diff: 1
Topic: The Collection Process

39) A banking day is any day that the particular bank is open and offering any of its services to the public.

Answer: FALSE
Diff: 1
Topic: The Collection Process

40) A check where the drawer and payee have accounts at different banks is known as an "on them" item.

Answer: TRUE
Diff: 1
Topic: The Collection Process
41) The result of the "four legals" is that the bank may choose whether to pay a check.

Answer: FALSE
Diff: 2
Topic: The Collection Process

42) What type of relationship is created when a customer makes a deposit into her account at a bank?
   A) principal-agent
   B) trustee-beneficiary
   C) donor-donee
   D) creditor-debtor

Answer: D
Diff: 1
Topic: The Bank - Customer Relationship
Skill: Legal Concepts

43) A principal-agency relationship is created between a customer and a bank:
   A) only if the customer deposits a check that the bank must collect for the customer
   B) any time the customer deposits an amount into the customer's checking account
   C) only when the customer writes a check against her account
   D) if the customer deposits a check that the bank must collect for the customer or if the customer writes a check against her account

Answer: D
Diff: 2
Topic: The Bank - Customer Relationship
Skill: Legal Concepts

44) Which of the following is correct about the Uniform Commercial Code?
   A) Article 3 covers negotiable instruments; Article 4 covers bank deposits and collections.
   B) Article 2 covers negotiable instruments as well as bank deposits and collections.
   C) Article 4 and 4A are the only articles that affect the banking system.
   D) It does not apply to the banking collection and deposit process because negotiable instruments are not considered "goods."

Answer: A
Diff: 2
Topic: The Bank - Customer Relationship
Skill: Legal Concepts
45) Which of the following is not a party to a check?
   A) drawer  
   B) drawee  
   C) indorsee  
   D) payee  

   Answer: C  
   Diff: 1  
   Topic: Ordinary Checks  
   Skill: Legal Concepts

46) What options does a payee have who is holding a check payable to her?
   A) She must seek payment directly from the drawee bank.  
   B) She must seek payment on the check, either directly from the drawee bank or by depositing the check in her account at her own bank.  
   C) She may seek payment from the drawee bank, seek payment by depositing the check in her account at her own bank, or she may indorse the check to another person, so long as the indorsement has been approved by the drawer.  
   D) She may seek payment from the drawee bank, seek payment by depositing the check in her account at her own bank, or she may indorse the check to another person, so long as the indorsement has been approved by the drawee.  
   E) She may seek payment from the drawee bank, seek payment by depositing the check in her account at her own bank, or she may indorse the check to another person, and this indorsement does not need the approval of the drawer or drawee.  

   Answer: E  
   Diff: 2  
   Topic: Ordinary Checks  
   Skill: Legal Concepts

47) When the payee of a check indorses a check to another person (the indorsee), what is true about the indorsee?
   A) The indorsee must get the consent of the drawer to further transfer the check.  
   B) In order to collect on the check, the indorsee must present the check for payment at the drawee bank.  
   C) The indorsee cannot indorse the check to another indorsee.  
   D) The indorsee becomes a holder who can either demand payment or indorse the check to yet another indorsee.  
   E) The indorsee must join with the payee of the check when seeking payment.  

   Answer: D  
   Diff: 2  
   Topic: Ordinary Checks  
   Skill: Legal Concepts
48) Which of the following statements is **not** true regarding Electronic Funds Transfer Systems (EFTS)?

- A) EFTS eliminates "float."
- B) Congress and the Federal Reserve Board have enacted legislation to protect EFTS users.
- C) A customer has unlimited liability for the unauthorized use of a lost or stolen EFTS debit card.
- D) A bank is liable for a wrongful dishonor if it fails to make an EFTS payment when funds are available.
- E) One major advantage to EFTS is that they are "online" so the transactions take effect immediately.

Answer: C
Diff: 2
Topic: Ordinary Checks
Skill: Legal Concepts

49) When a check is certified, which of the following occurs?

- A) The drawer agrees that the check will be paid.
- B) The drawer becomes liable to pay the check if the bank does not honor it.
- C) An indorser certifies to an indorsee that the check will be paid.
- D) The drawee agrees in advance that it will accept a check when it is presented.
- E) The ability to transfer the check by indorsement is terminated.

Answer: D
Diff: 3
Topic: Special Types of Checks
Skill: Legal Concepts

50) Which of the following is a characteristic of bank checks that makes payees often more willing to accept a bank check than to accept a personal check?

- A) The bank is solely or primarily responsible for payment.
- B) They are usually written for large amounts.
- C) They cannot be indorsed to other parties.
- D) The payee is required to accept them as legal tender in most situations.

Answer: A
Diff: 2
Topic: Special Types of Checks
Skill: Legal Concepts
51) Who can certify a check?
   A) the drawee
   B) the drawer
   C) the payee
   D) the payee and the drawer if both agree
   E) the drawee, the payee, or the drawer

Answer: A
Diff: 2
Topic: Special Types of Checks
Skill: Legal Concepts

52) Which of the following statements is not true if a check is certified by a bank?
   A) The refusal of the bank to certify the check is a type of dishonor.
   B) The drawer is not liable if the drawer has the check certified.
   C) The drawer is not liable if a holder has the check certified.
   D) All persons who indorsed the check before certification are discharged by certification.
   E) The bank must indicate on the face of the check that the check is certified.

Answer: A
Diff: 2
Topic: Special Types of Checks
Skill: Legal Concepts

53) When a check is presented for payment after certification at the certifying bank, and the check has been altered to reflect a higher amount, the bank must pay:
   A) the higher amount in all cases
   B) only the original amount in all cases
   C) the higher amount if it is an "on us" check, otherwise only the lower amount
   D) the higher amount, if the alteration was done by the payee of the check, but only the lower amount if the alteration was done by someone else, such as an indorsee
   E) the higher amount if the alteration was done before certification and only the lower amount if the alteration was done after certification

Answer: E
Diff: 3
Topic: Special Types of Checks
Skill: Legal Concepts
54) The main reason that someone would use a cashier's check to make a payment rather than a check drawn on that person's own account is that:
   A) using a cashier's check will cost less
   B) the person will obtain a longer float time with the cashier's check
   C) payees are often more willing to accept a cashier's check
   D) cashier's checks can be indorsed to third parties

Answer: C
Diff: 2
Topic: Special Types of Checks
Skill: Legal Concepts

55) Which of the following is characteristic of both cashier's checks and traveler's checks?
   A) requirement of a countersignature when used
   B) usually available only in certain fixed denominations
   C) must be certified before they can be negotiated
   D) frequently issued by companies other than banks
   E) the same party serves as both the drawee and drawer

Answer: E
Diff: 3
Topic: Special Types of Checks
Skill: Legal Concepts

56) Traveler's checks are not used as much as they were in the past because of which of the following?
   A) Issuers have become reluctant to issue them because of the losses due to lost traveler's checks.
   B) The service fees have increased to the point that most travelers refuse to pay them.
   C) The use of credit cards is replacing the use of traveler's checks.
   D) They are no longer recognized under the Uniform Commercial Code.
   E) The changes in the law regarding postdated checks have reduced their usefulness.

Answer: C
Diff: 1
Topic: Special Types of Checks
Skill: Legal Concepts

57) Which of the following is true about traveler's checks?
   A) The traveler is the drawer.
   B) The amount of the check is usually filled out by the traveler at the time of use.
   C) Traveler's checks are issued without a named payee.
   D) The traveler usually signs the check only once.
   E) A traveler's check becomes negotiable upon the first signature by the purchaser.

Answer: C
Diff: 2
Topic: Special Types of Checks
Skill: Legal Concepts
58) Which of the following is true about debit cards?
   A) They are a source of credit similar to credit cards.
   B) There is usually a 2-business-day float period when they are used.
   C) They generally carry a fixed credit limit similar to credit cards.
   D) They result in an immediate withdrawal from the user's checking account.

Answer: D
Diff: 1
Topic: Special Types of Checks
Skill: Legal Concepts

59) In order for the holder of a debit card to be liable for no more than $50 of unauthorized use, what must the cardholder do?
   A) Nothing, because debit cardholders' liability for unauthorized use is always limited to a maximum of $50.
   B) Notify the issuer bank within 2 days of learning of the loss or theft.
   C) Close the related checking account within 2 days of learning of the loss or theft.
   D) Notify the issuer bank within 60 days of learning of the loss or theft.
   E) Notify the issuer bank and close the related checking account within 2 days of learning of the loss or theft.

Answer: B
Diff: 2
Topic: Special Types of Checks
Skill: Legal Concepts

60) A stale check is a check that:
   A) has been dishonored by the bank
   B) has been indorsed too many times
   C) is postdated
   D) has been outstanding for more than 6 months
   E) is over 1 year old

Answer: D
Diff: 2
Topic: Honoring Checks
Skill: Legal Concepts
61) The legal effect of a stale check is which of the following?
   A) The drawee bank cannot pay it.
   B) The drawer is no longer liable on it.
   C) The bank is not under an obligation to pay it.
   D) The payee must get the drawer to redate it.

Answer: C
Diff: 2
Topic: Honoring Checks
Skill: Legal Concepts

62) When a drawer makes out an incomplete check, which of the following is true?
   A) The bank is usually liable for paying the check if it was completed in an unauthorized manner.
   B) The bank is not permitted to pay the check.
   C) The drawer generally will suffer the risk that the check is improperly completed unless the bank has notice that the completion was improper.
   D) The drawer is protected whenever a completion is unauthorized.

Answer: C
Diff: 3
Topic: Honoring Checks
Skill: Legal Concepts

63) When the drawer of a check dies, the bank can pay:
   A) checks drawn on the account for 6 months following the date of death
   B) checks drawn on the account for 10 days following the date of death in all cases
   C) checks drawn on the account for 10 days following the date of death if permission to do so has been given by the heirs
   D) checks drawn on the account for 10 days following the date of death unless someone claiming an interest in the account orders the bank to stop payment

Answer: D
Diff: 2
Topic: Honoring Checks
Skill: Legal Concepts
64) What steps must a drawer take in order to make a bank liable for paying a postdated check?
   A) The drawer must write the check with a date at some point in the future.
   B) The drawer must notify the drawee bank about the postdated check with a reasonably certain description of the check.
   C) The drawer must obtain written agreement of the payee to not attempt to deposit or cash the check until on or after the date of the check.
   D) The actions in choices A and B are both required.
   E) The actions in choices A, B, and C are all required.

   Answer: D
   Diff: 2
   Topic: Honoring Checks
   Skill: Legal Concepts

65) Which of the following is true of a stop-payment order issue to a bank?
   A) It is valid for 10 days if given orally.
   B) It is valid for 1 year if given in writing.
   C) A bank that pays a check in violation of a valid stop-payment order is liable to the drawer only if the drawer is damaged by this payment.
   D) A holder or indorser may stop payment on a check.

   Answer: C
   Diff: 2
   Topic: Honoring Checks
   Skill: Legal Concepts

66) Stop-payment orders:
   A) must be in writing in order to be effective
   B) may be oral, but are effective only for 14 days unless confirmed in writing within the 14-day period, in which case they will be effective for 6 months
   C) are effective as long as the account remains open if the order is in writing
   D) are effective for 6 months whether oral or in writing

   Answer: B
   Diff: 2
   Topic: Honoring Checks
   Skill: Legal Concepts
67) In connection with a checking account at a bank, what is an overdraft?
   A) It is a check written that the bank does not pay due to insufficient funds in the account.
   B) It is a negative balance caused by a bank paying a check when there are insufficient funds.
   C) It is a postdated check for a larger amount than the drawer's checking account balance.
   D) It is any kind of loan at a bank where a customer also has a checking account.
   E) It is a deposit by a customer that is later returned because of insufficient funds.

Answer: B
Diff: 2
Topic: Honoring Checks
Skill: Legal Concepts

68) When a drawee bank is presented with a check drawn on a customer's account in which there are not sufficient funds to pay the check, the bank:
   A) must pay the check if the customer is an established customer
   B) is not permitted to pay the check
   C) must notify the drawer prior to deciding whether or not to pay the check
   D) may choose whether to pay the check, but cannot charge interest on the overdraft unless the customer previously agreed to the payment of interest in the event of an overdraft
   E) may choose whether to pay the check, and can charge interest on the overdraft in all circumstances

Answer: D
Diff: 2
Topic: Honoring Checks
Skill: Legal Concepts

69) If a bank wrongfully dishonors a check, then it is:
   A) liable to the drawer for damages
   B) liable to the payee or holder for damages
   C) liable to the drawee for damages
   D) A and C only
   E) A and B only

Answer: A
Diff: 2
Topic: Honoring Checks
Skill: Legal Concepts
70) When a bank has wrongfully dishonored a check, the payee can:
   A) sue the bank for recovery of the check amount plus damages
   B) sue the drawer for recovery of the check amount plus damages
   C) sue the drawer or the bank for recovery of the check amount plus damages
   D) sue either the drawer or the bank for recovery of the check amount only
   E) sue the drawer for recovery of the check amount only

   Answer:  E
   Diff:  3
   Topic:  Honoring Checks
   Skill:  Legal Concepts

71) Banks are required to file a Currency Transaction Report with the Internal Revenue Service for:
   A) all transactions involving cash or certain types of checks of more than $10,000
   B) all transactions involving ordinary checks of $10,000 or more
   C) all transactions involving cash or certain types of checks of more than $1,000
   D) any suspected criminal activity involving funds of any amount
   E) A and D

   Answer:  A
   Diff:  2
   Topic:  Honoring Checks
   Skill:  Legal Concepts

72) Which of the following describes a bank's duty to ensure that a drawer's signature is genuine?
   A) The bank is not under a duty to determine the authenticity of drawers' signatures.
   B) The bank has a duty to discover forgeries only if they are reasonably obvious.
   C) The bank has a duty to discover forgeries, and is liable if it pays an instrument on which the drawer's signature was forged.
   D) The bank has a duty to discover forgeries, but only if the drawer has given notice of the likelihood of a forgery, such as if the drawer has lost some blank checks.

   Answer:  C
   Diff:  3
   Topic:  Forged Signatures and Altered Checks
   Skill:  Legal Concepts
73) If a party presents a check containing a forged signature to a bank for payment that the bank pays, from whom can the bank collect?
   A) the forger only
   B) the forger or the drawer
   C) the forger or the party who presented the check
   D) the forger or the party who presented the check, but only if the party presenting the check had knowledge that the signature was not genuine
   E) the forger and any person who has been a holder

Answer: D  
Diff: 3  
Topic: Forged Signatures and Altered Checks  
Skill: Legal Concepts

74) When a bank pays a check that has been materially altered to a higher amount, the bank can:
   A) not charge the depositor's account
   B) charge the depositor's account for the original amount of the check, but cannot recover the additional amount from anyone
   C) charge the depositor's account for the original amount of the check, and recover the additional amount only from the person who altered the check
   D) charge the depositor's account for the original amount of the check, and recover the additional amount from the person who presented the check for payment, even if that person did not know the check was altered
   E) charge the depositor's account for the original amount of the check, and recover the additional amount from the person who presented the check for payment, but only if that person knew that the check was altered

Answer: D  
Diff: 3  
Topic: Forged Signatures and Altered Checks  
Skill: Legal Concepts

75) Which of the following is not true regarding a drawer's duty to discover and report alterations and forgeries?
   A) If there is a series of forgeries, the drawer's failure to discover and report these to the bank could relieve the bank of some liability.
   B) A drawer must report a forgery or alteration within 6 months or the bank is discharged.
   C) The bank is not always liable for paying a check over a forged signature.
   D) The statutory time is 30 days to report a series of forgeries.

Answer: B  
Diff: 2  
Topic: Forged Signatures and Altered Checks  
Skill: Legal Concepts
76) The following are commonly used terms to describe banks in the collection system except:
   A) the collecting bank
   B) the depository bank
   C) the intermediary bank
   D) the maker bank
   E) the payor bank

   Answer: D
   Diff: 1
   Topic: The Collection Process
   Skill: Legal Concepts

77) Which of the following is true?
   A) All banks must process all checks through the Federal Reserve System.
   B) All banks must process all "on them" checks through the Federal Reserve System.
   C) The Federal Reserve System includes at least one regional bank in each state.
   D) The Federal Reserve System is not permitted to charge a fee for its processing services.
   E) Many banks use private clearinghouses instead of the Federal Reserve System to process checks.

   Answer: E
   Diff: 2
   Topic: The Collection Process
   Skill: Legal Concepts

78) Deferred posting refers to:
   A) the ability of a bank to reverse credits to a customer's account if a deposited check is later dishonored
   B) the ability of a bank to directly credit "on us" items
   C) the use of the Federal Reserve System for processing checks
   D) the ability of a bank to treat transactions occurring after a stated time of day as if they occur on the next banking day.

   Answer: D
   Diff: 2
   Topic: The Collection Process
   Skill: Legal Concepts
79) Which of the following is true about provisional credits?
   A) Once credit has been given to a customer, it cannot be taken away.
   B) If the bank allows a customer to withdraw amounts that have been granted provisionally, the credits for those amounts cannot be reversed.
   C) A bank can reverse credits up until there has been final settlement of an item, and if the customer does not then have the funds in his account to cover the reversal of the credit, the bank can sue the customer for the difference.
   D) A bank can reverse credits up until there has been final settlement of an item, and if the customer does not then have the funds in his account to cover the reversal of the credit, the bank must bear the loss for the difference.

Answer: C
diff: 3
Topic: The Collection Process
Skill: Legal Concepts

80) With an "on us" item, which banks are the same?
   A) the depository and the payor
   B) the payee and intermediary
   C) the collecting and intermediary
   D) the payee and depository

Answer: A
diff: 1
Topic: The Collection Process
Skill: Legal Concepts

81) The deadline for a bank to dishonor an item received on a particular day is:
   A) midnight of the next banking day, except for "on us" items, for which the deadline is midnight of the same banking day
   B) midnight of the next banking day, except for "on us" items, for which the deadline is midnight of the second banking day
   C) midnight of the next banking day, except for "on us" items, for which the deadline is the open of business on the second banking day
   D) midnight of the next banking day, except for "on them" items, for which the deadline is midnight of the second banking day

Answer: C
diff: 2
Topic: The Collection Process
Skill: Legal Concepts
82) Assuming the bank has proper notice, which of the following situations would not allow the bank to rightfully dishonor a check?
   A) the drawer's death or incompetence
   B) the check was drawn 4 months ago
   C) a court order, freezing the account
   D) a stop payment order
   E) exercise of a right of setoff

Answer: B
Diff: 1
Topic: The Collection Process
Skill: Legal Concepts

83) What is the significance of the "four legals?"
   A) They are the four basic legal requirements in order for a check to be legal.
   B) They are the four allowable dispositions that a bank can make of an "on them" check.
   C) They are the four legal requirements that must be present before a bank can pay a check.
   D) They are the four types of notices or actions that prevent a bank from paying a check, so long as they are received before the posting process is complete.
   E) They are the four basic types of checks.

Answer: D
Diff: 3
Topic: The Collection Process
Skill: Legal Concepts

84) Brad has a checking account at Third National Bank. On June 1, Brad pays his bills and writes 25 checks. These checks are all mailed to the respective payees. On June 5, Brad dies suddenly. Which of the following statements is true?
   A) The bank must pay checks on Brad's account until the bank has actual knowledge of his death.
   B) The bank cannot freeze Brad's account once it learns of his death.
   C) The bank must pay checks for 10 days after Brad's death, even after it learns of his death.
   D) The bank must freeze Brad's account if an interested third party so orders.

Answer: D
Diff: 3
Topic: Honoring Checks
Skill: Factual Application
85) Barry writes a check to Larry, but before he delivers it to Larry, he loses it through his own negligence. He then calls his bank and orally places a stop-payment order. Ten days later, the bank pays the check, which was forged. Barry intended to send a follow-up, written stop-payment order, but forgot. Barry learns three weeks later that the check had been paid. In this situation:
   A) the bank must credit Barry's account because it did not follow a valid stop-payment order
   B) Barry suffers the loss because his negligence led to the forgery
   C) Barry suffers the loss because he never sent a written stop-payment order
   D) Barry suffers the loss, but the bank must try to recover from the forger

Answer: A
Diff: 3
Topic: Honoring Checks
Skill: Factual Application

86) Drew makes out a check payable to Bill. Bill alters the amount of the check from $10 to $100, and cashes the check at the local grocery store. The grocery store later cashes the check at the drawee bank, which deducts $100 from Drew's account. Drew learns of the alteration and complains to the bank. Which is true in this situation?
   A) The bank must recredit Drew's account for $90.
   B) The bank can collect from the grocery store for breach of presentment warranties.
   C) The grocery store can collect from Bill for breach of presentment warranties.
   D) A, B, and C are true.
   E) A and C only are true.

Answer: D
Diff: 2
Topic: Forged Signatures and Altered Checks
Skill: Factual Application

87) In January of 2001, Fred had a cocktail party for his coworkers. The next day, after cleaning up, Fred noticed that a check had been stolen from his checkbook. Fred immediately called his bank and issued a stop-payment order on the check. One week later, the check was received by the bank and the bank paid it. Fred's signature was forged on the check. Fred never followed his oral stop-payment order with a written stop-payment order. Because Fred was notoriously sloppy with his personal financial affairs, Fred did not notice that the bank had paid the check until he was preparing his income tax return in April of 2002. Can Fred recover from the bank?
   A) Yes, because the bank paid the check contrary to a valid stop-payment order.
   B) Yes, because the indorsement on the check was forged.
   C) No, because he did not execute a written stop-payment order to follow up his oral order.
   D) No, because the fact that the check was stolen was not the bank's fault.
   E) No, because too much time had passed from when Fred had the information about the bank having paid the check to notify the bank.

Answer: E
Diff: 3
Topic: Forged Signatures and Altered Checks
Skill: Factual Application
88) Paula writes out a check for $30 when she has only $15 in her account. What can her bank do?

A) It can refuse to pay the check.
B) It can pay the check even if it results in an overdraft.
C) It can pay the check and then bill Paula $15 for the overdraft plus a $25 overdraft fee and interest on everything until it is all paid.
D) The bank can do any of the above.

Answer: D
Diff: 1
Topic: Forged Signatures and Altered Checks
Skill: Factual Application

89) Kenny has a checking account at Local Bank. Kenny writes a check to Grocery Store. What is the relationship of the parties?

A) Kenny is the drawer; Local Bank is the drawee; Grocery Store is the payee.
B) Kenny is the drawee; Local Bank is the drawer; Grocery Store is the payee.
C) Kenny is the payee; Local Bank is the drawee; Grocery Store is the drawer.
D) Kenny is the payee; Local Bank is the drawer; Grocery Store is the drawee.

Answer: A
Diff: 1
Skill: Factual Application

90) Why does the law generally place the risk of forgery on the payor bank, yet place the risk of unauthorized completion on the drawer? What factors would justify a difference in liability of the bank? What factors would justify a difference in liability of the drawer?

Answer: With unauthorized completion, the drawer set up a situation that can easily be abused. Thus, even though the unauthorized completion might not be the fault of the drawer, the drawer could have easily prevented the problem by not delivering an incomplete instrument. From the bank's standpoint, the unauthorized completion would be harder to detect. The bank has a signature card to compare signatures to check for forgery, but has no way to determine if the amount of a check was authorized.
Diff: 2
Skill: Ethics and Policy

91) Why are there such rigid and short deadlines for banks to decide whether or not to pay items? Does the midnight deadline force banks into making payment decisions before they have adequate information?

Answer: For there to be confidence in the banking system, there must be quick and final decisions on the payment of items. This is a tradeoff where the importance of quick information means that sometimes banks must make decisions before they would otherwise choose to.
Diff: 2
Skill: Ethics and Policy
92) Mark sold his car to Mary. Mary paid with a certified check. The check was made out for $18,000, the agreed price for the car. After they had exchanged paperwork and closed the deal on the car, Mark noticed that the bank had certified the check for $10,000 rather than the $18,000 amount of the check. Mark then altered the check to be for $28,000. How much must the bank pay on the check?

Answer: The bank is liable only for the amount for which it certified the check. Whether the bank erroneously certified an $18,000 check for $10,000, or Mary altered the check after the certification, the bank is liable only for $10,000.

Diff: 2  
Topic: Special Types of Checks  
Skill: Factual Application

93) Jenny has a checking account at Intrastate Bank. Jenny loses her checkbook. Richard finds it and forges a check payable to himself. He then indorses it, and properly negotiates it to Yummy Treats Restaurant. Yummy Treats cashes the check at Intrastate. Jenny learns of the forgery and complains to Intrastate. What are the liabilities of each of the parties involved?

Answer: The bank must recredit Jenny’s account and can recover from Richard if he can be found. The bank cannot recover from Yummy Treats, assuming that Yummy Treats did not know of the forgery.

Diff: 2  
Topic: Forged Signatures and Altered Checks  
Skill: Factual Application

94) Bubba, a good old country boy who has moved to the big city, had never locked the doors at his house in the country. Now that he has moved to the big city, he still often forgets to lock his doors. On one of these days, someone came into his home and stole, among other items, his checkbook and debit card. Bubba only writes a few checks a month, so he did not know until 2 weeks later that the checkbook and debit card were missing. Bubba had partially filled out a check, which he had planned to use to make final payment to a carpenter who was to do some work the following week in Bubba’s condominium. Bubba had signed the check and filled in the carpenter’s name, but had not filled in the amount because he did not know the carpenter’s charges. It turns out that the thief was this carpenter who had noticed that Bubba did not keep his door locked when he went to Bubba’s to estimate the job. The thief filled out the amount on the signed check as $1,500. In addition to the incomplete check made to him, the thief forged three other checks and deposited them. Lastly, when Bubba and the carpenter agreed on the work, Bubba wrote a $200 check to the carpenter that had not been paid when Bubba discovered the thefts. Bubba placed a valid stop-payment order with his bank, but the bank paid this check anyway 5 days later. All of the other checks were also paid by Bubba’s bank. In addition, the thief used the debit card in a $3,000 transaction. Discuss the liabilities of the parties.
Answer: Bubba's bank is liable on the forged checks and bears the loss on them. The partially completed check to the thief/carpenter, is more problematic. Bubba would be held liable for payment on the incomplete signed check. The bank is liable for not following the stop-payment order. This is true whether the order was written or oral because the improper payment occurred within 14 days of the order. Bubba is liable for $50 of the debit card transaction, or $500 if he took more than 2 days after discovering the loss to notify the bank.

Diff: 2  
Topic: Forged Signatures and Altered Checks  
Skill: Factual Application

95) Richard has a checking account at the Fourth National Bank. He receives his monthly statement on the fifteenth of every month. On March 15 he receives his statement for the previous month. Because he is busy, he glances at it and then sets it aside. Two weeks later he examines it more carefully and discovers a forged check in the amount of $500 that the bank has paid. What should Richard do? Who has responsibility for the forged check?

Answer: Richard must notify the bank as soon as possible. Richard has a duty to examine the statements (and canceled checks, if received promptly and with reasonable care to determine if any payment was not authorized because of alteration of a check or a forged signature. He is liable if Fourth Bank suffers a loss because Richard has failed to perform these duties. If Richard knows the name of the forger, the forger will be responsible. If not, the bank will probably have liability unless it is determined that Roger has failed to perform his duty to examine bank statements in a timely manner.

Diff: 2  
Topic: Forged Signatures and Altered Checks  
Skill: Factual Application
1) Secured credit refers to credit where there is a second party to pay the debt in the event that the original debtor does not.

Answer: FALSE
Diff: 1
Topic: Types of Credit

2) A debtor who is judgment-proof does not have a legal obligation for the payment of debts.

Answer: FALSE
Diff: 1
Topic: Types of Credit

3) Unsecured credit requires collateral to protect the payment of the debt.

Answer: FALSE
Diff: 1
Topic: Types of Credit

4) If a creditor repossesses a debtor's property and sells it, the proceeds must be applied to the outstanding debt.

Answer: TRUE
Diff: 1
Topic: Types of Credit

5) Unsecured creditors may repossess the debtor's property if the debtor is in default on a loan.

Answer: FALSE
Diff: 2
Topic: Types of Credit

6) If unsecured credit has been extended to a judgment-proof debtor, the creditor is unlikely to collect the debt.

Answer: TRUE
Diff: 1
Topic: Types of Credit
7) Generally, a creditor would rather be a secured creditor than an unsecured one.

Answer: TRUE
Diff: 1
Topic: Types of Credit

8) In a mortgage, the owner-debtor is the mortgagor.

Answer: TRUE
Diff: 2
Topic: Security Interests in Real Property

9) A deed of trust is a three-party arrangement to secure a loan with real property.

Answer: TRUE
Diff: 1
Topic: Security Interests in Real Property

10) The recording of a mortgage does not affect the rights and duties of the borrower and lender with respect to one another.

Answer: TRUE
Diff: 2
Topic: Security Interests in Real Property

11) Foreclosure is another word for the taking of possession of collateral.

Answer: FALSE
Diff: 2
Topic: Security Interests in Real Property

12) A deficiency in connection with a foreclosure is a determination that the debtor is in default.

Answer: FALSE
Diff: 2
Topic: Security Interests in Real Property

13) A deficiency judgment is one for the amount of a debt in excess of the value of any collateral.

Answer: TRUE
Diff: 1
Topic: Security Interests in Real Property
14) The right to redeem foreclosed property can extend beyond the date of the foreclosure sale.

Answer: TRUE
Diff: 2
Topic: Security Interests in Real Property

15) A deed of trust is an instrument that evidences the borrower's debt to the lender.

Answer: FALSE
Diff: 2
Topic: Security Interests in Real Property

16) An improperly recorded mortgage document is effective against a subsequent purchaser.

Answer: FALSE
Diff: 2
Topic: Security Interests in Real Property

17) All states permit foreclosure sales.

Answer: TRUE
Diff: 1
Topic: Security Interests in Real Property

18) A note is an instrument that gives the creditor a security interest in the debtor's property that is pledged as collateral.

Answer: FALSE
Diff: 2
Topic: Security Interests in Real Property

19) No court action is necessary when a foreclosure is by power of sale.

Answer: TRUE
Diff: 2
Topic: Security Interests in Real Property

20) A second mortgage holder has no rights of redemption if the property goes into foreclosure.

Answer: FALSE
Diff: 2
Topic: Security Interests in Real Property
21) In order to obtain a material person's lien on a piece of property, a notice of lien must be filed in the proper place and notice must be given to the owner of the affected real property.

Answer: TRUE
Diff: 1
Topic: Security Interests in Real Property

22) The nonrecordation of a mortgage or deed of trust does not affect either the legality of the instrument between the mortgagor and the mortgagee or the rights and obligations of the parties.

Answer: TRUE
Diff: 2
Topic: Recording Statutes

23) An improperly recorded document is still effective against the purchasers of real property.

Answer: FALSE
Diff: 1
Topic: Recording Statutes

24) A land sales contract is often referred to as "carrying the paper."

Answer: TRUE
Diff: 2
Topic: Land Sales Contract

25) Land sales contracts are often used for developed property.

Answer: FALSE
Diff: 2
Topic: Land Sales Contract

26) Material person's liens are usually subject to the debtor's right of redemption.

Answer: TRUE
Diff: 3
Topic: Material Person's Lien

27) A lien release is a document signed by a contractor, laborer, or material person enforcing his or her statutory lien against the property owner.

Answer: FALSE
Diff: 3
Topic: Lien Release
28) Which of the following is true about the distinction between secured and unsecured credit?
   A) Secured debt is debt that has already been paid, and unsecured has not yet been paid.
   B) Secured debt is expected to be collected, whereas collection of unsecured debt is doubtful.
   C) Secured debt will be collected over more than 1 year, whereas unsecured debt is expected to be collected within 1 year.
   D) Secured debt has collateral associated with it, whereas unsecured debt has no associated collateral.
   E) Secured debt results from a judgment of the court, whereas unsecured debt results from the agreement of the parties.

   Answer: D
   Diff: 1
   Topic: Types of Credit
   Skill: Legal Concepts

29) The concept of a deficiency judgment applies to:
   A) secured debt only
   B) unsecured debt only
   C) both secured and unsecured debt
   D) neither secured nor unsecured debt

   Answer: A
   Diff: 2
   Topic: Types of Credit
   Skill: Legal Concepts

30) The legal right in the debtor's property granted by the debtor to a creditor is known as:
   A) collateral
   B) a garnishment
   C) a financing statement
   D) a security interest
   E) a right of redemption

   Answer: D
   Diff: 2
   Topic: Types of Credit
   Skill: Legal Concepts
31) When a debtor fails to pay a debt, and the value of the collateral is less than the full amount of the debt, which of the following is generally true?
   A) The creditor can obtain a deficiency judgment against the debtor for the amount of the debt that was not satisfied from the collateral.
   B) The creditor must absorb the remaining loss and has no further remedy.
   C) The creditor must file a bankruptcy proceeding against the debtor in order to obtain further relief.
   D) The creditor must record its security interest before proceeding further.

   Answer: A
   Diff: 3
   Topic: Types of Credit
   Skill: Legal Concepts

32) Which of the following is not personal property?
   A) motor vehicles
   B) jewelry
   C) stock certificates
   D) condominiums
   E) copyrights

   Answer: D
   Diff: 1
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts

33) Which of the following is true about service providers' liens on personal property?
   A) The liens attach with respect to any work performed on personal property that benefits the property regardless of the consent of the owner of the property.
   B) They can exist only if provided for by statute.
   C) Whether or not they are recorded, the lien will remain attached to the property if the debtor transfers the property to another.
   D) Such a lien applies only to the reasonable value of the services provided.

   Answer: D
   Diff: 2
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts
34) Which of the following is not generally true about artisan's and mechanic's liens?
   A) They apply where one provides materials or services with respect to goods.
   B) They require that the labor or materials have been provided in the ordinary course of business.
   C) There must have been authorization from the owner of the goods for the work done on them.
   D) The artisan or mechanic can hold the goods until the amount owed is paid, but cannot sell the goods.
   E) Artisan's and mechanic's liens are super-priority liens given priority over any existing liens on the goods.

   Answer: D
   Diff: 3
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts

35) What is a mortgage?
   A) a loan to purchase a house or other real property
   B) a contract to purchase a house or other real property
   C) any loan associated with real property
   D) a security agreement in which real property is pledged as collateral for the related debt

   Answer: D
   Diff: 2
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts

36) How are mortgages and deeds of trust related to one another?
   A) They are two different methods to give a lender a security interest in real property of the debtor.
   B) They are two names for the same instrument, and thus can be used interchangeably.
   C) They are two distinct aspects of a security agreement covering real property, both of which must be present for the security interest to be valid.
   D) Mortgages are used for real property, and deeds of trust are used for personal property.
   E) Mortgages are used to create a security agreement covering residential real property, and deeds of trust are used in connection with commercial real property.

   Answer: A
   Diff: 2
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts
37) Which of the following is a two-party instrument?
   A) deed of trust
   B) mortgage
   C) both a deed of trust and a mortgage
   D) neither a deed of trust nor a mortgage

   Answer: B
   Diff: 1
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts

38) Which of the following is a three-party instrument?
   A) deed of trust
   B) mortgage
   C) both a deed of trust and a mortgage
   D) neither a deed of trust nor a mortgage

   Answer: A
   Diff: 1
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts

39) Which of the following is commonly used to create a security interest in real property to secure a loan?
   A) deed of trust
   B) mortgage
   C) both a deed of trust and a mortgage
   D) neither a deed of trust nor a mortgage

   Answer: C
   Diff: 1
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts

40) Which of the following best describes how a deed of trust works?
   A) The state gives a deed to the lender to hold until the borrower satisfies the debt.
   B) The borrower gives a deed to the lender to hold until the borrower satisfies the debt.
   C) When a party borrows money to purchase property, the seller holds the deed until the debt is paid off, at which point it will be conveyed to the borrower.
   D) When a trust is the owner of real property, a special type of deed is required.
   E) The borrower conveys a deed to a third party who holds legal title until the debt is paid off or the borrower defaults.

   Answer: E
   Diff: 2
   Topic: Security Interests in Personal Property
   Skill: Legal Concepts
41) Which of the following must be recorded in order to be valid between the debtor and creditor?
   A) deed of trust
   B) mortgage
   C) both a deed of trust and a mortgage
   D) neither a deed of trust nor a mortgage

Answer: D
Diff: 2
Topic: Security Interests in Personal Property
Skill: Legal Concepts

42) Which of the following must be recorded in order to gain priority over later security interests in the same parcel of property?
   A) deed of trust
   B) mortgage
   C) both a deed of trust and a mortgage
   D) neither a deed of trust nor a mortgage

Answer: C
Diff: 1
Topic: Security Interests in Personal Property
Skill: Legal Concepts

43) The process by which a lender uses the secured property to satisfy a debt in default is called:
   A) enactment
   B) deed entrustment
   C) lien release
   D) recording
   E) foreclosure

Answer: E
Diff: 1
Topic: Security Interests in Personal Property
Skill: Legal Concepts
44) What is a "power of sale" in connection with a mortgage?
   A) It is a statute allowing the secured property to be sold in order to satisfy the related debt if it is not paid according to the stated terms.
   B) It is a provision in a mortgage or deed of trust that allows a foreclosure process that does not involve court action.
   C) It is a provision in a mortgage or deed of trust that allows the borrower to sell the property even though the loan associated with the mortgage has not been paid off.
   D) It is the general principle that a mortgage or deed of trust cannot take away the borrower's legal right to sell property whether or not there is a security interest associated with it.

Answer:  B
Diff: 2
Topic:  Security Interests in Personal Property
Skill:  Legal Concepts

45) A statute that prevents a mortgage holder from seeking recovery directly from the borrower any difference in the amount of debt owed and the amount that the property brings at a foreclosure sale is called a(n):
   A) homeowner loss prevention statute
   B) lender's satisfaction statute
   C) antideficiency statute
   D) partial lender recovery statute
   E) modified debtor obligation statute

Answer:  C
Diff: 2
Topic:  Security Interests in Personal Property
Skill:  Legal Concepts

46) What does a right of redemption allow in connection with a mortgage or deed of trust?
   A) It allows the granting of a second mortgage on the same property that is already secured.
   B) It allows the lender to use the property to satisfy the debt if it goes into default.
   C) It allows the use of a deed of trust arrangement in place of a conventional mortgage.
   D) It allows the ability to foreclose on the property without court action.
   E) It allows the borrower to recover foreclosed property by paying off the related debt.

Answer:  E
Diff: 2
Topic:  Security Interests in Personal Property
Skill:  Legal Concepts
47) Under a land sales contract, which of the following is true?
   A) A third-party lender provides financing for the purchase of a piece of property.
   B) Credit is extended directly by the seller to the buyer, with the buyer not receiving a deed
      from the seller until the debt obligation is fully satisfied.
   C) Credit is extended directly by the seller to the buyer, with the buyer receiving a deed
      immediately and that will become null and void upon default.
   D) Land is sold that will not involve the use of a mortgage or deed of trust.

Answer: B
Diff: 2
Topic: Security Interests in Personal Property
Skill: Legal Concepts

48) A material person's lien can be obtained on real property by a contractor who has not been
paid and who has:
   A) provided materials used on the real property
   B) provided labor on the real property
   C) provided materials used on the real property or labor on the real property
   D) provided materials or labor used on personal property that was located on the real
      property at the time of providing the materials or labor
   E) C and D

Answer: C
Diff: 3
Topic: Security Interests in Personal Property
Skill: Legal Concepts

49) Sharon borrowed $200,000 in order to purchase a home. She entered into a mortgage
agreement with the lender, but the lender never recorded the mortgage. Sharon then borrowed
additional money from a second lender and executed a mortgage, which the second lender
recorded. Which of the following is true?
   A) The first lender cannot enforce its mortgage against Sharon.
   B) The rights of the second lender will be determined without regard to the mortgage of the
      first lender.
   C) Neither mortgage is enforceable.
   D) The recording of the second mortgage ahead of the first caused the second to be invalid.
   E) Sharon will be unable to sell the home until all valid mortgages against it are properly
      recorded.

Answer: B
Diff: 3
Topic: Security Interests in Personal Property
Skill: Factual Application
50) Jack has a construction company that specializes in home remodeling and renovation. He enters into a contract with Sandra to remodel her basement. Sandra agrees to pay in three installments, the third of which is due at the time of completion. Sandra makes the first two payments on schedule but refuses to make the final one even though the job has been completed. To preserve his rights, Jack files against the property. What type of filing has Jack most likely done?

A) a mechanic's lien  
B) a mortgage  
C) a deed of trust  
D) a deficiency judgment  
E) a foreclosure

Answer: A  
Diff: 2  
Topic: Security Interests in Personal Property  
Skill: Factual Application

51) Bernie purchases a house for $100,000. He puts $20,000 down, and borrows $80,000 from ABC Bank. ABC Bank does not record the mortgage. Bernie has expensive taste. He later goes to DEF Bank and obtains another $80,000 loan on the house. DEF records the mortgage. Bernie subsequently defaults on both mortgages. What are the rights of the banks?

A) The first bank to file has the right to take the house.  
B) ABC has a superior claim to the home because it made the first mortgage to Bernie.  
C) DEF has a superior claim to the home because it recorded the mortgage.  
D) Both banks are out of luck.

Answer: C  
Diff: 2  
Skill: Factual Application

52) Are the various requirements for filing mortgages and other security interests too burdensome on creditors? Do they work too much to the benefit of debtors?

Answer: The filing requirements do not affect the obligation of the debtor. The filing requirements are for the protection of creditors against claims by other creditors. They give notice to a potential creditor of preexisting security interests and protect the creditor against later security interests.  
Diff: 2  
Skill: Ethics and Policy
53) Is a residential homeowner's right of redemption too great a protection for the homeowner? If someone has purchased a home at a foreclosure sale, why should the homeowner in default be able to redeem the property after the fact?

Answer: The law does not like to see homeowners lose their homes, and thus gives them a "second chance." The redemption usually requires full payment of the debt, so lenders are not hurt if the right is exercised. Furthermore, it is fair to the purchaser at a foreclosure sale because the purchaser is assumed to be aware of any redemption rights at the time of sale, and can decide whether to bid and how much to bid based on this possibility.

Diff: 2  
Skill: Ethics and Policy

54) If the nonrecordation of a mortgage or deed of trust does not affect either the legality of the instrument between the mortgagor and the mortgagee or the rights and obligations of the parties, then why bother having a recording statute?

Answer: The recording of a mortgage or deed gives potential lenders or purchasers of real property the ability to determine whether there are any existing liens (mortgages) on the property. Note too that despite the nonrecordation, the mortgagor is obligated to pay the amount of the mortgage according to the terms of the mortgage.

Diff: 2  
Skill: Ethics and Policy

55) Mike has a long history of purchasing items on credit. At the present time, Mike has six secured creditors to whom he owes a total of $60,000 and two unsecured creditors to whom he owes $30,000. Mike recently was laid off from his job. It appears that he will have a difficult time finding a new job, and any job he finds will likely carry a salary lower than the job that he recently lost. What factors should a secured creditor consider in deciding whether to enter into a composition agreement? How would the analysis be different for unsecured creditors?

Answer: A secured creditor would consider the amount owed, the net realizable value of the security, Mike's job prospects, the chances of collection without a composition agreement, and the likelihood and consequences of Mike's filing bankruptcy. The value of collateral would not be relevant to unsecured creditors.

Diff: 2  
Topic: Collection Remedies  
Skill: Factual Application
56) Nora and Jed borrow $700,000 from Your Bank to purchase a house near the lake and they (Nora and Jed) give a mortgage to Your Bank as collateral in order to secure the loan. Nora and Jed prove to be poor money managers and thereafter default on their loan to Your Bank. Your Bank begins foreclosure proceedings and proceeds to sell the home at a judicial sale. Paul and Penelope fall in love with the house and purchase it for $850,000. What if anything must Your Bank remit to Nora and Jed?

Answer: Your Bank may keep $700,000 to cover the cost of the home. Further, if Your Bank is in a state that allows the mortgagee-lender to recover the costs of the foreclosure and judicial sale from the sales proceeds, it may also be reimbursed for these as well. Any leftover amount must go to Nora and Jed.

Diff: 2
Topic: Foreclosure Sale
Skill: Factual Application
1) The debtor in a secured transaction is in most cases the owner of the collateral.

Answer: TRUE
Diff: 1
Topic: Article 9 of the UCC - Security Interests in Personal Property

2) If a borrower fails to repay the loan, the responsibility to pay it back is called suretyship.

Answer: TRUE
Diff: 2
Topic: Article 9 of the UCC - Security Interests in Personal Property

3) The secured party in a secured transaction is usually a lender.

Answer: TRUE
Diff: 1
Topic: Article 9 of the UCC - Security Interests in Personal Property

4) Article 9 of the UCC governs secured transactions in personal property.

Answer: TRUE
Diff: 1
Topic: Article 9 of the UCC - Security Interests in Personal Property

5) A security interest must be in writing unless the creditor has possession of the collateral.

Answer: TRUE
Diff: 2
Topic: Security Interests in Personal Property

6) If a debtor who purchases an item with unsecured credit defaults on the loan, the creditor’s only means of recourse is to sue the debtor to try to recover the unpaid loan amount.

Answer: TRUE
Diff: 1
Topic: Security Interests in Personal Property
7) Value for a security interest is defined as any consideration sufficient to support a simple contract.

Answer: TRUE  
Diff: 2  
Topic: Security Interests in Personal Property

8) A security interest can attach to the property prior to the debtor having an interest in the property.

Answer: FALSE  
Diff: 1  
Topic: Security Interests in Personal Property

9) A three-party secured transaction happens when a seller sells goods to a buyer who has obtained financing from a third-party lender that takes a security interest in the goods sold.

Answer: TRUE  
Diff: 2  
Topic: Security Interests in Personal Property

10) A security interest may not be created in chattel paper.

Answer: FALSE  
Diff: 2  
Topic: Security Interests in Personal Property

11) Article 9 of the UCC applies to transactions involving real estate mortgages and landlord liens.

Answer: FALSE  
Diff: 2  
Topic: Security Interests in Personal Property

12) Ownership or possessory rights to property have no bearing on the security interest being given.

Answer: FALSE  
Diff: 2  
Topic: Attachment

13) The debtor must have a current or future legal right in or the right to possession of the collateral.

Answer: TRUE  
Diff: 2  
Topic: Attachment
14) After-acquired property is property that the debtor acquires after the security agreement is executed.

Answer: TRUE
Diff: 1
Topic: The Floating Lien Concept

15) Checks, notes, stocks, and bonds can all be subject to a security interest.

Answer: TRUE
Diff: 1
Topic: The Floating Lien Concept

16) A security agreement cannot cover after-acquired property of the debtor.

Answer: FALSE
Diff: 1
Topic: The Floating Lien Concept

17) Unless otherwise agreed, a security agreement automatically gives the creditor rights in the proceeds of the collateral.

Answer: TRUE
Diff: 1
Topic: The Floating Lien Concept

18) A secured party automatically has the right to receive the proceeds of a sale of collateral that was subject to a security agreement.

Answer: TRUE
Diff: 2
Topic: The Floating Lien Concept

19) Perfection is necessary in order for a creditor to have a valid security interest.

Answer: FALSE
Diff: 3
Topic: Perfecting a Security Interest

20) When filing is required to perfect a security agreement, the security agreement must be filed.

Answer: FALSE
Diff: 2
Topic: Perfecting a Security Interest
21) Financing statements are effective for 5 years from the date of filing.

Answer: TRUE
Diff: 1
Topic: Perfecting a Security Interest

22) The filing requirements for security interests can be different in the various states, but the office of the secretary of state and the county clerk’s office are often used.

Answer: TRUE
Diff: 2
Topic: Perfecting a Security Interest

23) A financing statement covering fixtures is called a blanket filing.

Answer: FALSE
Diff: 1
Topic: Perfecting a Security Interest

24) A security interest can be perfected merely by possession of the collateral by the secured party.

Answer: TRUE
Diff: 1
Topic: Perfecting a Security Interest

25) The automatic perfection rule applies only to a purchase money security interest in consumer goods.

Answer: TRUE
Diff: 2
Topic: Perfecting a Security Interest

26) A purchase money security interest in a motor vehicle is covered by the automatic perfection rule.

Answer: FALSE
Diff: 2
Topic: Perfecting a Security Interest

27) A certificate of filing indicates whether there are any currently effective financing statements naming a particular individual as the debtor.

Answer: TRUE
Diff: 1
Topic: Perfecting a Security Interest
28) A termination statement is filed by the debtor when a secured debt is paid off.

Answer: FALSE
Diff: 2
Topic: Perfecting a Security Interest

29) A financing statement can be filed regardless of a creditor's physical possession of the collateral.

Answer: FALSE
Diff: 1
Topic: Perfection by Possession of Collateral

30) A purchase money security interest automatically perfects the creditor's security interest at the time of sale.

Answer: TRUE
Diff: 2
Topic: Perfection by a Purchase Money Security Interest in Consumer Goods

31) Once a secured consumer debt is paid, the secured party must file a termination statement.

Answer: TRUE
Diff: 1
Topic: Termination Statement

32) A termination statement must be filed within 10 days of receipt of a debtor's written demand or within 1 month of the debt being paid, whichever comes first.

Answer: TRUE
Diff: 2
Topic: Termination Statement

33) If an affected secured party fails to file or send a termination statement as required, he or she is liable to the debtor for $1,000.

Answer: FALSE
Diff: 2
Topic: Termination Statement

34) More than one creditor can have a perfected security interest in the same collateral.

Answer: TRUE
Diff: 2
Topic: Priority of Claims
35) A perfected security interest will take priority over an unperfected security interest even if the unperfected security interest attached first.

Answer: TRUE
Diff: 2
Topic: Priority of Claims

36) A "buyer in the ordinary course of business" who purchases goods from a merchant takes those goods free of any perfected or unperfected security interest in that merchant's inventory.

Answer: TRUE
Diff: 1
Topic: Priority of Claims

37) If the collateral is something other than inventory, a perfected purchase money security interest would prevail over a perfected nonpurchase money security interest in after-acquired property.

Answer: TRUE
Diff: 3
Topic: Exceptions to the Perfection-Priority Rule

38) A buyer in the ordinary course of business is a person who, with knowledge of another's ownership or security interest in goods buys the goods, in the ordinary course of business from a person in the business of selling goods of that kind.

Answer: FALSE
Diff: 1
Topic: Exceptions to the Perfection-Priority Rule

39) The parties are free to define the term "default" in their security agreement.

Answer: TRUE
Diff: 1
Topic: Secured Creditor's Remedies

40) When the creditor repossesses the collateral, the creditor always retains the right to keep the collateral rather than sell it to satisfy the debt.

Answer: FALSE
Diff: 1
Topic: Secured Creditor's Remedies
41) If a sale of collateral produces any surplus funds after paying expenses and the underlying debt, the debtor is entitled to the surplus.

Answer: TRUE
Diff: 2
Topic: Secured Creditor's Remedies

42) A secured party may cure a default by taking possession of the debtor's collateral.

Answer: TRUE
Diff: 1
Topic: Secured Creditor's Remedies

43) Under no circumstance may a secured creditor repossess and retain the debtor's collateral in satisfaction of the debtor's obligation.

Answer: FALSE
Diff: 1
Topic: Secured Creditor's Remedies

44) A secured party may sell, lease, or otherwise dispose of collateral.

Answer: TRUE
Diff: 2
Topic: Secured Creditor's Remedies

45) If the proceeds from the disposition of the debtor's collateral are insufficient to satisfy the debt to the secured party, the debtor is personally liable to the secured party for the deficiency.

Answer: TRUE
Diff: 2
Topic: Secured Creditor's Remedies

46) A secured creditor may not relinquish his or her security interest in the debtor's collateral.

Answer: FALSE
Diff: 2
Topic: Secured Creditor's Remedies
47) Secured transactions usually involve:
   A) one or two parties  
   B) one, two, or three parties  
   C) two or three parties  
   D) two, three, or four parties  
   E) one, two, three, or four parties

Answer: C  
Diff: 1  
Topic: Article 9 of the UCC - Security Interests in Personal Property  
Skill: Legal Concepts

48) Which of the following elements must exist for there to be a valid, enforceable security agreement?
   A) a written security agreement  
   B) the creditor must give value to the debtor  
   C) the debtor must have an interest in the collateral  
   D) A, B, and C  
   E) B and C only

Answer: E  
Diff: 2  
Topic: Creating a Security Interest in Personal Property  
Skill: Legal Concepts

49) Which of the following statements is false?
   A) If an attachment occurs, there is a valid security interest between the debtor and the creditor.  
   B) Perfection is required to protect the security interest against the claims of third parties.  
   C) Some third parties have preference over the holders of perfected security interests.  
   D) Some security interests are automatically perfected.  
   E) There must always be a written agreement for attachment.

Answer: E  
Diff: 2  
Topic: Creating a Security Interest in Personal Property  
Skill: Legal Concepts

50) Article 9 of the UCC does not cover a security interest in the following:
   A) land  
   B) inventory  
   C) equipment  
   D) patents and copyrights

Answer: A  
Diff: 1  
Topic: Creating a Security Interest in Personal Property  
Skill: Legal Concepts
51) When a valid security interest becomes effective as between debtor and creditor, it is said to:

A) terminate the debtor's interest  
B) attach to the subject matter  
C) become perfected  
D) entitle the creditor to possession

Answer:  B  
Diff: 2  
Topic:  Creating a Security Interest in Personal Property  
Skill:  Legal Concepts

52) Which of the following is not one of the general categories of goods subject to a security interest under Article 9 of the UCC?

A) consumer goods  
B) equipment  
C) building materials  
D) farm products  
E) inventory

Answer:  C  
Diff: 2  
Topic:  Creating a Security Interest in Personal Property  
Skill:  Legal Concepts

53) Which of the following occurs upon the attachment of a security interest?

A) The creditor obtains certain rights that become effective if the debtor defaults.  
B) The creditor's security interest will obtain priority over all later security interests.  
C) Notice is given to the world that the creditor has a security interest in the collateral.  
D) Title to the collateral shifts to the creditor.  
E) The creditor obtains possession of the collateral.

Answer:  A  
Diff: 2  
Topic:  Creating a Security Interest in Personal Property  
Skill:  Legal Concepts
54) A security agreement provides that the agreement and collateral covers the current loan but also any future loans from this creditor to this debtor. This provision covers:
   A) after-acquired property
   B) proceeds
   C) future advances
   D) consumer goods
   E) floating liens

Answer: C
Diff: 2
Topic: The Floating Lien Concept
Skill: Legal Concepts

55) A type of security interest that does not attach to a single piece of property but also covers after-acquired property and future advances is known as a:
   A) temporary lien
   B) fixed lien
   C) transitory lien
   D) floating lien

Answer: D
Diff: 1
Topic: The Floating Lien Concept
Skill: Legal Concepts

56) In order for a security interest to give the secured party protection against the claims of other creditors of the debtor, the security interest must:
   A) terminate the debtor's interest
   B) attach to the subject matter
   C) become perfected
   D) entitle the creditor to possession

Answer: C
Diff: 2
Topic: Perfecting a Security Interest
Skill: Legal Concepts

57) Which of the following is true about attachment and perfection of security interests?
   A) A security interest may be either attached or perfected, but not both.
   B) A security interest must be perfected before it can attach.
   C) A security interest may be enforced by the creditor even if it has not been perfected, so long as it has attached.
   D) Attachment generally gives the same rights to the secured party as perfection.

Answer: C
Diff: 3
Topic: Perfecting a Security Interest
Skill: Legal Concepts
58) A security interest in a piece of equipment owned by a business would most often be perfected:
   A) by filing
   B) by possession
   C) by an agreement to that effect between debtor and creditor
   D) automatically

Answer: A
Diff: 2
Topic: Perfecting a Security Interest
Skill: Legal Concepts

59) Which of the following is true about security agreements and financing statements?
   A) These are two terms for essentially the same document.
   B) Both must be filed in order to perfect a security agreement.
   C) Both must exist in order for a security interest to attach.
   D) The financing statement gives constructive notice to the world of the existence of the related security agreement.
   E) The security agreement is unenforceable until a financing statement has been filed.

Answer: D
Diff: 3
Topic: Perfecting a Security Interest
Skill: Legal Concepts

60) In order to perfect a security interest by filing, which is true about the items to be filed?
   A) In all cases, the financing statement must be filed.
   B) In all cases, the security agreement must be filed.
   C) In all cases, both the financing statement and the security agreement must be filed.
   D) In all cases, the financing statement and underlying loan agreement must be filed.
   E) In all cases, the financing statement must be filed, except that the security agreement can be substituted for the financing statement if desired.

Answer: E
Diff: 3
Topic: Perfecting a Security Interest
Skill: Legal Concepts
61) Which of the following items does not need to be included in a financing statement?
   A) the debtor's name
   B) the debtor's mailing address
   C) the secured party's name
   D) a description of the collateral
   E) what constitutes a default in the underlying loan agreement

   Answer: E
   Diff: 2
   Topic: Perfecting a Security Interest
   Skill: Legal Concepts

62) A filed financing statement remains in force for a period of:
   A) 5 years from the date of filing
   B) 4 years from the date of filing
   C) 6 months from the date of filing
   D) 90 days from the date of filing

   Answer: A
   Diff: 1
   Topic: Perfecting a Security Interest
   Skill: Legal Concepts

63) Which of the following is true about perfection and attachment?
   A) Either can occur before the other.
   B) They always occur simultaneously.
   C) Attachment cannot occur until there has been perfection.
   D) Attachment must occur before or at the same time as perfection.
   E) There can only be one attached and one perfected security interest in a given piece of collateral.

   Answer: D
   Diff: 3
   Topic: Perfecting a Security Interest
   Skill: Legal Concepts

64) Which security interests are perfected at the moment of attachment?
   A) all security interests
   B) all purchase money security interests
   C) all consumer good security interests
   D) all consumer good purchase money security interests
   E) all pledges

   Answer: D
   Diff: 2
   Topic: Perfecting a Security Interest
   Skill: Legal Concepts
65) Under Article 9 of the UCC, whatever is received upon the sale, exchange, collection, or other disposition of collateral, is classified as:
   A) proceeds
   B) goods
   C) documents
   D) value

Answer: A
Diff: 1
Topic: Perfecting a Security Interest
Skill: Legal Concepts

66) A security agreement can cover:
   A) property not owned at the time of the agreement, but acquired later
   B) credit not owed at the time of the agreement, but acquired later
   C) neither A nor B
   D) both A and B

Answer: D
Diff: 1
Topic: Perfecting a Security Interest
Skill: Legal Concepts

67) Which of the following apply to filing of a financing statement?
   A) The public may review financing statements.
   B) The majority of states require financing statements pertaining to farm equipment, farm products and the like be filed with the county clerk.
   C) A continuation statement may be filed up to six months before the expiration of the financing statement's five year term.
   D) All of the above apply.

Answer: D
Diff: 3
Topic: Perfecting a Security Interest
Skill: Legal Concepts

68) Which of the following would relieve a creditor of filing a financing statement?
   A) by filing previous filing statements with the appropriate government office
   B) an agreement with the debtor that the creditor will not file a financing statement
   C) by the creditor taking physical possession of the collateral
   D) by filing an exemption for noncompliance of filing a financing statement

Answer: C
Diff: 3
Topic: Perfecting a Security Interest
Skill: Legal Concepts
69) If a security interest is perfected but thereafter becomes commingled with other goods that also have perfected security interest ultimately resulting in a product or mass and loss of identity, how does the security interest rank?
   A) equally according to the ration that the cost of goods to which interest originally attached bears to the cost of the total product or mass
   B) first in time
   C) first to be chosen
   D) there is no ranking of the security interest and a loss results
   E) None of these are correct.

Answer: A
Diff: 3
Topic: Priority of Claims
Skill: Legal Concepts

70) Which of the following are rules established by the UCC when determining priority among conflicting claims of creditors?
   A) A secured creditor's interest is equal to an unsecured creditor's interest.
   B) A perfected security interest has priority over a mere interest in the same collateral.
   C) If there are two or more perfected security interest in the same collateral, the last to perfect has priority as it is the most recent interest that has been filed.
   D) All of these are correct.

Answer: B
Diff: 2
Topic: Priority of Claims
Skill: Legal Concepts

71) Under Article 9 of the UCC, "protection of the buyers of goods" means that which of the following is true?
   A) A buyer in the ordinary course of business takes free of any security interest.
   B) The buyer can never take title to goods.
   C) Buyers can return nonconforming goods.
   D) Goods must be delivered to a common carrier in order for title to pass.

Answer: A
Diff: 1
Topic: Priority of Claims
Skill: Legal Concepts
72) If one party's security interest attached in March, but has not been perfected, and another creditor's security interest attached and perfected in April, which of the following is true as of the following December?
   A) The security interests have equal priority.
   B) The security interest that attached in March has priority.
   C) The security interest that attached in March has priority, but only if it became perfected prior to the other creditor bringing an action on the collateral.
   D) The security interest that was perfected in April has priority.

Answer: D  
Diff: 3  
Topic: Priority of Claims  
Skill: Legal Concepts

73) Generally, if two creditors have perfected security interests in the same collateral, only one of which is a purchase money security interest, which has the superior right (priority), assuming all notice is properly given within the appropriate time periods?
   A) the first to perfect
   B) the first to attach
   C) the purchase money security interest
   D) they have equal priority

Answer: C  
Diff: 2  
Topic: Priority of Claims  
Skill: Legal Concepts

74) Which of the following is true about perfection of purchase money security interests?
   A) They perfect automatically for any type of goods upon attachment.
   B) For equipment, the purchase money security interest has priority so long as filing occurs within 10 days after the debtor receives possession of the equipment.
   C) There is no special treatment for purchase money security interests in inventory.
   D) For consumer goods, they perfect even without attachment.

Answer: B  
Diff: 2  
Topic: Priority of Claims  
Skill: Legal Concepts
75) Which of the following persons can defeat a perfected security interest?
   A) a buyer in the ordinary course of business
   B) certain buyers of secondhand consumer goods when a financing statement has not been filed
   C) people with artisan's or mechanic's liens
   D) A, B, and C
   E) A and B only

   Answer: D
   Diff: 3
   Topic: Priority of Claims
   Skill: Legal Concepts

76) A secondhand buyer of consumer goods that were subject to a purchase money security interest in the hands of the original buyer takes those goods free of the purchase money security interest:
   A) under no circumstances
   B) so long as the original creditor perfected by automatic perfection
   C) so long as the original creditor perfected by filing a financing statement
   D) if the original creditor did not file a financing statement and the secondhand buyer does not have actual or constructive notice of the security interest
   E) in all circumstances

   Answer: D
   Diff: 3
   Topic: Priority of Claims
   Skill: Legal Concepts

77) Which of the following statements is false?
   A) If the proceeds from the sale of the collateral do not pay the underlying debt, the creditor may obtain a deficiency judgment against the debtor.
   B) If the proceeds from the sale of the collateral are more than the underlying debt and expenses, the debtor has a right to the excess.
   C) Generally, the debtor has a right of redemption as to the collateral.
   D) In all cases, the creditor has the right to retain the collateral.

   Answer: D
   Diff: 3
   Topic: Default and Remedies
   Skill: Legal Concepts
78) A creditor who has repossessed collateral may choose to retain it:
   A) in all circumstances
   B) in all circumstances unless the secured party receives an appropriate notice within 21 days
   C) in all circumstances when the debtor willfully did not pay the debt
   D) in all circumstances unless the secured party receives an appropriate notice within 21 days or in the case of consumer goods, if more than 60 percent of the price has been paid.

Answer: D
Diff: 2
Topic: Default and Remedies
Skill: Legal Concepts

79) Which of the following is true?
   A) The creditor is generally not entitled to obtain a deficiency judgment where the collateral is goods if the sale of the goods does not cover the amount owed on the underlying debt.
   B) The right of redemption for collateral extends until a reasonable time after its disposal.
   C) To exercise the right of redemption, the debtor must not only pay the amount owed, but also all related costs of the creditor in connection with the repossession of the collateral.
   D) Deficiency judgments are generally against public policy unless reasonable in amount.

Answer: C
Diff: 3
Topic: Default and Remedies
Skill: Legal Concepts

80) Pat went to Eighth National Bank in Oregon and obtained a loan to purchase a computer from a friend. Pat signed a security agreement granting the bank a security interest in the computer. Pat planned to use this computer in his home-based publishing business. The bank gave Pat $2,500 to use in purchasing the computer. However, Pat immediately went to Las Vegas without purchasing the computer and has not been seen since. The bank has filed a financing statement covering the computer. The bank wants the computer. Can the bank get the computer?
   A) Yes, because the computer is equipment.
   B) Yes, so long as no one else had an earlier perfected security interest in the computer.
   C) No, because Pat is no longer in the state of Oregon.
   D) No, because the security interest has not attached yet.
   E) No, because the bank must first try to collect from Pat.

Answer: D
Diff: 3
Topic: Creating a Security Interest in Personal Property
Skill: Factual Application
81) Sandy purchases a piece of equipment to use in her business. The seller of the equipment extended credit to Sandy to enable her to purchase the equipment. Sandy signs a security agreement, but the seller of the equipment does not file a financing statement anywhere. Sandy defaults on the loan and the seller of the equipment wants to get possession of the equipment. Can the seller repossess the equipment?
   A) No, because the equipment is not consumer goods.
   B) No, because the seller did not file a financing statement.
   C) Yes, because there is a valid security agreement.
   D) Yes, because there is automatic perfection.

Answer:  C
Diff: 3
Topic:  Creating a Security Interest in Personal Property
Skill:  Factual Application

82) Ajax Corporation borrowed $50,000 from National Bank, giving National a security interest in its factory equipment. The agreement stated that the equipment would be security for this $50,000 loan and any future loans that National made to Ajax. National filed a valid financing statement. Over the next several months, Ajax borrowed another $100,000 from National. No additional financing statements were filed. Ajax has not made any payments on its loans from National. Ajax defaults on these loans. National wants to foreclose on the collateral. Assuming this security agreement is valid and perfected, how much of National's debt is secured?
   A) None, because this was not a purchase money situation.
   B) Only the first $50,000 because financing statements were not filed on the last $100,000.
   C) Only the first $50,000 because future advances clauses are not valid.
   D) The entire $150,000 is secured.

Answer:  D
Diff: 2
Topic:  Perfecting a Security Interest
Skill:  Factual Application

83) A car dealer borrowed $500,000 from a bank and signed a security agreement giving the bank a security interest in "all current inventory, and all inventory acquired in the future." The bank forgot to file a financing statement. One year later, the car dealer defaults. At the time of default, the dealer owed $400,000 and had 275 cars in inventory, only 15 of which had been in inventory when the security agreement was signed. What can the bank do with respect to the dealer's inventory?
   A) Repossess all the cars, sell them, and keep all of the proceeds.
   B) Repossess all the cars, sell them, and keep the proceeds, but not more than $500,000.
   C) Repossess all the cars, sell them, and keep the proceeds, but not more than $400,000.
   D) Repossess only the 15 cars that were in inventory when the security agreement was signed, sell them, and keep the proceeds, but not more than $400,000.
   E) Not repossess any of the cars because the bank has not filed a financing statement.

Answer:  C
Diff: 3
Topic:  Perfecting a Security Interest
Skill:  Factual Application
84) Robert borrows $500 from a pawnshop, leaving his class ring as collateral. Later, Robert borrows $200 from the bank. Robert signs a financing statement giving the bank a security interest in this ring. If Robert defaults on both loans, who has superior rights to the ring?

A) The pawnshop has superior rights, because it was the first security agreement.
B) The pawnshop has superior rights, because it was the first to perfect.
C) The pawnshop has superior rights, because the bank’s interest is not perfected.
D) The bank has superior rights, because the pawnshop’s security agreement is not in writing.
E) The bank has superior rights, because the pawnshop's interest is not perfected.

Answer: B
Diff: 3
Topic: Priority of Claims
Skill: Factual Application

85) Fourthbank lent $50,000 to Mary, and took a security interest in 1,000 shares of Mary's stock in Specialized Motors. The bank took possession of the stock certificates. Mary then borrowed $20,000 from her brother, and signed a security agreement with her brother. Her brother immediately filed a financing statement. If the stock is worth $60,000 and Mary defaults on both loans, what is the outcome?

A) Fourthbank gets $50,000 and her brother gets $10,000.
B) Fourthbank gets $40,000 and her brother gets $20,000.
C) Fourthbank and her brother split the proceeds in a 5:2 ratio.
D) Her brother gets $20,000 and Fourthbank gets nothing.
E) Fourthbank gets $50,000 and her brother gets nothing.

Answer: A
Diff: 2
Topic: Priority of Claims
Skill: Factual Application

86) Sam went to Stable National Bank, borrowed $1,000, and granted a security interest in his sailboat to the bank. This security interest attached on March 1 and was perfected when the bank filed a financing statement on May 15. On April 12, Sam went to Solid National Bank, borrowed $2,000, and granted a security interest on the same sailboat. Solid perfected its security interest by filing a financing statement on April 20. Sam defaulted on both loans in June, having paid off none of the principal on either loan. Both banks want to repossess the boat. If the boat can be sold for $1,200, how much of the $1,200 would each bank be entitled to receive?

A) Stable: $1,000; Solid: $0
B) Stable: $1,000; Solid: $200
C) Stable: $400; Solid: $800
D) Stable: $0; Solid: $800
E) Stable: $0; Solid: $1,200

Answer: E
Diff: 3
Topic: Priority of Claims
Skill: Factual Application
87) JKL, Inc. operates a retail appliance store. JKL borrows $100,000 from First Bank, giving the bank a security interest in all of its current and after-acquired inventory. The bank properly perfects its security interest. Later, JKL buys some additional inventory from Wholesalers, Inc. JKL cannot pay for the inventory purchase, so it gives Wholesalers a security interest in this inventory. Wholesalers perfects its security interest. JKL defaults on both these loans. Assuming any notice required is properly and timely given, who has priority in this after-acquired inventory?

A) First Bank has priority, because it was first to attach.
B) First Bank has priority, because it was first to perfect.
C) Wholesalers has priority, because this was after-acquired inventory.
D) Wholesalers has priority, because this was a purchase money security interest.

Answer:  D
Diff:  3
Topic:  Priority of Claims
Skill:  Factual Application

88) Alice buys a home theater system from Blastaphonic Audio and Video, paying cash. Alice was aware that Fourth National Bank had a perfected security interest in all the inventory of Blastaphonic. Which of the following statements is true?

A) The home theater system is not subject to a security interest once Alice purchases it.
B) The home theater system remains subject to the security interest of Fourth National Bank because Alice had actual knowledge of the security interest.
C) The home theater system is not subject to a security interest once Alice purchases it so long as the remaining inventory of Blastaphonic is adequate to secure the amount of the indebtedness.
D) The home theater system remains subject to the security interest of Fourth National Bank, and this would be true even if Alice was not aware of Fourth National Bank's security interest.

Answer:  A
Diff:  3
Topic:  Priority of Claims
Skill:  Factual Application
89) John bought a television from Jake's Appliance Center for his personal use. John could not pay cash for it, so he signed a note and gave Jake's a security interest in the television. Jake's did not file a financing statement. About 6 months later, John sold this television to a neighbor, Jane, who did not know about Jake's security interest in it. John stopped making payments on the note to Jake's, and now Jake's wants to repossess the television from Jane. Can Jake's repossess this television from Jane?
   A) Yes; Jake's security interest survives this sale to Jane.
   B) No; Jane is a buyer in the ordinary course of business, who takes the television free of any security interest.
   C) No; Jane is a buyer of secondhand consumer goods, who takes the television free of any security interest.
   D) No; Jake's did not perfect the security interest, so it is not valid against third parties like Jane.
   E) No; Jake's security interest did not attach, so it is not valid against anyone, including Jane.

Answer: C
Diff: 3
Topic: Priority of Claims
Skill: Factual Application

90) Arthur borrowed $2,000 from Doug, and gave Doug his car as security for the loan. Doug does not file a financing statement. Carrie obtains a judgment against Arthur and wants the car. Can she get it?
   A) Yes; Doug failed to file a financing statement.
   B) Yes; a judgment will take precedence over the agreement between Doug and Arthur.
   C) No, because Doug and Arthur made the agreement before the judgment was obtained.
   D) No, because Doug has perfected his security interest by taking possession of the vehicle.

Answer: D
Diff: 3
Skill: Factual Application

91) What is the underlying purpose to having separate requirements for attachment and perfection?

Answer: Attachment and perfection are two different concepts. Because attachment addresses only the relationship between the creditor and the debtor, there is no need for others to have notice, thus there is no reason to have a filing requirement. Perfection, on the other hand, addresses priorities among multiple creditors, thus knowledge of preexisting creditors with rights in the collateral is necessary.
Diff: 2
Skill: Ethics and Policy
92) What risks are there for lenders who rely on the debtor's inventory for collateral? Although the rule that a buyer in the ordinary course of business takes the item free of an inventory security interest makes buyers more willing to purchase items from inventory, does it not discourage lenders from financing inventory? What can lenders, who rely on merchants' inventory for collateral, do to protect themselves?

Answer: This is where a lender can partially protect its interest with an after-acquired property clause. In addition, the lender would want to monitor the level of inventory relative to the amount of debt outstanding. Even with an after-acquired property clause, if the debtor is not buying more inventory, or if all newly purchased inventory is subject to purchase money security interests of a different creditor, the original lender may end up with too little collateral relative to the level of debt outstanding.

Diff: 3
Skill: Ethics and Policy

93) What is the purpose of an after-acquired property clause? In what circumstances could it be used abusively by creditors toward debtors?

Answer: It is generally used where the collateral is all property of a given type, such as inventory or equipment, of the debtor. It has been used abusively with respect to consumer goods where a debtor has fully paid the debt on all items but one, but the after-acquired property clause would allow repossession of all items.

Diff: 2
Skill: Ethics and Policy

94) What can a lender do to make sure it remains adequately protected when it has a floating lien? What types of collateral are appropriate for a floating lien?

Answer: The lender would need to monitor the levels of the collateral. Floating liens are most appropriate for pools of collateral that change over time, primarily inventory and farm products, and to a lesser degree, equipment.

Diff: 1
Skill: Ethics and Policy
95) Betty owns a home electronics store. Betty borrowed $100,000 a couple of years ago from Thirdbank, and Betty granted a security interest to Thirdbank on "present and after-acquired inventory." Betty is a generous store owner. Each employee is able to select electronics and place them in his or her office. Most employees have put elaborate stereo systems in their offices, and some have even installed home theater systems. One manager often brings his family in late in the evening to watch rented movies. The understanding was that these systems would be sold as demonstrator units after a few months, but that has happened only once. Most of the systems have been in the offices since shortly after the store opened 2 years ago. Betty has also supplied several of her relatives with stereo systems at no charge, also with the understanding that she can take them back and sell them at any time, although she has not taken any of these back. Betty defaults on the debt to Thirdbank. Will Thirdbank be able to recover the electronic components in employee offices and homes, as well as in Betty's relatives' homes?

Answer: This is a floating lien and would cover all the present inventory of the home electronics store. It is a fact question whether these items are still part of inventory, with arguments on either side. Some of the electronics may have become equipment or consumer goods.

Diff: 3
Topic: Perfecting a Security Interest
Skill: Factual Application

96) Kraco is a retailer of televisions and related products. Kraco buys its inventory from DEF, the manufacturer, on credit, giving DEF a security interest in this inventory. Beth buys a television from Kraco, paying cash. Beth also knows of DEF's security interest in this television. Sometime later, Kraco defaults on its debt to DEF, and DEF wants to foreclose on its collateral, including the television purchased by Beth. Does DEF have a security interest in Beth's television? Discuss your reasoning.

Answer: Beth took the television free of the security interest of DEF even though she knew of the security interest, assuming that she bought the television in the ordinary course of business.

Diff: 2
Topic: Priority of Claims
Skill: Factual Application
97) Harco is a retailer of appliances. Harco buys its inventory from RST, Inc., the manufacturer. To finance its inventory, Harco buys appliances from RST on credit, signing a promissory note and giving RST a security interest in the inventory. RST perfects this security interest. Harco also needed cash for working capital, so Harco borrowed money from First Bank, giving First Bank a security interest in Harco’s inventory. First Bank perfected this security interest before RST perfected its security interest. Harco cannot pay is debts, so both RST and First Bank attempt to foreclose on this inventory. Discuss who has priority and why?

Answer: Normally, the first to perfect has priority, but the holder of a purchase money security interest can obtain priority over a previously perfected security interest in inventory. This requires that the purchase money security interest holder notify the earlier perfected party (First Bank here) prior to the debtor taking possession, which did not happen. Thus, First Bank has priority.

Diff: 3
Topic: Priority of Claims
Skill: Factual Application

98) Steve is known for buying everything on credit. He typically has a dozen regular monthly payments on installment debt. He might have couch payments, mattress payments, stereo payments, and coffeemaker payments all at the same time. He sells his dining room table and chairs to Bob, a friend of his. A couple of months later, the furniture company from whom Steve bought the table shows up at Bob’s house to repossess the table because Steve has stopped making payments on the debt he incurred in purchasing the table. The furniture store claims it is entitled to the table because it was automatically perfected in the purchase money security interest, which Steve granted in purchasing the table. How would this case turn out?

Answer: Bob takes the table free of the purchase money security interest of the furniture store if he did not have actual or constructive notice of the security interest. Assuming that the furniture store did not file the security interest, it is arguable whether Bob had notice, given Steve’s reputation.

Diff: 2
Topic: Priority of Claims
Skill: Factual Application
99) Sooner Enterprises needs a large new piece of equipment. Sooner has approximately $100,000 in cash to put toward the $400,000 purchase price. Sooner goes to Adams National Bank and borrows $250,000 for part of the purchase price. Sooner buys the equipment, using the cash from Adams, the $100,000 in cash on hand, and by drawing $50,000 on a preexisting unsecured line of credit. Sooner and Adams National Bank executed a security agreement on March 1, but nothing was ever filed in connection with this security agreement. Adams extended credit and Sooner acquired the equipment on March 2. Two months later, on May 1, Sooner went to Baker National Bank and signed an agreement to borrow $50,000 which would be used to pay back the line of credit used to purchase the equipment. Baker extended the credit to Sooner on May 3, and filed a valid financing statement on May 15. On May 10, Sooner went to Colter National Bank and borrowed $75,000 using the equipment as collateral. On the same day, Colter properly filed a copy of the security agreement with Sooner. In June, Sooner defaulted on all of its debts. Discuss the priority of all its creditors with respect to this equipment.

Answer: Perfected secured parties take priority according to their date of perfection. By being the first to file, Colter has first priority, followed by Baker. Note that either the security agreement or a financing statement can be filed. Even though the security agreement of Adams has attached, it was never perfected. Because this purchase money security interest was in equipment, Adams had 10 days to file after Sooner took possession of the property in order to have first priority. Last in line would be the holder of the unsecured line of credit.

Diff: 3
Topic: Priority of Claims
Skill: Factual Application

100) Northern Drilling is an oil-drilling company that has defaulted on several of its loans. Petrogiant Oil Refining is owed $230,000 on a loan that is secured by some of Northern Drilling's equipment. This equipment is worth around $180,000. Petrogiant has repossessed the equipment pursuant to its security agreement and has notified Northern that it proposes to keep the equipment rather than sell it. Northern does not want Petrogiant to keep the equipment and wants it to be sold. Discuss the legal issues in this situation.

Answer: Northern can give written objection within 21 days after the notice was sent, and then the creditor would be required to sell the collateral. Northern would be foolish to demand that the collateral be sold in these circumstances. If the collateral is sold, Northern could be held liable for a deficiency judgment. If the creditor retains the collateral, it is retained in satisfaction of all claims against the debtor. Because the collateral is worth substantially less than the amount of the debt, Northern should allow Petrogiant to retain the collateral.

Diff: 2
Topic: Secured Creditor's Remedies
Skill: Factual Application
1) The founders of the United States thought the plight of debtors was so important that they included a provision in the U.S. Constitution on bankruptcy.

Answer: TRUE
Diff: 1
Topic: Overview of Federal Bankruptcy Law

2) Bankruptcy cases are heard in federal court.

Answer: TRUE
Diff: 1
Topic: Overview of Federal Bankruptcy Law

3) The two most common types of bankruptcy filed by businesses are liquidation and reorganization.

Answer: TRUE
Diff: 1
Topic: Overview of Federal Bankruptcy Law

4) One of the goals of federal bankruptcy law is to give debtors a chance at a fresh start financially.

Answer: TRUE
Diff: 1
Topic: Overview of Federal Bankruptcy Law

5) The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 makes it easier for debtors to escape from their debts under federal bankruptcy law.

Answer: FALSE
Diff: 1
Topic: Overview of Federal Bankruptcy Law

6) The Bankruptcy Reform Act of 1978 favored creditors, as it made it more difficult for debtors to escape from their debts under federal bankruptcy law.

Answer: FALSE
Diff: 2
Topic: Overview of Federal Bankruptcy Law
7) In addition to federal bankruptcy laws, there are individual state bankruptcy laws as well.
Answer: FALSE
Diff: 1
Topic: Overview of Federal Bankruptcy Law

8) Under the 2005 Act, a debtor may be given only a partial fresh start as he or she may have to pay more of his or her prepetition bankruptcy debts out of postpetition earnings.
Answer: TRUE
Diff: 2
Topic: Overview of Federal Bankruptcy Law

9) One advantage of the Bankruptcy Reform Act of 2005 is that it decreased the number of bankruptcy judges to handle bankruptcy cases, as the number of overall bankruptcy cases has decreased.
Answer: FALSE
Diff: 2
Topic: Overview of Federal Bankruptcy Law

10) The United States Trustee may perform many of the tasks that the bankruptcy judge had previously performed.
Answer: TRUE
Diff: 2
Topic: Overview of Federal Bankruptcy Law

11) An involuntary petition for bankruptcy is filed by a creditor, or creditors, and places the debtor into bankruptcy.
Answer: TRUE
Diff: 2
Topic: Bankruptcy Procedure

12) Attorneys may be fined for factual discrepancies under the new bankruptcy reform act.
Answer: TRUE
Diff: 2
Topic: Bankruptcy Procedure

13) The bankruptcy judge may attend the first meeting of creditors.
Answer: FALSE
Diff: 1
Topic: Bankruptcy Procedure
14) A secured creditor may also be an unsecured creditor if the value of a creditor's claim exceeds the value of a debtor's collateral for the debt owed to the creditor.

Answer: TRUE
Diff: 2
Topic: Bankruptcy Procedure

15) The effect of an automatic stay is to suspend certain legal actions by creditors against the debtor or the debtor's property.

Answer: TRUE
Diff: 2
Topic: Bankruptcy Procedure

16) Amounts owed to a pension plan are dischargeable in bankruptcy.

Answer: FALSE
Diff: 2
Topic: Bankruptcy Procedure

17) The debtor's bankruptcy estate is limited to tangible items.

Answer: FALSE
Diff: 2
Topic: The Bankruptcy Estate

18) An unmatured life insurance policy owned by the debtor is exempt from the bankruptcy estate.

Answer: TRUE
Diff: 3
Topic: The Bankruptcy Estate

19) A homestead exemption refers to the equity in a debtor's home that he or she is allowed to retain.

Answer: TRUE
Diff: 2
Topic: The Bankruptcy Estate

20) A preferential transfer of a debtor's property may not be voided by the bankruptcy court.

Answer: FALSE
Diff: 1
Topic: Preferential and Fraudulent Transfers
21) One way to determine whether or not a preferential transfer has been made is to look at the time frame in which the transfer was made.

Answer: TRUE
Diff: 1
Topic: Preferential and Fraudulent Transfers

22) If a debtor makes a bona fide payment of a debt for a domestic support obligation, then it will not be considered to be a preferential payment.

Answer: TRUE
Diff: 2
Topic: Preferential and Fraudulent Transfers

23) The bankruptcy court may now void certain fraudulent transfers of the debtor's property and obligations incurred by the debtor within 2 years of the filing of the petition for bankruptcy.

Answer: TRUE
Diff: 1
Topic: Preferential and Fraudulent Transfers

24) The transfer of assets into a living trust can be voided if the transfer was made within 10 years before the filing of the petition of the debtor for bankruptcy.

Answer: TRUE
Diff: 2
Topic: Preferential and Fraudulent Transfers

25) A liquidation bankruptcy is also known as straight bankruptcy.

Answer: TRUE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy

26) In a voluntary Chapter 7 bankruptcy petition, the debtor must list all property owned, including any exempt property.

Answer: TRUE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy

27) A party can be petitioned into bankruptcy against that party's will.

Answer: TRUE
Diff: 1
Topic: Chapter 7 - Liquidation Bankruptcy
28) A voluntary petition amounts to an order for relief.

Answer: TRUE
Diff: 1
Topic: Chapter 7 - Liquidation Bankruptcy

29) In a Chapter 7 bankruptcy, a trustee must be appointed.

Answer: TRUE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy

30) A proof of claim is not required to be filed by a secured creditor.

Answer: TRUE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy

31) The automatic stay would stop a secured creditor from repossessing any collateral.

Answer: TRUE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy

32) The term "median income" refers to that income where half of the state's families have income above the debtor's family income and half of the state's families have income below the debtor's family income.

Answer: TRUE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy

33) The means test refers to an easy way to determine whether the debtor has the means to pay pre-petition debts.

Answer: FALSE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy

34) If a debtor's new amount is $10,000 or more over 5 years, abuse is presumed and the debtor is not eligible for Chapter 7 relief.

Answer: TRUE
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy
35) The bankruptcy estate includes all property that the petitioner receives after the petition is filed.

Answer: FALSE
Diff: 2
Topic: Property of the Bankruptcy Estate

36) An inheritance received by an individual debtor 4 months after filing a Chapter 7 bankruptcy becomes part of the bankruptcy estate.

Answer: TRUE
Diff: 2
Topic: Property of the Bankruptcy Estate

37) Personal property that is subject to an unexpired lease and is not exempt must be surrendered by the debtor, redeemed by paying the secured lien in full or the debtor must assume the unexpired lease.

Answer: TRUE
Diff: 3
Topic: Property of the Bankruptcy Estate

38) The 2005 Bankruptcy Act made little to no changes with regard to the satisfaction of unsecured claims.

Answer: FALSE
Diff: 2
Topic: Property of the Bankruptcy Estate

39) If Mable makes false representations about her financial position when she obtains an extension of credit, this will bar discharge of her debt to that creditor.

Answer: TRUE
Diff: 1
Topic: Acts That Bar Discharge

40) The 2005 Bankruptcy Act bars the discharge of student loans unless it would cause an "undue hardship" to the debtor on his or her dependents.

Answer: TRUE
Diff: 2
Topic: Acts That Bar Discharge
41) The debtor in a Chapter 13 proceeding can keep more property than under a Chapter 7 proceeding.

Answer:  TRUE
Diff:  2
Topic:  Chapter 13 - Adjustment of Debts of an Individual with a Regular Income

42) Only individuals may file a petition under Chapter 13 of the Bankruptcy Code.

Answer:  TRUE
Diff:  1
Topic:  Chapter 13 - Adjustment of Debts of an Individual with a Regular Income

43) The dischargeable debts under a consumer debt adjustment plan of bankruptcy are the same as those under the straight (liquidation) bankruptcy.

Answer:  FALSE
Diff:  2
Topic:  Chapter 13 - Adjustment of Debts of an Individual with a Regular Income

44) Unsecured creditors must confirm a Chapter 13 plan.

Answer:  FALSE
Diff:  2
Topic:  Chapter 13 - Adjustment of Debts of an Individual with a Regular Income

45) Sole proprietorships may file for Chapter 13 bankruptcy.

Answer:  TRUE
Diff:  2
Topic:  Chapter 13 - Adjustment of Debts of an Individual with a Regular Income

46) A Chapter 11 bankruptcy was designed to provide a method for reorganization of the debtor's affairs.

Answer:  TRUE
Diff:  1
Topic:  Chapter 11 - Reorganization

47) A debtor is not afforded an automatic stay in a Chapter 11 bankruptcy.

Answer:  FALSE
Diff:  2
Topic:  Chapter 11 - Reorganization
48) Debtors under a Chapter 11 bankruptcy may not accept executory contracts and unexpired leases.

Answer: FALSE
Diff: 2
Topic: Chapter 11 - Reorganization

49) A Chapter 12 bankruptcy is a permanent part of the Bankruptcy Code that allows family farmers and family fisherman with regular income to file a type of reorganization bankruptcy.

Answer: TRUE
Diff: 1
Topic: Chapter 12 - Family Farmer and Family Fisherman Bankruptcy

50) The debtor under a Chapter 12 bankruptcy may convert it to a Chapter 7 liquidation case at any time.

Answer: TRUE
Diff: 2
Topic: Chapter 12 - Family Farmer and Family Fisherman Bankruptcy

51) The Bankruptcy Code does not provide for the bankruptcy of commercial banks, savings banks, or credit unions.

Answer: TRUE
Diff: 2
Topic: Special Forms of Bankruptcy

52) Chapter 9 of the Bankruptcy Code purposefully excludes cities and towns from filing for bankruptcy.

Answer: FALSE
Diff: 2
Topic: Special Forms of Bankruptcy

53) What is the primary purpose of federal bankruptcy law?
   A) to protect creditors
   B) to treat all creditors equally
   C) to preserve business relationships
   D) to discharge the debtor from burdensome debts by giving him a fresh start

Answer: D
Diff: 1
Topic: Overview of Federal Bankruptcy Law
Skill: Legal Concepts
54) Bankruptcy proceedings are commenced under:
   A) state law
   B) federal law
   C) local (city or county) law
   D) state or federal law at the option of the debtor
   E) state or federal law at the option of the creditors

Answer: B
Diff: 1
Topic: Overview of Federal Bankruptcy Law
Skill: Legal Concepts

55) What are the two most common types of bankruptcy used by businesses?
   A) liquidation and termination
   B) liquidation and reorganization
   C) termination and reaffirmation
   D) reaffirmation and liquidation
   E) reaffirmation and extension

Answer: B
Diff: 1
Topic: Overview of Federal Bankruptcy Law
Skill: Legal Concepts

56) The legal issues decided by the bankruptcy judges, such as whether certain payments are preferential, are known as:
   A) preferential proceedings
   B) reaffirmation proceedings
   C) automatic stay proceedings
   D) core proceedings
   E) reorganization proceedings

Answer: D
Diff: 2
Topic: Overview of Federal Bankruptcy Law
Skill: Legal Concepts

57) What is the general concept of the fresh start in bankruptcy?
   A) Debtors are given a new start in paying off their existing debts.
   B) Creditors are given a new start in collecting amounts owed to them.
   C) Businesses adopt a new plan of business.
   D) Debtors have most debts discharged and start over without those debts.

Answer: D
Diff: 2
Topic: Overview of Federal Bankruptcy Law
Skill: Legal Concepts
58) Which of the following is not part of the fresh start in bankruptcy?
   A) protection for debtors from creditors' abusive actions in collecting past debts
   B) preventing certain creditors from gaining unfair advantage over other creditors in the collection process
   C) protecting creditors from actions by the debtor that would diminish the value of the bankruptcy estate
   D) preserving existing business relations
   E) preventing the debtor from incurring excessive debt following the discharge in bankruptcy

   Answer: E
   Diff: 2
   Topic: Overview of Federal Bankruptcy Law
   Skill: Legal Concepts

59) "Straight bankruptcy" is another term for:
   A) discharge
   B) liquidation
   C) reorganization
   D) a consumer debt adjustment

   Answer: B
   Diff: 1
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts

60) Which of the following need not appear as part of a voluntary bankruptcy petition?
   A) a list of secured creditors
   B) a list of unsecured creditors
   C) a statement that the petitioner's debts exceed his assets
   D) a list of property
   E) a statement of the financial affairs of the petitioner

   Answer: C
   Diff: 2
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts
61) Which of the following must be stated in a Chapter 7 bankruptcy petition?
A) for voluntary petitions, that debts exceed assets, and for involuntary petitions, that the
   debtor is not paying debts as they come due
B) for both voluntary and involuntary petitions, that debts exceed assets
C) for voluntary petitions, that the debtor has debts, and for involuntary petitions, that the
   debtor is not paying debts as they come due
D) for voluntary petitions, that the debtor is not paying debts as they come due, and for
   involuntary petitions, that the debtor has debts

Answer: C
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy
Skill: Legal Concepts

62) An involuntary petition under the straight bankruptcy provisions can be filed against:
A) no one; all straight bankruptcy petitions must be voluntary
B) anyone who is not paying his or her bills as they come due
C) anyone who is not paying his or her bills as they come due, except ranchers, farmers, and
   nonprofit organizations
D) only corporations that are not paying their bills as they come due
E) only ranchers, farmers, and nonprofit organizations that are not paying their bills as they
   come due

Answer: C
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy
Skill: Legal Concepts

63) Which of the following types of petitions in a Chapter 7 bankruptcy constitute an order for
relief?
A) voluntary petitions only
B) all involuntary petitions, but no voluntary petitions
C) voluntary petitions and unchallenged involuntary petitions
D) voluntary petitions and challenged involuntary petitions
E) all voluntary and involuntary petitions

Answer: C
Diff: 2
Topic: Chapter 7 - Liquidation Bankruptcy
Skill: Legal Concepts
64) In a bankruptcy, the representative of the bankrupt estate is known as the:
   A) supervisor
   B) adjutant
   C) arbitrator
   D) trustee

   Answer: D
   Diff: 1
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts

65) Which of the following is not a duty of the trustee in a bankruptcy case?
   A) investigate the debtor's financial affairs
   B) employ disinterested professionals such as attorneys and accountants to assist in the administration of the estate
   C) provide financial advice to the debtor
   D) bring lawsuits on behalf of the bankruptcy estate
   E) distribute the proceeds of the bankruptcy estate

   Answer: C
   Diff: 2
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts

66) Which of the following is true about "proof of claims?"
   A) They must be filed by both secured and unsecured creditors in order for the creditor to receive a distribution from the bankruptcy estate.
   B) They need not be filed by secured creditors whose security covers the amount of their debt.
   C) They are never used by secured creditors.
   D) They can generally be filed any time within 1 year of the filing of the bankruptcy petition.

   Answer: B
   Diff: 3
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts
67) What is the purpose of the automatic stay in a bankruptcy case?
   A) to pay secured creditors without their having to file a proof of claim
   B) to ensure that secured creditors are the first to receive payment
   C) to prevent a race for the debtor's assets by assuring an orderly distribution in which each party will receive that to which the party is entitled
   D) to enable the appointment of a trustee
   E) to maximize the assets available for distribution to creditors

   Answer: C
   Diff: 2
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts

68) The automatic stay in a straight bankruptcy proceeding generally does not apply to:
   A) actions taken by unsecured creditors
   B) actions taken by secured creditors
   C) actions to collect alimony or child support
   D) actions to repossess collateral
   E) C and D only

   Answer: C
   Diff: 2
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts

69) Under what circumstances would a court grant a "relief from stay" under bankruptcy law?
   A) A secured creditor's collateral is not adequately protected during the bankruptcy proceedings.
   B) A debtor has insufficient assets to pay all debts owed.
   C) There has been a voidable preference.
   D) There has been a fraudulent transfer.
   E) Unsecured creditors might receive nothing in the bankruptcy settlement.

   Answer: A
   Diff: 3
   Topic: Chapter 7 - Liquidation Bankruptcy
   Skill: Legal Concepts
70) What is an exemption under the bankruptcy laws?
   A) a debt that does not need to be paid
   B) a debt that is not forgiven
   C) an asset that is not required to be used toward satisfaction of debts
   D) an administrative expense that does not need to be paid
   E) a law with which one need not comply

   Answer: C
   Diff: 2
   Topic: Property of the Bankruptcy Estate
   Skill: Legal Concepts

71) Which of the following is not a proper federal exemption under the bankruptcy laws?
   A) homestead allowance up to a certain amount
   B) exemption for a car up to a certain amount
   C) unlimited exemption for professionally prescribed health aids, such as an artificial limb
   D) unlimited exemption for tools used in the petitioner's trade or business

   Answer: D
   Diff: 3
   Topic: Property of the Bankruptcy Estate
   Skill: Legal Concepts

72) Which of the following is true about exemptions for an individual in a Chapter 7 bankruptcy?
   A) The federal statutory exemptions apply in all cases.
   B) Exemptions are always determined by state law.
   C) The federal law allows states to set their own exemptions, which can be either mandatory or optional, in place of the federal exemptions.
   D) The state exemptions, where present, generally allow the debtor to keep fewer assets than under federal law.

   Answer: C
   Diff: 2
   Topic: Property of the Bankruptcy Estate
   Skill: Legal Concepts

73) Which two states were cited in the textbook as having homestead exemptions without an upper dollar limit?
   A) Texas and Alaska
   B) Texas and California
   C) California and Florida
   D) New York and California
   E) Texas and Florida

   Answer: E
   Diff: 2
   Topic: Property of the Bankruptcy Estate
   Skill: Legal Concepts
74) A voidable preference includes:
   A) any payment made to a creditor after the petition is filed
   B) any payment made within 90 days before the petition is filed
   C) any payment made within 90 days before the petition is filed, for a preexisting debt, if the creditor receives more than he would under the bankruptcy laws
   D) any payment made within 90 days before the petition is filed, for a preexisting debt

Answer: C
Diff: 3
Topic: Property of the Bankruptcy Estate
Skill: Legal Concepts

75) What is true about voidable preferences and fraudulent transfers?
   A) They are two terms to describe the same type of transaction.
   B) Intent to defraud must be proven for both types of transactions.
   C) A voidable preference may have been a legitimate business transaction, but a fraudulent transfer requires proof of intent to defraud.
   D) Any transaction of either type within 1 year of the filing of the petition is subject to action by the bankruptcy trustee.

Answer: C
Diff: 3
Topic: Property of the Bankruptcy Estate
Skill: Legal Concepts

76) How far back in time can the trustee look to recover a preferential payment?
   A) 90 days for all creditors
   B) 1 year for all creditors
   C) 90 days, unless intent can be shown, in which case the period is extended to 1 year
   D) 90 days, except for insiders the period is extended to 1 year

Answer: D
Diff: 2
Topic: Property of the Bankruptcy Estate
Skill: Legal Concepts

77) For recovery by the trustee of which types of payments will the total amount of assets available for distribution to the creditors not be changed?
   A) preferential transfers
   B) fraudulent transfers
   C) both preferential and fraudulent transfers
   D) neither preferential nor fraudulent transfers

Answer: A
Diff: 3
Topic: Property of the Bankruptcy Estate
Skill: Legal Concepts
78) If you are a creditor, your best protection in the event of the debtor's bankruptcy (including protection from the debtor's other creditors) is usually obtained if you had previously received:
   A) the debtor's agreement to pay you first
   B) a written promise from the debtor to pay the debt as agreed
   C) a security interest granted by the debtor
   D) audited financial statements of the debtor

Answer: C  
Diff: 2  
Topic: Distribution of Property and Discharge  
Skill: Legal Concepts

79) If the value of the collateral is less than the debt owed to the secured party, then:
   A) the secured party is still secured for the entire debt owed him  
   B) the secured party is unsecured for the excess of debt over the value of the security
   C) the secured party loses the excess of debt over the value of the security
   D) the secured party gets to take some other property as collateral so his entire debt is secured
   E) the secured party is unsecured for the entire debt

Answer: B  
Diff: 2  
Topic: Distribution of Property and Discharge  
Skill: Legal Concepts

80) Which of the following debts are usually dischargeable in bankruptcy?
   A) taxes and customs duties
   B) debts not properly listed in the debtor's bankruptcy schedules
   C) fines and other penalties owed to a governmental unit
   D) debts incurred in the ordinary course of business

Answer: D  
Diff: 2  
Topic: Distribution of Property and Discharge  
Skill: Legal Concepts

81) A debtor may receive a discharge in straight bankruptcy only once:
   A) in a lifetime
   B) every 4 years
   C) every 6 years
   D) every 8 years
   E) every 10 years

Answer: C  
Diff: 1  
Topic: Distribution of Property and Discharge  
Skill: Legal Concepts
82) Which of the following is true about the discharge of debts in bankruptcy?
   A) Claims that the debtor has not listed on her schedule of debts are not discharged.
   B) No tax claims are discharged.
   C) All fines and penalties payable to the government are discharged.
   D) Debts caused by the debtor's use of poor business judgment are not discharged.
   E) All cash advances obtained by the debtor on a revolving line of credit prior to the filing of the bankruptcy petition are discharged.

Answer: A
Diff: 3
Topic: Distribution of Property and Discharge
Skill: Legal Concepts

83) A reaffirmation agreement would most likely be used in which of the following situations?
   A) when a bankruptcy petition has alimony debts
   B) when the petitioner has a debt secured by an automobile that the debtor would like to keep
   C) when the petitioner has made a voidable preference
   D) when the petitioner has committed a fraudulent act
   E) B and D only

Answer: B
Diff: 2
Topic: Distribution of Property and Discharge
Skill: Legal Concepts

84) A debtor may promise to pay a debt discharged in bankruptcy by executing:
   A) an extension agreement
   B) a reaffirmation agreement
   C) a writ of confirmation
   D) a debt consolidation agreement

Answer: B
Diff: 1
Topic: Distribution of Property and Discharge
Skill: Legal Concepts
85) What is the most important difference when a business uses Chapter 11 rather than Chapter 7 in a bankruptcy?
   A) In Chapter 11, petitions must be voluntary, whereas Chapter 7 petitions can be either voluntary or involuntary.
   B) In Chapter 11, the business survives, whereas in Chapter 7 the business does not survive.
   C) In Chapter 11, all creditors are assured of receiving some payment, whereas in Chapter 7 some creditors may receive nothing.
   D) In Chapter 11, there is never a trustee, whereas in Chapter 7 there is always a trustee.

Answer: B
Diff: 3
Topic: Chapter 11 - Reorganization Bankruptcy
Skill: Legal Concepts

86) In a Chapter 11 bankruptcy, the creditors committee is usually composed of:
   A) all unsecured creditors and the three largest secured creditors
   B) the seven largest unsecured creditors
   C) the seven largest unsecured creditors and all secured creditors
   D) the three largest secured and three largest unsecured creditors

Answer: B
Diff: 2
Topic: Chapter 11 - Reorganization Bankruptcy
Skill: Legal Concepts

87) When a class of creditors does not approve of a plan of reorganization under Chapter 11, the court can order the plan into effect:
   A) using the equity method
   B) using the secured creditor's method
   C) using the cram down method
   D) only if the plan is modified so that all classes of creditors consent

Answer: C
Diff: 2
Topic: Plan of Reorganization
Skill: Legal Concepts
88) If a business goes into a reorganization bankruptcy and has a contract with its employees to pay certain wages, that business:
   A) must honor the employees' contract
   B) may reject the employees' contract if certain procedures are followed, and with court approval
   C) may automatically reject the employees' contract
   D) may automatically reduce those wages by 50 percent
   E) may automatically reduce those wages by 25 percent

Answer: B
Diff: 2
Topic: Plan of Reorganization
Skill: Legal Concepts

89) Which of the following is not true about a Chapter 13 consumer debt adjustment compared to other bankruptcy plans?
   A) Executory contracts may be disaffirmed under Chapter 13 but not under other plans.
   B) Certain debts are dischargeable under Chapter 13 that are not dischargeable under other plans.
   C) More property may be retained under Chapter 13 than under other plans.
   D) Chapter 13 allows for an extension of time for payments that other plans do not.
   E) Chapter 13 plans are less expensive than other plans.

Answer: A
Diff: 2
Topic: Chapter 13 - Adjustment of Debts of an Individual with a Regular Income
Skill: Legal Concepts

90) Chapter 13 of the bankruptcy law gives individuals who have a steady source of income the opportunity to:
   A) adjust the debts if they have a regular income
   B) avoid all legal obligations for 1 year
   C) cancel all obligations due and owing up to $100,000
   D) elect a corporate dissolution

Answer: A
Diff: 2
Topic: Chapter 13 - Adjustment of Debts of an Individual with a Regular Income
Skill: Legal Concepts
91) If a debtor is an individual who wants to keep most of his property, has a steady income, and believes he can pay off most of his debts, the best bankruptcy plan for him would probably be:
   A) straight bankruptcy
   B) a reorganization
   C) a consumer debt adjustment
   D) a reaffirmation plan
   E) a Chapter 12 plan

Answer: C
Diff: 1
Topic: Chapter 13 - Adjustment of Debts of an Individual with a Regular Income
Skill: Legal Concepts

92) Great North Corporation has 35 creditors who are owed a total of $400,000. Great North has assets far in excess of $400,000, but is not paying its debts as they come due. Johnson Corporation and Jimmy Corporation, each of which is owed $15,000 by Great North Corporation, file an involuntary bankruptcy petition under Chapter 7. Which of the following is true?
   A) The petition is not effective because Great North has assets exceeding its debts.
   B) The petition is not effective because the $30,000 owed to the two creditors filing the petition is not large enough to support the petition.
   C) The petition is not effective because more than two creditors are needed to file a petition in this situation.
   D) The petition is not effective because involuntary petitions are not effective under Chapter 7 bankruptcies.
   E) The petition is effective because it meets all applicable requirements.

Answer: C
Diff: 3
Topic: Chapter 7 - Liquidation Bankruptcy
Skill: Factual Application
93) Marvin has petitioned for straight bankruptcy. Before Marvin petitioned, he made the following transfers:
1. Paid XYZ Supply Co. $2,000 for a past debt.
2. Bought inventory from Harmco, paying cash for it.
3. Gave Germco a lien on certain realty to secure a past debt; Germco insisted upon such an arrangement because Marvin could not pay the company's past due debt.
Assuming that all of the above transactions occurred within the appropriate time period, which of them would constitute a voidable preference?
   A. 1 only
   B. 1 and 2 only
   C. 1, 2, and 3
   D. 1 and 3 only
   E. 2 and 3 only

Answer: D
Diff: 3
Topic: Property of the Bankruptcy Estate
Skill: Factual Application

94) Bob runs an office supply business and has three primary suppliers. Bob has been in business for several years, and has always been most prompt in paying Acme Suppliers because a high school friend of his is a manager there. Up until recently, he has always paid all suppliers on time. Recently, sales have slowed down dramatically following the opening of a new national discount office supply outlet in the same town. As usual, Bob recently paid Acme Suppliers first, and had not paid anything on the accounts of the other two suppliers. Bob's last payment to Acme was for supplies purchased 4 months ago on unsecured credit. Bob files bankruptcy one month later while still owing $20,000 in unsecured debt to each of the other suppliers. Bob's final payment to Acme was most likely:
   A. not a voidable preferential payment because he had always paid Acme first
   B. not a voidable preferential payment because it was payment of a bona fide debt
   C. a preferential transfer that could be avoided (reversed) by the bankruptcy trustee
   D. a fraudulent transfer that could be avoided (reversed) by the bankruptcy trustee
   E. a valid part of the bankruptcy estate distribution

Answer: C
Diff: 3
Topic: Property of the Bankruptcy Estate
Skill: Factual Application
95) Matt is planning to file for bankruptcy. He wants to keep some of his property, so he gives certain jewelry to his parents, with the understanding that they will return it later. Also, Matt sells his car, worth $5,000, to his girlfriend for $100. These transfers are:
   A) preferential transfers
   B) voidable preferences
   C) fraudulent transfers
   D) legitimate distributions of assets

Answer: C
Diff: 2
Topic: Property of the Bankruptcy Estate
Skill: Factual Application

96) Sixth Bank made a car loan to a corporation that has now filed a liquidation bankruptcy. The original amount of the car loan was $20,000, on a car that cost $24,000 new. The current balance on the loan is $12,000 and the car is worth $10,000. Assuming that Sixth Bank has made all appropriate filings in the corporation's bankruptcy case, Sixth Bank is:
   A) a secured creditor for $10,000 only
   B) a secured creditor for $12,000 only
   C) a secured creditor for $10,000 and unsecured creditor for $2,000
   D) a secured creditor for $12,000 and unsecured creditor for $2,000
   E) a secured creditor for $10,000 and unsecured creditor for $5,000

Answer: C
Diff: 3
Topic: Distribution of Property and Discharge
Skill: Factual Application

97) Which of the following is the correct sequence of priorities, from highest to lowest, of the claims listed below?
   1. Unsecured creditors.
   2. Fees and expenses of administering the estate.
   4. Unsecured wages up to $2,000 earned within the appropriate time period.
      A) 1, 2, 3, 4
      B) 2, 3, 4, 1
      C) 2, 4, 3, 1
      D) 2, 4, 1, 3
      E) 3, 2, 4, 1

Answer: C
Diff: 3
Topic: Distribution of Property and Discharge
Skill: Factual Application
98) Freddie has gone crazy with the use of his credit cards over the past several years. He would get a cash advance on one card to pay off another. He now owes a total of $80,000, all of it on credit cards, and has $40,000 equity in his house and other assets of $13,000. Assuming Freddie has a steady job paying $20,000, Freddie can:
   A) not file for a consumer debt adjustment because his debts exceed his assets
   B) not file for a consumer debt adjustment because it would take an unreasonably long time to pay off his debts based on his current salary
   C) keep the equity in his home if he reaches a composition or extension agreement
   D) file for a consumer debt adjustment only if he relinquishes the equity in his house
   E) file for a Chapter 7 bankruptcy only

Answer: C
Diff: 3
Topic: Distribution of Property and Discharge
Skill: Factual Application

99) Mary borrowed $50,000 in student loans to become a doctor. Her parents cosigned the loans. Now, the loans have become due, and Mary wants to discharge them in bankruptcy. Which of the following statements best describes Mary's possible recourse?
   A) Student loans cannot be discharged unless Mary proves "undue hardship."
   B) Student loans cannot be discharged within 5 years unless Mary proves "undue hardship."
   C) Student loans cannot be discharged within 7 years unless Mary proves "undue hardship."
   D) Even though Mary must wait to discharge her debt, her parents can discharge their obligation immediately.

Answer: C
Diff: 2
Topic: Distribution of Property and Discharge
Skill: Factual Application

100) A debtor owns a residence worth $200,000. The owner has $60,000 of equity in the home. If the debtor files for Chapter 7 bankruptcy, a trustee may use what amount of the proceeds of a home sale to pay off debts? (Assume the federal homestead exemption applies.)
   A) $200,000
   B) $60,000
   C) $39,800
   D) $20,200

Answer: C
Diff: 2
Skill: Factual Application
101) Many critics have argued that it has become too easy for individuals to file bankruptcy. What is your opinion and why? Do you think the laws themselves are too liberal, or can parties simply violate the laws too easily, such as by making fraudulent transfers that trustees and courts are not aggressive enough in going after. How would you change the bankruptcy laws if you could?

Answer: One of the suggestions made most often for changes is for debtors with income about a certain level to be required to pay back a certain portion of their debts.

Diff: 2
Skill: Ethics and Policy

102) Is the voidable preference rule too harsh? For example, what if a party has received a payment (with no fraud involved) and the payor of that amount files bankruptcy within 90 days but the recipient of the payment has already spent it? Assuming that none of the exceptions to the voidable preference rule apply, is it fair to require the recipient to repay it to the bankruptcy estate?

Answer: The voidable preference rule is essentially one of fairness. The basic premise of the rule is that in a bankruptcy, all creditors should share the losses equitably that are caused by the debtor's bankruptcy. One aspect is that certain creditors should not disproportionately benefit based on payments made shortly before bankruptcy is filed.

Diff: 2
Skill: Ethics and Policy

103) Homestead exemptions in some "debtor haven" states are huge compared to those allowed under the federal bankruptcy laws. Should states be able to have homestead exemptions much larger than the federal exemptions and those of most other states? Why would a state choose to have a large homestead exemption? What are the advantages and disadvantages to such a state?

Answer: Given that large portions of debtor-creditor relationships cross state lines, these large exemptions allow a state's residents to gain at the expense of creditors, many of whom are located in other states. States with large exemptions attract certain individuals with substantial assets to the state, and upon the discharge of these obligations, these assets could then be spent in the state, increasing economic activity.

Diff: 2
Skill: Ethics and Policy
104) Many parties are eager to extend credit to those who have just received a discharge in bankruptcy. One view is that such persons have no other debts and thus are a relatively safe credit risk. Furthermore, such persons cannot get another discharge in bankruptcy for 6 years. Many such persons, though, run up excessive debts time and again. Should there be limits on the ability of those discharged in bankruptcy to incur new debt? What are the arguments for and against such a rule?

Answer: The argument against credit restrictions following bankruptcy is that, assuming that the information about the bankruptcy is publicly available, the credit granting decision is wholly within the control of the creditor, thus creditors desiring to extend credit and take this risk should be allowed to freely do so.

Diff: 2
Skill: Ethics and Policy

105) Why would an individual debtor use a Chapter 13 Consumer Debt Adjustment when a Chapter 7 bankruptcy is available to forgive all indebtedness? Are there any other options that a consumer debtor should consider? What other concerns are there here?

Answer: Although any bankruptcy has an adverse effect on a debtor's credit history, creditors will likely look more favorably on an individual who agreed to pay back a portion of the debts. Another option for a consumer debtor is to use Chapter 7, but then reaffirm some of the debts. Debtors should not commit to too much, or they'll soon again be overextended. Debtors can always pay back discharged debts without having first committed to do so.

Diff: 3
Skill: Ethics and Policy

106) What is the purpose of allowing lawyers and accountants to have first claim on the assets of a bankruptcy estate? What are the risks and abuses that this rule could lead to?

Answer: If these professionals did not have a first claim on the assets of the estate for their services, no one would be willing to provide the services. One risk is that the professionals will provide just enough services to exhaust the estate, leaving no assets for distribution to creditors.

Diff: 2
Skill: Ethics and Policy
107) Mike has a retail jewelry business that caters to very wealthy clients. Mike has always been very slow in paying his suppliers because he figured that he might as well use their money interest-free as long as possible. Because Mike purchases large amounts from these suppliers, they grudgingly accepted his slow payment. With his regular customers, Mike was very generous, often giving them gifts that were lavish by most standards. But Mike viewed a gift of a piece of jewelry worth a few thousand as small because these customers often spent well over $100,000 in a year and Mike's cost for these gifts was much less than the retail value. In 2001, Mike's business suddenly dropped sharply. In September, he made three gifts of jewelry worth $4,000 each to his three best customers. In addition, he paid $70,000 to his favorite supplier. Of this amount, $20,000 was for a purchase at the end of August, $10,000 for an item delivered when Mike made payment, and the other $40,000 was from a June purchase. Mike's jewelry business filed bankruptcy on October 1, 2001. Can the trustee recover the gifts made to his customers and the payment to his favorite supplier?

Answer: The gifts could be recovered if they were fraudulent transfers. The trustee would have to show intent, and that might depend on Mike's knowledge of his financial condition, and other factors. The payment of $10,000 to the supplier for current consideration could not be recovered, the $20,000 and $40,000 would depend on whether they were made in the ordinary course of business, an analysis made more difficult because "ordinary" for Mike was payment long after the purchase.

Diff: 3
Topic: Property of the Bankruptcy Estate
Skill: Factual Application

108) Mary is considering filing bankruptcy because she is unable to pay her debts as they come due. Mary has a steady job and can pay some of her obligations. Mary is especially worried about losing all her assets, and thus is afraid to file bankruptcy. Generally discuss Mary's situation.

Answer: The exemptions under the bankruptcy laws will allow Mary to keep certain assets, including her homestead exemption, interest in a car, and household items. In addition, Mary will be able to keep certain tools used in a business and certain retirement benefits. The precise exempt property will depend on the state in which Mary lives. Because Mary does have income, she should consider reaffirming certain debts or filing a Chapter 13 consumer debt adjustment to reduce bankruptcy's adverse impacts.

Diff: 2
Topic: Property of the Bankruptcy Estate
Skill: Factual Application
Roger has just filed a voluntary bankruptcy petition. Before Roger filed his petition, he made certain transfers of property listed below.

A. Before filing the petition, Roger owed three people, Jane, John, and Jerry, $10,000 each. Each of these debts was unsecured. However, Roger only had $10,000 in cash. Because he had borrowed the money from Jane first, Roger paid Jane the entire $10,000 he owed her. This transfer came 60 days before Roger filed his petition.

B. Roger was in a retail business. Roger purchased inventory for his business from Primo Suppliers and paid $5,000 cash for this purchase. This purchase occurred 30 days before Roger filed his petition.

C. Roger owned a beautiful diamond watch with a fair market value of $5,000. He gave this watch to his brother 8 months before filing his petition. His brother was to keep the watch until after Roger's bankruptcy was settled and then give it back to Roger. The brother understood this.

Discuss whether any of these transfers are voidable preferences.

Answer: Transaction A is a voidable preference; B is not because it was made in the ordinary course of business; and C is not, but C is a fraudulent transfer.

Diff: 3
Topic: Property of the Bankruptcy Estate
Skill: Factual Application
110) Perfect Enterprises filed a Chapter 7 bankruptcy petition. The trustee on the estate has performed all the work, and the trustee is now ready to distribute the assets of the estate. The only asset in the estate is cash of $144,000. The following are all the validly filed claims against the estate. How much would each creditor receive?

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trustee's fee</td>
<td>$10,000</td>
</tr>
<tr>
<td>Attorney fees assisting trustee</td>
<td>$6,000</td>
</tr>
<tr>
<td>Accountant fees assisting trustee</td>
<td>$4,000</td>
</tr>
<tr>
<td>Unpaid wages of 5 employees of $1,200 each for month prior to filing of petition</td>
<td>$6,000</td>
</tr>
<tr>
<td>Federal tax obligations (specified in 11 U.S.C. Section 350)</td>
<td>$12,000</td>
</tr>
<tr>
<td>Unsecured creditors:</td>
<td></td>
</tr>
<tr>
<td>Johnson</td>
<td>$20,000</td>
</tr>
<tr>
<td>Smith</td>
<td>$30,000</td>
</tr>
<tr>
<td>Jones</td>
<td>$30,000</td>
</tr>
<tr>
<td>Secured creditors:</td>
<td></td>
</tr>
<tr>
<td>Brown</td>
<td>$80,000</td>
</tr>
<tr>
<td>(Brown's collateral was sold for $70,000, and is part of the $144,000 mentioned above, thus Brown has received no payment yet.)</td>
<td></td>
</tr>
</tbody>
</table>

How much will each creditor receive in the distribution?

Answer: First, Brown receives the proceeds of his collateral, or $70,000, leaving Brown with a general unsecured claim of $10,000. Second, the expenses of administration are paid, with $10,000 paid to the trustee, $6,000 to the attorney, and $4,000 to the accountant. Third, the employee's wage claims of $6,000 are paid. Fourth, the $12,000 tax claim is paid. At this point Brown is an unsecured creditor for $10,000, along with the claims of Johnson, Smith, and Jones, for general unsecured claims of $90,000, with $36,000 remaining available for distribution. With available assets equal to 40 percent of the claim amount, each will received 40 cents on the dollar, or $4,000 for Brown, $8,000 for Johnson, and $12,000 each for Smith and Jones.

Diff: 3
Topic: Distribution of Property and Discharge
Skill: Factual Application
1) An agency relationship is created by the mutual consent of a principal and an agent.

Answer: TRUE
Diff: 1
Topic: Agency

2) An attorney is an agent when he represents a client.

Answer: TRUE
Diff: 1
Topic: Agency

3) A corporation must conduct all of its business affairs through agents.

Answer: TRUE
Diff: 2
Topic: Agency

4) Agency relationships are not necessary to the operation of a partnership.

Answer: FALSE
Diff: 2
Topic: Agency

5) Generally, in agency situations, the principal and agent must both have contractual capacity.

Answer: FALSE
Diff: 2
Topic: Agency

6) A principal who lacks contractual capacity can appoint an agent.

Answer: FALSE
Diff: 2
Topic: Agency
7) Agency is a fiduciary relationship.
Answer: TRUE
Diff: 1
Topic: Agency

8) When a principal hires another to kill someone, an agency is created.
Answer: FALSE
Diff: 1
Topic: Agency

9) Even if an employee cannot enter into contracts, a principal-agent relationship is formed by virtue of the employment relationship itself.
Answer: FALSE
Diff: 2
Topic: Agency

10) A principal-agent relationship exists when an employer hires an employee to perform some form of physical service.
Answer: FALSE
Diff: 1
Topic: Agency

11) A person who is not an employee who is employed by a principal to perform a certain task on his behalf is an independent contractor.
Answer: TRUE
Diff: 1
Topic: Principal-Independent Contractor Relationship

12) An express agency is one that happens when a principal and an agent expressly agree to enter into an agency agreement with each other.
Answer: TRUE
Diff: 1
Topic: Formation of an Agency

13) In an express agency called a power of attorney, the principal is the attorney-in-fact.
Answer: FALSE
Diff: 2
Topic: Formation of an Agency
14) Implied authority in an implied agency may be conferred by industry custom.

Answer: TRUE
Diff: 1
Topic: Formation of an Agency

15) An agency by estoppel arises when a principal expressly creates the agency relationship with an agent.

Answer: FALSE
Diff: 2
Topic: Formation of an Agency

16) An agency may be created even if a person misrepresents himself or herself as being another's agent when he or she really is not if the purported principal accepts the unauthorized act.

Answer: TRUE
Diff: 2
Topic: Formation of an Agency

17) A principal must compensate an agent at the completion of the agency or some other agreed upon time.

Answer: TRUE
Diff: 1
Topic: Principal's and Agent's Duties

18) An agent assumes the financial responsibility for all expenses within the scope of the agency.

Answer: FALSE
Diff: 2
Topic: Principal's and Agent's Duties

19) The principal has the duty to cooperate with the agent in the performance of his or her duties.

Answer: TRUE
Diff: 1
Topic: Principal's and Agent's Duties

20) An agent who has negligently failed to perform as per the agency contract is liable only for breach of contract.

Answer: FALSE
Diff: 2
Topic: Principal's and Agent's Duties
21) Any money or other benefit received by the agent in the course of the agency belongs to the agent.

Answer: FALSE
Diff: 1
Topic: Principal's and Agent's Duties

22) An agent may continue to represent the principal even after the agency relationship is terminated.

Answer: FALSE
Diff: 1
Topic: Termination of an Agency

23) An agency agreement may exist for an infinite period of time.

Answer: FALSE
Diff: 1
Topic: Termination of an Agency

24) An agency agreement may terminate after a certain event happens.

Answer: TRUE
Diff: 2
Topic: Termination of an Agency

25) When an agency agreement terminates, direct notice of the termination must be given to all persons who dealt with the agent.

Answer: TRUE
Diff: 1
Topic: Termination of an Agency

26) An agency coupled with an interest is terminated by the death or incapacity of either the principal or the agent.

Answer: FALSE
Diff: 3
Topic: Termination of an Agency

27) An agency may be terminated if the principal is declared bankrupt.

Answer: TRUE
Diff: 1
Topic: Termination of an Agency
28) An agency is not terminated by the loss of a required qualification.
Answer: FALSE
Diff: 2
Topic: Termination of an Agency

29) When a principal terminates an agency contract, it is called a renunciation of authority.
Answer: FALSE
Diff: 2
Topic: Termination of an Agency

30) The termination of an agency by the agent is called the revocation of authority.
Answer: TRUE
Diff: 2
Topic: Termination of an Agency

31) An agency always requires:
   A) both an agent and principal who are adults
   B) a written contract
   C) consideration on the part of both the principal and the agent
   D) an identified underlying transaction
   E) intent by both the principal and agent to be in the arrangement

Answer: E
Diff: 2
Topic: Agency
Skill: Legal Concepts

32) The general reference source for agency law is:
   A) Article 4 of the Uniform Commercial Code
   B) United States Supreme Court opinions
   C) the Restatement (Second) of Agency
   D) the Restatement (Second) of Contracts
   E) state constitutions

Answer: C
Diff: 1
Topic: Agency
Skill: Legal Concepts
33) Which is true about agency agreements?
   A) A minor may generally be a principal.
   B) A minor may generally be an agent.
   C) An agency agreement must have consideration on both the principal's and agent's side.
   D) Agents must disclose their agency status to those with whom they are dealing.

Answer: B
Diff: 2
Topic: Agency
Skill: Legal Concepts

34) Assuming that any minor who is involved is old enough to understand the terms of a transaction, which of the following is generally true in order to create a contract that cannot be disaffirmed?
   A) A minor can act as an agent on behalf of another minor.
   B) An adult can act as an agent on behalf of a minor.
   C) A minor can act as an agent on behalf of an adult.
   D) An adult can act as an agent on behalf of a minor if the minor waives his right to disaffirm.
   E) The principal can disaffirm all contracts that involve a minor as either principal or agent.

Answer: C
Diff: 2
Topic: Agency
Skill: Legal Concepts

35) The primary function of an agent in a principal-agent relationship is to:
   A) protect the principal from legal liability
   B) conduct business on behalf of the principal
   C) enter into contracts with the principal
   D) operate as a partner with the principal
   E) maintain the principal's status quo

Answer: B
Diff: 2
Topic: Agency
Skill: Legal Concepts
36) Someone authorized to act on behalf of another is generally known as a(n): 
   A) agent  
   B) independent contractor  
   C) employee  
   D) surety  

Answer: A  
Diff: 1  
Topic: Agency  
Skill: Legal Concepts

37) Which of the following is true? 
   A) All employees are agents, and no independent contractors are agents.  
   B) All employees are agents, and some independent contractors are agents.  
   C) Some employees are agents, and some independent contractors are agents.  
   D) Some employees are agents, and no independent contractors are agents.  
   E) No employees are agents, and no independent contractors are agents.  

Answer: C  
Diff: 3  
Topic: Agency  
Skill: Legal Concepts

38) Compared to an employee, an independent contractor is characterized by: 
   A) not being paid as much for the work performed  
   B) a lack of liability for her own actions  
   C) more freedom to do her work in the manner she determines  
   D) less ability to hire others to assist her  

Answer: C  
Diff: 2  
Topic: Agency  
Skill: Legal Concepts

39) Which of the following is generally true about a relationship where one party works for another? 
   A) A party can simultaneously be an employee and an independent contractor.  
   B) A party can simultaneously be an employee and an agent.  
   C) A party can simultaneously be an independent contractor and an agent.  
   D) Both B and C are true.  
   E) A, B, and C are true.  

Answer: D  
Diff: 2  
Topic: Agency  
Skill: Legal Concepts
40) Which of the following is true about determining whether someone working for another is an independent contractor or an employee?

A) The classification of the person doing the work depends on that person's job title.
B) The classification of the person doing the work depends on whether the parties to the arrangement consider the person doing the work to be an employee or independent contractor.
C) The classification of the person doing the work depends on if the person is also an agent.
D) The classification of the person doing the work depends on a number of factors, with no single factor being any more important than the others.
E) The classification of the person doing the work depends on a number of factors, with the degree of control over that person's work by the person who is paying for the work being the most important factor.

Answer: E
Diff: 3
Topic: Agency
Skill: Legal Concepts

41) An express agency requires:

A) a written agreement between the principal and agent
B) an oral or written agreement between the principal and agent
C) no agreement if the conduct indicates an implied agreement
D) an ongoing arrangement for a reasonable period of time

Answer: B
Diff: 2
Topic: Formation of an Agency
Skill: Legal Concepts

42) An express written agency agreement that is often used to give an agent the power to sign legal documents on behalf of the principal is know as a(n):

A) exclusive agency contract
B) power of attorney
C) employer-employee relationship
D) employer-independent contractor relationship

Answer: B
Diff: 1
Topic: Formation of an Agency
Skill: Legal Concepts
43) An express agency arrangement can be formed with which types of agreements?
   A) written only
   B) oral only
   C) oral or written
   D) An agreement is not necessary to form an express agency.

   Answer: C
   Diff: 1  
   Topic: Formation of an Agency
   Skill: Legal Concepts

44) An agency arrangement based on the conduct of the two parties is what type of agency?
   A) express
   B) implied
   C) inherent
   D) apparent

   Answer: B
   Diff: 1  
   Topic: Formation of an Agency
   Skill: Legal Concepts

45) Implied authority can be best described as a situation where:
   A) the principal and agent undertake actions in accordance with their earlier agreement that
      one act as agent for the other
   B) the principal has made representations to a third party that someone is to act as her agent
   C) the agent has made representations to a third party that he is acting as an agent for
      another
   D) the conduct of two parties indicates that they are acting in a principal and agent capacity
   E) both B and C

   Answer: D
   Diff: 2  
   Topic: Formation of an Agency
   Skill: Legal Concepts

46) Incidental authority is a kind of:
   A) express authority
   B) implied authority
   C) apparent authority
   D) authority by ratification
   E) authorization without authority

   Answer: B
   Diff: 2  
   Topic: Formation of an Agency
   Skill: Legal Concepts
47) Apparent authority can be best described as a situation where:
   A) the principal and agent undertake actions in accordance with their earlier agreement that one act as agent for the other
   B) the principal has made representations to a third party that someone is to act as her agent
   C) the agent has made representations to a third party that he is acting as an agent for another
   D) the conduct of two parties indicates that they are acting in a principal and agent capacity
   E) both B and C

Answer: B
Diff: 2
Topic: Formation of an Agency
Skill: Legal Concepts

48) Where the principal makes representations to a third party about the role that an agent is to play, which kind of authority can be created?
   A) apparent authority
   B) authority by estoppel
   C) inherent authority
   D) express authority
   E) implied authority

Answer: A
Diff: 2
Topic: Formation of an Agency
Skill: Legal Concepts

49) An agent negotiates a contract with a third party, for which the agent did not have express authority. Which of the following is true?
   A) The principal can never be held liable on the contract because the agent exceeded his authority.
   B) The principal can be liable on the contract only if the agent had implied authority to enter into the contract.
   C) The principal can be liable on the contract only if apparent authority was present.
   D) Either implied or apparent authority might cause the principal to be liable on the contract.

Answer: D
Diff: 2
Topic: Formation of an Agency
Skill: Legal Concepts
50) Which of the following is not one of the common types of agent authority?
A) apparent
B) implied
C) actual
D) dependent
E) agency by ratification

Answer: D
Diff: 1
Topic: Formation of an Agency
Skill: Legal Concepts

51) Where an employer makes use of a job title in an employment situation, which kind of authority can arise in the employee based on the job title?
A) apparent authority
B) authority by estoppel
C) inherent authority
D) express authority
E) implied authority

Answer: A
Diff: 2
Topic: Formation of an Agency
Skill: Legal Concepts

52) In the context of agency, ratification refers to:
A) reaffirming a contract to which one previously agreed
B) agreeing, after reaching majority, to be bound by a contract entered into as a minor
C) agreeing to be bound to a contract entered into by an agent that exceeded the agent's authority at the time the agent entered into it
D) getting the appropriate agency to agree to take steps to reduce an excessively large rodent population

Answer: C
Diff: 1
Topic: Formation of an Agency
Skill: Legal Concepts
53) An agency arrangement can be terminated by:
   A) achievement of the agency's purpose
   B) mutual agreement
   C) occurrence of a specified event
   D) both A and B
   E) A, B, and C

Answer: E
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts

54) The death of which party(ies) will cause an agency to terminate?
   A) the principal only
   B) the agent only
   C) either the principal or the agent
   D) neither the principal nor the agent

Answer: C
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts

55) The bankruptcy of which party(ies) will cause an agency to terminate?
   A) the principal only
   B) the agent only
   C) either the principal or the agent
   D) neither the principal nor the agent

Answer: A
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts
56) If the law changes such that the actions called for in an agency arrangement become illegal after the agency has been carried on legally for some period of time, what is the consequence?
   A) The agency is terminated retroactively and the parties are left where they are.
   B) The agency is terminated retroactively and the parties must each return any consideration received from the other.
   C) The agency is terminated effective upon the change in law taking effect.
   D) The agency is not terminated, but the principal and agent will each become liable for his or her own illegal actions.
   E) The agency is not terminated, but the principal and agent will each become liable for the illegal actions of the other.

Answer: C
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts

57) When an agent terminates an agency arrangement, the agent's action is called:
   A) revocation of authority
   B) rejection of authority
   C) renunciation of authority
   D) reaffirmation of authority
   E) reacquisition of authority

Answer: C
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts

58) When a principal terminates an agency arrangement, the principal's action is called:
   A) revocation of authority
   B) rejection of authority
   C) renunciation of authority
   D) reaffirmation of authority
   E) reacquisition of authority

Answer: A
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts
59) In an agency for a fixed term, such as 1 year, prior to the end of the stated period, the agent has:
   A) the power, but not the right, to terminate the arrangement
   B) the right, but not the power, to terminate the arrangement
   C) both the power and the right to terminate the arrangement
   D) neither the power nor the right to terminate the arrangement

Answer: A
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts

60) What is the effect of an agent terminating a fixed-term agency prior to the expiration of the stated period of time?
   A) The agency is terminated without further legal consequences.
   B) The attempted termination of the agency is not effective.
   C) The agency is terminated, but the agent might be liable for damages to the principal.
   D) Any contracts previously formed by the agent can be disaffirmed by the third party.
   E) The authority of the agent changes from express to apparent.

Answer: C
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts

61) What is the significance of an agency coupled with an interest?
   A) Only apparent authority can exist.
   B) The agency cannot be terminated unilaterally by the principal.
   C) The agent must be compensated for the agent's efforts.
   D) The agency cannot be terminated by agreement of the principal and agent.
   E) Both B and D are true.

Answer: B
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts
62) An agency coupled with an interest typically arises in which situation?
A) The agent is compensated for the performance of the duties.
B) The principal would likely suffer a loss if the agent's duties are not properly performed.
C) The principal gives the agent authority to sell collateral owned by the principal in the event that the principal defaults on a loan payable to the agent.
D) The agent is hired to perform personal services on behalf of the principal.
E) All of the above are true.

Answer: C
Diff: 2
Topic: Termination of an Agency
Skill: Legal Concepts

63) Charlie Customer goes to Kim, a local travel agent, and buys an airline ticket on BartAir. In this transaction:
A) Charlie is the principal, and Kim is his agent
B) BartAir is the principal, and Kim is its agent
C) Kim is the agent of neither BartAir nor Charlie
D) Kim is the agent of both Charlie and BartAir

Answer: B
Diff: 2
Topic: Agency
Skill: Factual Application

64) Jack hires Frankie, who is 13 years old, to buy a computer on Jack's behalf. Which of the following is true?
A) This is a valid agency relationship even though Frankie is a minor, and Jack would be bound by authorized contracts entered into on Jack's behalf.
B) This is a valid agency relationship even though Frankie is a minor, but Jack would be able to disaffirm any contracts entered into on Jack's behalf.
C) This agency arrangement is not valid because the agent lacks contractual capacity.
D) If Frankie buys the computer on Jack's behalf, Frankie would not be entitled to payment under the terms of the agency arrangement because of his lack of capacity.

Answer: A
Diff: 2
Topic: Agency
Skill: Factual Application
Susan Marie works as a receptionist for a computer software company. Susan Marie works from 8 a.m. to 5 p.m. on Monday through Thursday, and from 8 a.m. to noon on Friday. Susan Marie is paid $15 per hour, and is told how to do her job and what she should be working on at any particular time. The software company and Susan Marie have executed an "independent contractor agreement" in which the terms of this arrangement are specified. Which of the following is true?

A) Susan Marie would be treated as an employee because she is paid for the work that she does.
B) Susan Marie would be treated as an employee because of the control exercised by the software company over her work and because of the manner in which she is paid.
C) Susan Marie would be treated as an independent contractor because of the terms of the express agreement with the software firm.
D) Susan Marie would be treated as an independent contractor because of the irregular working hours of working only part of the day on Fridays.

Answer: B
Diff: 2
Topic: Kinds of Employment Relationships
Skill: Factual Application

John is hired at minimum wage in a fast-food restaurant. John works at the counter taking customer orders, accepting payment, and giving the orders to the customer. John must work in accordance with a detailed procedures manual. John is:

A) an independent contractor, but not an agent
B) an employee, but not an agent
C) an independent contractor as well as an agent
D) an employee as well as an agent

Answer: D
Diff: 2
Topic: Kinds of Employment Relationships
Skill: Factual Application

The principal hires an agent to manage his restaurant. As a result, the agent hires two people to serve as waitstaff. The hiring of the waitstaff is an example of what type of authority?

A) implied
B) express
C) apparent
D) ratified
E) no authority

Answer: A
Diff: 2
Topic: Formation of an Agency
Skill: Factual Application
68) A principal gives an agent express authority to "get his car running right." The authority that the agent has to enter into contracts for the purchase of auto parts is:
   A) apparent authority
   B) authority by estoppel
   C) inherent authority
   D) express authority
   E) implied authority

Answer: E
Diff: 2
Topic: Formation of an Agency
Skill: Factual Application

69) Bob enlists the help of his son to buy a new car. On the way to test-drive several models, Bob tells his son, "I'm leaving this entire decision up to you except that you are not to spend over $20,000 on whatever car you decide on." At the Toyota dealer, Bob tells the salesperson, "I'm turning this whole decision over to my son, so deal with him even though it will be my car." Later, the son returns to the dealership and negotiates the purchase of a Toyota Camry for $21,500. What type of authority, if any, existed for the son to purchase this car?
   A) apparent
   B) implied
   C) actual
   D) dependent
   E) No authority existed here.

Answer: A
Diff: 3
Topic: Formation of an Agency
Skill: Factual Application

70) You have contracted orally with Patty to buy some real estate on her behalf. The only limitations are that she wants a vacant lot in a residential area for less than $100,000. If you find such a residential lot costing $85,000, what type of authority do you have to enter into this transaction on Patty's behalf?
   A) express
   B) apparent
   C) implied
   D) ratification

Answer: A
Diff: 1
Topic: Formation of an Agency
Skill: Factual Application
71) Bob, owner of a small business, goes to Sally to negotiate the purchase of some inventory. Bob has Paul with him, who he introduces to Sally as "Paul, my purchasing manager." A short while later, Bob says he must leave and says, "You two can conclude this deal." Paul signs a contract to buy 2,500 units of her product. Paul tells Bob, and Bob then says, "You know you weren't supposed to buy more than 1,000 units!" Assume that Bob, in fact, had instructed Paul, prior to meeting with Sally, not to buy more than 1,000 units. Can Sally hold Bob to the contract?
   A) No, because Paul did not have authority to buy 2,500 units.
   B) No, but she can hold him to a purchase of 1,000 units.
   C) Yes, because there was implied authority for the transaction.
   D) Yes, because there was apparent authority for the transaction.

Answer: D
Diff: 3
Topic: Formation of an Agency
Skill: Factual Application

72) Principal has entered into a 6-month contract during which Agent will sell Principal's products on a commission basis. Although Agent is complying with all terms of the agreement, during the third month Principal tells Agent she is no longer going to sell his products and will receive no further commissions if she does. Which of the following is true?
   A) Agent continues to have a duty to sell because the 6 months are not yet over.
   B) Principal has the power, but not the right, to terminate the agency.
   C) Principal has the right, but not the power, to terminate the agency.
   D) Principal has both the right and the power to terminate the agency.
   E) Principal has neither the right nor the power to terminate the agency.

Answer: B
Diff: 3
Topic: Termination of an Agency
Skill: Factual Application

73) Which of the following would not terminate an agency by operation of law?
   A) A real estate agent loses his license.
   B) A principal hires another agent with similar duties.
   C) The principal is declared bankrupt.
   D) A lightning bolt kills the principal.

Answer: B
Diff: 2
Topic: Termination of an Agency
Skill: Factual Application
74) Pam and Alex enter into a contract for an agency agreement that states that Alex is Pam's agent to sell Pam's house. The term of the agency is from January 1 to April 1, 2002. Which is true as of February 29, 2002?

A) Neither Pam nor Alex has the power to end this agency.
B) Both Pam and Alex have the power to end this agency.
C) Pam has both the right and power to end this agency; Alex has neither.
D) Alex has both the right and power to end this agency; Pam has neither.

Answer: B
Diff: 3
Topic: Termination of an Agency
Skill: Factual Application

75) A principal and agent enter into an agency agreement under which the agent has a fixed 90-day period to sell the principal's house. Which of the following will end the agency arrangement prior to the end of the 90-day period?

A) Notification by the principal that the arrangement is over.
B) Notification by the agent that the arrangement is over.
C) Notification by either the agent or the principal that the arrangement is over.
D) Neither the agent nor the principal can unilaterally end the arrangement prior to the expiration of the 90-day period.

Answer: C
Diff: 3
Topic: Termination of an Agency
Skill: Factual Application

76) Ms. Principal and Mr. Agent sign an agency contract under which Agent will sell Principal's house for a fee of $10,000. Assume that the contract is valid in all respects and that on the third day of the contract period, Ms. Principal tells Mr. Agent that she has changed her mind and doesn't want him to sell the house. The next day Mr. Agent goes to Ms. Principal with a ready, willing, and able buyer. Ms. Principal:

A) must sell to the buyer because the agency is still in existence
B) cannot sell to the buyer because the agency is no longer in existence
C) can recover damages from Mr. Agent because the agency had ended
D) is not obligated to sell to the buyer because her renunciation had terminated the agency arrangement
E) may sell to the buyer even though the agency arrangement was no longer in existence

Answer: E
Diff: 3
Topic: Termination of an Agency
Skill: Factual Application
77) The principal hires an agent to manage her boutique. After several months, the principal fires this agent. To avoid liability for any further acts done by this agent, the principal must give:
   A) direct notice to all persons who knew of the agency
   B) direct notice to those who dealt with the agent, and no notice to anyone else
   C) direct notice to those who dealt with the agent, but only constructive notice to those who knew of the agency but did not deal with the agent
   D) constructive notice to all persons who knew of the agency, and no notice to anyone else
   E) No notice of the termination is required in order to avoid liability.

Answer: C
Diff: 2
Topic: Termination of an Agency
Skill: Factual Application

78) Jeff hires Frank to work for his company. As part of his job duties, Frank must negotiate a contract with another an outside company. In this business relationship, what are the respective roles of the parties?
   A) Jeff is the agent, Frank is the principal, and the outside company is a third-party.
   B) Frank is the principal, Jeff is the agent, and the outside company is a third-party.
   C) Jeff is the principal, Frank is the agent, and the outside company is a third-party.
   D) The outside company is the principal, Jeff is the agent, and Frank is a third-party.

Answer: B
Diff: 2
Topic: Termination of an Agency
Skill: Factual Application

79) Mickey went to eat at a local restaurant. He was unsatisfied with the meal, and decided to leave quickly without paying. Another patron noticed that Mickey left without paying, and followed Mickey's car onto the highway. The patron called a manager at the restaurant from a cell phone, providing information as to Mickey's location. The manager called 911 to relay the information to the police.

The cars were driving at high-speed on the highway. Mickey lost control of his vehicle and suffered significant injuries after crashing into an embankment. The patron drove away from the scene without being identified. Mickey subsequently sued the restaurant, claiming that the patron was an agent of the establishment and therefore vicariously liable for the cause of the accident.

Will the patron most likely be considered an agent of the restaurant?
   A) Yes; the patron was acting on behalf of the restaurant and to further the purpose of the enterprise.
   B) Yes; the patron was communicating with the restaurant manager and being directed by the establishment.
   C) No; by the very nature of the definition, patrons are customers of a restaurant and may never act as agents.
   D) No; the patron was merely relaying information to the manager, and these facts would not indicate that the manager was controlling the actions of the patron.

Answer: D
Diff: 2
Topic: Termination of an Agency
Skill: Factual Application
80) Ringo is a welder at a manufacturing facility. His main function at the organization is to perform welding related tasks. His job does not entail purchasing, and he rarely interacts with anyone outside of the organization. While at the grocery store, he runs into George, a salesman from a welding supply company. George tells Ringo that he will sell the company welding supplies at a significant discount if he can sign an exclusive contract immediately. Ringo thinks it looks like a good deal, so he signs his company up for the terrific bargain.

Ringo tells his boss, Paul, about the deal. Paul is initially upset, but after review of the contract he decides to accept shipment of the supplies for the next few months. After a few months have passed, John, a salesman from a competing welding supply company offers an even better deal to Paul. Paul wants to get out of the contract with George. He's thinking of telling George that the initial contract wasn't valid because Ringo did not have authority to sign on behalf of the company. What is the most likely result?

A) The company will not be liable because Ringo had no authority by virtue of his position.
B) The company will not be liable because Ringo did not have authority to sign the contract, and ratification did not occur.
C) The company will be liable because Ringo is an authorized to bind the company by virtue of his position.
D) The company will be liable. Ringo is not authorized, but the actions of Paul constitute ratification.

Answer: D
Diff: 2
Topic: Termination of an Agency
Skill: Factual Application

81) Why can apparent agency be created only by representations of the principal, but not the supposed agent?

Answer: When a party represents that someone is her agent, the party making the representations is creating potential liability for herself, and the law will hold her liable. When someone makes representations that she is someone's agent, the person making the representations is creating liability for another. Assuming that the purported principal had no role in the representations, it would not be fair to impose liability on the purported principal because there would be no way for the purported principal to know about or control the representations of others claiming to be her agent.
Diff: 3
Skill: Ethics and Policy

82) Why is either party allowed to terminate a fixed-term agency arrangement prior to the end of the term?

Answer: Because contracts are considered consensual in nature, a principal should be bound by an agent's contract only if they both want the agent to be acting as such for the principal. The ability to collect damages in a wrongful termination protects the nonbreaching party.
Diff: 2
Skill: Ethics and Policy
83) Why is capacity required for the principal, but not for the agent?

Answer: The rule allowing a minor to disaffirm a contract is for the protection of a minor. If a minor could be a principal, the minor could do indirectly what the minor could not do directly. An adult agent could take advantage of the minor principal. On the other hand, when a minor acts as an agent, any contracts that the minor enters into are binding on the adult principal, not the minor agent. Thus, a minor does not need protection here. If the adult has foolishly hired a minor to be his agent, it is the adult who must live with the consequences of that decision. Furthermore, it might be wise for an adult to hire a minor who might be an expert on the subject matter of the transaction.

Diff: 3
Skill: Ethics and Policy

84) Mary has been hired to write courses for a Web-based training organization. Mary works at the offices of the organization. Mary is given content guidelines and a contract for each course that she writes, and is paid a flat fee upon completion of the course. It can take anywhere from 2 weeks to 6 weeks to complete a course. The organization wants the contractors to work in their offices during the regular 40-hour work week, unless they need to be elsewhere to do research. The organization provides a computer to Mary. Mary also is able to use other employees at the organization for word processing and editing. Is Mary an employee or an independent contractor?

Answer: Mary is probably an independent contractor because of being paid on an irregular basis upon the completion of each course. It is not quite clear how much control is exercised over how she does her work, but it appears that she has considerable freedom so long as she stays within the course guidelines. The requirement to be present during the work week and the availability of the computer and other employees would weigh in favor of Mary being an employee, but this would probably not overcome the other factors.

Diff: 2
Topic: Kinds of Employment Relationships
Skill: Factual Application

85) Jan wants to buy a house, but her friend Ann is a much tougher negotiator. They devise a plan where Ann will tell the seller of the house that she is Jan's agent and will make all the decisions with respect to any purchase of the house. They also agree that Ann actually will have no such authority and that Jan is the only one who will make any decisions relative to purchasing the house. They meet with the seller, and Ann says that she is Jan's agent while Jan says nothing. Has an agency been created?

Answer: Although an agent cannot create an apparent agency, Jan's silence would be treated as a representation that Ann's statements were true, thereby creating apparent authority.

Diff: 2
Topic: Formation of the Agency Relationship
Skill: Factual Application
86) Ann has contracted to be Paul's agent for the sale of Paul's home. The contract provides that the duration of this agency is 120 days. Within the first week, Ann has found a potential buyer and is involved in negotiations. The following week, Paul notifies Ann that he is terminating the arrangement, but Ann proceeds to negotiate a sale with the potential buyer. Discuss this situation.

Answer: Paul had the power to terminate the agency, thus Ann no longer had any authority and the sale contract is not valid. Because Paul did not have the right to terminate the agency, Ann could recover damages, most likely the amount of her lost commission. The buyer could recover any damages from Ann caused by her falsely indicating that she had authority.

Diff: 2
Topic: Termination of an Agency
Skill: Factual Application

87) Agnes is an agent for Pepe for maintaining Pepe's antique car collection, including the sale and purchase of antique cars. Agnes has had this position for several years, but recently Agnes has developed a cocaine habit. She recently sold one of Pepe's cars and kept some of the money herself to buy some cocaine. Soon thereafter, Agnes was declared bankrupt. The state then notified Agnes that she had sold the maximum allowable number of cars in a year without getting a dealer's license. Shortly thereafter, Pepe was on a secluded island and died, which no one knew about until 2 weeks later. Discuss the effect of these events on the existence of the agency.

Answer: Although the actions of Agnes in using the proceeds of the one sale to buy cocaine was illegal, the purpose of the agency remained legal. The bankruptcy of Agnes would not end the agency. Once the sale of cars required a license, there would be no authority for such sales until the license was obtained. The agency ended at the moment of Pepe's death.

Diff: 2
Topic: Termination of an Agency
Skill: Factual Application
1) An agent has a duty to notify the principal of information he or she learns from a third party if that information is important to the principal.

Answer: TRUE
Diff: 1
Topic: Agent's Duty of Loyalty to the Principal

2) A lawyer who claims to be a specialist in securities law will be held to the standard of a reasonable specialist in securities law.

Answer: TRUE
Diff: 1
Topic: Agent's Duty of Loyalty to the Principal

3) A third party can assume that if he tells something to an agent, the information is forwarded to the principal.

Answer: TRUE
Diff: 2
Topic: Agent's Duty of Loyalty to the Principal

4) An agent acting as a dual agent is not always in breach of the duty of loyalty.

Answer: TRUE
Diff: 1
Topic: Agent's Duty of Loyalty to the Principal

5) An agent can usurp an opportunity available to the principal.

Answer: FALSE
Diff: 1
Topic: Agent's Duty of Loyalty to the Principal

6) Misuse of confidential information is not considered to be a breach of the duty of loyalty as long as it benefits the agency.

Answer: FALSE
Diff: 1
Topic: Agent's Duty of Loyalty to the Principal
7) Because the agent is hired to exercise the agent's skills and judgment, the agent has a duty of obedience to the principal.

Answer: TRUE
Diff: 1
Topic: Agent's Duty of Loyalty to the Principal

8) The agent owes the duty of accountability to the principal, but the principal does not owe this duty to the agent.

Answer: TRUE
Diff: 2
Topic: Agent's Duty of Loyalty to the Principal

9) An agent generally is not liable on contracts made in connection with a fully disclosed agency.

Answer: TRUE
Diff: 1
Topic: Contract Liability to Third Parties

10) An undisclosed agency exists where the third party is aware that the party he is dealing with is an agent, but does not know the identity of the principal.

Answer: FALSE
Diff: 2
Topic: Contract Liability to Third Parties

11) In an undisclosed agency, both the principal and the agent are liable on the contract with the third party.

Answer: TRUE
Diff: 2
Topic: Contract Liability to Third Parties

12) An agent can be held liable on any contract negotiated by the agent on behalf of the principal.

Answer: FALSE
Diff: 2
Topic: Contract Liability to Third Parties

13) In an undisclosed agency, both the principal and the agent are liable on the contract with the third party.

Answer: TRUE
Diff: 2
Topic: Contract Liability to Third Parties
14) A principal's liability for the tort of an agent depends on the degree of disclosure of the agency relationship.

Answer: FALSE
Diff: 3
Topic: Tort Liability to Third Parties

15) An agent may not be liable for the tortuous conduct of his or her principal if he or she merely indirectly participated in the principal's conduct.

Answer: FALSE
Diff: 2
Topic: Tort Liability to Third Parties

16) A principal's liability for his/her agent's conduct within the scope of their employment is based on the legal theory of vicarious liability.

Answer: TRUE
Diff: 2
Topic: Negligence

17) The basic rule for whether the principal is liable for negligence of an agent is whether the agent intended to commit the tort.

Answer: FALSE
Diff: 2
Topic: Negligence

18) The frolic and detour rule states that an agent is liable to the principal for damages resulting from the agent going on a frolic and detour.

Answer: FALSE
Diff: 2
Topic: Negligence

19) Under the coming and going rule, the principal is not liable for the negligence of the agent when commuting to or from the place of work.

Answer: TRUE
Diff: 2
Topic: Negligence

20) Generally, a principal is liable for the acts of her agents while on the way to and from work if the principal supplies a car to the agent.

Answer: FALSE
Diff: 2
Topic: Negligence
21) When an agent is acting partly for himself or herself and partly for the principal, the agent will be held totally liable if the agent injures someone while on such a mission.

Answer: FALSE
Diff: 2
Topic: Negligence

22) If an agent commits an intentional tort within a work-related time or space, the principal is liable for any injuries caused by the agent's intentional torts.

Answer: TRUE
Diff: 2
Topic: Intentional Torts

23) If an agent's motivation in committing an intentional tort is to promote the principal's business, the principal is relieved of liability for any injury caused by the tort.

Answer: FALSE
Diff: 2
Topic: Intentional Torts

24) The degree of skill necessary to complete a task has little to do with whether someone is an independent contractor or not.

Answer: FALSE
Diff: 2
Topic: Liability for Independent Contractor's Torts

25) A principal is not liable for injuries caused by independent contractors.

Answer: TRUE
Diff: 2
Topic: Liability for Independent Contractor's Torts

26) A principal who hires an unqualified independent contractor remains free of liability if that person injures someone while on the job.

Answer: FALSE
Diff: 1
Topic: Liability for Independent Contractor's Torts
27) All of the following are duties of the agent to the principal **except:**
   A) loyalty
   B) notification
   C) reimbursement
   D) obedience
   E) accountability

Answer: C
Diff: 1
Topic: Agent's Duties
Skill: Legal Concepts

28) An agent's obligation to perform in accordance with the terms of the agency arrangement is the agent's duty of:
   A) obedience
   B) loyalty
   C) indemnification
   D) performance
   E) nonbreach

Answer: D
Diff: 2
Topic: Agent's Duties
Skill: Legal Concepts

29) An agent's duty of notification can best be described as a duty to:
   A) notify any third parties that the agent is acting as an agent
   B) notify any third parties as to the identity of the principal
   C) notify the principal about any material information that the agent learns relative to the subject matter of the agency
   D) notify the principal in a reasonable period of time in advance of terminating the agency arrangement
   E) both A and B

Answer: C
Diff: 2
Topic: Agent's Duties
Skill: Legal Concepts
30) Information that comes to the knowledge of an agent:
   A) is required to be communicated to the principal in all circumstances
   B) is imputed to the principal
   C) can be disclosed to the principal only with the third party's consent
   D) will result in termination of the agency arrangement if it is not communicated to the principal

Answer: B
Diff: 2
Topic: Agent's Duties
Skill: Legal Concepts

31) An agent's competing with the principal is generally a breach of the duty of:
   A) performance
   B) loyalty
   C) accounting
   D) indemnification
   E) obedience

Answer: B
Diff: 2
Topic: Agent's Duties
Skill: Legal Concepts

32) Which of the following is not one of the common ways in which the duty of loyalty can be breached?
   A) self-dealing
   B) dual agency
   C) usurping an opportunity
   D) failing to follow the principal's instructions
   E) competing with the principal

Answer: D
Diff: 2
Topic: Agent's Duties
Skill: Legal Concepts

33) The duty of loyalty is generally a duty of:
   A) the principal only
   B) the agent only
   C) both the principal and agent
   D) neither the principal nor the agent

Answer: B
Diff: 2
Topic: Agent's Duties
Skill: Legal Concepts
34) Which of the following is **not** a duty of the agent in a principal-agency relationship.
   A) loyalty
   B) obedience
   C) accountability
   D) performance
   E) indemnification

Answer: E
Diff: 2
Topic: Agent's Duties
Skill: Legal Concepts

35) What distinguishes the duties of reimbursement and indemnification?
   A) Reimbursement is an agent's duty and indemnification is a duty of the principal.
   B) Reimbursement is a principal's duty and indemnification is a duty of the agent.
   C) Reimbursement relates to expected expenditures by the agent, and indemnification relates to losses suffered.
   D) Reimbursement relates to third parties and indemnification relates to the principal.
   E) Reimbursement applies only to actions that were within the scope of the agency whereas indemnification relates to all actions of the agent.

Answer: C
Diff: 3
Topic: Principal's Duties
Skill: Legal Concepts

36) The principal's duty of cooperation requires that:
   A) the principal assist the agent and not interfere with the agent in the performance of her duties
   B) the principal take reasonable steps to accomplish what the principal has agreed to do
   C) the principal promptly pay any agreed-upon compensation to the agent upon the agent's completion of his duty
   D) the principal pay the agent for any expenses incurred in connection with the agency arrangement
   E) the principal not hold the agent liable for torts that the agent commits in connection with the agency arrangement

Answer: A
Diff: 2
Topic: Principal's Duties
Skill: Legal Concepts
37) Which of the following is not a duty that the principal owes to the agent?
   A) compensation
   B) reimbursement and indemnification
   C) obedience
   D) cooperation
   E) providing a safe work place

Answer:  C
Diff: 2
Topic: Principal's Duties
Skill: Legal Concepts

38) The duty of a principal to indemnify her agent can best be described as a duty to:
   A) pay to the agent any loss the agent suffers because of the principal
   B) promptly pay the agreed compensation in the agency arrangement
   C) give the agent adequate instructions to properly carry out the duties of the agency
   D) prevent the agent from having personal responsibility for torts that the agent commits while acting within the scope of the agency

Answer:  A
Diff: 3
Topic: Principal's Duties
Skill: Legal Concepts

39) A principal has a duty of compensation:
   A) in all agency arrangements
   B) only in agency arrangements that expressly provide for compensation
   C) in all agency arrangements except for gratuitous agency arrangements
   D) to pay the agent prior to the agent performing the duties of the agency
   E) to pay the agent even where the agent failed to produce the required result under a contingent fee arrangement

Answer:  C
Diff: 2
Topic: Principal's Duties
Skill: Legal Concepts

40) The degree to which an agent disclosed the agency relationship affects:
   A) the agent's liability on a contract that the agent negotiates
   B) the agent's liability for a tort committed by the agent
   C) the principal's liability for a tort committed by the agent
   D) the principal's liability on a contract that the agent negotiates
   E) All of these are correct.

Answer:  A
Diff: 2
Topic: Contract Liability to Third Parties
Skill: Legal Concepts
41) The degree to which an agent disclosed the agency relationship affects the contract liability of:
   A) the agent only
   B) the principal only
   C) both the agent and the principal
   D) neither the agent nor the principal

Answer: A
Diff: 2
Topic: Contract Liability to Third Parties
Skill: Legal Concepts

42) When an agent negotiates a contract on behalf of the principal, the liability of the principal will depend on if:
   A) the agent was motivated by the principal's best interests
   B) the agency arrangement was fully disclosed
   C) the agency arrangement was express or implied
   D) the agent was authorized to enter into this particular transaction
   E) the agency arrangement was agreed to in writing

Answer: D
Diff: 3
Topic: Contract Liability to Third Parties
Skill: Legal Concepts

43) Why is the agent able to be held liable on a contract when the existence of the agency arrangement was not disclosed?
   A) so that the outcome in a contract situation is the same as that for a tort
   B) to discourage the use of undisclosed agency arrangements
   C) to offset the fraud frequently present in this situation
   D) because the third party could rely on the reputation of only the agent when entering into the contract
   E) to ensure that the principal fulfills its obligations under contracts negotiated by authorized agents

Answer: D
Diff: 3
Topic: Contract Liability to Third Parties
Skill: Legal Concepts
44) In an agency relationship involving a principal, an agent, and a third party, whether or not the agency relationship has been disclosed to the third party is a crucial issue. This would affect:
   A) the contract liability of the principal to the third party for a tort of the agent
   B) the tort liability of the principal to the third party for a tort of the agent
   C) the tort liability of the agent to the third party for the agent's tort
   D) the contract liability of the agent to the third party on a contract made by the agent on the principal's behalf
   E) the liability of the principal to compensate the agent for the agent's services

Answer: D
Diff: 2
Topic: Contract Liability to Third Parties
Skill: Legal Concepts

45) Where an agent has disclosed that she is an agent, but has not disclosed the identity of the principal, who can be held liable on an authorized contract entered into by the agent on the principal's behalf?
   A) the agent only
   B) the principal only
   C) both the principal and agent
   D) neither the principal nor the agent
   E) only the agent prior to disclosure of the principal's identity, and only the principal thereafter

Answer: C
Diff: 2
Topic: Contract Liability to Third Parties
Skill: Legal Concepts

46) An agent who wishes to avoid liability on contracts he enters into on behalf of the principal should make sure that the principal is:
   A) undisclosed
   B) partially disclosed
   C) either partially disclosed or fully disclosed
   D) fully disclosed
   E) the degree of disclosure is irrelevant

Answer: D
Diff: 1
Topic: Contract Liability to Third Parties
Skill: Legal Concepts
47) When is an agent liable for a tort committed by the principal?
   A) when the agency is undisclosed
   B) when the tort was committed with the scope of the agency
   C) when the agent ratifies the action
   D) when the agent has aided or abetted the principal's tortious conduct
   E) both A and D

Answer: D
Diff: 2
Topic: Tort Liability to Third Parties
Skill: Legal Concepts

48) For which types of misrepresentations of an agent is the principal liable, assuming that the
   misrepresentation was made within the scope of the agency?
   A) intentional misrepresentations only
   B) innocent misrepresentations only
   C) both intentional and innocent misrepresentations
   D) neither intentional nor innocent misrepresentations

Answer: C
Diff: 2
Topic: Negligence
Skill: Legal Concepts

49) Under which circumstance will a principal **not** be responsible for the tort of the agent?
   A) if the agent was violating the instructions of the principal in committing the tort
   B) if the agency agreement between the agent and principal says that the principal will not
      be responsible for the agent's torts
   C) if the tort was committed outside the scope of the agency arrangement
   D) if the tort is an unintentional tort

Answer: C
Diff: 2
Topic: Negligence
Skill: Legal Concepts

50) The significance of a "frolic and detour" is which of the following?
   A) The employee can be liable to an employer if the frolic and detour is not authorized.
   B) It determines if an employee can be liable on a contract made on the employer's behalf.
   C) It can determine if someone working for a business is an employee or independent
      contractor.
   D) It can determine if an employer is liable for the negligence tort of an employee.
   E) It can determine if an employee is liable for torts he commits on the job.

Answer: D
Diff: 2
Topic: Negligence
Skill: Legal Concepts
51) If an agent negligently injures a third party while acting within the scope of employment, which of the following is true?
   A) The agent will be liable to the third party.
   B) The principal will be liable to the third party.
   C) The agent will be liable to the principal.
   D) All of the above are true.

Answer: D
Diff: 3
Topic: Negligence
Skill: Legal Concepts

52) What is the effect on the tort liability of an agent when it is determined that an intentional tort was committed within the scope of the agency?
   A) The agent is released from liability.
   B) The agent will be 50 percent liable, and the principal will be 50 percent liable.
   C) The liability of the agent to the injured party is unaffected.
   D) The agent will be liable only if the principal is unable to pay.
   E) The principal acquires the opportunity to use the contributory negligence defense.

Answer: C
Diff: 2
Topic: Negligence
Skill: Legal Concepts

53) The coming and going rule provides which of the following?
   A) Agents are not liable for torts that they commit when going to or from work.
   B) Principals are not liable for torts committed by their agents while going to or from work.
   C) Commuting to or from work is considered within the scope of an agency.
   D) Commuting to or from work is considered to be a dual purpose mission.
   E) A principal is liable for any tort of an agent that occurs between the time the agent comes to work and the time the agent goes home.

Answer: B
Diff: 2
Topic: Negligence
Skill: Legal Concepts

54) The "motivation" test and the "work-related" test are used to determine whether:
   A) an employer is responsible for the intentional tort of an employee
   B) an employer is responsible for the negligence tort of an employee
   C) an employee is responsible for the contract entered into on behalf of an employer
   D) an employee is responsible for the tort he commits while on the job

Answer: A
Diff: 2
Topic: Intentional Torts
Skill: Legal Concepts
55) Which of the following is true about the tests used to determine whether a principal is responsible for the intentional torts of his agent?
   A) The work-related test and motivation test are two names for the same test.
   B) In most states the plaintiff can choose which test to use.
   C) The work-related test will find that the employer is liable in more circumstances than the motivation test.
   D) Under either of these tests, the plaintiff must also prove that the agency was fully disclosed in order to recover.

Answer: C
Diff: 3
Topic: Intentional Torts
Skill: Legal Concepts

56) In which of the following circumstances can a principal be held liable for the torts of an independent contractor?
   A) in no circumstances
   B) in the same circumstances as the principal would be held liable for the torts of an agent
   C) when the principal is negligent in selecting the independent contractor
   D) when the independent contractor is hired to undertake a dangerous activity
   E) both C and D

Answer: E
Diff: 2
Topic: Liability for Independent Contractor's Torts
Skill: Legal Concepts

57) An agent has been hired to buy land for the principal for use as a factory site. The agent finds a good parcel for the purpose, and proposes it for purchase to the principal. The principal declines to purchase the property because it is too far from the interstate highway. The agent then buys this land for himself as an investment. What, if anything, has the agent done wrong?
   A) usurped an opportunity
   B) nothing
   C) engaged in self-dealing
   D) competed with the principal
   E) misused confidential information

Answer: B
Diff: 3
Topic: Agent's Duties
Skill: Factual Application
58) A principal hires an agent to place advertising in publications to reach certain target audiences. The agent places 45 percent of the advertising in a magazine of which he is the owner. The principal could probably recover from the agent on the grounds of:
   A) the agent breaching the duty of accountability
   B) the agent usurping an opportunity
   C) the agent competing with the principal
   D) the agent breaching the duty of obedience
   E) the agent engaging in self-dealing

Answer: E  
Diff: 3  
Topic: Agent's Duties  
Skill: Factual Application

59) A Boulder manufacturer of computer disk drives has contracted with you for you to be its agent in finding customers for their products. You arrange (without the principal's knowledge) a sale of the disk drives to a computer assembly business that you and your sister own. You have:
   A) not violated any of an agent's duties
   B) violated the duty of loyalty by usurping an opportunity
   C) violated the duty of loyalty by competing with the principal
   D) violated the duty of loyalty by self-dealing
   E) violated the duty of loyalty by engaging in a dual agency

Answer: D  
Diff: 3  
Topic: Agent's Duties  
Skill: Factual Application

60) Paul, who collects old cars, hires Andy to find and purchase a 1965 Ford Mustang on his behalf. Andy sees a car advertised that might be what Paul has in mind. Andy examines the car and falls in love with it. He decides to purchase it himself. Andy has:
   A) usurped an opportunity
   B) engaged in self-dealing
   C) competed with the principal
   D) not violated the duty of loyalty

Answer: A  
Diff: 3  
Topic: Agent's Duties  
Skill: Factual Application
61) Paulette appointed Angie to be her agent to purchase a building lot for a warehouse in a large city. Angie owns several suitable lots, and a week after the agency arrangement was entered into, said to Paulette, "You know, I own a couple of lots that might work and that I might be willing to sell." Angie and Paulette then agree on a price for Paulette to buy one of the lots. Angie has:
   A) not violated any of an agent's duties
   B) violated the duty of loyalty by usurping an opportunity
   C) violated the duty of loyalty by competing with the principal
   D) violated the duty of loyalty by self-dealing
   E) violated the duty of loyalty by engaging in a dual agency

Answer: A
Diff: 3
Topic: Agent's Duties
Skill: Factual Application

62) An agent enters into an authorized contract on behalf of the principal. The principal breached the contract and the agent was held to be liable due to the breach of the principal. The agent can seek to recover from the principal based on the principal's duty of:
   A) reimbursement
   B) cooperation
   C) compensation
   D) indemnification
   E) contribution

Answer: D
Diff: 2
Topic: Principal's Duties
Skill: Factual Application

63) Agent enters into a contract with Third Party on behalf of Principal. Agent told Third Party that this contract was being entered into on behalf of someone else, but did not identify Principal to Third Party. A couple of weeks later, Principal disappears and Third Party wants to hold Agent to the contract. Third Party can:
   A) not recover from Agent because Agent had disclosed the existence of Principal
   B) not recover from Agent because Third Party must first try to recover from Principal
   C) recover from Agent because Agent had a duty to ensure that Principal performed on the contract
   D) recover from Agent because Agent did not disclose the identity of Principal
   E) recover from Agent because Agent acted on behalf of an undisclosed principal

Answer: D
Diff: 3
Topic: Contract Liability to Third Parties
Skill: Factual Application
64) Pedro hires Andrea to negotiate the purchase of a sailboat for Pedro. Andrea decides to buy from Sally a sailboat meeting Pedro's specifications. Andrea tells Sally that the purchase is really being made by Pedro, and Andrea and Sally sign a written contract, with Andrea signing on Pedro's behalf. Based on all this:
   A) Pedro is not liable on this contract, but Andrea is liable
   B) neither Andrea nor Pedro can be held liable on this contract
   C) Andrea is not liable on this contract, but Pedro is liable
   D) either Andrea or Pedro could be held liable on this contract

Answer: C
Diff: 2
Topic: Contract Liability to Third Parties
Skill: Factual Application

65) John has been hired by Bubbaweiser Beer Company to purchase an airplane. He approaches Sam who has a Cessna for sale. John does not mention that he is making this purchase on behalf of someone else. He negotiates a deal. Two weeks later, Sam learns that John did not negotiate the deal for himself, but was acting as an agent. Bubbaweiser declares bankruptcy and cannot buy the plane. John:
   A) can be held liable on the contract because this was an undisclosed agency
   B) can be held liable on the contract because this was a partially disclosed agency
   C) can be held liable on the contract simply because he is an agent
   D) cannot be held liable on the contract
   E) can be held liable on the contract unless he was on a frolic and detour

Answer: A
Diff: 3
Topic: Contract Liability to Third Parties
Skill: Factual Application

66) Jane takes her car to Joe's Garage, leaving it there for repairs. Ted, one of Joe's employees, takes the car for a joy ride, without Joe's permission. In fact, Joe has a very strict rule that his employees cannot drive customers' cars except to diagnose or test them. Ted crashes into another car, driven by Mary. Mary is injured and sues Jane, Ted, and Joe. Which of the following is true?
   A) Only Ted is liable.
   B) Only Jane and Ted are liable.
   C) Jane, Ted, and Joe are all liable.
   D) Only Ted and Joe are liable.
   E) Only Joe is liable.

Answer: D
Diff: 2
Topic: Negligence
Skill: Factual Application
67) Bob sells real estate in Knoxville for a real estate sales company. One afternoon, he shows a client two homes in Knoxville and the client tells Bob that there is a great cabin for sale in Gatlinburg, about 40 miles from Knoxville. Bob drops the client off in Knoxville and goes to Gatlinburg to check out this property because he wants a place for his family to go on weekends. As he is entering Gatlinburg, he accidentally hits and injures a pedestrian. In determining whether Bob's employer can be held liable, a court will:
   A) apply the work-related test and find the employer liable
   B) not find the employer liable under the coming and going rule
   C) use the frolic and detour rule to determine the employer's liability
   D) determine the outcome based on the degree of disclosure of the agency relationship

Answer: C  
Diff: 3  
Topic: Negligence  
Skill: Factual Application

68) An employee of Slap-em-up Construction Company negligently drops some materials and injures a pedestrian on the sidewalk below. The liability of the employer to the injured pedestrian depends on:
   A) if the employee was within the scope of employment when the materials were dropped
   B) if the agency arrangement was fully disclosed
   C) the motivation of the employee in dropping the materials
   D) whether the employee intended to drop the materials
   E) None of the above.

Answer: A  
Diff: 2  
Topic: Negligence  
Skill: Factual Application

69) Rocky Mountain Mall hired George to be a Santa Claus in the mall. After a tough day of demanding kids, George stops at a bar in the mall for a cold beer. Before he knows it, he's had six beers and heads home still wearing his Santa suit. While driving, he injures a pedestrian. The injured pedestrian sues the owner of the shopping mall. Which of the following is true?
   A) Because he is still in uniform he would probably be found to be within the scope of employment and the mall owner would be liable.
   B) The only way the mall could avoid liability here is to prove that he was on a frolic and detour at the time of the accident.
   C) The coming and going rule would probably protect the owner of the mall from liability.
   D) The pedestrian must show that George intended to get drunk in order to recover.
   E) The mall owner would probably be liable because the bar was in the same mall where George worked as Santa.

Answer: C  
Diff: 3  
Topic: Negligence  
Skill: Factual Application
70) Edward is an employee of Huge Corporation who works in one of the company's stores. One day Edward sees one of his ex-girlfriends, who jilted him, in the store. He is still mad at her for this, so he goes over and slugs her in the face. She sues Edward and Huge Corporation. If the state applies the motivation test, which of the following is true?

A) Huge and Edward could each be liable for the tort.
B) Huge, but not Edward, would be liable for the tort.
C) Edward, but not Huge, would be liable for the tort.
D) Neither Edward nor Huge would be liable for the tort.
E) Huge and Edward could each be liable for the tort, but the plaintiff must first seek recovery from Edward.

Answer: C
Diff: 3
Topic: Intentional Torts
Skill: Factual Application

71) As the Wyoming Tetons are playing the Missouri Ozarks in a baseball game, a fan who is sitting near the Tetons' dugout starts yelling at Micky Macho, one of the relief pitchers, that his pink minivan makes him look like a suburban family man. Macho, because he feels insulted, picks up a nearby bench and throws it at the fan, who gets injured by this action. The fan then sues the Tetons. The fan could recover from the Tetons:

A) under the work-related test but not under the motivation test
B) under the motivation test but not under the work-related test
C) under either the motivation or the work-related test
D) under neither the work-related test nor the motivation test

Answer: A
Diff: 3
Topic: Intentional Torts
Skill: Factual Application

72) Eric works for a construction company. He drives his own vehicle to a job-site that is designated by the company on a daily basis. While driving to work one morning, he is dancing to music on the radio and spills coffee on his lap. As a result, he swerves his truck into an oncoming car, which causes significant physical injuries to the occupants of the other vehicle. The injured parties sue Eric and the construction company. Will the case be successful?

A) The case will be successful against Eric for driving negligently, and the case will also be successful against the company because he was acting within his scope of employment by driving to work.
B) The case will not be successful against Eric because he was not driving negligently, but the case will be successful against the employer due to the doctrine of respondeat superior.
C) The case will be successful against Eric for driving negligently, but the case will not be successful against the company due to the coming and going rule.
D) The case will not be successful against either Eric or the company.

Answer: C
Diff: 3
Topic: Intentional Torts
Skill: Factual Application
73) Eric works for a construction company. He drives his own vehicle to a job-site that is designated by the company on a daily basis. As a favor, his boss asks that he pick up some other employees to bring to the job-site the next morning. After picking up the employees, and while driving to work, he is dancing to music on the radio and spills coffee on his lap. As a result, he swerves his truck into an oncoming car, which causes significant physical injuries to the occupants of the other vehicle. The injured parties sue Eric and the construction company. Will the case be successful?

A) The case will be successful against Eric for driving negligently, and the case will also be successful against the company because he was acting with a dual purpose in his drive to work.
B) The case will not be successful against Eric because he was not driving negligently, but the case will be successful against the employer due to the doctrine of respondeat superior.
C) The case will be successful against Eric for driving negligently, but the case will not be successful against the company due to the coming and going rule.
D) The case will not be successful against either Eric or the company.

Answer: A
Diff: 3
Topic: Intentional Torts
Skill: Factual Application

74) Jerry and Elaine dated for a long time. She recently broke up with him. Jerry is working at the checkout counter of a local hardware store, when he looks up to see Elaine enter with her new boyfriend. Jerry becomes enraged and punches the new guy boyfriend right in the nose. Is the employer liable for the actions of Jerry?

A) The employer would not be liable under either the motivation test or the work-related test.
B) The employer would be liable under the motivation test, but would not be liable under the work-related test.
C) The employer would not be liable under the motivation test, but would be liable under the work-related test.
D) The employer would be liable under both the motivation test and the work-related test.

Answer: C
Diff: 3
Topic: Intentional Torts
Skill: Factual Application

75) Generally, if an agent negligently injures a third party within the scope of the agency, the principal can be held liable even if the agent was violating the instructions of the principal. Is this fair to the principal? What is the justification for this rule?

Answer: If the principal could avoid liability simply by having a rule against certain conduct, there would be no incentive for the principal to see that the rule is followed. This also gives an incentive to hire persons who will follow such rules.
Diff: 3
Skill: Ethics and Policy
76) Why does the law in some states hold principals liable for the intentional torts of employees under the work-related rule for torts motivated by personal concerns? Aren't these matters that an employer does not have control over? Which do you think is the better rule for employer liability for intentional torts of employees? Why?

Answer: This rule provides various incentives that reduce the risk of these injuries. Employers have an incentive to try to screen out violent persons in the hiring process. The rule also encourages employers to train employees to minimize the risk of these acts, and to assign employees likely to engage in such an act to areas where they do not interact with the public.

Diff: 2
Skill: Ethics and Policy

77) With the increasing incidence of workplace violence, what should the rule be for employer liability for violent acts of their employees? Should it be any different than for intentional torts generally? Why might you want a different rule in these cases?

Answer: In some of these situations, the violent act is one that could not have been foreseen by anyone, including the employer, even with the most thorough screening process. The work history of the individual often provides no warning to the employer.

Diff: 2
Skill: Ethics and Policy

78) Why would an agent not disclose the existence and identity of the principal when negotiating a contract, given that doing so would avoid agent liability on the contract? What should an agent do when the principal does not want to be disclosed?

Answer: There are many business situations where it is in the principal's interest for his or her identity to remain unknown. An agent should be aware of the liability risk and factor that into the amount of compensation charged. Alternatively, the agent might be able to put a liability release clause into any contracts with third parties, although this would not be possible in an undisclosed principal situation.

Diff: 2
Skill: Ethics and Policy

79) Does the frolic and detour rule make sense? Is it too subject to manipulation and subjective interpretation? Is there a more workable rule that you can think of?

Answer: A more precise rule would be difficult to formulate because of the variety of situations where an employee negligently injures a third party.

Diff: 1
Skill: Ethics and Policy
80) Anne was hired by Peter to sell a condominium in San Francisco. The asking price for the modest two-bedroom unit was $2,300,000. Peter told Anne he would go as low as $2,100,000, but no lower, but that she should try to get as high a price as possible. If he couldn't get that much for it, he said he would use it as rental property. A good friend of Anne's was in the market for a two-bedroom condominium in San Francisco. In fact, this friend had come to Anne to help her find a place and negotiate for it. Anne's friend said that she could absolutely not spend more than $2,000,000. When Peter hired Anne to sell his condominium, Anne told her friend about it and the asking price. Anne told her friend, "Don't even bother. He won't go below $2,100,000, that is his bottom price." Anne's friend accepted that. Anne then proposed to her friend that they go in together, with Anne fronting some money through her friend, but not having Anne's name on the contract as purchaser. Before they could work out the details, Anne's friend received a raise and decided to buy the condominium. Anne negotiated a price of $2,100,000 on Peter's behalf. Peter later found out that Anne had told her friend about his bottom price, and about the plan for Anne to help buy the house. What claims, if any, does Peter have?

Answer: Anne at least started to violate the duty of loyalty by self-dealing. Her disclosure of the bottom dollar price was also a violation, even though it appeared that the friend could not have bought the property. This is because the friend could have passed the information further, and circumstances can change, as they did here, and because the actual contract was negotiated with the buyer having knowledge. Anne improperly acted as a dual agent.

Diff: 3
Topic: Agent's Duties
Skill: Factual Application
81) Abe is an associate (employee) with that famous Denver law firm, Dewey, Cheatem, & How. One Thursday Abe and another associate, Gabe, had to go to western Colorado for a client's deposition. The deposition is unexpectedly over in midmorning and they start driving back to Denver. As they approach Vail, Gabe reminds Abe that the partners are in Aspen for 2 days and how it would be nice to be a partner. Abe says, "If they're in Aspen, that means they're not in the office in Denver. I hear the slopes calling for a half-day of skiing." They pull off I-70 and are skiing by 1 p.m. By chance, Abe runs into a client from Denver and they ski together and discuss the client's latest legal matters. As Abe is skiing with this client, Abe and the client both ski through a beginner ski lesson group as the beginner students practice their snowplow technique. Abe and the client each injure one skier. Five claims are filed:
1. Abe's victim sues Abe.
2. Abe's victim sues the law firm.
3. The client's victim sues the client.
4. The client's victim sues Abe.
5. The client's victim sues the law firm.

Discuss the outcome of each claim, assuming Abe was solely negligent with respect to his victim and the client was solely negligent with respect to his victim.

Answer: 1. Abe is liable for his own negligence to his victim.
2. The law firm's negligence depends on if Abe was on a frolic and detour.
3. The client is liable for his own negligence.
4. Abe is an agent for his client, and is an independent contractor. Generally speaking, an agent is not liable for the torts of his principal.
5. The law firm is not liable here because Abe is not liable.

Diff: 3
Topic: Contract Liability to Third Parties
Skill: Factual Application
82) Philip wanted to buy a new car. Philip did not know much about cars, but his 17-year-old daughter Andrea did because she had recently started driving and had drooled over new cars since she was 12 in anticipation of the day she would start driving. Andrea said she would go out and make the purchase on Philip's behalf if he would let her have the new car once a week. Philip agreed because he figured she'd probably manage to talk him out of any car at least once a week. Philip told Andrea, "I don't want anything fancy. Something like a Ford Pinto should be sufficient."

"Oh, Dad!" Andrea said, "They quit making Pintos in 1980. You know you don't want anything that small anyway. You even complained about the Taurus being too small."

Philip responded, "That's right, I guess. But, I don't need anything with all that power equipment and fancy stereos. Just get me a good, basic, comfortable car that isn't too small."

"I can do that," responded Andrea. "I'll find you the best car for your wants and needs."

"It's a deal," said Philip.

Andrea shopped around and ended up at a Pontiac dealer. Throughout the entire experience, she kept thinking that her dad needed a more sporty image. She was tempted to get him a Trans Am but thought this might be too much. Because she knew he wouldn't be comfortable in a small car, she decided on a full-size Bonneville sedan. After explaining to the salesperson that this car would be for her father, the salesperson talked Andrea into the sport model, which had a more powerful engine, special wheels, and suspension.

Philip was initially upset with this choice, but after Andrea correctly explained that the sport model was only about $1,500 extra, and that all Bonnevilles came with power windows and such, Philip cooled off and started driving the car. Six weeks later he returned the car to the dealer, explaining that his daughter was supposed to buy a basic model and the sport suspension on this car rode too roughly.

1. Can the dealer hold Philip to the contract? Give all reasons why or why not.
2. Can the dealer hold Andrea to the contract? Give all reasons why or why not.

Answer: 1. If there was authority for the transaction, Philip can be held to the contract. Andrea, as a minor, can act as an agent. There was probably not authority for the transaction, but by driving the car for several weeks, Philip probably ratified the contract.
2. Although Andrea disclosed the identity of the principal, which normally would protect her from liability on the contract, she exceeded her authority and she could be held liable.

Diff: 3
Topic: Contract Liability to Third Parties
Skill: Factual Application
83) Billy owns a bike shop in a coastal California town. His shop sells and repairs bikes. One of his employees was repairing a bike with one of those pesky intermittent problems that would never occur when the repair technician was around. The customer said that the gears periodically would not shift properly. The employee took the bike out for a test ride hoping to replicate the problem. The problem did not appear. Because it was approaching noon, the employee decided to ride the bike home to have lunch. On the way back to the shop, the employee hit a small child and injured her. Discuss the liability of the employee and Billy's bike shop for the injuries to the child.

Answer: The employee is liable for his tort, as are all tortfeasors. The liability of the bike shop would be determined using the scope of employment test, considering all the facts and circumstances. On one hand, the employee was testing the bike, which would be in the scope of employment. On the other hand, the employee was returning from lunch (home) which would not be within the scope of employment.

Diff: 2
Topic: Negligence Torts
Skill: Factual Application

84) Pat is the owner of Tarantula Skiwear of Boulder, Colorado. Tarantula is a new company that makes top-of-the-line products. Angela is the salesperson whose territory is the state of Utah. In an ordinary week, Angela, a Boulder resident, goes to the company office on Monday morning, takes care of paperwork, and in the late morning takes off for Utah. She stays in Utah until sometime on Friday, the exact time changing from week to week. Sometimes, she will stay in Utah for the weekend to ski and save the drive to Boulder and back. More often, she will drive partway back to Boulder on Friday evening, stopping to ski at one of the larger Colorado resorts, and return to Boulder on Saturday or Sunday. In order to make a sale, Angela must often negotiate a discount from the standard wholesale prices.

Tarantula wants to maintain the exclusivity of its line in Vail, thus the company has a policy of selling at full wholesale list price in Vail and not negotiating. The salesperson, who covers Vail, follows the policy rigidly and, as a result, Tarantula Skiwear is available in only two Vail stores. Angela thinks she could make a large sale by only cutting the list price slightly. One Thursday she drives from Salt Lake City to Vail. Friday morning she called on a large retail outlet in Vail. The owner said he would love to have the Tarantula line, but just couldn't pay the full wholesale price. Angela takes the owner skiing, with both, of course, wearing Tarantula wear. Angela is demonstrating how good Tarantula Skiwear looks at high speed when she skis into someone just beginning to snowboard. The snowboarder sues Angela and Tarantula Skiwear. Assuming that Angela was, in fact, negligent, can the plaintiff recover from Tarantula? Discuss the likely issues to arise and their likely resolution.

Answer: The issue is whether Angela was within the scope of employment when the injury occurred. On one hand, she was trying to sell the company's product, but this was not her territory. A court might find either the coming and going rule to apply, or folic and detour.

Diff: 3
Topic: Negligence Torts
Skill: Factual Application
85) Jerry was employed as a blackjack dealer in a Las Vegas casino. One evening as he dealt, a patron became more and more abusive, insulting Jerry, using profanity, and finally making personal insults about Jerry's appearance. Jerry became very angry and hit the patron. The patron sued both Jerry and the casino. Discuss the liability of Jerry and the casino, assuming that Jerry's actions were not justified.

Answer: Jerry, like everyone, is liable for his own torts. The liability of the casino for this intentional tort of Jerry's depends on which test is applied by the state. The casino would not be liable under the motivation test, but would be liable under the work-related test. The casino might also be liable if its own negligence (such as improper supervision, or seeing Jerry get abusive, but failing to act) was a cause of the injuries.

Diff: 3
Topic: Intentional Torts
Skill: Factual Application

86) Tim played first base for a minor league baseball team, the Salamanders. During a home game, a fan for the visiting team was seated near first base and heckling Tim. The fan said that Tim's mother wore army boots, and that Tim played like he was in Little League. Finally, Tim had had enough, and threw his right shoe at the fan, injuring him. An hour after the game in a nearby bar, a drunk fan was threatening the Salamanders' right fielder, also their star hitter. Although this person was too drunk to have inflicted injury, Tim punched him a couple of times in order to protect his friend and star. Discuss the liability of the Salamanders for these injuries.

Answer: The Salamanders would be liable for the injury during the game under the work-related test. If Tim threw the shoe because the heckling was interfering with his playing baseball, the Salamanders would also be liable under the motivation test. The Salamanders would not be liable under the work-related test for the injury in the bar, but might be under the motivation test. The court might find, though, that the injury was too far-removed from work for liability.

Diff: 2
Topic: Intentional Torts
Skill: Factual Application
1) Employment law is a mixture of contract law, agency law and government regulation.

Answer: TRUE
Diff: 2
Topic: Employment at Will

2) Most employees are considered at-will employees.

Answer: TRUE
Diff: 2
Topic: Employment at Will

3) The employment at-will doctrine is law in most states, although numerous exceptions greatly limit its application in many circumstances today.

Answer: TRUE
Diff: 1
Topic: Employment at Will

4) An at-will employee can be fired if the employee refuses to follow the employer's order to do an act that is in violation of the law.

Answer: FALSE
Diff: 2
Topic: Employment at Will

5) A wrongful discharge action against an employer can be based upon the tort of intentional infliction of emotional distress.

Answer: TRUE
Diff: 1
Topic: Employment at Will

6) If an employer's termination of an employee also involves the commission of a tort, the at-will doctrine would generally not apply.

Answer: TRUE
Diff: 1
Topic: Employment at Will
7) Generally, preemployment drug screening of employees has been upheld by the courts.

Answer: TRUE
Diff: 1
Topic: Employment at Will

8) An employee who is discharged in violation of an implied-in-fact contract can sue the employer for breach of contract.

Answer: TRUE
Diff: 2
Topic: Employment at Will

9) The first step for an employee pursuing a workers' compensation claim is to file a lawsuit in Federal District Court.

Answer: FALSE
Diff: 2
Topic: Workers' Compensation Acts

10) The test whether an employee can recover under workers' compensation is whether the injury affects the employee's performance of the job.

Answer: FALSE
Diff: 2
Topic: Workers' Compensation Acts

11) If an employee is injured during the course of her employment, she may either sue the employer in court or proceed with a workers' compensation claim.

Answer: FALSE
Diff: 1
Topic: Workers' Compensation Acts

12) An employee cannot collect a workers' compensation claim if the injury did not arise out of the course of employment.

Answer: TRUE
Diff: 1
Topic: Workers' Compensation Acts

13) Workers may not sue their employer to recover damages for employment-related injuries if the employer does not carry workers' compensation insurance.

Answer: FALSE
Diff: 1
Topic: Workers' Compensation Acts
14) An accident that happens while the employee is an off-premises restaurant during his or her personal lunch hour are covered under workers' compensation.

Answer: FALSE
Diff: 2
Topic: Workers' Compensation Acts

15) Under the Occupational Safety and Health Act, employers must not only meet numerous specific safety standards, but they must generally provide a safe working environment.

Answer: TRUE
Diff: 1
Topic: Occupational Safety and Health Act

16) The Occupational Safety and Health Act does not apply to government employers.

Answer: TRUE
Diff: 1
Topic: Occupational Safety and Health Act

17) The two types of safety standards under the Occupational Safety and Health Act are specific duty standards and general duty standards.

Answer: TRUE
Diff: 1
Topic: Occupational Safety and Health Act

18) So long as an employer follows the specific safety standards applicable to the particular industry, the employer will not be in violation of the Occupational Safety and Health Act.

Answer: FALSE
Diff: 2
Topic: Occupational Safety and Health Act

19) The Federal Circuit Court of Appeals may hear appeals of OSHA's contested citation reviews.

Answer: TRUE
Diff: 2
Topic: Occupational Safety and Health Act


Answer: FALSE
Diff: 1
Topic: Fair Labor Standards Act

Answer: TRUE  
Diff: 1  
Topic: Fair Labor Standards Act

22) Employees age 16 and 17 can work unlimited hours each week in nonhazardous jobs.

Answer: TRUE  
Diff: 1  
Topic: Fair Labor Standards Act

23) For an employer with a 2-week pay period, overtime pay must be paid to a nonexempt employer only if the hours worked in the pay period exceed 80, regardless of how many hours were worked in each of the weeks.

Answer: FALSE  
Diff: 1  
Topic: Fair Labor Standards Act

24) An employer can pay less than the minimum wage to take into account the reasonable cost of meals and lodging supplied to employees.

Answer: TRUE  
Diff: 1  
Topic: Fair Labor Standards Act

25) For purposes of overtime pay, weeks may be combined to double the overtime pay due an employee.

Answer: FALSE  
Diff: 1  
Topic: Fair Labor Standards Act

26) Under the Family and Medical Leave Act, an employer may not require medical proof of claimed serious health conditions.

Answer: FALSE  
Diff: 2  
Topic: Family and Medical Leave Act
27) Employees of private employers or the employee's beneficiaries must be offered the opportunity to continue his or her group health insurance after the voluntary or involuntary termination of a worker's employment as per qualifying events defined by law.

Answer: TRUE
Diff: 2
Topic: Consolidated Omnibus Budget Reconciliation Act (COBRA)

28) The Employee Retirement Income Security Act mandates which employers must provide pension plans for its employees.

Answer: FALSE
Diff: 1
Topic: Employee Retirement Income Security Act

29) Under the Employee Retirement Income Security Act, an employee's benefits must vest within 7 years or less.

Answer: TRUE
Diff: 1
Topic: Employee Retirement Income Security Act

30) The Employee Retirement Income Security Act requires pension plans to be in writing.

Answer: TRUE
Diff: 1
Topic: Employee Retirement Income Security Act

31) The Employee Retirement Income Security Act allows up to 25 percent of a retirement plan's assets to be invested in the securities of the sponsoring employer.

Answer: FALSE
Diff: 1
Topic: Employee Retirement Income Security Act

32) All employers are required to inspect documents to determine that an employee is a citizen or is otherwise entitled to work in the United States.

Answer: TRUE
Diff: 1
Topic: Immigration Reform and Control Act

33) Only some U.S. employers must complete INS Form I-9 for each of their employees.

Answer: FALSE
Diff: 2
Topic: Immigration Reform and Control Act
34) Preemployment drug screening has been upheld by the courts.

Answer: TRUE
Diff: 1
Topic: Drug Testing

35) Unemployment insurance premiums are paid by employees.

Answer: FALSE
Diff: 1
Topic: Unemployment Compensation

36) The unemployment compensation program is run at the federal level to ensure equality of benefits across the country.

Answer: FALSE
Diff: 1
Topic: Unemployment Compensation

37) Under the Federal Unemployment Tax Act, employers are required to pay unemployment taxes.

Answer: TRUE
Diff: 1
Topic: Unemployment Compensation

38) Surviving family members of deceased workers can receive benefits under the Social Security program.

Answer: TRUE
Diff: 1
Topic: Social Security

39) Under the Social Security program, a worker's social security taxes paid during her working years are accumulated in an account to be used in paying her retirement benefits once she retires.

Answer: FALSE
Diff: 2
Topic: Social Security
40) Which of the following best describes the employment at-will doctrine?
   A) Employees remain employed only if the employer wants them to be employed.
   B) Employees remain employed only if the employees want to be employed.
   C) Employees remain employed only if both the employer and the employee want the employment relationship to continue.
   D) Whether an employment relationship continues is based on the will of the government.

Answer: C
Diff: 2
Topic: Employment at Will
Skill: Legal Concepts

41) Under the employment at-will doctrine, an employment relationship can be terminated:
   A) by the employee only
   B) by the employer only
   C) only by mutual agreement of the employer and the employee
   D) by either the employee or the employer
   E) only by court order

Answer: D
Diff: 2
Topic: Employment at Will
Skill: Legal Concepts

42) Which of the following best describes the status of the employment at-will doctrine in the United States today?
   A) It applies in most states to most employment relationships, but there are many exceptions that limit its application.
   B) It applies more today than in the last century, and the quantity of corporate layoffs is evidence of this.
   C) It today applies only to the employer, although in the past it applied to both the employee and employer.
   D) It still applies today, but only to employees who are expressly told that they are at-will employees when they are hired.
   E) It is the underlying basis on which discrimination is prohibited in employment.

Answer: A
Diff: 2
Topic: Employment at Will
Skill: Legal Concepts
43) Under what doctrine are both the employer and employee free to terminate an employment relationship at any time?
   A) the mutual employment doctrine
   B) the free dissociation doctrine
   C) the independent contracting employment doctrine
   D) the employment at-will doctrine
   E) the employment freedom of termination doctrine

   Answer: D
   Diff: 1
   Topic: Employment at Will
   Skill: Legal Concepts

44) Which of the following is not one of the common exceptions to the employment at-will doctrine?
   A) contract
   B) public policy
   C) employer necessity
   D) tort
   E) statutory

   Answer: C
   Diff: 1
   Topic: Employment at Will
   Skill: Legal Concepts

45) What is generally the effect when an exception to the employment at-will doctrine applies?
   A) The employer is required to hire a certain employee.
   B) There is some sort of limitation on at least one party's ability to terminate the employment relationship.
   C) The Fair Labor Standards Act will set the terms, such as pay, for the employment relationship.
   D) Employees can be prohibited from quitting a job.
   E) An employee is entitled to additional pay to continue working in a specific job.

   Answer: B
   Diff: 3
   Topic: Employment at Will
   Skill: Legal Concepts
46) Company handbooks have been found to amount to an exception to the employment at-will doctrine.

A) contract
B) public policy
C) tort
D) apparent
E) statutory

Answer: A
Diff: 2
Topic: Employment at Will
Skill: Legal Concepts

47) Which of the following is true about the contract exception to the employment at-will doctrine?

A) In order to apply, there must be an express written contract specifying the terms of employment.
B) In order to apply, there must be an express written contract specifying the terms of employment and the contract must state that the employee is not an at-will employee.
C) The exception can apply based on the conduct of the parties or statements made by the employer or its agent.
D) The exception applies only where an attempted termination by the employer would be a violation of a statute.
E) It applies only if the employee who is wrongfully terminated is unable to find alternative employment.

Answer: C
Diff: 3
Topic: Employment at Will
Skill: Legal Concepts

48) An at-will employee being threatened with termination if the employee does not violate a law at the direction of the employer would be protected under which exception to the employment at-will doctrine?

A) contract
B) public policy
C) tort
D) criminal
E) statutory

Answer: B
Diff: 2
Topic: Employment at Will
Skill: Legal Concepts
49) The contract exception to the employment at-will doctrine can apply where:
   A) there is an express employment contract
   B) there is an employee policies or procedures manual
   C) oral statements have been made to the employee about continued employment
   D) A or B only
   E) A, B, or C

Answer: E  
Diff: 2  
Topic: Employment at Will  
Skill: Legal Concepts

50) Which of the following statements is true about workers' compensation?
   A) The employer can avoid liability if the injured employee was contributorily negligent in
      causing the injury.
   B) When an employee is injured, the employee must decide whether to seek a workers'
      compensation payment or file an ordinary lawsuit against the employer.
   C) The employer is strictly liable for employment-related injuries, and the employee will file
      his claim through an administrative procedure rather than by filing an ordinary lawsuit.
   D) If the employee is dissatisfied with the amount received under the workers' compensation
      system for her injuries, she generally then can file an ordinary lawsuit.
   E) Employees (or their unions) generally negotiate with employers over whether to be
      included in the workers' compensation system.

Answer: C  
Diff: 3  
Topic: Workers' Compensation Acts  
Skill: Legal Concepts

51) Under workers' compensation, when an employee is accidentally injured on the job, which of
    the following is true?
    A) A worker can sue the employer in addition to recovering from workers' compensation,
       but only if the employer intentionally caused the injury.
    B) A worker has the choice of whether to file a normal lawsuit or recover from the workers'
       compensation board.
    C) A worker can file a normal lawsuit and recover from the workers' compensation board.
    D) Whether the injury occurred in the course of employment is not relevant.

Answer: A  
Diff: 3  
Topic: Workers' Compensation Acts  
Skill: Legal Concepts
52) Which of the following statements best describes the workers' compensation rules?
   A) The employer can avoid liability if the injured employee was contributorily negligent.
   B) The employer is liable for employment related injuries only if negligent.
   C) The employee will collect for all work-related injuries, and will not need to prove negligence on the part of the employer.
   D) The employee has the choice to sue or proceed under the workers' compensation statute.
   E) For most employers, participation in the workers' compensation program is voluntary.

Answer: C
Diff: 2
Topic: Workers' Compensation Acts
Skill: Legal Concepts

53) The primary goal of establishing workers' compensation systems is to:
   A) provide a more certain method for employees to recover for workplace injuries
   B) to protect the court system from being burdened with lawsuits relating to workplace injuries
   C) to discourage workers from filing frivolous claims relating to workplace injuries
   D) to prevent injuries in the workplace
   E) to ensure that injured workers return to work as quickly as practicable

Answer: A
Diff: 3
Topic: Workers' Compensation Acts
Skill: Legal Concepts

54) Which of the following is not true regarding the Occupational Safety and Health Act?
   A) Its purpose is to protect the safety of workers and the safety of those who purchase the employer's products or services.
   B) Employers are subject to having their workplaces inspected under the Act.
   C) Even though the Act contains numerous specific safety standards, employers must also provide a work environment that is free from recognized hazards that could cause death or serious injury.
   D) Employers are required to post notices in the workplace informing workers of their rights under the Act.
   E) Employees do not have a private cause of action under the Act.

Answer: A
Diff: 3
Topic: Occupational Safety and Health Act
Skill: Legal Concepts
55) Under the Occupational Safety and Health Act, which of the following is true?
A) Purchasers of a company's products are assured that they are safe for use in the home.
B) A company can be found to be in violation even if a specific safety regulation is not violated.
C) Complaints are handled by the Equal Employment Opportunity Commission.
D) Very few safety standards have actually been adopted.

Answer: B
Diff: 2
Topic: Occupational Safety and Health Act
Skill: Legal Concepts

56) Which of the following statements is not true under the Fair Labor Standards Act?
A) Children under 14 cannot work at all, except on farms.
B) Children ages 14 and 15 may work limited hours in nonhazardous jobs.
C) Children ages 16 and 17 may work unlimited hours in nonhazardous jobs.
D) Persons age 18 or over may work unlimited hours in nonhazardous jobs.
E) Persons age 18 or over may work unlimited hours in hazardous jobs.

Answer: A
Diff: 2
Topic: Fair Labor Standards Act
Skill: Legal Concepts

57) Minimum wages, hours of employment, and child labor are regulated by the:
A) Right to Work Laws
B) Regulated Hours Act
C) Federal Employment Act of 1940
D) Fair Labor Standards Act

Answer: D
Diff: 1
Topic: Fair Labor Standards Act
Skill: Legal Concepts

58) Overtime pay is required to be paid to nonexempt employees who work:
A) over 8 hours per day
B) over 10 hours per day
C) over 12 hours per day
D) over 40 hours per week
E) over 50 hours per week

Answer: D
Diff: 1
Topic: Fair Labor Standards Act
Skill: Legal Concepts
59) Under the Fair Labor Standards Act:
A) limitations are placed on the hours that workers can work each week without being paid overtime
B) a minimum wage is set, but is not required to be paid if the worker agrees to accept a lower amount
C) workers are prevented from working in hazardous jobs
D) employers are not required to pay overtime for a nonexempt employee who works 45 hours in the first week but only 25 hours in the second week of a 2-week pay period

Answer: A
Diff: 2
Topic: Fair Labor Standards Act
Skill: Legal Concepts

60) Which of the following is not addressed by ERISA?
A) funding requirements of pension plans
B) companies that must provide pension plans for employees
C) investment limitations of a pension fund in the stock of the sponsoring corporation
D) vesting requirements
E) disclosure and reporting requirements

Answer: B
Diff: 2
Topic: Employee Retirement Income Security Act
Skill: Legal Concepts

61) Which of the following is not a purpose of ERISA?
A) for employees to have access to certain information about their pension plans
B) to make certain that pension plans have certain minimum amounts placed into them by employers
C) to limit or prevent employees from losing pension benefits if they decide to leave an employer
D) to ensure that as many companies as possible provide pension plans for their employees
E) to make sure that the management of the pension fund is separate from the management of the employer

Answer: D
Diff: 2
Topic: Employee Retirement Income Security Act
Skill: Legal Concepts
62) Which of the following is true about the Employee Retirement Income Security Act?
A) It requires employees to contribute a fair share to any pension plans provided by their employer.
B) It states which types of companies must provide pension plans to their employees.
C) It sets required retirement ages for employees.
D) It does not require employers to provide pension plans.

Answer: D
Diff: 2
Topic: Employee Retirement Income Security Act
Skill: Legal Concepts

63) Vesting as used in a pension plan means:
A) that there are adequate funds to pay out expected benefits
B) that a beneficiary's rights to receive payments cannot be taken away
C) that the plan covers all eligible employees
D) that the plan is adequately insured
E) that the plan has qualified for all government approvals

Answer: B
Diff: 2
Topic: Employee Retirement Income Security Act
Skill: Legal Concepts

64) Under the Employee Retirement Income Security Act, an employee's benefits must vest:
A) within 10 years
B) by the time of the employee's retirement
C) in total within 5 years or gradually within 7 years
D) only as provided in the pension plan
E) when the benefit is first recorded

Answer: C
Diff: 2
Topic: Employee Retirement Income Security Act
Skill: Legal Concepts
65) Which of the following is true about the provisions of the Consolidated Omnibus Budget Reconciliation Act's provisions relating to health insurance?

A) Certain companies are required to provide group health insurance coverage to their employees.
B) Upon termination of employment, an employer is required to pay, for a limited time, for the former employee's health insurance coverage under the same terms that it had been paying for it while the employee worked for the employer.
C) Upon termination of employment, a health insurance provider must allow the employee to continue to participate in the same health insurance coverage program that the employee participated in while working for the employer, although the employee must pay for it.
D) Employers must make the same group health insurance available to all employees.

Answer: C
Diff: 2
Topic: Consolidated Omnibus Budget Reconciliation Act (COBRA)
Skill: Legal Concepts

66) Which of the following statements is true under the Immigration Reform and Control Act of 1986?

A) The employer has no responsibility to check the immigration status of its employees.
B) The employer may hire only U.S. citizens.
C) The employer may hire only U.S. citizens and aliens with proper documentation.
D) The employer may give preference to certain employees based on national origin.
E) Both C and D are true.

Answer: C
Diff: 2
Topic: Immigration Reform and Control Act
Skill: Legal Concepts

67) The purpose of the Form I-9 under the Immigration Reform and Control Act of 1986 is:

A) for the employer to attest to having inspected an employee's documentation showing that the employee is entitled to work in the United States
B) for the employer to grant a waiver from work visa requirements for foreign workers
C) for the employer to document illegal aliens working in the United States
D) to document that the employer is complying with the Civil Rights Act of 1964 with respect to employment discrimination on the basis of national origin

Answer: A
Diff: 2
Topic: Immigration Reform and Control Act
Skill: Legal Concepts
68) Unemployment compensation amounts are determined by:
   A) the federal government
   B) the state governments, without any restrictions by the federal government
   C) the state governments, within general guidelines of the federal government
   D) the insurance companies providing unemployment insurance
   Answer: B
   Diff: 1
   Topic: Unemployment Compensation
   Skill: Legal Concepts

69) Which of the following is true about unemployment benefits?
   A) Because they are set at the federal level, unemployment benefits are the same in every state.
   B) Employees are eligible to receive benefits regardless of the reason that employment ends.
   C) The taxes to support the unemployment benefits program are paid by the employer.
   D) Once awarded, a recipient of unemployment benefits will be entitled to collect the award even if the employee finds other work.
   Answer: C
   Diff: 2
   Topic: Unemployment Compensation
   Skill: Legal Concepts

70) Which of the following is not true regarding Social Security?
   A) Benefits include retirement benefits and survivors' benefits to family members of deceased workers.
   B) The amounts paid in by a worker during her working career are accumulated to be paid out during the worker's retirement years.
   C) The Social Security tax for an employee is paid partly by the employee and partly by the employer.
   D) A self-employed person must pay both the employee and employer portions of the tax.
   E) A person with a high level of wages pays the full rate of Social Security tax on only a portion of her wages.
   Answer: B
   Diff: 2
   Topic: Social Security
   Skill: Legal Concepts
71) Which of the following benefits is not provided under the Social Security system?
A) retirement benefits  
B) unemployment benefits  
C) disability benefits  
D) survivors benefits  
E) Neither B nor D is provided under Social Security.

Answer: B  
Diff: 2  
Topic: Social Security  
Skill: Legal Concepts

72) Which of the following is true about the Social Security system?
A) Self-employed persons are exempt from paying Social Security taxes.  
B) In order to receive benefits, a recipient must have worked and paid into the system.  
C) The amounts paid in by a worker are accumulated and then paid back out to the worker with amounts added for taxes.  
D) Survivors of workers can receive benefits.

Answer: D  
Diff: 2  
Topic: Social Security  
Skill: Legal Concepts

73) Social Security provides benefits for the following except:
A) retired persons who have reached a certain age  
B) surviving family members of deceased workers  
C) coworkers benefits  
D) disability benefits  
E) medical and hospitalization benefits

Answer: C  
Diff: 1  
Topic: Social Security  
Skill: Legal Concepts

74) Mary arrived at work one day and her boss said to her, "That's the ugliest dress I have ever seen. Because you wore that to work today, you are fired." Assuming that Mary is an at-will employee, which of the following is true?
A) Mary can be fired for any reason.  
B) If Mary has the will to work, she cannot be fired without cause.  
C) If none of the exceptions to the at-will rule apply, Mary can be fired.  
D) Mary can be fired only if it is in the best interest of the employer.

Answer: C  
Diff: 2  
Topic: Employment at Will  
Skill: Factual Application
75) Justin was hired in February of 2004 as a salesperson. There is no written employment contract, and Justin is paid on a commission basis. Justin's manager has said to Justin on several occasions that if Justin continues to meet his sales quotas, the company "will keep him around for a long time." Justin has always met his sales quotas, but is told one day that the company has decided to replace him because he does not project the image that the company wants. If Justin is an at-will employee, which of the following is true?

A) As an at-will employee, there are no restrictions on the employer terminating Justin.
B) Because there is no written employment contract, the employer can terminate Justin.
C) The employer can terminate Justin only if the employer would suffer a loss by not terminating him.
D) The statements by the manager could likely give Justin contract rights that could amount to an exception to the at-will doctrine.
E) The employer would not be able to fire Justin on the basis of public policy.

Answer: D
Diff: 2
Topic: Employment at Will
Skill: Factual Application

76) Bob, an employee of Risky Manufacturing, Inc. is accidentally injured by a fellow worker while working his shift. Under workers' compensation, Bob can:

A) sue Risky or seek workers' compensation recovery, but not both
B) sue Risky or seek workers' compensation recovery
C) seek workers' compensation only
D) recover from workers' compensation only if Risky was negligent in allowing the injury to occur

Answer: C
Diff: 2
Topic: Workers' Compensation Acts
Skill: Factual Application

77) Judy just bought a new business with many employees. She has heard about the requirements of OSHA. What is the employer's general duty under OSHA?

A) to obey the regulations announced by OSHA
B) to provide a perfectly safe workplace
C) to provide a work environment free from known hazards
D) both A and B

Answer: C
Diff: 1
Topic: Occupational Safety and Health Act
Skill: Factual Application
78) Megan is under 18 years of age and she wants to get a job. However, she has heard that her employment is limited because she is under age. Which of the following statements is true?
   A) If Megan is under 14, she cannot get any job.
   B) If Megan is under 18, she can get any job she wants, so long as her parents consent.
   C) If Megan is 14 or 15, she can work unlimited hours in nonhazardous jobs.
   D) If Megan is 16 or 17, she can work unlimited hours in nonhazardous jobs.

Answer: D
Diff: 2
Topic: Fair Labor Standards Act
Skill: Factual Application

79) Joe, a high school student, just received his first paycheck from his first job. He notices that he was not paid the minimum wage and he is concerned. Which of the following statements is true?
   A) Managerial and professional employees are subject to the minimum wage laws.
   B) An employer may pay lower wages if food and lodging are provided to the employee.
   C) An employee is entitled to minimum wage only if he works over 40 hours per week.
   D) An employee can be paid a wage below the minimum wage if the employee is a student.
   E) Both B and D are true.

Answer: E
Diff: 3
Topic: Fair Labor Standards Act
Skill: Factual Application

80) Mary goes to work for Rocky Mountain Company, which has a pension plan requiring her to work at least ten years in order to be entitled to her benefits if she quits. This is a violation of:
   A) Employee Retirement Income Security Act
   B) Social Security Act
   C) Equal Pay Act
   D) Fair Labor Standards Act
   E) None of these are correct.

Answer: A
Diff: 2
Topic: Employee Retirement Income Security Act
Skill: Factual Application
81) Spruce Corporation has 100 employees, engages in interstate commerce, and has been in existence since it incorporated in 1985. Spruce never had a pension plan for its employees, but decided to adopt one beginning in 2003. Spruce has been a very successful company, so the company decided that 25 percent of the pension plan assets would be put into stock of Spruce Corporation. The pension plan provides that employees will vest within 3 years of earning benefits. Spruce is in violation of the Employee Retirement Income Security Act:

A) before adopting its pension plan, but not thereafter
B) after adopting its pension plan, but not beforehand
C) both before and after the adoption of the pension plan
D) neither before nor after adopting the pension plan

Answer: B
Diff: 2
Topic: Employee Retirement Income Security Act
Skill: Factual Application

82) John works at a local grocery store to pay his way through college. His work schedule can vary from week to week. One week he works for sixty hours, and the next week he works for twenty. He asks his boss whether he is entitled to overtime at the end of the two week period. Is he?

A) No. He is not entitled to overtime because he did not work in excess of eighty hours in a two week period.
B) No. Employers are entitled to offset the overages of the first week hours with a subsequent reduction of hours.
C) Yes. He must be paid twenty hours of overtime for the first work week.
D) Yes. He must be paid sixty hours of overtime for the first work week.

Answer: C
Diff: 2
Topic: Fair Labor Standards Act
Skill: Factual Application

83) Susan begins work for a large employer on December 1st. She works an average of 50 hours per week for 40 weeks, and then has her hours reduced to 40 hours per week for the next 4 weeks, and reduced further the 30 hours per week during the next 4 week period. She has a family emergency and informs her supervisor that she must take time off to care for a sick child. If the illness is legitimate, must the employer provide leave under the Family Medical Leave Act?

A) No. She did not work the requisite number of hours to entitle her to protection under the FMLA.
B) No. She did not work the requisite period of time to entitle her to protection under the FMLA.
C) No. Sick children are not a legitimate reason for leave under the provisions of the FMLA.
D) Yes. She is entitled to leave under the FMLA.

Answer: B
Diff: 2
Topic: Fair Labor Standards Act
Skill: Factual Application
84) Should there be a lower minimum wage for some workers, for example, workers under age 18? What are the arguments for and against a two-tier minimum wage?

Answer: A lower minimum wage might be justified because of these workers' lack of experience. It also might allow workers to be employed who might otherwise be unable to find work. On the other hand, employers might choose to hire the younger workers at the expense of older workers who have families to support.
Diff: 2
Skill: Ethics and Policy

85) The Employee Retirement Income Security Act does not require any employers to provide pension plans for their employees. Should this law be changed so that employers are required to provide at least some minimum pension plan to employees?

Answer: The goal of ERISA is to ensure that any benefits promised to employees will, in fact, be paid when the employee is retired, and that employees are not otherwise misled about the benefits that they will receive. The marketplace should probably determine whether or not particular employers offer a pension plan.
Diff: 2
Skill: Ethics and Policy

86) Should the law set the 40-hour workweek, given that many persons might choose to work longer hours but cannot because their employers do not want to pay overtime wages? In other words, many persons might be willing to work 45 or 50 hours a week at their regular wage rate, but cannot under the current law. This law also prevents a covered employee from working 50 hours one week and only 30 hours the other week of a 2-week pay period. Should employees be able to voluntarily work beyond the limits for regular pay if they so choose?

Answer: The problem with allowing this is that employers could force employees to "choose" to work in excess of the limits without receiving the overtime pay.
Diff: 2
Skill: Ethics and Policy

87) Should the at-will employment doctrine be abolished? Should an employer be able to fire an employee for no reason at all?

Answer: There are many exceptions to the at-will doctrine that protect against many abuses. Employers might be reluctant to hire employees if they knew that they could not terminate them without cause.
Diff: 2
Skill: Ethics and Policy
88) Marsha has recently been hired to work in sales at a retail outlet of a large sporting goods company. Marsha receives a base salary and a bonus depending on the amount of sales that she makes in a month. She earns a bonus in any month that her sales are 120 percent or more of her sales quota for the month. For the first 4 months Marsha earns a bonus every month. Early in the fifth month, her supervisor quits, and someone is transferred from another department. Her new supervisor is hard to get along with and makes unreasonable demands. Although everyone under this supervisor has problems with him, he seems to have taken a particular dislike to Marsha. For the next 2 months Marsha greatly exceeds her sales quotas, yet the difficulties with the supervisor continue. The following month Marsha is fired despite having the highest sales for the prior month. Discuss Marsha's legal situation.

Answer: The question does not mention an employment contract, thus Marsha is an at-will employee and can be terminated at any time for any reason, even an illogical one, so long as it is not an improper reason. Here, even though illogical or unfair, there are no facts to support an exception to the at-will doctrine.
Diff: 2
Topic: Employment at Will
Skill: Factual Application

89) Debbie was the president and chief executive officer of RST corporation. Debbie was also a skydiving enthusiast. She often stated that skydiving showed the worth of a person more than any other activity. On weekends, Debbie and a group of RST executives would go skydiving. Mark had been hired as a junior executive several years ago, and had performed his job well. RST needed a new vice-president of marketing to fill a vacancy caused by retirement, and Mark thought he had a good chance to get that job. Debbie asked Mark to go skydiving with her group on Saturday. Mark did not want to go, but he thought that if he did not go, it would cost him this promotion. Most, but not all, of the other vice-presidents participated in these jumps. Mark jumped and was killed when his parachute failed to open. Beth, Mark's wife, sued to collect workers' compensation for the death of Mark. What was the result?

Answer: The crucial test is whether the injury was work-related. The fact that this was a regular activity conducted with a group solely from RST Corporation would support a finding that it was work-related. On the other hand, this could be viewed as a voluntary activity conducted outside of work because no one was required to attend. One might want to know if any business was discussed or conducted on these days.
Diff: 2
Topic: Workers' Compensation Acts
Skill: Factual Application
90) Mary owns a medium-size distribution business with about 20 employees. Mary had an unusual management style and from time to time would throw items at her employees. Paul was working in the warehouse one hot summer day and accidentally gave a will-call customer the wrong goods. The customer came back to the office a short while later upon discovering the problem. Mary was in the office and asked who had filled his order. The customer described Paul, whereupon Mary went to the warehouse and threw a computer printout, with stock numbers and product descriptions, at Paul, yelling, "Use this, you idiot. Maybe you can do your job then!" Paul was startled, and by reflex turned to run after Mary, but slipped when he was barely under way. Paul's back was injured when the computer printout hit him, and he injured his leg when he slipped. What recourse does Paul have?

Answer: Workers' compensation will cover Paul's injuries if they are work-related. Both injuries are probably work-related, and Paul could recover from workers' compensation. Because at least the first was intentionally caused by the employer, Paul could also sue Mary.

Diff: 2
Topic: Workers' Compensation Acts
Skill: Factual Application

91) The Bonzo Bike Accessory Company operates in a small commercial building in Davis, California. The company employs several people who make a variety of bicycle accessories. Mike Bonzo, the owner, has read carefully and knows that he is complying with all of the specific applicable safety regulations. One day, an OSHA inspector arrives, inspects the workplace, and cites several dangerous conditions. There was not a single specific regulation violated for any of the dangerous conditions cited. Mike admits that four of the cited conditions were, in fact, dangerous, but still insists that he did not violate OSHA regulations. Discuss Michael's situation.

Answer: Mike has a general duty to provide a workplace free of hazards in addition to meeting any specific safety regulations.

Diff: 2
Topic: Occupational Safety and Health Act
Skill: Factual Application
92) Bob works in a large law firm with the title of paralegal. Bob had worked as a legal secretary for years, but was promoted to paralegal last year. The secretaries in the firm were paid on an hourly basis, and all time in excess of 40 hours per week was paid at one and a half times the hourly rate. Bob learned much in his years working in the residential real estate department of his law firm. In fact, he could draft most uncomplicated sale and purchase contracts and was doing this while still working as a secretary. He would frequently draft the contracts using forms, making changes and insertions where necessary, and merely have the attorneys review them for any needed revisions. Bob was excited to hear about the promotion, but then was disappointed to learn that he would not be getting a raise, and that the duties of his job would not change much. Bob's hourly wage was converted to a weekly salary based on 40 hours at his prior wage. No overtime would be paid, which upset Bob because he had averaged about 20-25 hours of overtime per month, and always welcomed the opportunity to earn extra money. The law firm assured Bob that he would now be considered for a year-end bonus based on performance and contribution to the firm. The law firm became busier during the year, and Bob increasingly had to work overtime. He continued to do some drafting of contracts as well as most of the word processing for the real estate department. At the end of the year, the firm announced that profits were less than hoped for and that the maximum bonus would be $100, which Bob received. Does Bob have a claim to receive any additional compensation for his work during the year?

Answer: Bob might have a promissory estoppel claim based on the promise that he would receive a bonus to make up for the loss of overtime pay. Bob might also have a claim under the Fair Labor Standards Act. It would depend on whether Bob truly was an exempt employee or whether the promotion and change to a salary basis of pay was merely an attempt to avoid paying overtime.

Diff: 3
Topic: Fair Labor Standards Act
Skill: Factual Application

93) Sam operates a small business with 12 employees. Sam says to his employees, "I'm not required to give you a pension plan, but I will do so. The plan is that if you stay employed with me until you reach age 65, I will give you a pension of $1,000 per year during retirement for each full year you have worked. Because I believe so strongly in this company, if I invest any money in the fund in advance, I will put half of it into stock of this company. If you leave before retirement, you don't get it. That way, you'll have more incentive to work hard and stay with the company." Comment on the legal aspects of this plan.

Answer: Sam is correct that he need not provide a pension fund. But, if offering one, he must follow the provisions of the ERISA. This plan violates the vesting requirements, the funding requirements, and the restrictions on investing in the sponsoring company's stock. The plan is required to be in writing.

Diff: 3
Topic: Employee Retirement Income Security Act
Skill: Factual Application
1) Prior to the Industrial Revolution, employees and employers had similar bargaining power.

Answer: TRUE
Diff: 1
Topic: Labor Law

2) Today, approximately 72 percent of private sector wage and salary workers belong to unions.

Answer: TRUE
Diff: 1
Topic: Labor Law

3) The Labor-Management Relations Act gives the President the right to seek an injunction to stop a strike that would create a national emergency.

Answer: TRUE
Diff: 1
Topic: Labor Law

4) The Landrum-Griffin Act was passed in response to abuses by management in opposing unions' organizing activities.

Answer: FALSE
Diff: 2
Topic: Labor Law

5) Decisions of the National Labor Relations Board are enforceable in court.

Answer: TRUE
Diff: 1
Topic: Labor Law

6) The Labor-Management Reporting and Disclosure Act establishes the rights of the employer.

Answer: FALSE
Diff: 2
Topic: Labor Law
7) If both parties approve, managers can belong to the same union as the employees that they manage.

Answer: FALSE
Diff: 1
Topic: Organizing a Union

8) A union election will not be permitted if a union election was held at the same employer within the past 12 months.

Answer: TRUE
Diff: 1
Topic: Organizing a Union

9) The National Labor Relations Board supervises all elections for union representation.

Answer: FALSE
Diff: 1
Topic: Organizing a Union

10) Employers may prevent all union solicitation on their company property.

Answer: FALSE
Diff: 1
Topic: Organizing a Union

11) Section 8(a) of the National Labor Relations Act prevents employers from interfering with employee's rights to form a union.

Answer: TRUE
Diff: 1
Topic: Organizing a Union

12) Section 7 of the National Labor Relations Act limits employees' right to join together to form a union.

Answer: FALSE
Diff: 2
Topic: Organizing a Union

13) Union solicitation may be conducted by employees at all times, as the employer is required by law to provide an accessible area on company property for this purpose.

Answer: FALSE
Diff: 2
Topic: Union Solicitation on Company Property
14) An employer may form a company union.

Answer: FALSE
Diff: 1
Topic: Illegal Interference with an Election

15) Where an unfair labor practice has been found, the court may issue a cease-and-desist order and may set aside an election and order a new election.

Answer: TRUE
Diff: 2
Topic: Illegal Interference with an Election

16) Employers and unions are required to negotiate in good faith.

Answer: TRUE
Diff: 1
Topic: Collective Bargaining

17) Some subjects, such as wages and hours, are compulsory subjects of collective bargaining.

Answer: TRUE
Diff: 1
Topic: Collective Bargaining

18) The Worker Adjustment and Retraining Notification Act requires 6 months notice prior to certain layoffs.

Answer: FALSE
Diff: 2
Topic: Collective Bargaining

19) The Plant Closing Act is the same as the Worker Adjustment and Retraining Notification Act.

Answer: TRUE
Diff: 2
Topic: Plant Closing Act

20) Under the Worker Adjustment and Retraining Notification Act, employers with 100 or more employees must give their employees 60 days notice before taking part in certain plant closings or layoffs.

Answer: TRUE
Diff: 1
Topic: Plant Closing Act
21) An employee cannot be forced to join a union before being hired, but can be forced to join a union after being hired.

Answer: TRUE
Diff: 1
Topic: Union Security Agreements

22) In an agency shop, workers are required to join a union after being hired.

Answer: FALSE
Diff: 1
Topic: Union Security Agreements

23) Under an agency shop agreement, employees who are not union members are required to pay an agency fee to the union.

Answer: TRUE
Diff: 1
Topic: Union Security Agreements

24) If a state enacts a right-to-work law, individual employees can be forced to join a union or pay union dues even if a union has been elected by other employees.

Answer: FALSE
Diff: 2
Topic: State Right-to-Work Laws

25) Criminal penalties may be part of the remedies for violation of right-to-work laws.

Answer: TRUE
Diff: 2
Topic: State Right-to-Work Laws

26) A strike action must be ratified by a majority of the union workers.

Answer: TRUE
Diff: 1
Topic: Strikes and Picketing

27) A worker who chooses not to strike when a strike has been called is known as a crossover worker.

Answer: TRUE
Diff: 1
Topic: Strikes and Picketing
28) Any replacement workers hired to replace striking workers must be dismissed when the strike is over.

Answer: FALSE
Diff: 2
Topic: Strikes and Picketing

29) It is illegal for workers to strike if there is a no-strike clause as part of a negotiated agreement.

Answer: TRUE
Diff: 1
Topic: Strikes and Picketing

30) Employers cannot prevent employees from entering the work premises if the employer anticipates a strike.

Answer: FALSE
Diff: 1
Topic: Strikes and Picketing

31) Picketing cannot lawfully prohibit customers from entering the employer's place of business.

Answer: TRUE
Diff: 1
Topic: Strikes and Picketing

32) Secondary boycott picketing is illegal if it is directed against a neutral employer as opposed to the struck employer's product.

Answer: TRUE
Diff: 2
Topic: Strikes and Picketing

33) Courts usually tolerate a certain amount of isolated violence before deciding that the entire strike is illegal.

Answer: TRUE
Diff: 1
Topic: Illegal Strikes

34) A partial or intermittent strike is lawful if it is quickly ratified by the union.

Answer: FALSE
Diff: 2
Topic: Illegal Strikes
35) A wildcat strike refers to a strike in which individual union members go on strike without proper authorization from the union.
Answer: TRUE
Diff: 1
Topic: Illegal Strikes

36) An employer may not prevent those employees whom it suspects will strike from entering the plant or premises.
Answer: FALSE
Diff: 1
Topic: Employer Lockout

37) A union is permitted to discipline its members for working for wages below the union scale.
Answer: TRUE
Diff: 2
Topic: Internal Union Affairs

38) Title I of the Landrum-Griffin Act is referred to as labor's "bill of rights."
Answer: TRUE
Diff: 1
Topic: Internal Union Affairs

39) Which of the following is true about the American Federation of Labor?
   A) It was formed in the early part of the twentieth century.
   B) When formed, only skilled craft workers were allowed to join.
   C) All members of other unions are automatically members of it.
   D) It is not allowed to engage in political lobbying.

Answer: B
Diff: 2
Topic: Labor Law
Skill: Legal Concepts

40) The two labor organizations that combined in 1955 were:
   A) the Teamsters and the United Auto Workers
   B) the United Auto Workers and The American Federation of Labor
   C) the American Federation of Labor and the Congress of Industrial Organizations
   D) the United Steel Workers and United Auto Workers
   E) the United Steel Workers and the Congress of Industrial Organizations

Answer: C
Diff: 2
Topic: Labor Law
Skill: Legal Concepts
41) The approximate percentage of private sector wage and salary workers who belong to a union today is:
   A) 7
   B) 15
   C) 26
   D) 34
   E) 52

   Answer: B
   Diff: 1
   Topic: Labor Law
   Skill: Legal Concepts

42) Which of the following is not one of the major federal labor statutes?
   A) The Norris-LaGuardia Act
   B) The National Labor Relations Act
   C) The Labor-Management Relations Act
   D) The Labor-Management Fair Bargaining Act
   E) The Labor-Management Reporting and Disclosure Act

   Answer: D
   Diff: 2
   Topic: Labor Law
   Skill: Legal Concepts

43) Which of the following statutes specifically covers employees of airline carriers?
   A) The Norris-LaGuardia Act
   B) The National Labor Relations Act
   C) The Labor-Management Relations Act
   D) The Railway Labor Act

   Answer: D
   Diff: 2
   Topic: Labor Law
   Skill: Legal Concepts

44) Which of the following statutes provides that it is legal for employees to organize?
   A) The Norris-LaGuardia Act
   B) The National Labor Relations Act
   C) The Labor-Management Relations Act
   D) The Worker Adjustment and Retraining Notification Act
   E) The Labor-Management Reporting and Disclosure Act

   Answer: A
   Diff: 2
   Topic: Labor Law
   Skill: Legal Concepts
45) Which of the following statutes places an affirmative duty on employers to bargain in good faith with unions?

A) The Norris-LaGuardia Act  
B) The National Labor Relations Act  
C) The Labor-Management Relations Act  
D) The Worker Adjustment and Retraining Notification Act  
E) The Labor-Management Reporting and Disclosure Act

Answer: B  
Diff: 2  
Topic: Labor Law  
Skill: Legal Concepts

46) Which of the following statutes allows the president to seek an injunction against a strike that would create a national emergency?

A) The Norris-LaGuardia Act  
B) The National Labor Relations Act  
C) The Labor-Management Relations Act  
D) The Worker Adjustment and Retraining Notification Act  
E) The Labor-Management Reporting and Disclosure Act

Answer: C  
Diff: 2  
Topic: Labor Law  
Skill: Legal Concepts

47) Which of the following statutes regulates internal union affairs and establishes certain rights of union members?

A) The Norris-LaGuardia Act  
B) The National Labor Relations Act  
C) The Labor-Management Relations Act  
D) The Worker Adjustment and Retraining Notification Act  
E) The Labor-Management Reporting and Disclosure Act

Answer: E  
Diff: 2  
Topic: Labor Law  
Skill: Legal Concepts
48) Which of the following statutes prohibits ex-convicts and communists from holding union offices?
   A) The Norris-LaGuardia Act
   B) The National Labor Relations Act
   C) The Labor-Management Relations Act
   D) The Worker Adjustment and Retraining Notification Act
   E) The Labor-Management Reporting and Disclosure Act

   Answer: C
   Diff: 2
   Topic: Labor Law
   Skill: Legal Concepts

49) Which of the following statutes is also known as the Wagner Act?
   A) The Norris-LaGuardia Act
   B) The National Labor Relations Act
   C) The Labor-Management Relations Act
   D) The Worker Adjustment and Retraining Notification Act
   E) The Labor-Management Reporting and Disclosure Act

   Answer: B
   Diff: 2
   Topic: Labor Law
   Skill: Legal Concepts

50) Which of the following statutes amended the National Labor Relations Act?
   A) The Norris-LaGuardia Act
   B) The Labor-Management Relations Act
   C) The Worker Adjustment and Retraining Notification Act
   D) The Labor-Management Reporting and Disclosure Act

   Answer: B
   Diff: 2
   Topic: Labor Law
   Skill: Legal Concepts

51) The body that is charged with overseeing union elections is the:
   A) The National Union Organizing Oversight Committee
   B) The Labor-Management Review Board
   C) The American Federation of Labor
   D) The Union Elections Oversight Commission
   E) The National Labor Relations Board

   Answer: E
   Diff: 1
   Topic: Labor Law
   Skill: Legal Concepts
52) Which of the following is least likely an appropriate bargaining unit?
   A) all teachers in a particular state
   B) all workers at a particular plant of a company that has four other similar plants
   C) all the maintenance workers at a single plant
   D) the production workers at one plant and the maintenance workers at another company's plant
   E) all the production workers at a company's six plants located in six states

Answer: D
Diff: 2
Topic: Organizing a Union
Skill: Legal Concepts

53) Under which of the following circumstances will the NLRB allow the union to hold an election?
   A) if an election has been held within the last year
   B) if the employees have a union and a valid contract with the employer
   C) if the union has engaged in unfair labor practices
   D) if the union can show that at least 30 percent of the employees are interested in joining the union
   E) in C and D only

Answer: D
Diff: 2
Topic: Organizing a Union
Skill: Legal Concepts

54) The National Labor Relations Board supervises which type(s) of union elections.
   A) contested elections only
   B) uncontested elections only
   C) both contested and uncontested elections
   D) neither contested nor uncontested elections

Answer: A
Diff: 2
Topic: Organizing a Union
Skill: Legal Concepts
55) Under what conditions must an employer allow nonemployee union solicitation on company property?
   A) if there is currently no union representing the company's employees
   B) if the union is affiliated with another union that currently represents other employees of the company
   C) if the employees live in a company town such that it would be difficult to solicit the employees off company property
   D) if the purpose is to solicit employees to change union representation rather than to solicit nonunion workers to join a union
   E) if the purpose of the union is to address issues other than wages

Answer: C
Diff: 3
Topic: Organizing a Union
Skill: Legal Concepts

56) Which is true about employers and solicitations of employees by unions?
   A) The employer can prohibit all solicitation by employees on work premises.
   B) The employer can require that all solicitations be approved by management.
   C) The employer can restrict solicitations to nonworking areas, such as the parking lot, and can limit the solicitations to the employee's free time.
   D) The employer can bar solicitations that express unfavorable opinions about the employer.

Answer: C
Diff: 2
Topic: Organizing a Union
Skill: Legal Concepts

57) The National Labor Relations Act prohibits interference with union elections by:
   A) the employer
   B) the union
   C) either the employer or the union
   D) neither the employer or the union

Answer: C
Diff: 1
Topic: Organizing a Union
Skill: Legal Concepts
58) Which of the following subjects is not a proper subject for collective bargaining?
   A) wages and hours
   B) discrimination against ethnic workers
   C) the closing of part of an employer's business
   D) A, B, and C
   E) B and C only are not proper

Answer: B
Diff: 1
Topic: Collective Bargaining
Skill: Legal Concepts

59) Collective bargaining subjects are classified under the labor laws:
   A) as either group or individual
   B) as either preexisting or new
   C) as either local, industry, or national
   D) as either permissive, compulsory, or illegal
   E) as either settled, undetermined, or optional

Answer: D
Diff: 2
Topic: Collective Bargaining
Skill: Legal Concepts

60) In collective bargaining, wages and hours are considered which type of subjects?
   A) compulsory
   B) optional
   C) permissive
   D) linked

Answer: A
Diff: 1
Topic: Collective Bargaining
Skill: Legal Concepts
61) The Worker Adjustment and Retraining Notification Act requires notification to be given:
   A) 6 months in advance for any plant closing  
   B) 60 days in advance for any plant closing  
   C) 60 days in advance for plant closings resulting in the loss of 50 or more jobs, but not for temporary layoffs  
   D) 60 days in advance for plant closings resulting in the loss of 50 or more jobs, and for layoffs of 50 employees or 33 percent of workers at a site for 30 days or more  
   E) 60 days in advance for plant closings resulting in the loss of 50 or more jobs, and 30 days in advance for layoffs affecting more than 33 workers at the site

Answer: D  
Diff: 3  
Topic: Collective Bargaining  
Skill: Legal Concepts

62) For a layoff or plant closing that is covered by the Worker Adjustment and Retraining Notification Act, the required notice must be given:
   A) by publication in a newspaper of general circulation in the locality where the plant is located  
   B) individually to the affected employees in all circumstances  
   C) by filing with the secretary of state's office or other appropriate state office  
   D) to the union, where the employees are represented by a union, and to the employees individually where there is no union  
   E) to the National Labor Relations Board

Answer: D  
Diff: 2  
Topic: Collective Bargaining  
Skill: Legal Concepts

63) The Worker Adjustment and Retraining Notification Act exempts an employer from giving notice of an otherwise covered layoff or plant closing if:
   A) the giving of notice would work an undue hardship on the employer  
   B) the employer was seeking capital investment in the business, and notice of the layoff or closing would have precluded the employer from acquiring the capital  
   C) the employees are represented by a union  
   D) the employees are not represented by a union  
   E) rumors of the closing already existed at the time the notice would have been required

Answer: B  
Diff: 2  
Topic: Collective Bargaining  
Skill: Legal Concepts
64) The following type(s) of shop(s) is illegal:
   A) closed shop
   B) closed shop and agency shop
   C) union shop and agency shop
   D) union shop
   E) union shops, closed shops, and agency shops are all legal

Answer: A
Diff: 2
Topic: Union Security Agreements
Skill: Legal Concepts

65) The following type(s) of shop(s) does not require union membership:
   A) closed shop
   B) closed shop and agency shop
   C) union shop and agency shop
   D) union shop
   E) agency shop

Answer: E
Diff: 2
Topic: Union Security Agreements
Skill: Legal Concepts

66) Which of the following best describes a closed shop?
   A) Employers can hire either members or nonmembers of the union.
   B) Employers can hire only persons who are already members of the union.
   C) Employers can hire either members or nonmembers of the union, but the employee must join the union within a set period of time after joining the union.
   D) Employers can allow only one union to represent all of its workers even though those workers might be working in different trades.

Answer: B
Diff: 2
Topic: Union Security Agreements
Skill: Legal Concepts
67) Much has been written concerning so-called right-to-work laws. What is the current status of such laws?
   A) Congress has passed a law prohibiting states from passing right-to-work laws.
   B) If a state passes a right-to-work law, then individual employees can be forced to join a union.
   C) If a state passes a right-to-work law, then individual employees cannot be forced to join a union.
   D) If a state passes a right-to-work law, then state and local government employees can unionize.
   E) Most states have passed right-to-work laws.

   Answer:  C  
   Diff: 2  
   Topic:  Union Security Agreements  
   Skill:  Legal Concepts  

68) A right-to-work law generally provides that:
   A) union membership is mandatory  
   B) employees cannot be forced to join a union  
   C) union employees cannot be laid off  
   D) both union and nonunion employees cannot be laid off  
   E) employers cannot hire replacement workers in the event of a strike

   Answer:  B  
   Diff: 2  
   Topic:  Union Security Agreements  
   Skill:  Legal Concepts  

69) Right-to-work laws have been passed in how many states?
   A) less than one-fifth of the states  
   B) nearly half of the states  
   C) approximately three quarters of the states  
   D) all but a couple of states  
   E) all of the states

   Answer:  B  
   Diff: 2  
   Topic:  Union Security Agreements  
   Skill:  Legal Concepts
70) Which of the following items is not a legitimate reason for a union to have a strike?
   A) to protest the employer changing the style of its product
   B) to correct an unfair labor practice
   C) to preserve the employees' work
   D) to obtain higher pay
   E) to work a shorter work week

Answer: A
Diff: 2
Topic: Strikes and Picketing
Skill: Legal Concepts

71) Which of the following types of strikes is legal?
   A) violent strikes
   B) strikes occurring 75 days after union notification to the employer of a possible strike
   C) sit-down strikes
   D) partial strikes
   E) wildcat strikes

Answer: B
Diff: 2
Topic: Strikes and Picketing
Skill: Legal Concepts

72) Which of the following statements regarding replacing striking workers is false?
   A) All strikers may be replaced by other workers.
   B) All strikers must be reinstated after the strike, even if replacement workers must be fired.
   C) Strikers for economic benefits are entitled to reinstatement, but replacement workers need not be fired.
   D) Strikers for unfair labor practices are entitled to reinstatement, even if replacement workers must be fired.
   E) Illegal strikers may be terminated and have no rights to reinstatement.

Answer: B
Diff: 2
Topic: Strikes and Picketing
Skill: Legal Concepts

73) An employee who does not honor a strike and works during the strike is a(n):
   A) replacement worker
   B) temporary worker
   C) crossover worker
   D) continuous worker
   E) illegal worker

Answer: C
Diff: 1
Topic: Strikes and Picketing
Skill: Legal Concepts
74) What is a lockout in connection with labor law?
   A) an action by workers to prevent management from entering the company's premises
   B) an action by workers to prevent customers from entering the company's premises
   C) an action by workers to prevent suppliers from entering the company's premises
   D) an action by management to prevent union organizers from entering the company's premises
   E) an action by management to prevent workers from entering the company's premises

   Answer: E
   Diff: 2
   Topic: Strikes and Picketing
   Skill: Legal Concepts

75) For which of the following may a union not discipline one of its members?
   A) walking off the job in an unsanctioned strike
   B) testifying in court against the union
   C) working for wages below union scale
   D) spying for an employer

   Answer: B
   Diff: 2
   Topic: Internal Union Affairs
   Skill: Legal Concepts

76) Which of the following acts contains the provisions known as labor's "bill of rights"?
   A) The Landrum-Griffin Act
   B) The Plant Closing Act
   C) The National Labor Relations Act
   D) The Taft-Hartley Act
   E) The Norris-LaGuardia Act

   Answer: A
   Diff: 2
   Topic: Internal Union Affairs
   Skill: Legal Concepts

77) Dime Enterprises is a large employer. A union represents its employees. The union is demanding that Dime negotiate on all sorts of matters that Dime does not think it should negotiate. Which of the following statements is false regarding these negotiations?
   A) Dime may negotiate on anything it wants to, except illegal items.
   B) Dime must negotiate as to wages, hours, and working conditions.
   C) Dime may refuse to negotiate on closing part of its business.
   D) Dime may negotiate obtaining a closed shop.

   Answer: D
   Diff: 2
   Topic: Collective Bargaining
   Skill: Factual Application
78) Mebs Motor Company has decided to close down its plant in Sunburn, Michigan. The demand for its cars is falling dramatically, and the plant has been losing money for years. Mebs management has heard of some federal law that requires notice being given to employees about plant closings under certain conditions. Which of the following is not true regarding this law?
   A) The act covers employers with 100 or more employees.
   B) The act generally requires 60 days notice.
   C) The act applies to plant closings and to mass layoffs.
   D) There are no exceptions to the notification rules.

Answer: D
Diff: 3
Topic: Collective Bargaining
Skill: Factual Application

79) The Farm Union represents farm workers, some of whom are employed by Vino Wineries. The union is on strike against Vino and it is picketing all liquor stores that sell Vino products. The picketers are asking that no one buy anything from any liquor store that carries Vino products. There has been no violence. This picketing is:
   A) an illegal secondary boycott
   B) a legal secondary boycott
   C) an illegal common situs picket
   D) a legal common situs picket
   E) an illegal hot cargo agreement

Answer: A
Diff: 3
Topic: Strikes and Picketing
Skill: Factual Application

80) Jed owns a small but growing manufacturing company. Jed had enjoyed a good relationship with his production workers until recently. Now there is to be an election to join a national union that will be held in 2 weeks. Jed has implemented a policy that there will be no solicitation of employees on company property. Which of the following is true?
   A) Jed must allow solicitation of his employees anytime they are at work.
   B) Jed must provide his employees with time off in order to learn about the union's side of the issue.
   C) Jed must allow anyone to solicit his employees while they are on breaks or at lunch.
   D) Jed must allow on-duty employees to solicit other employees but can limit it to nonwork areas such as break rooms.
   E) Jed must allow nonemployees to solicit on the premises, but Jed has the right to be present for the soliciting activities.

Answer: D
Diff: 2
Topic: Organizing a Union
Skill: Factual Application
81) Union at an industrial facility demands that management negotiate the prohibited hiring of certain new employees during the collective bargaining process. Specifically, the union wants assurances that the company will not hire any more women to work for the company during the next three years. Must the company negotiate the issue?
   A) Yes; it is a mandatory subject of bargaining.
   B) No; it is a permissive subject of bargaining.
   C) Yes; it impacts the terms and working conditions of employment.
   D) No; it is an illegal subject of collective bargaining.

Answer: D
Diff: 2
Topic: Organizing a Union
Skill: Factual Application

82) What practical problems are there with the notice requirements of the Plant Closing Act?

Answer: In many circumstances, once the advance notice is given, disgruntled workers could sabotage production and cause other problems if they know that they are going to lose their jobs. Some employers might choose to simply give 60 days of severance pay rather than try to operate a factory with angry workers.
Diff: 2
Skill: Ethics and Policy

83) How will unions be affected if increasing amounts of work that was once done by employees is being done by independent contractors?

Answer: These arrangements will likely decrease the power of unions. Many of the rights of the labor laws are granted to "employees," but not to independent contractors. The short-term nature of these contracts might make it more difficult to find a high percentage of parties who want to address labor issues.
Diff: 2
Skill: Ethics and Policy
84) Henry is the owner and president of a machine shop with 36 employees. Of these, 30 persons are employed as machinists and the other six work in the office or in sales. There has never been union representation. In the same industrial park is a dealership for heavy equipment such as that used in road construction or surface mining. There are about 50 mechanics who have formed a union at the heavy equipment dealership. Some of these mechanics have been trying to get the machinists at Henry's machine shop to join their union. The union formed by the mechanics is not affiliated with any national union. Henry believes he has been a good employer and fears a union will drive a wedge between him and his employees. Henry's employees currently are at-will employees. Henry takes several actions to prevent his machinists from voting to join the union. He has forbidden any representatives of the mechanic's union from coming on to his premises. In addition, he has reminded his employees that they are at-will employees, and if he hears of any of them discussing the union with any of the mechanics, they will immediately lose their jobs. He also gives all his employees a $1-per-hour wage increase, and tells them that if a union is formed, they will have to start at zero and negotiate a new wage. Henry has also considered offering to form a company union if it looks like the union vote might succeed. Discuss the legal implications of the union's and Henry's activities.

Answer: Henry could challenge the bargaining unit composed of mechanics from one company and machinists from another company as being inappropriate. Henry can probably offer a higher wage, but his threats of terminating his employees are not proper. Henry can properly keep nonemployees off his premises. Henry cannot form a company union.
Diff: 3
Topic: Organizing a Union
Skill: Factual Application

85) The Overrock Typewriter Company has been in business for a hundred years, but falling sales have forced several layoffs in the past 20 years. There has never been a union at the company, but some workers have organized a union election. Overrock's owner will not discuss wages if a union is formed, and might close the plant. Discuss the legal implications.

Answer: Overrock would need to comply with any applicable notice requirements of the Plant Closing Act. Overrock cannot threaten to close the plant and would be required to bargain on wages if a union is formed.
Diff: 2
Topic: Collective Bargaining
Skill: Factual Application
1) The Equal Employment Opportunity Commission is responsible for enforcing most federal antidiscrimination laws.

Answer: TRUE
Diff: 1
Topic: Equal Employment Opportunity Commission (EEOC)

2) The Equal Employment Opportunity Act of 1972 was created to eliminate job discrimination based on race alone.

Answer: FALSE
Diff: 1
Topic: Title VII of the Civil Rights Act of 1964

3) Title VII of the Civil Rights Act of 1964 applies to employers with five or more employees.

Answer: FALSE
Diff: 2
Topic: Title VII of the Civil Rights Act of 1964

4) Undocumented aliens may not bring actions for employment discrimination under Title VII.

Answer: FALSE
Diff: 2
Topic: Title VII of the Civil Rights Act of 1964

5) Some policies that apply equally to members of different races can violate the Civil Rights Act of 1964 because of the overall impact on the different races.

Answer: TRUE
Diff: 1
Topic: Title VII of the Civil Rights Act of 1964

6) Disparate treatment discrimination refers to the discrimination against a specific individual because of his or her race, color, national origin, sex, or religion.

Answer: TRUE
Diff: 2
Topic: Forms of Title VII Actions
7) Statistical imbalance between an employer's workforce and the relevant population is not enough, by itself, to prove disparate impact discrimination.

Answer: TRUE
Diff: 1
Topic: Forms of Title VII Actions

8) The EEOC must receive a filed complaint by a private complainant and then choose whether or not to bring suit against the employer on the complainant's behalf.

Answer: TRUE
Diff: 2
Topic: Procedure for Bringing a Title VII Action

9) A successful plaintiff in a Title VII action may not recover attorneys' fees.

Answer: FALSE
Diff: 1
Topic: Remedies for Violation of Title VII

10) National origin refers to the color of a person's skin.

Answer: FALSE
Diff: 1
Topic: Race, Color, and National Origin Discrimination

11) Sex discrimination as per the Title VII definition applies only to men.

Answer: FALSE
Diff: 1
Topic: Sex Discrimination


Answer: TRUE
Diff: 1
Topic: Sex Discrimination

13) The mere posting of a swimsuit calendar in the lunchroom of the ABC Company is not sexual harassment, as it is not specifically aimed at any one individual in the company.

Answer: FALSE
Diff: 2
Topic: Sexual Harassment
14) Same-sex discrimination does not violate Title VII.

Answer: FALSE
Diff: 2
Topic: Same-Sex Discrimination

15) The right of an employee to practice his or her religion is absolute.

Answer: FALSE
Diff: 1
Topic: Religious Discrimination

16) Title VII expressly prohibits religious organizations to give preference in employment to individuals of a particular religion.

Answer: FALSE
Diff: 2
Topic: Religious Discrimination

17) The concept of bona fide occupational qualification is broadly interpreted by the courts.

Answer: FALSE
Diff: 1
Topic: Defenses to a Title VII Action

18) A legitimate merit test is a valid defense to a Title VII discrimination claim.

Answer: TRUE
Diff: 1
Topic: Defenses to a Title VII Action

19) Under the Civil Rights Act of 1866, there is no cap on the recovery of compensatory or punitive damages.

Answer: TRUE
Diff: 2
Topic: Civil Rights Act of 1866

20) A private plaintiff must also go through the procedural requirements of Title VII in order to bring an action.

Answer: FALSE
Diff: 2
Topic: Civil Rights Act of 1866
21) One of the "factors other than sex" that justifies lower wages for women under the Equal Pay Act is that women are willing to work for less money than men are.

Answer: FALSE  
Diff: 3  
Topic: Equal Pay Act of 1963

22) Shift differentials are allowed under the Equal Pay Act of 1963.

Answer: TRUE  
Diff: 1  
Topic: Equal Pay Act of 1963

23) The employer bears the burden of proving that there is a legal justification for paying unequal wages to male and female workers.

Answer: TRUE  
Diff: 1  
Topic: Equal Pay Act of 1963

24) If a violation of the Equal Pay Act is found, the employer may reduce the wages of the other workers to eliminate the unequal pay.

Answer: FALSE  
Diff: 1  
Topic: Equal Pay Act of 1963

25) A 35-year-old employee who is fired because his employer incorrectly believes he is too old to do his job does not have a valid age discrimination claim.

Answer: TRUE  
Diff: 2  
Topic: Age Discrimination in Employment Act of 1967

26) The Age Discrimination in Employment Act only protects workers from age 40 to age 70.

Answer: FALSE  
Diff: 1  
Topic: Age Discrimination in Employment Act of 1967

27) A policy of hiring workers only age 40 and older does not violate the Age Discrimination in Employment Act.

Answer: TRUE  
Diff: 2  
Topic: Age Discrimination in Employment Act of 1967
28) Title I of the ADA requires employers to make reasonable accommodations to individuals with disabilities.

Answer: TRUE
Diff: 2
Topic: Americans with Disabilities Act of 1990

29) Whether an accommodation is "reasonable" under the Americans with Disabilities Act does not depend on the employer's size or financial resources.

Answer: FALSE
Diff: 2
Topic: Americans with Disabilities Act of 1990

30) The ADA does not apply to mental disabilities.

Answer: FALSE
Diff: 2
Topic: Americans with Disabilities Act of 1990

31) An employer may question a job applicant about the severity of his or her disability.

Answer: FALSE
Diff: 1
Topic: Americans with Disabilities Act of 1990

32) Affirmative action plans provide that certain job preferences will be given to members of classes.

Answer: TRUE
Diff: 2
Topic: Affirmative Action

33) Lawful affirmative action plans that have an effect on members of majority classes are actionable by the members of the majority class who are affected.

Answer: FALSE
Diff: 2
Topic: Reverse Discrimination
34) The Equal Employment Opportunity Commission has the power to do the following except:
   A) pass amendments to the Civil Rights Act of 1964 and other antidiscrimination statutes
   B) file suits to enforce antidiscrimination statutes on behalf of complainants
   C) conduct investigations related to the antidiscrimination laws
   D) interpret antidiscrimination statutes

Answer: A
Diff: 2
Topic: Equal Employment Opportunity Commission (EEOC)
Skill: Legal Concepts

35) Which is true about the two kinds of discrimination that are actionable under Title VII?
   A) Disparate impact and disparate treatment are both based on how an employer treats a specific individual.
   B) Disparate impact and disparate treatment are both based on how an employer treats a protected class.
   C) Disparate treatment refers to individuals and disparate impact refers to protected classes.
   D) Disparate impact refers to individuals and disparate treatment refers to protected classes.

Answer: C
Diff: 2
Topic: Title VII of the Civil Rights Act of 1964
Skill: Legal Concepts

36) Which is true if someone believes that he was fired from a job because of his religion?
   A) He must prove that the person who fired him is of a different religion.
   B) He must first file a complaint with the Equal Employment Opportunity Commission or an equivalent state agency prior to being able to file suit in court.
   C) He will not have a claim if the employer has a disproportionately high number of employees of the same religion.
   D) He must prove that he is a reasonably active practitioner of his religion.

Answer: B
Diff: 3
Topic: Title VII of the Civil Rights Act of 1964
Skill: Legal Concepts
37) If a party has presented a complaint to the Equal Employment Opportunity Commission about alleged discrimination in violation of the Civil Rights Act of 1964, and the EEOC decides not to bring a suit on behalf of the employee, the EEOC will issue a(n):
   A) order of dismissal of the complaint
   B) notice of the complainant's right to appeal to the appropriate court of appeals
   C) judgment in the employer's favor
   D) injunction to prevent the illegal behavior in the future
   E) right to sue letter

Answer: E  
Diff: 2  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Legal Concepts

38) Which of the following are protected classes under Title VII of the 1964 Civil Rights Act?
   A) race, national origin, and sex
   B) race, national origin, and political affiliation
   C) race, religion, and sexual orientation
   D) rational origin, race, and alien status
   E) religion, color, and prior welfare eligibility

Answer: A  
Diff: 2  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Legal Concepts

39) Under the Civil Rights Act of 1964, an employer cannot discriminate against a member of a protected class in:
   A) hiring
   B) termination of employment
   C) promotion
   D) Conditions of Employment
   E) All of these are correct.

Answer: E  
Diff: 1  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Legal Concepts
40) Which of the following employers have been expressly excluded from Title VII?
   A) labor unions
   B) state and local governments
   C) most federal agencies
   D) Indian tribes
   E) All of these are correct.

   Answer: D
   Diff: 2
   Topic: Title VII of the Civil Rights Act of 1964
   Skill: Legal Concepts

41) The Civil Rights Act of 1964 protects against discrimination based on:
   A) sex
   B) sexual preference
   C) both sex and sexual preference
   D) neither sex nor sexual preference

   Answer: A
   Diff: 1
   Topic: Title VII of the Civil Rights Act of 1964
   Skill: Legal Concepts

42) Which of the following is true about sexual harassment in the workplace?
   A) If a supervisor approaches someone and asks that person out for a social date, and if the supervisor acts in socially customary manner, it will not be sexual harassment.
   B) The standards for a hostile work environment are extremely vague and depend on all the facts and circumstances.
   C) Sexual harassment claims require that persons of both sexes be involved.
   D) Sexual harassment is covered under OSHA as part of workplace safety.

   Answer: B
   Diff: 2
   Topic: Title VII of the Civil Rights Act of 1964
   Skill: Legal Concepts

43) In deciding sexual harassment cases, some courts have applied:
   A) the reasonable woman standard
   B) the liberal society standard
   C) the workplace reality standard
   D) the reciprocal conduct standard

   Answer: A
   Diff: 1
   Topic: Title VII of the Civil Rights Act of 1964
   Skill: Legal Concepts
44) In a hostile work environment sexual harassment claim, the employer will have a successful defense if the employer can show which of the following?
   A) The employer took reasonable care to prevent or correct the conduct and the employee did not take advantage of corrective or preventive opportunities of the employer to remedy the situation.
   B) The employee was offended by conduct that the employer in good faith did not consider to be offensive.
   C) There were no adverse consequences to the employee's work status, such as a demotion or denied promotion.
   D) The employee stands to personally gain if the persons engaging in the sexual harassment are reprimanded.

Answer: A
Diff: 3
Topic: Title VII of the Civil Rights Act of 1964
Skill: Legal Concepts

45) Which of the following would be a legal defense to a charge of discrimination under Title VII?
   A) discrimination based on merit
   B) discrimination based on seniority
   C) discrimination based on a bona fide occupational qualification
   D) A, B, and C
   E) B and C only

Answer: D
Diff: 1
Topic: Defenses to a Title VII Action
Skill: Legal Concepts

46) Which of the following factors can never be used as a legal bona fide occupational qualification?
   A) sex
   B) religion
   C) race
   D) B and C
   E) A and C

Answer: C
Diff: 2
Topic: Defenses to a Title VII Action
Skill: Legal Concepts
47) A bona fide occupational qualification is required to be:
   A) job related and cost effective
   B) job related and nondiscriminatory
   C) job related and a business necessity
   D) rationally based and evenly applied
   E) long-term and permanently applied

   Answer: C
   Diff: 3
   Topic: Defenses to a Title VII Action
   Skill: Legal Concepts

48) Which of the following items is a legal justification for paying unequal wages based on gender?
   A) seniority only
   B) merit only
   C) quantity or quality of work only
   D) seniority, merit, and quantity or quality of work
   E) There are no legal justifications for paying unequal wages.

   Answer: D
   Diff: 1
   Topic: Equal Pay Act of 1963
   Skill: Legal Concepts

49) Who is protected under the Age Discrimination in Employment Act?
   A) all workers who are age 40 or over
   B) all workers of any age who are discriminated against for being too old
   C) all workers who are in a job in which they were 40 years of age or over when hired
   D) any worker who is replaced with a younger worker

   Answer: A
   Diff: 2
   Topic: Age Discrimination in Employment Act of 1967
   Skill: Legal Concepts

50) The Age Discrimination in Employment Act makes it illegal for:
   A) employers to hire only employees who are age 40 and over
   B) employers to have a seniority system
   C) employers to know the age of job applicants before making a hiring decision
   D) employers to have a mandatory retirement age for most jobs
   E) employers to have a workforce comprised primarily of very young or very old workers

   Answer: D
   Diff: 2
   Topic: Age Discrimination in Employment Act of 1967
   Skill: Legal Concepts
51) Which of the following is true about the Americans with Disabilities Act?
   A) It affects only the employment of persons with disabilities.
   B) It clearly sets limits and requirements relevant to employers.
   C) It not only prevents discrimination based on disabilities, but employers can be required to
      incur costs in order to accommodate disabled individuals in their jobs.
   D) It requires employers to ask about an applicant's disabilities so that the employer knows if
      the applicant is covered.

   Answer: C
   Diff: 2
   Topic: Americans with Disabilities Act of 1990
   Skill: Legal Concepts

52) Which of the following would not qualify as a disability under the Americans with
    Disabilities Act?
   A) Aaron's past addiction to cocaine
   B) Mike's inability to use his arms
   C) Pat's inability to make it through the day without several drinks of alcohol
   D) the impression among many people that Sandy is disabled due to a leg injury when, in
      fact, her leg functions normally

   Answer: C
   Diff: 2
   Topic: Americans with Disabilities Act of 1990
   Skill: Legal Concepts

53) The Americans with Disabilities Act requires that:
   A) persons with qualifying disabilities receive preference in hiring whenever possible
   B) applicants for jobs are asked about their disabilities in order to identify them
   C) employers make reasonable accommodations to accommodate employees' disabilities
   D) newly hired employees have physical examinations to identify disabilities
   E) persons with disabilities notify a potential employer of disabilities prior to being hired

   Answer: C
   Diff: 2
   Topic: Americans with Disabilities Act of 1990
   Skill: Legal Concepts
54) Which of the following is true?
   A) Pay differences due to seniority differences and differences in amounts earned under a commission pay plan are not acceptable if they result in different pay for male and female employees.
   B) The Age Discrimination in Employment Act protects all workers against being discriminated against because they are thought to be too old.
   C) Under the Americans with Disabilities Act, an employer is required to provide reasonable accommodations to enable a disabled person to perform a job.
   D) Protected classes under Title VII of the Civil Rights Act of 1964 include race, national origin, and sexual preference.

   Answer: C
   Diff: 3
   Topic: Americans with Disabilities Act of 1990
   Skill: Legal Concepts

55) One major reason for suing under Section 1981 of the Civil Rights Act of 1866 rather than the Civil Rights Act of 1964, is that the Civil Rights Act of 1866:
   A) has broader coverage
   B) allows for a private action to be instituted without going to the EEOC
   C) allows for the recovery of greater damages
   D) A, B, and C
   E) B and C only

   Answer: E
   Diff: 3
   Topic: Civil Rights Act of 1866
   Skill: Legal Concepts

56) Oriole Corporation has a large factory in Center City. Of Oriole's factory workers, 80 percent are white and 20 percent are black. However, the general population of Bigtown is about 50 percent black, and has been for over 50 years. This data would indicate that Oriole's hiring practices have been:
   A) legal because no specific black person has been discriminated against
   B) legal because as some blacks were hired by Oriole, there can be no discrimination
   C) illegal because this shows a disparate treatment discrimination
   D) illegal because this shows a disparate impact discrimination

   Answer: D
   Diff: 3
   Topic: Title VII of the Civil Rights Act of 1964
   Skill: Factual Application
57) Diana is up for promotion to Sales Manager at West Coast Products. The company presently has 12 female sales managers and ten male sales managers. Diana is turned down for the promotion and, in explaining this, the company president tells her that although she is generally well qualified, she is too aggressive and acts too much like a man. The president also says to Diana, "It's not because you are a woman. Obviously this company has nothing against women given that we have 12 women sales managers and that I, as company president, am a woman." When Diana sues West Coast Products under section VII of the Civil Rights Act of 1964, the court will:

A) deny recovery to Diana because she is not a member of a protected class  
B) deny recovery because the company does not generally discriminate against women  
C) allow recovery because Diana was turned down in part because she is a woman  
D) allow recovery if Diana can prove that at least one male with her qualifications was promoted in the past  
E) allow recovery only if Diana cannot obtain similar employment elsewhere

Answer: C  
Diff: 3  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Factual Application

58) If a qualified black person applied for a particular job and was rejected for that job just because he was black, and the employer kept the position open and hired an equally qualified white person, it would be a case of which of the following types of discrimination?

A) disparate treatment discrimination  
B) pattern of practice of discrimination  
C) disparate impact discrimination from a facially neutral rule  
D) sex discrimination  
E) It would not be illegal discrimination.

Answer: A  
Diff: 2  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Factual Application

59) Center City adopted a rule that all employees of Center City had to live within the city limits. Center City is right next to Elmville. Center City has no African Americans, but one-third of the residents of Elmville are African American. Due to the rule, no employee of Center City is African American. The rule is most likely:

A) disparate treatment discrimination  
B) pattern of practice of discrimination  
C) disparate impact discrimination from a facially neutral rule  
D) national origin discrimination  
E) not illegal discrimination

Answer: C  
Diff: 2  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Factual Application
60) Spruce Industries is a manufacturing factory located in El Rosa. El Rosa is 25 percent Hispanic, but Spruce has only 2 percent Hispanic employees. This data supports the charge that Spruce has engaged in:
   A) disparate treatment discrimination
   B) disparate impact discrimination from a facially neutral rule
   C) sex discrimination
   D) behavior that is not illegal discrimination

Answer: B  
Diff: 2  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Factual Application

61) One of the requirements for a factory assembly job at Spruce Industries is that the worker be less than 6-feet tall. Aaron applies for the job, but is not hired. Which is true?
   A) Spruce Industries is in violation of Title VII only if Aaron is less than 6-feet tall.
   B) Spruce Industries is in violation of Title VII only if Aaron is over 6-feet tall.
   C) Spruce Industries is in violation of Title VII only if Aaron can show that he is over 6-feet tall and he was not hired because he was too tall.
   D) Spruce Industries is in violation of Title VII if the height requirement has the result of discriminating against men and does not relate to fitness for the particular job.

Answer: D  
Diff: 3  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Factual Application

62) A job applicant in the city of Portland is not hired by a corporation because he is gay and because he is from California. He could:
   A) recover under Title VII of the Civil Rights Act
   B) recover under the Fair Labor Standards Act
   C) recover because this is an improper burden on interstate commerce
   D) keep looking for a job because he has no remedy under federal statutes

Answer: D  
Diff: 2  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Factual Application
63) William was a factory worker at the Spruce Industries plant. When it was learned that he was a homosexual, he was fired. This action is:
   A) not prohibited by federal law
   B) a violation of Title VII
   C) illegal sex discrimination
   D) a violation of the Equal Pay Act
   E) a violation of the Civil Rights Act of 1964

Answer: A
Diff: 3
Topic: Title VII of the Civil Rights Act of 1964
Skill: Factual Application

64) Sarah's religion requires her to cover her hair and face in public. When she applies for a job as a teller at First Bank, she is told that she will be required to wear the company uniform and cannot cover her hair and face. Which of the following is correct?
   A) If First Bank hires Sarah, she must wear the same uniform as everyone else.
   B) First Bank can refuse to hire Sarah because of her religion.
   C) If First Bank hires Sarah, it must make a reasonable accommodation for her religious beliefs.
   D) The law does not cover this situation.

Answer: C
Diff: 2
Topic: Title VII of the Civil Rights Act of 1964
Skill: Factual Application

65) The local police department gives a detective's test. Everyone who takes the test must have been a police officer for at least 5 years. The people taking the exam are rated from top to bottom based on their scores on that test. Then, if any detective openings are available, they are filled on the basis of whoever has the highest score. Which of the following statements best describes this practice?
   A) Tests like this are never legal in promotion decisions.
   B) Tests like this are always legal in promotion decisions.
   C) Tests like this are legal as long as the subject matter tested has some relationship to the job being applied for.
   D) Tests like this are legal as long as they are not the sole factor used in determining promotion.
   E) Tests like this are legal as long as they are the sole factor used in determining promotion.

Answer: C
Diff: 3
Topic: Title VII of the Civil Rights Act of 1964
Skill: Factual Application
66) Which of the following situations would be a bona fide occupational qualification?

A) hiring only Hispanic waiters at a restaurant that markets to a Hispanic clientele
B) hiring only men to be attendants in the locker room of a men's health club
C) hiring only Catholics to be waitresses in a restaurant that caters to a largely Catholic population
D) both A and B
E) both B and C

Answer: B
Diff: 2
Topic: Defenses to a Title VII Action
Skill: Factual Application

67) Jane is a manager of a bank. She has all of the qualifications to be promoted to bank manager. In fact, she is better qualified than any of the males being considered for that position. However, the owner of the bank believes that the bank customers will not accept a woman as bank manager, so the owner promotes one of the males. The owner's actions would best be described by:

A) quid pro quo sex discrimination
B) hostile working environment sex discrimination
C) sex discrimination
D) pregnancy discrimination
E) sexual harassment

Answer: C
Diff: 1
Topic: Defenses to a Title VII Action
Skill: Factual Application

68) In a hospital, nurses are paid less than janitors. The nurses need more education to become nurses than the janitors need to become janitors. The janitors must lift heavier objects than the nurses, but the nurses have more responsibility than the janitors. This discrimination in the amount paid to nurses and janitors is:

A) legal, because the jobs are not similar
B) illegal, because the nurses need more education
C) illegal, because the nurses have more responsibility
D) legal, because the janitors need to lift heavier items
E) legal, because the nurses have better working conditions

Answer: A
Diff: 3
Topic: Equal Pay Act of 1963
Skill: Factual Application
69) A male driver for a company is paid $1 per hour less than a female driver. Which of the following is least likely to be a valid reason under the Equal Pay Act?
   A) The female driver has worked longer for the company.
   B) The female driver has a better safety record than the male driver does.
   C) The female driver drives a larger truck that is harder to drive.
   D) Females are thought by the owner to be safer drivers on average.

Answer: D
Diff: 3
Topic: Equal Pay Act of 1963
Skill: Factual Application

70) Martha and John work in a factory. The factory pays each worker $5 per hour plus $.25 per piece of work completed. John is always paid more money than Martha, because John can work faster than Martha can. This situation is:
   A) illegal, because of pay discrimination
   B) legal, because of a seniority system
   C) legal, because of a defined merit system
   D) legal, because the pay is based on a difference in quantity or quality of work
   E) legal, because the pay is based on "some other factor than sex"

Answer: D
Diff: 3
Topic: Equal Pay Act of 1963
Skill: Factual Application

71) ORIOLE Corp. has a large manufacturing facility in Springfield. ORIOLE hires both male and female employees. However, there are four times as many adult women in Springfield as adult men looking for work. Therefore, ORIOLE must pay men more than women to get them to work for ORIOLE. The practice of paying men more than women is:
   A) illegal, because of pay discrimination
   B) legal, because of a seniority system
   C) legal, because of the different prevailing market wages for men and women
   D) legal, because the pay is based on a difference in quantity or quality of work
   E) legal, because the pay is based on "some other factor than sex"

Answer: A
Diff: 3
Topic: Equal Pay Act of 1963
Skill: Factual Application
72) Three persons have been turned down for jobs because of their age. Alice, age 72, was turned down because she was too old. Betty, age 45, had applied for a job where most of her customers would be senior citizens and was turned down because she was too young. Cathy, age 35, was turned down for a teaching job because the school wanted very young teachers and thought she was too old. Assuming each was otherwise qualified for the job sought, who has a valid claim for illegal age discrimination?

A) Alice only  
B) Alice and Cathy  
C) Alice and Betty  
D) Betty only  
E) Alice, Betty, and Cathy

Answer: C  
Diff: 3  
Topic: Age Discrimination in Employment Act of 1967  
Skill: Factual Application

73) Which of the following is least likely to succeed on a claim under the Americans with Disabilities Act?

A) someone who is unable to walk, but can do all the requirements of a job, although in some cases it might take him a little longer than if he could walk  
B) someone who is not hired because of a past drug habit, which he has stayed away from for a couple of years  
C) someone who has a documented history of severe asthma, although he or she has not had any problems since moving from New Orleans to Denver  
D) someone who has a bad back that prevents him from being able to work at the minimum required speed on an assembly line  
E) someone who wears unusual looking thick glasses to correct a rare vision problem; this person has normal vision with the glasses, but most people falsely assume that she cannot see normally, even with the glasses

Answer: D  
Diff: 3  
Topic: Americans with Disabilities Act of 1990  
Skill: Factual Application
74) Which of the following individuals does not have a claim under the Americans with Disabilities Act?

A) John, who is unable to walk and must use a wheelchair
B) Bill, who has a record of severe asthma (which requires him to limit almost all physical activity), but who has not had an attack for several months
C) Sandy, who is addicted to alcohol and has tried all currently accepted techniques but simply cannot stop drinking
D) Alice, who has one arm five inches shorter than the other arm. Alice can do anything that persons with arms of equal length can, but most people incorrectly assume that she is limited in her physical abilities
E) Aaron, a former cocaine addict who has used no drugs or alcohol for 5 years and appears to have overcome his addiction

Answer: C
Diff: 3
Topic: Americans with Disabilities Act of 1990
Skill: Factual Application

75) Aaron, after a long and distinguished career at a nuclear weapons plant in the plutonium storage department, is hired by a local company to work in its warehouse. Aaron's skin has turned bright green from his years around the plutonium, but he is otherwise healthy and is not, himself, radioactive in any way. All scientific and health experts have determined that this condition is permanent, but harmless. After working in the warehouse, Aaron is not promoted, and Aaron believes it is because of his green skin. Which of the following, if it is true and is the reason that Aaron was not promoted, would give Aaron the best chance of prevailing if Aaron sues his employer because he was not promoted?

A) A white worker was promoted because the white worker was simply a better warehouseman.
B) A black worker was promoted because the black worker has worked longer for the employer, and promotions were made on the basis of seniority.
C) Supervisors need to understand the computerized inventory system and Aaron did not, despite his attempts to understand it.
D) Despite the opinion of experts, some of the people Aaron would be supervising thought he had some kind of disability and therefore did not want to work for him.
E) Aaron had told his boss that he was gay and this was the reason he was not promoted.

Answer: D
Diff: 3
Topic: Americans with Disabilities Act of 1990
Skill: Factual Application
76) Bart is the manager of Great Enterprises. A handicapped individual has applied for a job at Great Enterprises. Bart wants to know his responsibilities under the Americans with Disabilities Act. Which of the following statements is true about those responsibilities?
   
   A) A user of illegal drugs is covered under the Act.
   B) Bart can require a medical examination before offering employment to this person.
   C) If a deaf applicant can perform the job functions only if she is provided with a sign language interpreter, she is protected under the Act.
   D) Under the Act, undue burden is defined without considering cost.

   Answer:  C  
   Diff: 2  
   Topic:  Americans with Disabilities Act of 1990  
   Skill:  Factual Application

77) Aaron has started his own business that has grown rapidly to the point that he now has 11 employees. Which of the following is not true?

   A) Title I of the Americans with Disabilities Act is administered by the Equal Employment Opportunity Commission.
   B) The Americans with Disabilities Act covers providers of public accommodations as well as employers.
   C) Aaron is not subject to the requirement to provide reasonable accommodations to his employees.
   D) The difficulty of providing accommodation to an employee is not considered in deciding whether or not the accommodation must be provided.

   Answer:  D  
   Diff: 3  
   Topic:  Americans with Disabilities Act of 1990  
   Skill:  Factual Application

78) On July 1, 2007 Maria applied for a job with a large organization. She is clearly qualified for the position, so she was surprised to learn that the position was filled by a white male with inferior qualifications. After thinking about it for awhile, she is convinced that she did not receive the position because she was discriminated against for being a Hispanic female. On June 1, 2008 she files a complaint with the EEOC. What will probably be the result of her claim?

   A) She will be successful in proving a prima facie case of discrimination, and she has filed her claim within the requisite time for an EEOC filing.
   B) She will be successful proving a prima facie case of discrimination, but she has not filed her claim within the requisite time for an EEOC filing.
   C) She will not be able to prove a prima facie claim of discrimination, although she has filed her claim in a timely manner with the EEOC.
   D) She will not be able to prove a prima facie claim of discrimination, nor has she filed her claim in a timely manner with the EEOC.

   Answer:  B  
   Diff: 3  
   Topic:  Equal Employment Opportunity Commission (EEOC)  
   Skill:  Factual Application
Under what circumstances, if any, do you believe affirmative action is appropriate? Was affirmative action appropriate when such programs were first used? If there has been a change in the appropriateness of affirmative action, why has there been a change? Does it make a difference if the program is administered by the government or is voluntarily implemented by a private employer?

Answer: Under recent court decisions, affirmative action programs must be narrowly tailored to be legal. Opinions differ greatly about the appropriateness of affirmative action programs.

Skill: Ethics and Policy

The Americans with Disabilities Act has resulted in a large number of claims filed by persons claiming to be covered under the act for conditions such as a weak back. Who was intended to be protected by the Act? Is the Act being abused? If so, how can this abuse be reduced?

Answer: Some studies have shown that the Act has not really helped those with the greatest disabilities, and those who were intended to be protected. On the other hand, many individuals have received workplace accommodations that both increase productivity for the employer and greatly improve the working life of the employee.

Skill: Ethics and Policy

Should the overseas operations of United States corporations be subject to the United States laws prohibiting discrimination in employment? If so, to what extent? What practical difficulties are there to applying the laws to overseas operations?

Answer: Some argue that this would be a form of imperialism. On the other hand, if a United States company merely was providing additional protections that were legal, though not required, it might be hard to call it imperialism.

Skill: Ethics and Policy

Some have criticized the widespread filing of sexual harassment claims on the grounds that false claims are too easy to file and allege. Do you agree? How could the number of false accusations be reduced without hindering the ability of victims to file legitimate claims?

Answer: The recent court decisions recognizing a defense where the employer exercised reasonable care to prevent sexual harassment and the employee failed to make use of corrective or preventive measures should reduce this problem.

Skill: Ethics and Policy
83) Many employers are making greater use of contract labor. For example, some firms now will provide a 500-person temporary contract sales force, which might be useful where a firm has a new product that will require labor-intensive selling initially, but once introduced, will require far fewer salespeople. What are the pros and cons of this trend?

Answer: As the case involving Microsoft in the text points out, often this practice is abusive and used primarily to get around the employment laws and the protections that they provide to employees. Some businesses argue that this trend has accelerated because the employment laws are slanted too much in favor of employees, thus leading to employers taking drastic steps to not have workers classified as employees.

Diff: 2  
Skill: Ethics and Policy

84) Suppose that an employer has an informal policy to terminate many, but not all, of its production workers as they approach the age of 40. The goal is to have only the best employees working once they reach age 40 because of the increased difficulty in terminating them after reaching age 40 due to the Age Discrimination in Employment Act. Is this action legal? Is it ethical?

Answer: This action is probably legal, although most would question whether it is ethical.

Diff: 1  
Skill: Ethics and Policy

85) Newton's fire department had a minimum height and weight requirement for its firefighters. These requirements disqualified approximately 80 percent of all women, but only 5 percent of all men. Jane, a female who has wanted to be a firefighter all of her life, applied for a position on the Newton fire department but was not hired because she did not meet the minimum height and weight requirements. Jane sues the department for discrimination. Explain whether or not Jane has a valid claim under the antidiscrimination laws.

Answer: This is likely a disparate impact claim under a facially neutral rule. The rule is legitimate if it relates to a bona fide occupational qualification, which it probably does not. A BFOQ must be job-related and a business necessity.

Diff: 2  
Topic: Title VII of the Civil Rights Act of 1964  
Skill: Factual Application
86) Jane was employed at the headquarters of Technobyte Corporation. Jane's immediate supervisor, Paul, liked Jane very much, so he continually asked Jane out on dates. Jane always declined courteously. Finally, Jane agreed to have dinner with Paul, hoping to appease him and get a chance to put an end to all of this. During dinner, Jane explained to Paul that she already had a boyfriend and that she did not date married men. (Paul was married.) After that night, Paul did not ask Jane out on a date again, but Paul became less friendly toward Jane at work. Several months later a position opened up for a promotion. Although Jane was one of the best qualified of the 12 persons eligible for the promotion, another employee was promoted. Does Jane have a claim against Paul?

Answer: Jane likely has a quid pro quo sexual harassment claim against Paul. The validity of her claim depends on, among other items, the actual reason she was not given the promotion.

Diff: 3
Topic: Title VII of the Civil Rights Act of 1964
Skill: Factual Application

87) Martha is the coach of the female basketball team, and Aaron is the coach of the male basketball team at State University. Both Martha and Aaron have comparable knowledge of basketball, both have comparable skills, both work comparable hours, and both have comparable win-loss records. The male team is a revenue, generating sport, producing about $5 million dollars annually. The female team does not produce revenues. Martha is paid $30,000 per year for her job, but Aaron is paid $100,000 per year for his. Martha sued State University for a violation of the Equal Pay Act. Discuss the arguments on both sides of this case.

Answer: Martha initially appears to have a fairly strong claim because the jobs are so similar. The University could defend the difference in pay on the grounds that the male coach's job is more difficult if there is greater competition in men's basketball or because of the additional responsibilities that come with keeping large numbers of paying fans satisfied. Additionally, the University could argue the generation of revenue is an aspect of performance quality that it can reward with higher pay.

Diff: 3
Topic: Equal Pay Act of 1963
Skill: Factual Application

88) A car dealership ran an advertisement seeking a driver for its courtesy car used to pick up and drop off customers who bring in their car for service. The advertisement says that they want someone "with a minimum of 40 years experience." Are there any problems with this advertisement under the antidiscrimination laws?

Answer: The advertisement probably violates the Age Discrimination in Employment Act because there could be qualified applicants in their 40s who could not have 40 years of work experience as a professional driver. It is unlikely that the requirement is a bona fide occupational qualification because many people would be sufficiently qualified for the job with far fewer years of driving experience.

Diff: 3
Topic: Age Discrimination in Employment Act of 1967
Skill: Factual Application
89) Cindy is 36 years old and works as a sales representative for a small manufacturer. Cindy and her husband have been married for about 12 years. They have no children because initially they wanted to establish their careers before taking on the obligations of raising a family. Cindy has been trying to get pregnant for a couple of years without success. Cindy and her husband have recently learned that the source of the problem is Cindy, and that she needs to reduce her working hours in order to reduce her stress level. Cindy currently works about 60 hours a week and wants to reduce her hours to about 40 or so. Cindy's employer refuses to change her responsibilities, but says that it is no problem if she works fewer hours per week, so long as she gets all her work finished. Cindy brings a claim under the Americans with Disabilities Act on the grounds that her inability to get pregnant is a covered disability. Discuss the strengths and weaknesses of Cindy's case.

Answer: One issue is whether the inability to get pregnant is an impairment that "substantially limits" a "major life activity." Some decisions have said it is not. If she is covered, there may be an issue as to what is a reasonable accommodation.

Diff: 3
Topic: Americans with Disabilities Act of 1990
Skill: Factual Application
1) Ease and cost of formation have little to do with the selection of the form under which a business should operate.

Answer: FALSE
Diff: 1
Topic: Entrepreneurship

2) Amazon.com was an immediate success both at selling books and at making a profit.

Answer: FALSE
Diff: 1
Topic: Entrepreneurship

3) Amazon.com started out as a general partnership and was incorporated after several years of operation.

Answer: FALSE
Diff: 1
Topic: Entrepreneurship

4) Amazon.com is one of the largest, most recognized e-commerce companies in the world.

Answer: TRUE
Diff: 1
Topic: Entrepreneurship

5) An entrepreneur is a person who forms and operates a new business.

Answer: TRUE
Diff: 1
Topic: Entrepreneurship

6) Sole proprietorships are the most common form of business organization in the United States.

Answer: TRUE
Diff: 1
Topic: Sole Proprietorship
7) A large business can be operated as a sole proprietorship.

Answer: FALSE
Diff: 2
Topic: Sole Proprietorship

8) The shareholders are the owners in a sole proprietorship.

Answer: FALSE
Diff: 1
Topic: Sole Proprietorship

9) There are no disadvantages to doing business as a sole proprietorship.

Answer: FALSE
Diff: 1
Topic: Sole Proprietorship

10) State approval is needed in order to form a sole proprietorship.

Answer: FALSE
Diff: 2
Topic: Sole Proprietorship

11) A sole proprietor's access to capital is unlimited.

Answer: FALSE
Diff: 1
Topic: Sole Proprietorship

12) In most states a sole proprietorship that operates under a trade name must file with the appropriate state agency.

Answer: TRUE
Diff: 2
Topic: Sole Proprietorship

13) In order to use a fictitious name, a sole proprietorship must incorporate the business.

Answer: FALSE
Diff: 2
Topic: Sole Proprietorship

14) It is difficult to transfer or sell a sole proprietorship.

Answer: FALSE
Diff: 1
Topic: Sole Proprietorship
15) A sole proprietorship is a separate legal entity from the sole proprietor.

Answer: FALSE
Diff: 1
Topic: Sole Proprietorship

16) If a person, operating a business as a sole proprietor, owes money to business creditors, those creditors may collect only from the assets of the business itself.

Answer: FALSE
Diff: 1
Topic: Sole Proprietorship

17) State approval is required when creating a sole proprietorship.

Answer: FALSE
Diff: 1
Topic: Sole Proprietorship

18) The purpose of requiring the filing of fictitious business names is to allow the public to know the true owner of businesses operating under fictitious names.

Answer: TRUE
Diff: 1
Topic: Sole Proprietorship

19) The "fictitious name statutes" require all sole proprietorships to file a statement indicating whether or not they use a trade name.

Answer: FALSE
Diff: 2
Topic: Sole Proprietorship

20) A sole proprietor is personally liable for the debts of the business.

Answer: TRUE
Diff: 1
Topic: Personal Liability of Sole Proprietors

21) A sole proprietorship is a distinct legal entity.

Answer: FALSE
Diff: 1
Topic: Personal Liability of Sole Proprietors
22) If a sole proprietor closes a business that has no assets but owes money to a creditor, the owner is personally liable to pay the creditor.

Answer: TRUE
Diff: 2
Topic: Personal Liability of Sole Proprietors

23) Jack is the sole proprietor of Jack's Appliances. He gives out a 5-year warranty on all appliances that he sells. Sara buys a stove from him. A year later, Jack dies and the business is sold to Ken. Sara can now enforce the warranty against Ken.

Answer: FALSE
Diff: 2
Topic: Personal Liability of Sole Proprietors

24) A general partnership is a voluntary association of two or more persons for carrying on a business as co-owners for profit.

Answer: TRUE
Diff: 1
Topic: General Partnership

25) A general partnership hides behind the corporate veil, thereby relieving the general partners of liability for the debts and obligations of the partnership.

Answer: FALSE
Diff: 1
Topic: General Partnership

26) Partnerships are considered to be separate legal entities under the UPA.

Answer: TRUE
Diff: 1
Topic: Uniform Partnership Act (UPA)

27) The Uniform Partnership Act may not act as a gap-filling device if the partners agreement fails to provide for an essential term or contingency.

Answer: FALSE
Diff: 2
Topic: Uniform Partnership Act (UPA)

28) Partnerships that exist for more than one year must be in writing.

Answer: TRUE
Diff: 1
Topic: The General Partnership Agreement
29) In general, all partners have equal rights in the management and conduct of the partnership business.

Answer: TRUE
Diff: 1
Topic: Rights and Duties of General Partners

30) Each partner's vote is based on his or her capital contribution or share in the partnership profits.

Answer: FALSE
Diff: 2
Topic: Rights and Duties of General Partners

31) If a partnership agreement provides for the sharing of losses but is silent as to how profits are to be shared, profits are shared equally.

Answer: TRUE
Diff: 2
Topic: Rights and Duties of General Partners

32) The UPA provides that a partner is not entitled to remuneration for his or her performance in the partnership's business.

Answer: FALSE
Diff: 1
Topic: Rights and Duties of General Partners

33) A partner is entitled to indemnification of his or her expenses on behalf of the partnership.

Answer: TRUE
Diff: 1
Topic: Rights and Duties of General Partners

34) Upon termination of a partnership, the partners are entitled to have all of their capital contributions returned to them.

Answer: FALSE
Diff: 2
Topic: Rights and Duties of General Partners

35) Each partner has a privacy right whereby they need not provide information affecting the partnership.

Answer: FALSE
Diff: 1
Topic: Rights and Duties of General Partners
36) Partners owe one another a duty of loyalty.

Answer: TRUE
Diff: 1
Topic: Rights and Duties of General Partners

37) Partners are liable for damages caused by their negligence regardless if the negligence was caused by an honest error in judgment.

Answer: FALSE
Diff: 2
Topic: Rights and Duties of General Partners

38) Partners are allowed to bring an action for an accounting against other partners.

Answer: TRUE
Diff: 2
Topic: Rights and Duties of General Partners

39) A release of one partner does not discharge the liability of the other partners.

Answer: TRUE
Diff: 1
Topic: Liability of General Partners

40) Under the UPA, partners are individually liable for the contracts and debts of the partnership.

Answer: FALSE
Diff: 2
Topic: Contract Liability

41) A new partner who is admitted to a partnership is not liable for the existing debts and obligations of the partnership.

Answer: FALSE
Diff: 3
Topic: Liability of Incoming Partners

42) A partnership with a fixed duration is called a partnership at will.

Answer: FALSE
Diff: 2
Topic: Dissolution of Partnership
43) A partnership with no fixed duration is called a partnership for a term.

Answer: FALSE
Diff: 1
Topic: Dissolution of Partnership

44) The process of winding up involves the liquidation of the partnership's assets.

Answer: TRUE
Diff: 2
Topic: Dissolution of Partnership

45) A partner who withdraws from a partnership for a term before the expiration of the term does not have the right to dissolve the partnership.

Answer: TRUE
Diff: 2
Topic: Dissolution of Partnership

46) A third party who has actually dealt with the partnership must be given actual notice of the partnership's dissolution or have acquired knowledge of the dissolution from another source.

Answer: TRUE
Diff: 1
Topic: Dissolution of Partnership

47) When a partnership is continued and the old partnership is dissolved, the creditors of the old partnership do not become creditors of the new partnership.

Answer: FALSE
Diff: 2
Topic: Dissolution of Partnership

48) The dissolution of a partnership discharges the liability of the outgoing partners for the existing partnership's debts and obligations.

Answer: FALSE
Diff: 2
Topic: Dissolution of Partnership
49) An entrepreneur can form a business with only one owner under which of the following forms?
   A) general partnership
   B) corporation
   C) limited partnership
   D) limited proprietorship
   E) all of the above

   Answer: B
   Diff: 2
   Topic: Entrepreneurship
   Skill: Legal Concepts

50) Which of the following is true about the choice of business entity for an entrepreneur?
   A) The choice will be determined by the amount of capital invested.
   B) The Internal Revenue Service will determine the type of entity based on all the facts and circumstances.
   C) The choice will be determined by whether the primary business is services or goods.
   D) The choice will take into account many factors, with wide latitude in finding an entity that has all the characteristics desired.
   E) The choice will take into account many factors, but the entrepreneur usually will have to accept substantial tradeoffs, as each different entity generally has a set of characteristics that must be accepted in total, the desirable and the undesirable.

   Answer: D
   Diff: 2
   Topic: Entrepreneurship
   Skill: Legal Concepts

51) The major disadvantage of a sole proprietorship is:
   A) the difficulty and cost of formation
   B) the unlimited liability for the business's debts
   C) the sharing of management authority with others
   D) the difficulty in transferring ownership to others

   Answer: B
   Diff: 1
   Topic: Sole Proprietorship
   Skill: Legal Concepts
52) If a business, having one owner, is started without the owner choosing any particular form of business organization, that business will be:
   A) nonexistent until the form of organization is chosen
   B) a corporation
   C) a joint venture
   D) a sole proprietorship
   E) a franchise

Answer: D  
Diff: 1  
Topic: Sole Proprietorship  
Skill: Legal Concepts

53) A sole proprietor has unlimited liability for:
   A) personal, but not business debts
   B) business, but not personal debts
   C) both business and personal debts
   D) neither business nor personal debts

Answer: C  
Diff: 1  
Topic: Sole Proprietorship  
Skill: Legal Concepts

54) Does a sole proprietor have unlimited liability for any of the liabilities of the business?
   A) No.
   B) Yes, but only for ordinary recurring types of expenses.
   C) Yes, but only for foreseeable expenses and liabilities.
   D) Yes, but only for debts if the owner specifically assumed personal liability when the debt was incurred.
   E) Yes, for all debts of the business.

Answer: E  
Diff: 2  
Topic: Sole Proprietorship  
Skill: Legal Concepts

55) The major advantage of a sole proprietorship is that:
   A) it is easy to create
   B) it offers limited liability
   C) it includes a "need not file under a fictitious name" statute
   D) it is easy to raise capital

Answer: A  
Diff: 1  
Topic: Sole Proprietorship  
Skill: Legal Concepts
56) In order to form a sole proprietorship, the owner must:
   A) apply to the secretary of state and wait for approval
   B) register with the secretary of state, but no separate approval is required
   C) execute a sole proprietorship agreement
   D) register with the Internal Revenue Service
   E) none of the above

Answer: E
Diff: 1
Topic: Sole Proprietorship
Skill: Legal Concepts

57) Martha started a flower shop as a sole proprietor. After 1 year, she was forced to close the shop because business was so bad. At that time, the business assets totaled $50,000, but the business liabilities totaled $125,000. Which of the following statements is true?
   A) Martha is personally liable for the additional $75,000.
   B) Martha's business creditors can collect only the $50,000 of business assets.
   C) Martha's business creditors can collect only the $50,000 now, but if Martha ever goes into business again, they can get the assets of the new business.
   D) Once Martha terminates the sole proprietorship, the business creditors cannot even get the $50,000.

Answer: A
Diff: 2
Topic: Entrepreneurial Forms of Conducting Business: Sole Proprietorship
Skill: Legal Concepts

58) Which of the following businesses can be operated as a sole proprietorship?
   A) any business, so long as there are no employees other than the proprietor
   B) any service-type business
   C) any business, so long as revenues are not excessively large
   D) any business, so long as the number of employees is not excessively large
   E) any business

Answer: E
Diff: 2
Topic: Entrepreneurial Forms of Conducting Business: Sole Proprietorship
Skill: Legal Concepts
59) Betty starts up a business selling party supplies from a retail store. This business is very successful. She opens several other stores in the same city. She eventually has six similar stores in her city. She has a manager for each store who is paid a fixed annual salary. All her other employees are paid on an hourly basis. She has never chosen any particular form of business organization for this business. This business is most likely:

A) a sole proprietorship
B) a joint venture
C) a corporation
D) a partnership
E) a franchise

Answer: A
Diff: 2
Topic: Entrepreneurial Forms of Conducting Business: Sole Proprietorship
Skill: Legal Concepts

60) Mark operates an auto parts shop. The shop has gone out of business, and all assets have been sold. The following debts remain:
1. $10,000 owed to suppliers for merchandise that was sold to customers.
2. $20,000 owed to suppliers for merchandise that was ruined in an unexpected flood.
3. $35,000 owed to a customer who has a final judgment in a product liability suit against the auto parts shop.

For which of these debts can Mark be held personally liable?

A) None; they were all business debts.
B) 1 only
C) 1 and 2 only
D) 1 and 3 only
E) 1, 2, and 3

Answer: E
Diff: 2
Topic: Entrepreneurial Forms of Conducting Business: Sole Proprietorship
Skill: Legal Concepts
61) Patty owned a sole proprietorship. She had four salespersons selling the company's products. One of her salespersons made false statements about a competitor's products while trying to sell Patty's products. The competitor sues Patty's business and wins the lawsuit. Under what circumstances could Patty be personally responsible to pay the judgment?
   A) none, because this was a debt of the business
   B) if Patty was separately named in the lawsuit
   C) if Patty knew about the salesperson's activities
   D) if the salesperson's activities were part of a continuing pattern rather than an isolated incident
   E) Patty is liable here regardless of any other circumstances.

Answer: E
Diff: 3
Topic: Entrepreneurial Forms of Conducting Business: Sole Proprietorship
Skill: Legal Concepts

62) Fred and Ginger are general partners in a business. They decide to purchase a building for the partnership. Ginger will put up the money for the building, and Fred will complete the remodeling. While inspecting the building, Fred is informed that the building is packed full of asbestos. He fails to tell Ginger of the presence of the substance. They buy the building and go into business. During remodeling of the building, people from the neighborhood begin complaining about the dust from the building. Some of them even threaten to sue! Who is liable?
   A) Neither is liable personally, nor is the partnership, as they did not put the substance in the building.
   B) Fred will have liability because he was put on notice of the presence of the substance. Ginger will not be liable because she did not have actual knowledge.
   C) Ginger will be liable because she is the one that purchased the building. Fred will not be liable. Even though he had actual knowledge, he did not purchase the building.
   D) Both will be liable by virtue of the fact that they are partners.

Answer: D
Diff: 3
Topic: General Partnership
Skill: Legal Concepts

63) How might an entrepreneur take steps to minimize the unlimited liability of a sole proprietorship?

Answer: Before limited liability companies were authorized, many proprietors did not want the expense and complexity of forming and operating a corporation. With limited liability companies, there is less reason to not form an entity with limited liability. For those operating as a proprietorship, liability insurance is one way that the liability risk can be sharply reduced. Insurance will protect against many, though not all, losses that can occur.
Diff: 2
Skill: Ethics and Policy
64) Why do you think that there are so many available types of business entities today? What was the motivation for the passage in the late 1980s and early 1990s of statutes authorizing limited liability companies?

Answer: The large number of entity types is a result of political support for statutes creating them. Where in the past an entrepreneur had only a few entity choices, and those required taking an entire set of characteristics, some desirable and others not, today the wide choice of entities allows an entrepreneur to get the exact mix of characteristics desired. One motivation for the limited liability company statutes was the change in the tax laws in 1986 that made partnership taxation more favorable than corporate taxation in many more circumstances than previously.

Diff: 2
Skill: Ethics and Policy

65) Lorna has recently developed a software program tailored for the upscale coffee shop industry. Lorna has begun marketing her program and has had some success selling to small independent stores. She is now ready to begin marketing to franchisees of the national chains, with the hope that a franchisor might make the software part of its required franchisee package. Lorna wants to keep the business separate from her personal affairs, so she has set up separate checking accounts, separate phone lines, and has set up a fictitious business name that does not use her name. She has filed a fictitious business name statement in the appropriate state office. She has written a will in which she has declared that in the event of her death, her business and personal assets and liabilities are to be kept separate, just as they were during her life. Her personal checks say, "Lorna Lones, personal account only." Discuss the extent to which Lorna has insulated her personal assets from any business losses.

Answer: Lorna, as the sole owner of a business that has not filed as any other type of entity, is operating as a sole proprietorship. As a sole proprietorship, none of the steps that Lorna has taken will alter the general situation that her personal and business assets are considered to be a single pool of assets. Lorna could easily form a limited liability company in many states, or incorporate. Absent that, on individual contracts she might be able to get the other party to agree to not hold her personally liable, but her merely requesting this might cause some parties to not do business with her. She would be unable to take similar steps with respect to tort liability.

Diff: 2
Topic: Sole Proprietorship
Skill: Factual Application
66) Maria has started a computer accessory manufacturing and sales business that she really became involved in accidentally. She never planned to have a business, but had made a certain accessory that her friends thought was interesting, and she made some for them. Suddenly people were paying her, and then she started selling through a Web site. She has never formed any type of business entity. Now that Maria wants to sell these accessories in Japan, she thinks she might need to look into the choice of entity. Discuss Maria's options for her business in the United States, and how she might operate in Japan.

Answer: Maria could form a corporation, or, in those states allowing it, a limited liability company with a single owner. Both would give her limited liability. With the corporation, she could elect S status if she wanted to be taxed as a partnership. With the LLC, she could choose corporate or partnership taxation. For her Japan expansion plans, it would be easiest to hire a sales agent or representative. A subsidiary would protect her U.S. assets for losses of the Japan operations.
Diff: 2
Topic: Sole Proprietorship
Skill: Factual Application
1) **Limited partnerships have both manager partners and investor partners.**

   Answer: TRUE  
   Diff: 1  
   Topic: Limited Partnership

2) **A corporation may be a limited partner in a limited partnership.**

   Answer: TRUE  
   Diff: 1  
   Topic: Limited Partnership

3) **Limited partners are liable for partnership debts.**

   Answer: FALSE  
   Diff: 1  
   Topic: Limited Partnership

4) **In a limited partnership, the partners can agree that all partners have limited liability.**

   Answer: FALSE  
   Diff: 2  
   Topic: Limited Partnership

5) **A limited partnership may have an unlimited number of partners.**

   Answer: TRUE  
   Diff: 2  
   Topic: Limited Partnership

6) **A trust may be a general partner in a limited partnership.**

   Answer: TRUE  
   Diff: 2  
   Topic: Limited Partnership
7) So long as there is at least one general and one limited partner, there are no restrictions on the number of each type of partner in a limited partnership.

Answer: TRUE
Diff: 1
Topic: Limited Partnership

8) Under the Revised Uniform Limited Partnership Act, two or more persons must execute and sign a certificate of limited partnership.

Answer: TRUE
Diff: 2
Topic: Limited Partnership

9) A person may be a limited partner and a general partner in the same partnership at the same time.

Answer: TRUE
Diff: 2
Topic: Limited Partnership

10) The firm name of a limited partnership may include the surname of a limited partner if the business was carried on under that name before the admission of the limited partner.

Answer: TRUE
Diff: 3
Topic: Limited Partnership

11) It is all right to abbreviate the words limited partnership as long as all other formation requirements have been met.

Answer: FALSE
Diff: 2
Topic: Formation of Limited Partnerships

12) The creation of a limited partnership is informal and therefore no public disclosure is necessary.

Answer: FALSE
Diff: 1
Topic: Formation of Limited Partnerships

13) The limited partnership is formed when the certificate of limited partnership is filed.

Answer: TRUE
Diff: 2
Topic: Formation of Limited Partnerships
14) A limited partnership must properly comply with all statutory requirements in order to be effectively formed.

Answer: FALSE
Diff: 1
Topic: Formation of Limited Partnerships

15) The rights between partners in a limited partnership are unaffected by a failure to properly comply with filing requirements.

Answer: TRUE
Diff: 2
Topic: Formation of Limited Partnerships

16) Where a partner who erroneously believed she was a limited partner dealt with a third party who believed in good faith that she was a general partner, the partner will be treated as a general partner.

Answer: TRUE
Diff: 2
Topic: Formation of Limited Partnerships

17) A master limited partnership is one that is traded on an organized securities exchange such as the New York Stock Exchange.

Answer: TRUE
Diff: 2
Topic: Formation of Limited Partnerships

18) A partner or creditor of the limited partnership may not bring a lawsuit to enforce a partner's promise to make a contribution.

Answer: FALSE
Diff: 2
Topic: Formation of Limited Partnerships

19) Limited partnerships properly registered in one state are generally free to operate in all states without further filing or registration requirements.

Answer: FALSE
Diff: 2
Topic: Formation of Limited Partnerships

20) General and limited partners may be given unequal voting rights.

Answer: TRUE
Diff: 2
Topic: Limited Partnership Agreement
21) A limited partner is liable for losses regardless of his or her contribution.

Answer: FALSE
Diff: 1
Topic: Limited Partnership Agreement

22) Each limited partner has the right to obtain from the general partners true and full information regarding the state of the business.

Answer: TRUE
Diff: 2
Topic: Right to Information

23) The limited partnership can waive the right of partners to approve the admission of new general partners.

Answer: FALSE
Diff: 2
Topic: Admission of New Partners

24) The general partners of a limited partnership have unlimited liability for the debts and obligations of the limited partnerships.

Answer: TRUE
Diff: 1
Topic: Liability of General and Limited Partners

25) A limited partner may be an agent of the limited partnership.

Answer: TRUE
Diff: 1
Topic: Permissible Activities of Limited Partners

26) A limited partner may not act as a consultant or advisor to a general partner regarding the limited partnership, or he or she will lose his or her limited liability.

Answer: TRUE
Diff: 2
Topic: Permissible Activities of Limited Partners

27) Withdrawal of a limited partner causes dissolution of a limited partnership.

Answer: FALSE
Diff: 2
Topic: Dissolution and Winding Up
28) A limited partnership agreement can provide that withdrawal of a general partner does not cause dissolution.

Answer: TRUE
Diff: 1
Topic: Dissolution and Winding Up

29) The Revised Uniform Limited Partnership Act provides that, in distributing the assets of a dissolved partnership, the general partners have priority over limited partners.

Answer: FALSE
Diff: 2
Topic: Dissolution and Winding Up

30) Which of the following is true regarding the liability of the partners in a limited partnership?
A) Both the limited and general partners have unlimited liability for the partnership debts.
B) Neither the limited nor the general partners have unlimited liability for the partnership debts.
C) The limited partners have limited liability and the general partners have unlimited liability for the partnership debts.
D) The limited partners have unlimited liability and the general partners have limited liability for the partnership debts.
E) If a corporation is a partner, its shareholders have unlimited liability for the partnership debts.

Answer: C
Diff: 2
Topic: The Revised Uniform Limited Partnership Act (RULPA)
Skill: Legal Concepts

31) Which of the following best describes the Revised Uniform Limited Partnership Act?
A) It is a federal statute governing all limited partnerships.
B) It is a standard law passed by most states that generally applies to limited partnerships except where the limited partnership agreement provides a different provision.
C) It is a standard law passed in every state that applies to limited partnerships and takes precedence over any contrary provisions in a limited partnership agreement.
D) It is a federal statute that states can choose to implement or not.

Answer: B
Diff: 2
Topic: The Revised Uniform Limited Partnership Act (RULPA)
Skill: Legal Concepts
32) Which types of partners in a limited partnership should participate in management?
   A) general partners only
   B) limited partners only
   C) both general and limited partners
   D) general partners only, unless there are no general partners, and in that case, limited
      partners participate in management

   Answer: A
   Diff: 1
   Topic: Definition of a Limited Partnership
   Skill: Legal Concepts

33) Which of the following best describes who may be a partner in a limited partnership?
   A) an individual only
   B) an individual and a corporation only
   C) an individual, corporation, and a limited partnership only
   D) an individual, corporation, limited partnership, and an estate
   E) an individual, corporation, and an estate only

   Answer: D
   Diff: 2
   Topic: Definition of a Limited Partnership
   Skill: Legal Concepts

34) A limited partnership is required to have at least:
   A) two limited partners
   B) one general partner and two limited partners
   C) one general partner and one limited partner
   D) two general partners
   E) two partners who can be any mix of limited and general partners

   Answer: C
   Diff: 1
   Topic: Definition of a Limited Partnership
   Skill: Legal Concepts
35) Which of the following is true about a corporation being a general partner in a limited partnership?

A) A corporation cannot be a general partner in a limited partnership.
B) A corporation can be a general partner in a limited partnership only if it is not the sole general partner in the limited partnership.
C) A corporation can be a general partner in a limited partnership only if there is at least one other general partner that is not a corporation.
D) A corporation can be a general partner in a limited partnership even if it is the only general partner.

Answer: D
Diff: 2
Topic: Definition of a Limited Partnership
Skill: Legal Concepts

36) What is the effect of having a corporation as the general partner of a limited partnership?

A) The limited liability of the corporation will result in the limited partners having greater liability than they would otherwise.
B) Each shareholder of the corporation will be treated as a limited partner of the limited partnership.
C) Each shareholder of the corporation will be treated as a general partner of the limited partnership.
D) The liability of the corporate general partner will be limited to the amount of its assets.

Answer: D
Diff: 2
Topic: Definition of a Limited Partnership
Skill: Legal Concepts

37) Which of the following is not required to be included in a certificate of limited partnership?

A) the general character of the business
B) the amount of capital contributed by each partner
C) the name and business of each limited and general partner
D) the portion of profits to be distributed to each limited and general partner
E) the latest date on which the limited partnership is to dissolve

Answer: D
Diff: 2
Topic: Formation of Limited Partnerships
Skill: Legal Concepts
38) Which of the following is true about articles of limited partnership?
   A) The articles must be filed along with the certificate of limited partnership.
   B) The articles of limited partnership apply to the general partners only.
   C) Without articles of limited partnership, the partnership will be treated as a general partnership.
   D) If there are no articles of limited partnership, the certificate of limited partnership will serve as the articles.

   Answer: D
   Diff: 2
   Topic: Formation of Limited Partnerships
   Skill: Legal Concepts

39) Which of the following are two names for the same item?
   A) certificate of limited partnership and offering circular
   B) certificate of limited partnership and limited partnership agreement
   C) limited partnership agreement and articles of limited partnership
   D) offering circular and articles of limited partnership
   E) certificate of limited partnership and articles of limited partnership

   Answer: C
   Diff: 2
   Topic: Formation of Limited Partnerships
   Skill: Legal Concepts

40) Which of the following is a consequence of defective formation of a limited partnership?
   A) Contracts entered into by the partnership will be void.
   B) Contracts entered into by the partnership will be voidable by the other party.
   C) The rights as between the partners will be different based on the defective formation.
   D) A partner who would have been a limited partner, might have unlimited liability to a third party who conducted business with a good faith belief that the partner was a general partner.
   E) A partner who would have been a limited partner will have unlimited liability to all third parties who conduct business with the partnership during the period of defective formation of the limited partnership.

   Answer: D
   Diff: 3
   Topic: Formation of Limited Partnerships
   Skill: Legal Concepts
41) What must be done by a limited partnership that is properly registered in one state in order to conduct business in another state?
   A) Nothing, because the home state registration is good in all states.
   B) It must obtain a certificate of limited partnership just as it had in the first state.
   C) It must clearly indicate that it is formed in a different state to all parties with whom it does business.
   D) It must obtain a registered agent in the new state.
   E) It must obtain a certificate of registration in the new state.

   Answer: E
   Diff: 2
   Topic: Formation of Limited Partnerships
   Skill: Legal Concepts

42) Which of the following is a consequence of a limited partnership failing to obtain a certificate of registration before conducting business in another state?
   A) Contracts that it enters into are void.
   B) Contracts that it enters into are voidable.
   C) The limited partners will lose their limited liability.
   D) The limited partnership cannot defend itself in any lawsuits brought against it in the other state.
   E) The limited partnership cannot initiate any lawsuits in the other state.

   Answer: E
   Diff: 3
   Topic: Formation of Limited Partnerships
   Skill: Legal Concepts

43) What is a master limited partnership?
   A) It is a limited partnership whose partnership interests are traded on a stock exchange.
   B) It is a limited partnership with at least 10 general and 10 limited partners.
   C) It is a limited partnership that is taxed as a corporation.
   D) It is a limited partnership that has been in existence for at least 20 years.
   E) It is a limited partnership where all the partners have expressly agreed to not be bound by the provisions of the Revised Uniform Limited Partnership Act.

   Answer: A
   Diff: 2
   Topic: Formation of Limited Partnerships
   Skill: Legal Concepts
44) Which of the following activities will cause a limited partner to lose his limited liability?
   A) being an employee of the limited partnership
   B) acting as a surety for the limited partnership
   C) helping with the management of the limited partnership
   D) voting on amendments to the limited partnership agreement
   E) voting on the dissolution of the limited partnership

Answer: C
Diff: 1
Topic: Operation of General and Limited Partners
Skill: Legal Concepts

45) Limited partners can lose their limited liability by:
   A) investing too much in the partnership
   B) withdrawing from a limited partnership contrary to provisions in the limited partnership agreement
   C) actively managing the business of the limited partnership
   D) serving as a paid consultant to the limited partnership
   E) breaching their fiduciary duty to the limited partnership

Answer: C
Diff: 2
Topic: Operation of General and Limited Partners
Skill: Legal Concepts

46) What is the effect of a limited partner making a personal guarantee on behalf of a limited partnership of which the guarantor is a limited partner?
   A) It results in the limited partner being treated as a general partner for liability purposes.
   B) The guarantee is void because it goes against the nature of limited liability.
   C) The guarantee would be born by the general partners because they have unlimited liability.
   D) The limited partner will be held liable on the guarantee up to the amount of his investment in the limited partnership.
   E) The limited partner will be liable under the terms of the guarantee, but will otherwise continue to be treated as a limited partner.

Answer: E
Diff: 2
Topic: Operation of General and Limited Partners
Skill: Legal Concepts
47) A limited partner who takes an active part in managing a limited partnership:
   A) will be entitled to profit distributions as if she were a general partner
   B) will be treated as a general partner with respect to parties who reasonably believed that she was a general partner
   C) will be treated as a general partner with respect to all parties with whom she dealt
   D) will be entitled to reasonable compensation for the value of the services provided
   E) will lose the right to receive profit distributions as a limited partner

Answer: B
Diff: 3
Topic: Operation of General and Limited Partners
Skill: Legal Concepts

48) Which of the following is not one of the activities that is permissible under the Revised Uniform Partnership Act for a limited partner?
   A) being an agent of the partnership
   B) being an agent of a general partner
   C) making the credit-granting decisions of the limited partnership
   D) acting as a consultant to the limited partnership
   E) acting as a surety for the limited partnership

Answer: C
Diff: 2
Topic: Operation of General and Limited Partners
Skill: Legal Concepts

49) Where there is no agreement in a limited partnership regarding the allocation of profits, how are they allocated?
   A) equally among all the partners
   B) one-half equally among the general partners, one half equally among the limited partners
   C) among all partners, in proportion to capital invested in the partnership
   D) one-half among limited partners in proportion to capital invested, and one half among general partners in proportion to capital invested
   E) in accordance with which partners generated the profits

Answer: C
Diff: 2
Topic: Operation of General and Limited Partners
Skill: Legal Concepts
50) Which partners have an unlimited right to obtain information about the partnership’s business?
   A) limited partners only
   B) general partners only
   C) both general and limited partners
   D) neither general nor limited partners

Answer: C
Diff: 2
Topic: Operation of General and Limited Partners
Skill: Legal Concepts

51) Which of the following is true about the admission of new partners to a limited partnership under the Revised Uniform Limited Partnership Act?
   A) Admission of either general or limited partners requires a majority vote of all partners.
   B) Admission of either general or limited partners requires the unanimous written consent of all partners, but this requirement can be eliminated by agreement for admission of new limited partners.
   C) Admission of either general or limited partners requires the unanimous written consent of all partners, but this requirement can be eliminated by agreement for admission of new general and/or limited partners.
   D) Admission of new general partners requires the unanimous written consent of all partners, and the admission of new limited partners requires the unanimous written consent of all general partners only.
   E) Admission of new general partners requires the unanimous written consent of all partners, and the admission of new limited partners requires the consent of a majority of all partners.

Answer: B
Diff: 3
Topic: Operation of General and Limited Partners
Skill: Legal Concepts

52) A limited partnership must keep the copies of the following records at its principal office except:
   A) certificate of limited partnership, including amendments to it
   B) operating budget for the current year
   C) financial statements for the 3 most recent years
   D) list of full name and business address of each partner
   E) federal, state, and local income tax returns

Answer: B
Diff: 2
Topic: Operation of General and Limited Partners
Skill: Legal Concepts
53) What must occur in order for a limited partner to withdraw from a limited partnership where the partnership agreement is silent?
   A) A limited partner can withdraw at any time.
   B) A limited partner can withdraw by giving 6 months' notice to each general partner.
   C) A limited partner can withdraw by giving 6 months' prior notice to each limited and general partner.
   D) A limited partner can withdraw upon approval of a majority of the limited partners.

   Answer: B
   Diff: 2
   Topic: Operation of General and Limited Partners
   Skill: Legal Concepts

54) Which of the following must occur upon the conclusion of the winding-up process of a limited partnership?
   A) The general partners must post a bond to cover potential claims against the partnership.
   B) A certificate of cancellation must be filed with the secretary of state in the state of organization.
   C) To protect their limited liability, the limited partners must give notice of the termination of the partnership to those parties with whom the partnership has dealt.
   D) The limited partners must receive their capital investment before the general partners receive theirs.

   Answer: B
   Diff: 2
   Topic: Dissolution and Winding Up
   Skill: Legal Concepts

55) Can a limited partnership agreement provide for a different distribution priority than set out in the Revised Uniform Limited Partnership Act?
   A) Yes; any differences are permitted so long as agreed to by all partners.
   B) Yes; any differences are permitted so long as agreed to by the general partners.
   C) Yes; so long as creditors retain their top priority.
   D) No; differences are never permitted.
   E) No; except for differences that benefit the limited partners.

   Answer: C
   Diff: 2
   Topic: Dissolution and Winding Up
   Skill: Legal Concepts
56) Joel is a limited partner in the Snow Bird Limited Partnership. He invested $5,000 to buy his interest. Joel is one of 10 partners, two of whom are general partners. Snow Bird is now insolvent, with debts exceeding assets by $96,000. The partnership creditors sue all the partners for these debts. How much additional money must Joel contribute?

A) $0  
B) $4,600  
C) $5,000  
D) $9,600  
E) $96,000

Answer: A  
Diff: 2  
Topic: The Revised Uniform Limited Partnership Act (RULPA)  
Skill: Factual Application

57) Cindy is one of 50 limited partners in a real estate investment limited partnership. The general partner is Evergreen Corporation. Evergreen Corporation invested $500,000 in the partnership and each of the limited partners all of whom are natural persons, invested $10,000. Evergreen has four shareholders. If the real estate partnership is dissolved at a time when it has debts exceeding assets, which of the following is true?

A) Because having a corporation means that no partner in the limited partnership has unlimited liability, the limited partners would have unlimited liability.  
B) Because having a corporation means that no partner in the limited partnership has unlimited liability, the shareholders of the corporation would have unlimited liability.  
C) Neither the corporation nor the limited partners would be required to contribute any assets toward the satisfaction of the unpaid obligations of the limited partnership.  
D) The limited partners would not need to contribute any amounts to the satisfaction of the debts, but the assets of the corporation would be available for this purpose.

Answer: D  
Diff: 3  
Topic: Definition of a Limited Partnership  
Skill: Factual Application
58) Albert joined a limited partnership with an investment of $10,000 for his interest. There were nine other limited partners who invested the same amount. There were two general partners who invested $100,000 each. The general partners filed the certificate of limited partnership in the wrong location. The general partners negotiated the purchase of two separate parcels of real estate, signing notes for both on behalf of the limited partnership. The seller of the first parcel was aware that there were only two limited partners and that the remaining partners were limited partners. The seller of the second parcel thought that she was dealing with a general partnership with all of the partners as general partners. After these transactions, when Albert discovered the defective filing, he notified the general partners, who immediately made a correct filing. What personal liability does Albert have in connection with these two transactions?

   A) Albert will have unlimited liability for both of the real estate purchases.
   B) Albert will have unlimited liability for the purchase of the second parcel only.
   C) Albert will not have unlimited liability for either of these transactions.
   D) Albert will have unlimited liability for both of these transactions, but only for claims filed prior to the time that the certificate of limited partnership was filed.

Answer: B
Diff: 3
Topic: Formation of Limited Partnerships
Skill: Factual Application

59) Cindy was a limited partner in the JKL Limited Partnership. Because of her expertise in this type of business, Cindy was asked to take care of the day-to-day operations of the partnership. JKL had two primary creditors, Smith Supply Co. and Jones Discount. Smith knew that Cindy was a limited partner, but Jones thought that Cindy was a general partner. Due to unforeseen economic conditions, JKL went bankrupt owing both Smith and Jones large amounts of money. Both Smith and Jones sue Cindy as a general partner. To what extent is Cindy liable to them under the Revised Uniform Limited Partnership Act?

   A) Because Cindy was a limited partner, she is not liable to either of them.
   B) Because Cindy participated in the day-to-day operations of the partnership, she is liable to both of them as a general partner.
   C) Even though Cindy participated in the day-to-day operations of the partnership, she is liable as a general partner only to Jones.
   D) Even though Cindy participated in the day-to-day operations of the partnership, she is liable as a general partner only to Smith.

Answer: C
Diff: 3
Topic: Operation of General and Limited Partners
Skill: Factual Application
60) Mary was a limited partner in a limited partnership that had four other limited partners and one general partner. Mary and one other limited partner invested $40,000 each in the partnership, the other two limited partners invested $60,000 each, and the general partner invested $800,000. The partnership agreement made no mention as to the sharing of profits and losses. In the first year of operations the partnership had a net income of $100,000. How much should be allocated to Mary?
A) $25,000  
B) $20,000  
C) $10,000  
D) $5,000  
E) $4,000
Answer: E  
Diff: 3  
Topic: Operation of General and Limited Partners  
Skill: Factual Application

61) Amy is a limited partner in a limited partnership. Amy is considering opening a business similar to that of the limited partnership. One of the reasons that Amy is considering taking this step is that Amy believes that the limited partnership is being poorly managed. Amy wants to review the books and records of the partnership, but the general partners have refused to allow her to have access. Which of the following is true?
A) As a limited partner, Amy has no rights to review the books and records of the partnership.  
B) Amy has unlimited rights to review financial statements, tax returns, and a few other specified items, but has no rights to review other business records.  
C) Amy has unlimited rights to review financial statements, tax returns, and a few other specified items, but must demonstrate a legitimate purpose in order to review any other business records of the partnership.  
D) Amy must demonstrate a legitimate purpose in order to obtain any information on the business of the partnership.  
E) Amy has an unlimited right to obtain information regarding the operations of the partnership business.

Answer: E  
Diff: 2  
Topic: Operation of General and Limited Partners  
Skill: Factual Application
62) The Black Squirrel limited partnership has been in operation for many years, but has recently fallen on hard times. The partners have decided to dissolve, although there are few assets remaining in the partnership. Shortly after the partnership filed its certificate of limited partnership, the partners had the foresight to incorporate into their partnership agreement a provision that, in the event of dissolution, the assets would be distributed in payment of claims first to limited partners, then to general partners, then to creditors. Hilda is a limited partner and feels relieved that she will receive at least a portion of her capital. Henry, one of the general partners said that this provision is void and unenforceable. Which of the following best describes this situation?

A) The provision placing limited partners ahead of general partners in unenforceable, thus all partners would be on an equal footing and ahead of creditors.
B) The provision placing the partners ahead of creditors in not enforceable, but the priority of limited partners over general partners is enforceable.
C) The distribution of assets in the event of dissolution is one of the few provisions where the Revised Uniform Limited Partnership Act does not allow modification.
D) The distribution as called for in the agreement would be enforceable if it had been included in any filings related to the limited partnership.
E) The distribution as called for in the agreement is enforceable even though it was not included in any filing associated with the limited partnership.

Answer: B
Diff: 3
Topic: Dissolution and Winding Up
Skill: Factual Application

63) There are two general partners, each of whom contributes $5,000 in capital to a limited partnership. There are two limited partners, each of whom contributes $20,000. The total amount of capital contributed is $50,000. The limited partnership agreement does not stipulate how profits and losses are to be allocated. Assume that the limited partnership makes $300,000 in profits. Under the RULPA, how much would each partner receive?

A) All partners would receive $75,000, regardless of whether he/she is a general or limited partner.
B) Each general partner would receive $50,000, and each limited partner would receive $100,000.
C) Each general partner would receive $30,000, and each limited partner would receive $120,000.
D) Each general partner would receive $120,000, and each limited partner would receive $30,000.

Answer: C
Diff: 3
Topic: Dissolution and Winding Up
Skill: Factual Application
64) What are the advantages and disadvantages of the recently increased ability to limit one's liability when operating a business? Do the advantages outweigh the disadvantages? Should certain kinds of businesses not be permitted to operate with limited liability?

Answer: With several new forms of business organization becoming available in recent years, business owners can more easily find a form of organization that contains all of the characteristics that best meet their needs. As long as there is proper notice of an entity's limited liability, most businesses should have that option. Some businesses, notably some of the professions, cannot operate with limited liability. In these cases, most owners protect themselves with liability insurance, although such insurance does not cover losses caused simply by poor business conditions.

Diff: 2
Skill: Ethics and Policy

65) Is it ethical for someone who is forming a risky business to use a form of business that limits that person's personal liability, when the person doing so knows that this will increase the chances that the creditors of a business will not fully collect amounts due to them? Explain your reasoning.

Answer: There are risks in all business transactions, and as long as all concerned parties are aware of who can and who cannot be held liable in a situation, then this should probably be left to the marketplace in most instances.

Diff: 2
Skill: Ethics and Policy

66) Why should the amounts contributed by both general and limited partners be required to be included in the certificate of limited partnership? Isn't this too much detail?

Answer: One of the risks in a limited partnership is that the general partners will invest very little compared to the limited partners. Worse is when the general partners make oral promises or statements (which cannot later be documented) about the amount they have invested or will invest. This requirement reduces these abuses by making contribution amounts public.

Diff: 2
Skill: Ethics and Policy
67) Lisa entered into a limited partnership as a limited partner by investing $25,000 in cash. There was a total of 50 limited partners and 20 general partners. The partners elected a management committee that included two of the general partners and Lisa as one of the limited partners. The certificate of limited partnership was completed, but was filed with the wrong office. The partnership then commenced business. Some of the parties with whom it conducted business assumed that the partnership was a general partnership because they searched the records of the secretary of state and found no certificate of limited partnership or any other record. Others assumed that it was a general partnership but had not actually searched the filings. Still others assumed that it was a limited partnership. In addition, among those who assumed that it was a limited partnership, some assumed that Lisa was a general partner and others did not. Discuss Lisa's situation with respect to personal liability for partnership debts.

Answer: Lisa would have personal liability to those who, due to the defective formation of the limited partnership, believed in good faith that this was a general partnership at the time that party entered into the transaction with the partnership. The third parties would not need to have searched the filings to meet the good faith requirement. In addition, those parties believing that this was a limited partnership could recover from Lisa on the basis of a reasonable belief, based on her conduct, that she was a general partner.

Diff: 3
Topic: Formation of Limited Partnerships
Skill: Factual Application

68) Hank is a limited partner in a limited partnership. Hank has considerable expertise in the partnership's business, thus Hank has been hired as a consultant for the limited partnership. Hank noticed several problems with the management of the business. Hank then made several recommendations, including removing one of the general partners, expanding into an additional line of business, and borrowing substantial money to finance the expansion. At a partnership meeting to discuss Hank's recommendations, Hank voted in favor of removing the partner, expanding the business, and borrowing the money to do so. In order to get the loan on more favorable terms, Hank executed a personal guarantee on the indebtedness. The partnership expanded but could not generate sales to support the expansion. Upon dissolution, the partnership's debts exceed its assets. Numerous creditors claim that Hank should be considered a general partner. Discuss Hank's liability.

Answer: Hank's activities were all within the allowable activities for a limited partner to undertake without being considered a general partner. Hank will have no personal liability except for the personal guarantee.

Diff: 3
Topic: Operation of General and Limited Partners
Skill: Factual Application
69) The Good Times limited partnership has already seen all of its good times pass by. Its partnership agreement set the order of distribution as first to general partners, second to creditors, last to limited partners. Assuming there were no further details in the agreement, explain in detail the priority of distribution.

Answer: Normally creditors are paid first. Although partners can provide for a different distribution than that called for in the RULPA, they cannot change the creditor's first priority. Most likely, the amount each partner is due would be calculated based on the partners’ capital contributions. Then, amounts due to general partners would be paid before amounts due to limited partners.

Diff: 3
Topic: Dissolution and Winding Up
Skill: Factual Application
1) Corporations are the most dominant form of business organization in the United States.

Answer: TRUE  
Diff: 1  
Topic: Nature of the Corporation

2) A corporation can sue or be sued in its own name.

Answer: TRUE  
Diff: 1  
Topic: Nature of the Corporation

3) A corporation cannot be established that has a fixed termination date.

Answer: FALSE  
Diff: 2  
Topic: Nature of the Corporation

4) Shareholders have unlimited liability that can exceed the extent of their capital contributions.

Answer: FALSE  
Diff: 1  
Topic: Nature of the Corporation

5) A corporation's existence is not affected by the death or insanity of a shareholder.

Answer: TRUE  
Diff: 1  
Topic: Nature of the Corporation

6) The concept of centralized management indicates that the management of the corporation is separated from the ownership of the corporation.

Answer: TRUE  
Diff: 1  
Topic: Nature of the Corporation
7) Corporations exist in perpetuity unless a specific duration is stated in the corporation's articles of incorporation.

Answer: TRUE
Diff: 2
Topic: Nature of the Corporation

8) Shareholders are elected by the board of directors so that they can make policy decisions.

Answer: FALSE
Diff: 1
Topic: Nature of the Corporation

9) The Revised Model Business Corporation Act is a federal statute affecting corporations.

Answer: FALSE
Diff: 1
Topic: Revised Model Business Corporation Act (RMBCA)

10) The law governing the formation and operation of corporations is all at the state level.

Answer: TRUE
Diff: 1
Topic: Revised Model Business Corporation Act (RMBCA)

11) Park districts may be formed as corporations.

Answer: TRUE
Diff: 2
Topic: Classifications of Corporations

12) Most corporations are private.

Answer: TRUE
Diff: 1
Topic: Classifications of Corporations

13) A corporation formed for scientific purposes would be a profit corporation.

Answer: FALSE
Diff: 2
Topic: Classifications of Corporations
14) A publicly held corporation is one that is owned by a few shareholders who are often family members, relatives, or friends.

Answer: FALSE
Diff: 2
Topic: Classifications of Corporations

15) Shareholders that are involved in the management of a corporation are most likely involved in a closely held corporation.

Answer: TRUE
Diff: 2
Topic: Classifications of Corporations

16) Professional corporations in some states do not provide limited liability with respect to the professional malpractice of other shareholders.

Answer: TRUE
Diff: 1
Topic: Classifications of Corporations

17) Nonprofit corporations can be formed only for certain purposes.

Answer: TRUE
Diff: 1
Topic: Classifications of Corporations

18) A state may require a foreign corporation to "qualify" in that state before the corporation may do business within that state.

Answer: TRUE
Diff: 1
Topic: Classifications of Corporations

19) Corporations must be incorporated in the states in which they do most of their business.

Answer: FALSE
Diff: 2
Topic: Classifications of Corporations

20) A corporation is a domestic corporation in the state in which it is incorporated.

Answer: TRUE
Diff: 1
Topic: Classifications of Corporations
21) A state may not require a foreign corporation to qualify to conduct intrastate commerce within the state.

Answer: FALSE  
Diff: 2  
Topic: Classifications of Corporations

22) An alien corporation is a corporation that does business in a state other than the one in which it is incorporated.

Answer: FALSE  
Diff: 1  
Topic: Classifications of Corporations

23) The procedure for incorporating a corporation is the same in every state.

Answer: FALSE  
Diff: 1  
Topic: Incorporation Procedures

24) A promoter can be held liable on a contract entered into on behalf of a corporation that is not yet formed.

Answer: TRUE  
Diff: 1  
Topic: Incorporation Procedures

25) Corporations generally become bound to promoters’ contracts as soon as the corporation is formed.

Answer: FALSE  
Diff: 2  
Topic: Incorporation Procedures

26) A novation is frequently used to transfer liability on contracts from promoters to the corporation that they have formed and to release the promoter from liability.

Answer: TRUE  
Diff: 2  
Topic: Incorporation Procedures

27) A corporation must generally choose a state for incorporation where it has a business presence.

Answer: FALSE  
Diff: 1  
Topic: Incorporation Procedures
28) The articles of incorporation must be approved by the state before the corporation can officially come into existence.

Answer: TRUE
Diff: 1
Topic: Incorporation Procedures

29) A corporation's articles of incorporation and bylaws must be filed with the appropriate state agency.

Answer: FALSE
Diff: 1
Topic: Incorporation Procedures

30) Every corporation must have a registered office and registered agent and these must be identified in the articles of incorporation.

Answer: TRUE
Diff: 1
Topic: Incorporation Procedures

31) The bylaws must be adopted at the organizational meeting of the initial board of directors.

Answer: TRUE
Diff: 1
Topic: Incorporation Procedures

32) Under certain circumstances, a corporation can elect to be taxed similarly to a partnership.

Answer: TRUE
Diff: 1
Topic: Incorporation Procedures

33) A corporation can be formed for "any lawful purpose."

Answer: TRUE
Diff: 1
Topic: Incorporation Procedures

34) The bylaws of a corporation must be filed with the appropriate government official.

Answer: FALSE
Diff: 2
Topic: Incorporation Procedures
35) The board of directors, as well as the shareholders, has the right to amend the bylaws of a corporation.

Answer: TRUE
Diff: 2
Topic: Incorporation Procedures

36) Par value affects a stock's market value.

Answer: FALSE
Diff: 2
Topic: Financing the Corporation

37) Preferred stockholders have limited liability just like common stockholders.

Answer: TRUE
Diff: 1
Topic: Financing the Corporation

38) Preferred stock generally pays a higher rate of return than common stock.

Answer: FALSE
Diff: 1
Topic: Financing the Corporation

39) The liquidation preference of preferred stock means that preferred shareholders receive more in the event of a corporation's liquidation.

Answer: FALSE
Diff: 2
Topic: Financing the Corporation

40) Convertible preferred stock is stock that can be converted to stock of another corporation.

Answer: FALSE
Diff: 1
Topic: Financing the Corporation

41) One difference between a stock option and a stock warrant is that a warrant is evidenced by written certificate.

Answer: TRUE
Diff: 1
Topic: Financing the Corporation
42) A debenture is a long-term secured debt instrument.
Answer: FALSE
Diff: 1
Topic: Financing the Corporation with Debt Securities

43) A note is a debt security that has an original maturity of 5 years or less.
Answer: TRUE
Diff: 1
Topic: Financing the Corporation with Debt Securities

44) Corporations' express powers come from both federal and state statutes, among other sources.
Answer: TRUE
Diff: 1
Topic: Corporate Powers

45) An *ultra vires* act will generally cause dissolution of the corporation.
Answer: FALSE
Diff: 2
Topic: Corporate Powers

46) Implied powers are nonexistent in terms of accomplishing a corporate purpose.
Answer: FALSE
Diff: 1
Topic: Corporate Powers

47) Corporations formed under general incorporating laws may engage in businesses such as banking, insurance, and the operation of public utilities.
Answer: FALSE
Diff: 2
Topic: Corporate Powers

48) A voluntary dissolution of a corporation generally requires approval by a majority of the shares entitled to vote.
Answer: TRUE
Diff: 1
Topic: Dissolution and Termination of Corporations
49) In most corporations, the shareholders can seek a judicial dissolution if the directors are deadlocked in the management of the corporation.

Answer: TRUE
Diff: 1
Topic: Dissolution and Termination of Corporations

50) Termination only occurs after the winding up of the corporation's affairs.

Answer: TRUE
Diff: 1
Topic: Dissolution and Termination of Corporations

51) The dissolution of a corporation impairs all rights and remedies available against the corporation or its directors, or officers, or shareholders.

Answer: FALSE
Diff: 2
Topic: Dissolution and Termination of Corporations

52) Which of the following is not a characteristic of a corporation?
   A) unlimited liability of owners
   B) free transferability of shares
   C) perpetual existence
   D) centralized management

Answer: A
Diff: 1
Topic: Nature of the Corporation
Skill: Legal Concepts

53) The uniform law, issued in 1984 by the Committee on Corporate Laws of the American Bar Association, that regulates the formation, operation, and termination of corporations is:
   A) the Model Business Corporation Act
   B) the Uniform Commercial Code
   C) the Revised Model Business Commercial Code
   D) the Standard Incorporation Act

Answer: C
Diff: 1
Topic: Revised Model Business Corporation Act (RMBCA)
Skill: Legal Concepts
54) A private corporation is one which:
   A) has a small number of owners who are often members of the same family
   B) does not prepare financial statements
   C) is owned by private entities
   D) does not make public disclosure of information

Answer: C
Diff: 2
Topic: Classifications of Corporations
Skill: Legal Concepts

55) Which of the following is true?
   A) Foreign corporations and alien corporations both refer to corporations incorporated in
      other nations.
   B) Foreign corporations are corporations that are formed in other nations originally, but are
      now incorporated in the local state.
   C) Alien corporations are corporations that are incorporated in other nations, and foreign
      corporations are corporations that are incorporated in other states.
   D) The law of most states usually treats alien corporations and foreign corporations
differently.

Answer: C
Diff: 3
Topic: Classifications of Corporations
Skill: Legal Concepts

56) A foreign corporation is one that:
   A) is incorporated in another state
   B) is incorporated in another country
   C) is incorporated in one state, but does business in other states
   D) is incorporated in one state, but does business in other nations

Answer: A
Diff: 2
Topic: Classifications of Corporations
Skill: Legal Concepts

57) If a corporation is properly incorporated in one state and wants to do business in a second
   state, the corporation:
   A) must incorporate in the second state
   B) must do nothing because being incorporated in one state entitles the corporation to do
      business in all states
   C) register with the Interstate Commerce Commission
   D) may be required to obtain a certificate of authority from the second state

Answer: D
Diff: 2
Topic: Classifications of Corporations
Skill: Legal Concepts
58) A nonprofit corporation is:
   A) any corporation that has never made a profit
   B) any corporation that does not intend to make a profit
   C) a corporation formed for charitable, educational, religious, or scientific purposes that cannot make a profit
   D) a corporation formed for charitable, educational, religious, or scientific purposes that can make a profit, although any profit may not be distributed to its members, officers, or directors

Answer: D
Diff: 2
Topic: Classifications of Corporations
Skill: Legal Concepts

59) A "closely held corporation" is a corporation that is owned by:
   A) a large number of members of the public
   B) the government
   C) doctors, lawyers, or other professionals
   D) a few shareholders, usually family members
   E) a nonprofit organization

Answer: E
Diff: 1
Topic: Classifications of Corporations
Skill: Legal Concepts

60) A professional corporation is one that:
   A) is formed with the assistance of a lawyer
   B) has been in existence long enough to reasonably assure that it will be profitable in the near future
   C) is typically used as a form of doing business by doctors and lawyers
   D) does not have shareholders

Answer: C
Diff: 2
Topic: Classifications of Corporations
Skill: Legal Concepts
61) What makes a publicly held corporation different from a public corporation?
A) A publicly held corporation has many shareholders rather than being a corporation owned
by a governmental entity.
B) A publicly held corporation is entitled to limited liability, but a public corporation is not.
C) A publicly held corporation must have a charitable purpose, but a public corporation need
not have a charitable purpose.
D) They are two terms that have the same meaning.

Answer: A
Diff: 2
Topic: Classifications of Corporations
Skill: Legal Concepts

62) Which of the following is not true about promoters of a corporation?
A) A promoter can be relieved of liability on a contract entered into on behalf of a
corporation with a third party if, after the corporation is formed, the third party agrees to
a novation.
B) A promoter can be relieved of liability on a contract entered into on behalf of a
corporation with a third party if, at the time the contract is entered into, the third party
agrees to a novation to occur automatically upon the valid creation of the corporation.
C) The creation of the corporation does not automatically release the promoter from
contracts entered into on behalf of the corporation.
D) If the corporation fails to come into existence, the promoter cannot be held liable on a
contract entered into on behalf of the corporation.

Answer: D
Diff: 3
Topic: Promoters' Activities
Skill: Legal Concepts

63) A promoter enters into a contract on behalf of a proposed corporation. The corporation has
not yet come into existence. Which of the following statements best describes the promoter's
liability on this contract?
A) If the corporation never comes into existence, the promoter will be liable on this contract.
B) Once the corporation comes into existence, the promoter is automatically released from
this contract.
C) If a novation occurs, the promoter is released from this contract.
D) Even if the corporation is never formed, the promoter is not liable on this contract.
E) both A and C

Answer: E
Diff: 2
Topic: Promoters' Activities
Skill: Legal Concepts
64) When a promoter enters into a contract on behalf of a corporation that is not yet formed, the corporation will become liable on the contract:
   A) at the time the promoter enters into the contract
   B) when the corporation comes into existence
   C) once the corporation has elected its initial board of directors
   D) only if the corporation, once formed, agrees to be liable on the contract
   E) only in the case of a novation

Answer: D
Diff: 3
Topic: Promoters' Activities
Skill: Legal Concepts

65) Which of the following generally does not need to be included with the articles of incorporation?
   A) the period of duration of the corporation
   B) the classes and preferences of stock
   C) whether preemption rights are given to the stockholders
   D) a copy of the bylaws
   E) the names of the incorporators

Answer: D
Diff: 2
Topic: Incorporation Procedures
Skill: Legal Concepts

66) Generally, in order to adopt an amendment to the articles of incorporation of an existing corporation, what must be done?
   A) The shareholders must vote in favor of the amendment.
   B) The promoters must file the amendment in the state of incorporation.
   C) The board of directors must adopt a resolution recommending the amendment and the shareholders must vote to approve the amendment.
   D) The board of directors must adopt a resolution approving the amendment.
   E) The board of directors must vote on the amendment as provided in the bylaws.

Answer: C
Diff: 2
Topic: Incorporation Procedures
Skill: Legal Concepts
67) The person empowered by the corporation to receive notice of lawsuits against it is called the:
   A) incorporator
   B) promoter
   C) registered agent
   D) president
   E) director du jour

   Answer: C
   Diff: 2
   Topic: Incorporation Procedures
   Skill: Legal Concepts

68) Which of the following is true about the registered agent of a corporation?
   A) The registered agent is the chief promoter in the formation of the corporation.
   B) The registered agent is the entity designated to receive service of process on behalf of the corporation.
   C) The registered agent must be an individual person.
   D) The registered agent is the party authorized to enter into contracts on behalf of the corporation.
   E) The registered agent is the corporation's outside legal counsel.

   Answer: B
   Diff: 2
   Topic: Incorporation Procedures
   Skill: Legal Concepts

69) The bylaws of a corporation:
   A) take precedence over the articles of incorporation
   B) must be filed in the appropriate state office
   C) are not binding on the officers and directors of the corporation
   D) govern the internal management of the corporation and typically would include the time and place of the annual shareholders' meeting

   Answer: D
   Diff: 1
   Topic: Incorporation Procedures
   Skill: Legal Concepts
70) Which of the following would not be a typical item of business at the organizational meeting of a corporation?
   A) adoption of bylaws
   B) election of corporate officers
   C) selection of promoters
   D) authorizing the issuance of shares of stock
   E) choosing an auditor

Answer: C
Diff: 2
Topic: Incorporation Procedures
Skill: Legal Concepts

71) In order to be effective, shareholder approval for an amendment to the articles is needed:
   A) for all amendments
   B) only for amendments that are not filed
   C) for all amendments except those not affecting the rights attached to shares of stock
   D) only for amendments that the board does not approve

Answer: C
Diff: 2
Topic: Incorporation Procedures
Skill: Legal Concepts

72) Which of the following best describes how a corporation, which has not made any special tax elections, and its shareholders, are taxed?
   A) The corporation is not taxed, but the shareholders are taxed on their dividends.
   B) The corporation is taxed, but the shareholders are not taxed on their dividends.
   C) The corporation is taxed, and the shareholders are taxed on their dividends.
   D) Neither the corporation nor its shareholders are taxed.
   E) They are taxed as a partnership is taxed.

Answer: C
Diff: 2
Topic: Incorporation Procedures
Skill: Legal Concepts

73) The first meeting of the board of directors after the bylaws are filed is called the:
   A) promoters' meeting
   B) adoption meeting
   C) initiation meeting
   D) organizational meeting
   E) novation meeting

Answer: D
Diff: 1
Topic: Incorporation Procedures
Skill: Legal Concepts
74) Which of the following is true about par value of common stock?
A) It is a determinant of the market value of the shares.
B) It is usually the initial offering price of shares.
C) The concept of par value has been eliminated in the Revised Model Business Corporation Act.
D) Corporations often set a high par value in order to increase the attractiveness of their stock.
E) Par value represents the minimum price at which shares of stock can be traded after they are initially issued.

Answer: C
Diff: 2
Topic: Financing the Corporation
Skill: Legal Concepts

75) What is the significance of the term "preferred" in reference to preferred stock?
A) It is viewed to generally be a better investment than common stock.
B) Preferred stockholders usually have better voting rights than common stockholders.
C) Preferred stockholders receive preference over creditors of the corporation in the event of liquidation.
D) Preferred stockholders receive certain preferences over common stockholders with respect to dividends or with respect to assets in the event of liquidation.
E) Only shareholders owning a certain minimum amount of common stock are entitled to purchase preferred stock.

Answer: D
Diff: 2
Topic: Financing the Corporation
Skill: Legal Concepts

76) Which of the following items cannot be given as a preference on preferred stock?
A) dividend preference over common stock
B) liquidation preference over common stock
C) voting rights
D) liquidation preference over security holders
E) voting rights over security holders

Answer: D
Diff: 2
Topic: Financing the Corporation
Skill: Legal Concepts
77) Which of the following statements is true?
   A) The number of shares provided for in the articles of incorporation is called authorized shares.
   B) A corporation may not repurchase its own shares after they have been issued.
   C) A corporation may vote its treasury stock.
   D) The corporation must sell all of the authorized stock.

Answer: A
Diff: 1
Topic: Financing the Corporation
Skill: Legal Concepts

78) If preferred stock is "participating," this means that the preferred shareholders:
   A) are entitled to share, to some extent, in dividends over and above the stated dividend on the preferred stock
   B) are entitled to vote along with common shareholders
   C) have an absolute right to receive their dividends
   D) are part of the management of the corporation
   E) are not entitled to preference in receiving dividends

Answer: A
Diff: 2
Topic: Financing the Corporation
Skill: Legal Concepts

79) Which of the following numbers of shares could properly exist in a corporation?
   A) 100,000 authorized, 90,000 issued, and 80,000 outstanding
   B) 100,000 authorized, 90,000 outstanding, and 80,000 issued
   C) 100,000 issued, 90,000 outstanding, and 80,000 authorized
   D) 100,000 outstanding, 90,000 issued, and 80,000 authorized
   E) A or C

Answer: A
Diff: 2
Topic: Financing the Corporation
Skill: Legal Concepts

80) In a corporation, out of the number of shares authorized, the number outstanding, and the number issued, which must be at least as large as the other two?
   A) issued
   B) outstanding
   C) authorized
   D) None of these are correct.

Answer: C
Diff: 2
Topic: Financing the Corporation
Skill: Legal Concepts
81) Which of the following best describes a stock option?
   A) It gives the holder the right to sell stock at the option price.
   B) It gives the holder the right, for a fixed period of time, to buy shares of stock for a fixed
      price so long as the market price of the stock does not exceed the option price.
   C) It gives the holder the right to receive shares of stock, without having to pay any
      additional amount, if the market price of the stock reaches the option price.
   D) It gives the holder the right, for a fixed period of time, to buy shares of stock at the option
      price even if the market price of the stock rises above the option price.

   Answer: D
   Diff: 3
   Topic: Financing the Corporation
   Skill: Legal Concepts

82) Which of the following is true with regard to subsidiary corporations?
   A) A corporation can conduct business in another country through a subsidiary corporation.
   B) A parent corporation usually owns all or a majority of the subsidiary corporation.
   C) A subsidiary corporation is a separate legal entity.
   D) A parent corporation is not liable for the contracts or torts committed by the subsidiary
      corporation.
   E) All of these are correct.

   Answer: E
   Diff: 2
   Topic: Financing the Corporation
   Skill: Legal Concepts

83) Corporations receive powers from which of the following sources?
   A) state constitutions
   B) the articles of incorporation
   C) bylaws
   D) B and C only
   E) A, B, and C

   Answer: E
   Diff: 1
   Topic: Corporate Powers
   Skill: Legal Concepts
84) If a corporation commits an *ultra vires* act, which of the following is *not* an available remedy?
   A) The shareholders may sue for an injunction prohibiting the act.
   B) The shareholders may sue the officers and/or directors for damages.
   C) The state attorney general may bring criminal charges against the officers and/or directors.
   D) The state attorney general may sue to dissolve the corporation.

Answer: C
Diff: 2
Topic: Corporate Powers
Skill: Legal Concepts

85) A corporation can be dissolved:
   A) by the board of directors with shareholder approval
   B) by the secretary of state for certain failures by the corporation
   C) through a judicial proceeding
   D) by the corporation's creditors
   E) All of these are correct.

Answer: E
Diff: 1
Topic: Dissolution and Termination of Corporations
Skill: Legal Concepts

86) Jill invests $1,000 to buy 10 shares of Good Corporation. The corporation goes bankrupt having no assets and $1 million in liabilities. The most Jill can lose is the $1,000 she invested. This is an example of the corporate characteristic of:
   A) limited liability
   B) free transferability of shares
   C) perpetual existence
   D) centralized management
   E) double taxation

Answer: A
Diff: 1
Topic: Nature of the Corporation
Skill: Factual Application
87) The City of Maysville has formed a separate corporation to operate the water system for the city. This corporation is best described as what type of corporation?
   A) public
   B) private
   C) profit
   D) nonprofit
   E) closely held

Answer: A
Diff: 1
Topic: Classifications of Corporations
Skill: Factual Application

88) The DEF Corporation is incorporated in Texas. It wishes to do business in Oklahoma. Before DEF can legally do business in Oklahoma, which of the following must it do?
   A) Nothing; DEF automatically has a constitutional right to do business in Oklahoma.
   B) DEF must incorporate in Oklahoma.
   C) DEF must qualify (register) to do business in Oklahoma.
   D) DEF must domicile itself in Oklahoma.
   E) Since DEF is a Texas corporation, it cannot do business in Oklahoma.

Answer: C
Diff: 2
Topic: Classifications of Corporations
Skill: Factual Application

89) Mallard Corporation is incorporated in Iowa and does business in Ohio. This corporation is:
   A) a domestic corporation as to both Iowa and Ohio
   B) a foreign corporation as to both Iowa and Ohio
   C) a domestic corporation as to Iowa and a foreign corporation as to Ohio
   D) a domestic corporation as to Ohio and a foreign corporation as to Iowa
   E) a domestic corporation as to Iowa and an alien corporation as to Ohio

Answer: C
Diff: 1
Topic: Classifications of Corporations
Skill: Factual Application
90) Larry was asked by one of his clients how to define a nonprofit corporation. Larry was unsure, so he asks you for help. Which of the following best describes the essence of nonprofit corporations?
   A) They are usually created for charitable, educational, scientific, or religious purposes.
   B) They may not make a profit.
   C) They may make a profit, but the profit cannot benefit any officer, director, or member.
   D) A and B only
   E) A and C only

   Answer: E
   Diff: 2
   Topic: Classifications of Corporations
   Skill: Factual Application

91) Eric, Becky, and Brenda are all licensed medical doctors who form a professional corporation, Dr. Inc., to practice medicine. They are the only shareholders. Eric negligently operates on a patient, George, seriously injuring him. George sues Dr. Inc., Eric, Becky, and Brenda for malpractice. Assuming that the general rules of corporate liability apply, from whom may George recover?
   A) nobody
   B) Eric only
   C) Dr. Inc. only
   D) either Eric or Dr. Inc
   E) either Eric, Dr. Inc., Becky, or Brenda

   Answer: D
   Diff: 2
   Topic: Classifications of Corporations
   Skill: Factual Application

92) Amy is the promoter of JKL Corporation. Before the corporation comes into existence, Amy leases office space for its headquarters. Amy signs the contract, "Amy for JKL Corporation." Due to unforeseen difficulties, JKL never comes into existence. The landlord, however, still wants Amy to pay for the office space. Amy refuses and the landlord sues. The outcome will most likely be which of the following?
   A) The landlord wins.
   B) Amy wins, because the corporation is liable on the contract.
   C) Amy wins, because, as the corporation never came into existence, the contract is void.
   D) Amy wins, because the contract was ratified by the corporation.
   E) Amy wins, because there was a valid novation.

   Answer: A
   Diff: 2
   Topic: Promoters' Activities
   Skill: Factual Application
93) Mary is planning to form a corporation to manufacture and distribute electric solar panels. She will sell the panels only in the Rocky Mountain states. These panels will be manufactured at two factories, one in Illinois and one in Florida. The headquarters of this company will be in Louisiana. In which state(s) could Mary incorporate this business?
   A) Florida, Illinois, or Louisiana
   B) Louisiana only
   C) Florida, Illinois, Louisiana, or any state in which the products are sold
   D) Louisiana or any state in which the products are sold
   E) any of the fifty states

Answer: E
Diff: 2
Topic: Incorporation Procedures
Skill: Factual Application

94) Rover Corporation is a regular corporation that has not elected S corporation status. In 1992, Rover earns $100,000; in 1993, Rover distributes $50,000 to its shareholders. Which of the following best describes the tax consequences to Rover and its shareholders?
   A) The shareholders are taxed on $100,000 in 1992; Rover is not subject to tax.
   B) Rover is taxed on $100,000 in 1992; the shareholders are not subject to tax.
   C) Rover is taxed on $100,000 in 1992; the shareholders are taxed on $50,000 in 1992.
   D) Rover is taxed on $100,000 in 1992; the shareholders are taxed on $50,000 in 1993.
   E) Neither Rover nor its shareholders are subject to tax.

Answer: D
Diff: 2
Topic: Incorporation Procedures
Skill: Factual Application

95) A particular issue of stock carries a stated dividend rate of 8 percent; that if this dividend is not paid during a particular year, it will be paid in a subsequent year before common stock dividends are paid; and that upon liquidation of the corporation, the owner will receive $300 per share before the common stockholders get anything. This stock is:
   A) common stock
   B) preferred stock
   C) cumulative preferred stock with a liquidation preference
   D) noncumulative preferred stock with a liquidation preference
   E) cumulative, participating preferred stock with a liquidation preference

Answer: C
Diff: 3
Topic: Financing the Corporation
Skill: Factual Application
96) John buys a particular issue of stock that carries a stated dividend rate of 8 percent per year; that if this dividend is not paid during a particular year, it will not be paid in a subsequent year before common stock dividends are paid; that John can exchange the stock for common stock in the future, at a specified exchange price; and that if the corporation wants to, it may buy the stock back from John at $50 per share. This stock is best described as:
   A) noncumulative, convertible, redeemable preferred
   B) cumulative, convertible, participating preferred
   C) noncumulative, redeemable, participating preferred
   D) cumulative, redeemable, participating preferred
   E) common

Answer: A
Diff: 3
Topic: Financing the Corporation
Skill: Factual Application

97) ABC Corporation is incorporated in state X. Under the laws of state X, no corporation is allowed to sell insurance contracts without first obtaining a license from the state. ABC sells an insurance contract, but neither ABC nor its directors, officers, or employees have the required license. ABC’s actions are best described as:
   A) express powers
   B) implied powers
   C) ultra vires acts
   D) inherent powers
   E) legal acts

Answer: C
Diff: 3
Topic: Corporate Powers
Skill: Factual Application

98) The Zazu-Zazu Corporation has recently hit upon hard times. It has been sued several times, and, after being executed on, two judgments remain unsatisfied. Zazu-Zazu has failed to file its last two annual reports. In these circumstances, who can have Zazu-Zazu dissolved?
   A) the board with approval of a majority of the shareholders
   B) the secretary of state
   C) the creditors
   D) A and B only
   E) A, B, and C

Answer: E
Diff: 2
Topic: Dissolution and Termination of Corporations
Skill: Factual Application
99) Huey, Dewey and Louie form a corporation. Each member has equal shares, and Huey is designated as the CEO. Dewey and Louis are not corporate officers. The company borrows $1,000,000 from the Bank of Donald. Within the year, the company goes broke and out of business, through no fault of the organization. The company has only about $100,000 of assets when the business goes under. How will the bank recover its money?

A) The bank will take the $100,000 in assets, and Huey, Dewey and Louie will each be liable for $300,000 of the loan.
B) The bank will take the $100,000 in assets, and Huey will be liable for the remaining $900,000.
C) The bank will take the $100,000 in assets, and can choose to go after each shareholder Huey, Dewey and Louie, if any individual is solvent.
D) The bank will take the $100,000 in assets, and take a loss on the remaining $900,000 balance.

Answer: D
Diff: 2
Skill: Factual Application

100) What is the purpose of having preferred stock in addition to common stock? How is preferred stock similar to and different from common stock and debt?

Answer: In some cases preferred stock is a better source of financing for a corporation than either common stock or debt. Common stock receives a fixed payment like debt, but it is not a legal obligation, making it more like the dividend on common stock.
Diff: 2
Skill: Ethics and Policy

101) What additional factors should one consider in deciding whether to incorporate a business when the business will operate internationally?

Answer: Most businesses operated internationally should have limited liability for the owners. One factor to consider is whether the other nation(s) will recognize the limited liability of the entity chosen.
Diff: 2
Skill: Ethics and Policy

102) One of the characteristics of corporations, especially large corporations, is a separation of ownership and control. Why is there this separation of ownership and control? What are its advantages and disadvantages? What risks does it pose and to whom?

Answer: With so many owners possible in corporations, it is simply impossible to have all shareholders hold the power to manage the corporation. This allows the corporation to be more efficiently managed, but the management might become isolated and nonresponsive to the shareholders.
Diff: 2
Skill: Ethics and Policy
103) Betty is considering forming a business in Colorado. She is thinking about a business that would rent in-line skates to customers and transport them to the top of Mount Evans, west of Denver. The road up Mount Evans is the highest paved road in the United States and reaches just over 14,000 feet above sea level. Customers could skate from the top at 14,000 feet to a point in a nearby town at about 8,000 feet above sea level. The customers would skate about 35 miles, nearly all of which is downhill. Betty is considering whether or not she should form a corporation to operate this business. What are the advantages and disadvantages of forming a corporation? Is there any way she could avoid or compensate for any of the disadvantages?

Answer: Limited liability is Betty's biggest advantage, especially considering the risks of this business. The primary disadvantages may be double taxation and the costs incurred in forming a corporation. The centralization of management and free transferability of shares may not be that crucial if Betty is planning to put up all the money herself. She could get around the tax problem, if it is a problem for her, by electing S corporation status. If she did not want to incorporate, she could protect herself from liability by obtaining insurance, something she would likely do even if incorporated. In many states, she could form a limited liability company.

Diff: 3
Topic: Nature of the Corporation
Skill: Factual Application

104) Jane wishes to create a corporation to operate an art gallery. She completes the articles of incorporation and mails them to the appropriate state office. Then, she leases space, hires a receptionist, buys supplies, and contracts with artists to exhibit their artwork, all on behalf of her corporation. Sometime later, the state issues its certificate of incorporation.

A. Discuss the liability of Jane and the corporation with regard to these contracts Jane has made.
B. Discuss novation based upon the above fact situation.

Answer: A corporation is liable on contracts of a promoter only if it adopts the contracts. Under the Revised Model Business Corporation Act, the corporation's existence began when the secretary of state approved and filed the articles of incorporation, presumably at that time it issued the certificate of incorporation. Any contracts entered into by Jane, as a promoter, will be binding on Jane unless she, the corporation, and the third party enter into a novation, by which the corporation assumes liability and Jane is released.

Diff: 2
Topic: Promoters' Activities
Skill: Factual Application
105) Henry wants to form a business that rents chain saws and tree climbing equipment to persons who desire to do major tree-removal work themselves rather than hire others to do the job. Henry had not planned to incorporate this business because he had always heard that forming a corporation was difficult and expensive. A friend suggests that he might want to incorporate in order to have limited liability. Briefly describe the steps for Henry to incorporate.

Answer: Henry might need to find other shareholders and might need to enter into contracts as a promoter. Henry would need to file articles of incorporation including the name of the corporation, the number of shares it is authorized to issue, the corporation's initial registered office and registered agent, and the names of all incorporators. Henry would then need to hold an organizational meeting and at that meeting elect officers and adopt bylaws.
Diff: 2
Topic: Incorporation Procedures
Skill: Factual Application

106) Donna formed a corporation several years ago by issuing 500 shares of stock. There are 10 shareholders, with the smallest shareholder owning 25 shares, and Donna holding the most at 100 shares. The corporation needs additional cash, but the current shareholders do not wish to have any additional shareholders. What are their options and what additional factors should the current shareholders consider in raising the additional cash?

Answer: They could issue additional common stock to themselves, preferred stock, or borrow the money. Other factors include whether the existing shareholders could afford more common stock, how long the corporation needs the money, and how each option would affect income.
Diff: 2
Topic: Financing the Corporation with Equity Securities
Skill: Factual Application
107) Acorn Corporation was formed 2 years ago at which time it issued 1,000 shares of stock in various quantities to 130 different shareholders. Three shareholders each hold 200 shares; the remaining 127 shareholders hold the other 400 shares of stock. The stated purpose of Acorn Corporation is to "purchase new computers for resale to consumers and to conduct all business incident to the purchase and resale of new computers." Justin, Jessica, and Jeremy, the three shareholders of 200 shares each, were the promoters of the corporation and were intended to be the initial board of directors. The articles of corporation were properly filed, and a certificate of incorporation was received a short time later. Justin was named as the registered agent in the articles of incorporation. Justin, Jessica, and Jeremy assumed the duties of running the corporation, but never held an organizational meeting. They have run the corporation for 3 years, and none of the other shareholders has objected to the fact that the organizational meeting was not held. The business had been quite successful until the last year. In the last year, Justin, Jessica, and Jeremy have made some changes in the business. They have begun accepting used computers as trade-ins, and have begun offering computer-training classes. In addition, they have been offering word-processing services and have also begun buying and selling used office equipment other than computers. All of these additional operations have been unprofitable thus far. A group of the other shareholders has sued in an effort to stop the carrying on of these other businesses. Do they have a basis for such a suit, and if so, what remedies would they have?

Answer: These other business activities are ultra vires acts because they exceed the powers of the corporation as stated in the articles. As shareholders, they can sue for an injunction to stop the ultra vires acts and for the damages caused by them. They also could request the attorney general in the state of incorporation to enjoin these other operations or to dissolve the corporation.

Diff: 3
Topic: Corporate Powers
Skill: Factual Application
1) Shareholders own the corporation.
Answer: TRUE  
Diff: 1  
Topic: Shareholders

2) Corporations are required to hold annual shareholders' meetings.
Answer: TRUE  
Diff: 1  
Topic: Shareholders

3) A special shareholders' meeting may be called by any person authorized to do so by the articles of incorporation or bylaws.
Answer: TRUE  
Diff: 1  
Topic: Shareholders

4) A special shareholders' meeting agenda is limited to items stated in the notice of the meeting.
Answer: TRUE  
Diff: 1  
Topic: Shareholders

5) When action is taken at a special shareholders' meeting where the notice was defective, the action is valid, but any shareholder can call another special meeting to reconsider the item.
Answer: FALSE  
Diff: 2  
Topic: Shareholders

6) A proxy may validly be given orally or in writing.
Answer: FALSE  
Diff: 1  
Topic: Shareholders
7) A proxy is valid for an indefinite period of time.
Answer: FALSE
Diff: 1
Topic: Shareholders

8) All classes of common stock must have voting rights.
Answer: FALSE
Diff: 1
Topic: Shareholders

9) The bylaws of a corporation may require a "supermajority" vote for certain issues.
Answer: TRUE
Diff: 1
Topic: Shareholders

10) Voting agreements among shareholders of a corporation are usually considered to be void.
Answer: FALSE
Diff: 1
Topic: Shareholders

11) Shareholders may enter into an agreement that states that if a shareholder wants to sell his stock he must sell it to the corporation.
Answer: TRUE
Diff: 1
Topic: Shareholders

12) The preemptive right allows shareholders with sufficient shares of stock the right to be on the board of directors.
Answer: FALSE
Diff: 2
Topic: Shareholders

13) Because one of the characteristics of a corporation is the free transferability of shares of stock, an agreement attempting to restrict that right is generally unenforceable.
Answer: FALSE
Diff: 1
Topic: Shareholders
14) A shareholder's right to inspect the shareholders' list, articles of incorporation, and bylaws is absolute.

Answer: TRUE
Diff: 1
Topic: Shareholders

15) Under the straight voting method, a majority shareholder can elect the entire board of directors.

Answer: TRUE
Diff: 2
Topic: Shareholders

16) A derivative lawsuit is one that a shareholder brings against an offending party on behalf of the corporation when the corporation fails to bring the lawsuit itself.

Answer: TRUE
Diff: 1
Topic: Shareholders

17) Cumulative voting gives a minority shareholder a better chance to elect someone to the board of directors.

Answer: TRUE
Diff: 2
Topic: Shareholders

18) A voting trust is an agreement between two or more shareholders on how they will vote their shares.

Answer: FALSE
Diff: 3
Topic: Shareholders

19) An annual financial statement must be furnished to all of a corporation's shareholders.

Answer: TRUE
Diff: 1
Topic: Shareholders

20) Shareholders may not inspect the minutes of shareholders' meetings.

Answer: FALSE
Diff: 1
Topic: Shareholders
21) It is mandatory that the directors pay dividends to all of a corporation's shareholders.

Answer: FALSE
Diff: 1
Topic: Shareholders

22) Shareholders never have a right to bring a lawsuit on behalf of a corporation, as this is the job of the board of directors.

Answer: FALSE
Diff: 2
Topic: Shareholders

23) Shareholders have absolute liability for the debts and obligations of the corporation.

Answer: FALSE
Diff: 1
Topic: Shareholders

24) Delivery of notices to stockholders may be made electronically with the stockholder's consent.

Answer: TRUE
Diff: 2
Topic: Corporate Code Recognition of Internet Law and Online Commerce

25) Stockholders may not vote by electronic communication.

Answer: FALSE
Diff: 1
Topic: Corporate Code Recognition of Internet Law and Online Commerce

26) The election of directors of the corporation may be held by electronic transmission.

Answer: TRUE
Diff: 2
Topic: Corporate Code Recognition of Internet Law and Online Commerce

27) The officers of a corporation are responsible for overseeing the board of directors.

Answer: FALSE
Diff: 2
Topic: Board of Directors
28) On the board of directors of a corporation, an outside director is a director who is not also an officer of the corporation.

Answer: TRUE
Diff: 1
Topic: Board of Directors

29) Directors of a corporation must generally be selected from among the shareholders.

Answer: FALSE
Diff: 2
Topic: Board of Directors

30) Unless the articles of incorporation provide otherwise, members of the board of directors of a corporation can be removed without cause.

Answer: TRUE
Diff: 2
Topic: Board of Directors

31) The articles of incorporation, but not the bylaws, can require more than a simple majority for a quorum of the board of directors.

Answer: FALSE
Diff: 2
Topic: Board of Directors

32) Directors of a corporation have unlimited access to the records of the corporation.

Answer: TRUE
Diff: 1
Topic: Board of Directors

33) The term of a director's office expires at the next annual shareholder's meeting following his or her election, unless terms are staggered.

Answer: TRUE
Diff: 2
Topic: Board of Directors

34) Regular, as well as special, meetings are provided for in the corporate bylaws.

Answer: TRUE
Diff: 1
Topic: Board of Directors
35) The articles of incorporation, as well as the bylaws, may not require a greater than majority of directors to comprise a quorum of the vote of the board.

Answer: FALSE
Diff: 3
Topic: Board of Directors

36) Shareholders create committees of the board and delegate certain powers to those committees.

Answer: FALSE
Diff: 2
Topic: Board of Directors

37) In a corporation, each officer position must be held by a different individual.

Answer: FALSE
Diff: 2
Topic: Agency Authority of Officers

38) Absent an agreement to the contrary, a corporate officer can be removed by the board of directors anytime the removal is deemed to be in the corporation's best interest.

Answer: TRUE
Diff: 1
Topic: Agency Authority of Officers

39) Officers are not liable on an unauthorized contract regardless if the corporation ratifies it or not.

Answer: FALSE
Diff: 1
Topic: Agency Authority of Officers

40) Generally, a corporate director is liable for mistakes in judgment.

Answer: FALSE
Diff: 2
Topic: Liability of Corporate Directors and Officers

41) When relying on a report prepared by a professional, corporate officers and directors have a duty to analyze the report to determine its accuracy.

Answer: FALSE
Diff: 2
Topic: Liability of Corporate Directors and Officers
42) Shareholders generally have liability for the debts and obligations of the corporation beyond their capital contribution.

Answer: FALSE
Diff: 1
Topic: Liability of Shareholders

43) Shareholders can lose their limited liability if a corporation has been operated without the correct separateness between the owner and the corporation.

Answer: TRUE
Diff: 1
Topic: Liability of Shareholders

44) Courts will pierce the corporate veil if the corporation has been formed without sufficient capital.

Answer: TRUE
Diff: 1
Topic: Liability of Shareholders

45) Corporations are required to hold shareholders' meetings at least:
   A) once a year
   B) every 6 months
   C) twice a year, but they are not required to be held every 6 months
   D) quarterly
   E) monthly

Answer: A
Diff: 1
Topic: Shareholders
Skill: Legal Concepts

46) Who may call a special shareholders' meeting if the bylaws do not address this issue?
   A) the board of directors
   B) any shareholder
   C) shareholders holding at least 10 percent of the voting shares of the corporation
   D) any two officers
   E) A and C

Answer: E
Diff: 2
Topic: Shareholders
Skill: Legal Concepts
47) The two general types of shareholders' meetings are:
   A) annual and special
   B) annual and quarterly
   C) general and annual
   D) general and special

Answer: A
Diff: 1
Topic: Shareholders
Skill: Legal Concepts

48) Which of the following is true about the required notice for shareholders' meetings?
   A) The notice can be oral or written, but is required only for special meetings.
   B) The notice can be oral or written and is required for both regular and special meetings.
   C) The notice must be written, but is required only for special meetings.
   D) The notice must be written and is required for both regular and special meetings.
   E) The notice must be written, but is required only when unusual items will be on the agenda of the meeting.

Answer: D
Diff: 2
Topic: Shareholders
Skill: Legal Concepts

49) The notice for which type(s) of shareholders' meetings must include the purpose of the meeting?
   A) annual meetings only
   B) special meetings only
   C) both special and annual meetings
   D) neither annual nor special meetings

Answer: B
Diff: 1
Topic: Shareholders
Skill: Legal Concepts

50) What is the purpose of cumulative voting?
   A) to enforce a supramajority voting requirement
   B) to vote on mergers and other fundamental changes to the corporation
   C) to vote to pay dividends
   D) A, B, and C
   E) to give a minority shareholder a better opportunity to elect someone to the board of directors

Answer: E
Diff: 2
Topic: Shareholders
Skill: Legal Concepts
51) The document by which a shareholder grants another person the right to vote the shareholder's shares at a shareholders' meeting is called a:
   A) power of attorney
   B) proxy
   C) voting trust
   D) election agency

Answer: B
Diff: 1
Topic: Shareholders
Skill: Legal Concepts

52) In order to vote shares at a shareholders' meeting, a person must own the shares as of:
   A) the date the notice of the meeting is given
   B) the date the shareholders' list is prepared
   C) the record date
   D) the voting date
   E) the date of the meeting

Answer: C
Diff: 2
Topic: Shareholders
Skill: Legal Concepts

53) Where the bylaws require a simple majority vote of shareholders for a particular action, what is the legal significance of a unanimous vote instead of simple majority vote?
   A) There is no difference in the legal effects of the two votes.
   B) The directors can override the vote if it is less than unanimous.
   C) The vote could be reversed at a later shareholders' meeting if it is less than unanimous, but not if it is unanimous.
   D) The dissenting shareholders can demand that the corporation repurchase their shares in a less than unanimous vote, but this would be inapplicable in a unanimous vote.

Answer: A
Diff: 3
Topic: Shareholders
Skill: Legal Concepts
54) Which method of voting would give minority shareholders the best chance to elect someone to the board of directors of a corporation?
   A) cumulative
   B) straight
   C) proxy
   D) supermajority
   E) preemptive

Answer: A
Diff: 1
Topic: Shareholders
Skill: Legal Concepts

55) Which of the following is true about supramajority requirements?
   A) They can be required for voting but not for quorums.
   B) They can be required for either voting or for quorums, but must be part of the original articles.
   C) They are automatically required for quorums of shareholders meetings and voting at such meetings when approving mergers, consolidations, or the sale of substantially all of the assets of the corporation.
   D) They can be required for either voting or for quorums, and if the requirement is added in an amendment, the vote approving the amendment must pass by the same supramajority as the new supramajority requirement contained in the amendment on which is being voted.
   E) They can be required for either voting or for quorums, and if the requirement is added in an amendment, the vote approving the amendment needs only to have a simple majority in order to become effective.

Answer: D
Diff: 3
Topic: Shareholders
Skill: Legal Concepts

56) An agreement between shareholders that addresses how they will vote their shares in an upcoming election of the board of directors, but provides for nothing else, is a:
   A) voting trust
   B) proxy
   C) voting agreement
   D) agency agreement

Answer: C
Diff: 2
Topic: Shareholders
Skill: Legal Concepts
57) Which of the following is true?

A) Voting trusts and voting agreements both require the transfer of stock certificates to a trustee.
B) In a voting trust, the shareholder grants the trustee the right to vote the shares, but in a voting agreement, the shareholders vote their own shares.
C) Voting agreements, but not voting trusts, must be accompanied by proxies executed by the shareholders.
D) Voting trusts are irrevocable, while voting agreements can be either revocable or irrevocable.
E) Voting agreements cannot extend for more than 10 years.

Answer: B
Diff: 3
Topic: Shareholders
Skill: Legal Concepts

58) Which of the following best describes buy-and-sell agreements among shareholders of a corporation?

A) They are most often entered into among shareholders of large publicly held corporations because it is difficult to monitor the large numbers of sales of the shares.
B) They always provide for purchase of shares by the corporation in the event that a shareholder desires to sell shares.
C) They can provide for the sale of shares to either the corporation or to other shareholders.
D) They usually also contain an agreement for a voting trust.
E) They are enforceable only if the agreement provides for a fair price.

Answer: C
Diff: 3
Topic: Shareholders
Skill: Legal Concepts

59) Assuming there is no agreement on the issue, in order to transfer shares owned by a shareholder, the shareholder must obtain approval of:

A) the board of directors, regardless of whether the transfer is made by sale or gift
B) the board of directors if the transfer is by sale, no one if the transfer is to be made by gift
C) the other shareholders, regardless of whether the transfer is made by sale or gift
D) the other shareholders, but only if the shareholder is selling more than 50 percent of the outstanding shares
E) neither the board of directors nor the other shareholders

Answer: E
Diff: 3
Topic: Shareholders
Skill: Legal Concepts
60) State law provides that existing shareholders may buy new issues of stock in the same proportion as their current holdings. This is done to allow the current stockholders to keep the same voting and dividend rights they had before the new issue. This right is known as a right of:
   A) redemption
   B) ratification
   C) preemption
   D) first refusal
   E) buy-sell

Answer: C
Diff: 2
Topic: Shareholders
Skill: Legal Concepts

61) Which of the following describes a shareholder's preemptive rights?
   A) the right to purchase shares of another shareholder pursuant to a buy-and-sell agreement
   B) the right to purchase a pro-rata portion of any additional shares issued by the corporation
   C) the right of shareholders to override actions of the board of directors
   D) the right of shareholders to remove members of the board of directors without cause
   E) the right of shareholders to call special meetings

Answer: B
Diff: 1
Topic: Shareholders
Skill: Legal Concepts

62) What is a derivative lawsuit?
   A) an action brought by the board of directors on behalf of the corporation
   B) an action brought by a majority of the board of directors against an individual board member
   C) an action brought by a shareholder or shareholders on behalf of the corporation when the board of directors does not file the suit
   D) an action brought by shareholders against the corporation
   E) an action brought by the officers against the directors

Answer: C
Diff: 2
Topic: Shareholders
Skill: Legal Concepts
63) Which of the following statements is false?
   A) Shareholders may vote by proxy.
   B) Directors may vote by proxy.
   C) Notice must be given for shareholder meetings.
   D) Notice must be given for directors meetings.
   E) The solicitation of proxies is governed by the Securities and Exchange Commission.

Answer: B
Diff: 2
Topic: Rights of Directors
Skill: Legal Concepts

64) Which of the following is true about removing a member of the board of directors from the board before that director's term is over?
   A) Board members can only be removed for cause, unless the articles of incorporation provide otherwise.
   B) Board members can be removed with or without cause by the remaining members of the board or by the shareholders, unless the articles of incorporation provide otherwise.
   C) Board members cannot be removed without cause, and any attempt in the articles of incorporation or the bylaws to allow removal without cause is ineffective.
   D) Board members can be removed with or without cause, but only by the shareholders and not by the remaining board members, unless the articles of incorporation provide otherwise.
   E) Board members can be removed only if they are found to be in violation of the business judgment rule.

Answer: D
Diff: 3
Topic: Rights of Directors
Skill: Legal Concepts

65) Under what circumstances can the terms of directors be staggered such that only a portion of the board members' terms expire in any one year?
   A) in any circumstances
   B) in closely held corporations
   C) when there are both inside and outside directors
   D) when there are nine or more members of the board of directors
   E) under no circumstances

Answer: D
Diff: 1
Topic: Rights of Directors
Skill: Legal Concepts
66) When a vacancy occurs because a director resigns, by whom can the vacancy be filled?
   A) the remaining board members
   B) the shareholders
   C) the corporate president
   D) A or B
   E) A, B, or C

Answer: D
Diff: 2
Topic: Rights of Directors
Skill: Legal Concepts

67) Dividends may be paid out of which of the following?
   A) common stock proceeds
   B) preferred stock proceeds
   C) retained earnings
   D) preemptive right proceeds

Answer: C
Diff: 1
Topic: Rights of Directors
Skill: Legal Concepts

68) Who has a right to receive dividends?
   A) both preferred and common shareholders at all times
   B) both preferred and common shareholders, so long as the corporation has adequate retained earnings
   C) preferred shareholders at all times when the corporation has adequate retained earnings, and common shareholders whenever dividends have been declared
   D) both preferred and common shareholders, but only when dividends have been declared
   E) neither preferred nor common shareholders ever have a right to the payment of dividends, even after their declaration

Answer: D
Diff: 3
Topic: Rights of Directors
Skill: Legal Concepts

69) Dividends may be paid in the form of:
   A) cash only
   B) cash or property only
   C) cash, property, or additional stock
   D) cash, property, inventory, or additional stock

Answer: D
Diff: 1
Topic: Rights of Directors
Skill: Legal Concepts
70) Officers of a corporation typically can have which types of agency authority?
   A) express only
   B) express and apparent only
   C) express and implied only
   D) implied and apparent only
   E) express, implied, and apparent

Answer: E
Diff: 1
Topic: Rights of Officers
Skill: Legal Concepts

71) In what ways can officers and directors protect themselves from liability for actions taken as an officer or director?
   A) by having the corporation purchase liability insurance to cover such losses
   B) by having the corporation indemnify the officers and directors
   C) by having the corporation purchase liability insurance or indemnify the officers and directors, but the corporation cannot do both
   D) by having the corporation purchase liability insurance or indemnify the officers and directors, or do both
   E) The directors and officers can purchase their own insurance, but it is not a proper expenditure of corporate funds to pay for reimbursement of officers and directors for failing to do what they were hired to do.

Answer: D
Diff: 3
Topic: Liability of Corporate Directors and Officers
Skill: Legal Concepts

72) Which of the following is likely to be a breach of a corporate officer's/director's duty of care?
   A) failing to anticipate a drop in the consumer demand of the company's product
   B) failing to make a reasonable investigation of relevant facts
   C) failing to predict the startup of a new competitor
   D) failing to foresee a severe rise in the interest rate
   E) all of the above

Answer: B
Diff: 3
Topic: Liability of Corporate Directors and Officers
Skill: Legal Concepts
73) Which of the following is correct regarding the business judgment rule?
   A) Directors and officers have an obligation to exercise sound business judgment, and any failure to do so is per se negligence that results in liability to the corporation.
   B) Directors and officers have an obligation to exercise sound business judgment, and any failure to do so results in a rebuttable presumption of negligence.
   C) Directors and officers are never liable in suits filed against them by shareholders.
   D) Directors and officers are not liable for honest mistakes of judgment.
   E) Directors and officers are liable for gross negligence, but not for ordinary negligence.

Answer: D  
Diff: 2  
Topic: Liability of Corporate Directors and Officers  
Skill: Legal Concepts

74) Generally, a shareholder may not sue his corporation for which of the following?
   A) to enforce preemptive rights
   B) to compel the declaration of dividends
   C) to inspect the corporate books and records
   D) to recover an illegal dividend
   E) to cancel an *ultra vires* contract

Answer: B  
Diff: 2  
Topic: Liability of Corporate Directors and Officers  
Skill: Legal Concepts

75) Self-dealing by a director of a corporation can best be described as:
   A) a duty of the director to use her own expertise whenever possible
   B) a breach of a director's duty of care
   C) a breach of a director's duty of loyalty
   D) a duty of the director to not overly rely on others
   E) a director serving on the boards of both a parent and subsidiary

Answer: B  
Diff: 2  
Topic: Liability of Corporate Directors and Officers  
Skill: Legal Concepts
76) Which of the following situations, by itself, would not justify a court disregarding the corporate entity?
   A) The corporation failed to follow the necessary corporate formalities.
   B) The corporation is severely undercapitalized.
   C) The corporation does not have enough assets to pay its liabilities.
   D) The shareholders have looted the corporation.
   E) The corporation has been used by its shareholders to commit fraud.

Answer: C
Diff: 3
Topic: Liability of Shareholders
Skill: Legal Concepts

77) "Piercing the corporate veil" can refer to:
   A) denying corporate existence to a corporation
   B) denying limited liability to owners of a corporation because the corporation failed to exercise reasonable care in its business decisions
   C) denying limited liability to owners of a corporation where the corporate affairs were not sufficiently segregated from those of the owners
   D) forcing a corporation to pay a dividend to its shareholders

Answer: C
Diff: 2
Topic: Liability of Shareholders
Skill: Legal Concepts

78) Which of the following would be a violation of a shareholder's fiduciary duty to other shareholders?
   A) The controlling shareholder elects himself director.
   B) The controlling shareholder sells assets to himself at less than fair market value.
   C) The controlling shareholder votes to sell a building of the corporation.
   D) The controlling shareholder votes to declare a dividend.
   E) The controlling shareholder votes to liquidate the corporation.

Answer: B
Diff: 1
Topic: Liability of Shareholders
Skill: Legal Concepts
79) Tim owns 30 of the 10,000 shares in Heron Corporation. There was a special shareholders' meeting held recently for which Tim received notice 4 days in advance. Tim could not attend. One agenda item that Tim favored was defeated by a vote of 7,050 to 2,423. Tim can:
   A) do nothing because the item would not have passed with Tim’s 30 votes
   B) do nothing because Tim had notice of the meeting and could have executed a proxy
   C) have the action declared void because he did not receive adequate notice.
   D) exercise his preemptive right to preempt this improper action

Answer: C
Diff: 2
Topic: Rights of Shareholders
Skill: Factual Application

80) The board of directors of Sunny Corporations votes 9-2 to require all future actions by the shareholders to be approved by a two-thirds majority. This action is:
   A) invalid because supramajority requirements are not permissible
   B) valid, but would not have been valid if the vote had been 6-5
   C) valid, and would have been valid also with a vote of 6-5
   D) valid, as long as the two dissenting directors properly registered their dissent
   E) invalid because the board of directors does not have the power to decide this

Answer: E
Diff: 3
Topic: Rights of Shareholders
Skill: Factual Application

81) Pam owns 800 of the 2,000 issued and outstanding shares of Antelope Corporation. There are five members of the board of directors, three of whom are up for election at a shareholders' meeting. If each share of stock is entitled to one vote, what is the maximum number of votes that Pam can cast for any one of the candidates for the positions on the board under cumulative voting?
   A) 800
   B) 2,000
   C) 2,400
   D) 4,000
   E) 6,000

Answer: C
Diff: 2
Topic: Rights of Shareholders
Skill: Factual Application
82) Mr. Scott owns 1,000 shares of Jackson Corporation stock. Jackson is having the election for the board of directors. There are five directors to be elected. Mr. Scott comes to you for advice. Which of the following statements is false?

A) If the voting is cumulative, Mr. Scott may cast a total of 5,000 votes for any one candidate.
B) If the voting is straight rather than cumulative, Mr. Scott may cast up to 1,000 votes for any one candidate.
C) Generally, the articles of incorporation or the bylaws determine if the voting is cumulative.
D) Straight voting gives the best chance for a minority shareholder to elect someone to the board.

Answer: D
Diff: 2
Topic: Rights of Shareholders
Skill: Factual Application

83) Bart and Garth own 600 and 200 shares of the 1,000 outstanding shares of a corporation. Bart and Garth separately want to sell their shares. The shares were recently appraised at $240 per share, and there have been no significant changes or events affecting the value of the shares since the appraisal. Bart has found a buyer willing to pay $300 per share and Garth plans to sell his shares for $100 each. Assuming there is no express shareholders' agreement regarding sales of shares, what approvals must Bart and Garth obtain?

A) They each must obtain the approval of the board of directors.
B) Garth, but not Bart, must obtain the approval of the other shareholders for his sale.
C) Bart, but not Garth, must obtain the approval of the other shareholders for his sale.
D) Neither needs approval for his sale, but in the case of each sale the remaining shareholders must first have the opportunity to exercise their preemptive rights.
E) Neither needs approval for his sale.

Answer: E
Diff: 3
Topic: Rights of Shareholders
Skill: Factual Application
84) Martin, Martina, and Melvin are shareholders of Random Corporation. They each hold several hundred of the 5,000 outstanding shares. The three enter into an agreement that they will always vote against any attorney in a board of director's election and vote against any plans to expand the corporation's business overseas. This agreement is:

   A) an enforceable voting agreement  
   B) valid as to the overseas expansion, but invalid with respect to attorneys on the board  
   C) invalid because any such voting agreement is against public policy because it limits a shareholder's right to vote freely on all matters  
   D) invalid because the agreed votes are contrary to the best interests of the corporation, but would be valid where the shareholders agree to vote in the corporation's best interests  
   E) valid so long as the board of directors approves it

Answer: A  
Diff: 2  
Topic: Rights of Shareholders  
Skill: Factual Application

85) Sean owns stock in the Cardinal Corporation. All of the shareholders have agreed that if one wants to sell his or her shares, he or she must offer to sell them to the other shareholders. If the other shareholders do not buy the shares, the selling shareholder may sell them to anyone else. This type of arrangement is known as a(n):

   A) buy-sell agreement  
   B) right of first refusal  
   C) preemption agreement  
   D) quorum agreement  
   E) close corporation agreement

Answer: B  
Diff: 1  
Topic: Rights of Shareholders  
Skill: Factual Application

86) Betty is a stockholder of Bluebird Corporation. The directors, as a group, have forced Bluebird to commit an *ultra vires* act. Betty wishes to sue the directors on behalf of Bluebird. In order to show more clout, Betty also wants all the other stockholders to be a party to this action, so she asks the court if she can represent all other stockholders as a group. This lawsuit is best described as:

   A) a class action suit  
   B) a derivative suit  
   C) a class action, derivative suit  
   D) an *ultra vires* suit  
   E) a frivolous suit

Answer: C  
Diff: 2  
Topic: Rights of Shareholders  
Skill: Factual Application
87) Ralph is the president of JKL Corporation. Ralph knows that Shark Co. is looking to acquire a corporation much like JKL. Therefore, Ralph enters into negotiations with Shark, and finally signs a contract with Shark for the sale of nearly all the assets of JKL to Shark. Ralph takes the contract back to the board of directors, which passes a resolution accepting the sale of the assets to Shark. This is an example of the president's:

A) express authority  
B) implied authority  
C) action being ratified by the corporation  
D) action being without authority and thus not binding on the corporation

Answer: D  
Diff: 3  
Topic: Rights of Directors  
Skill: Factual Application

88) Mary was just appointed a vice president of LMN Corporation and placed in charge of their Chicago plant. As soon as she takes over, she hires a new employee and signs a contract for the purchase of needed supplies from Joe's Supply. When the payroll arrives at the LMN corporate office for approval, the president refuses to approve payment for the new employee that Mary hired. Similarly, the president refuses to approve payment for the supplies purchased from Joe's. The new employee and Joe sue both LMN and Mary for payment. What is the result?

A) Mary is liable, but LMN is not liable for both contracts.  
B) Mary is not liable, but LMN is liable for both contracts.  
C) Both LMN and Mary are liable for both contracts.  
D) Neither LMN nor Mary is liable for either of the contracts.  
E) LMN only is liable for the employment contract, but Mary alone is liable for the supplies contract.

Answer: B  
Diff: 2  
Topic: Rights of Officers  
Skill: Factual Application

89) Mary is the president of Heavy Metals Corporation. The appropriate state law provides that corporations cannot invest in speculative uranium stock. Mary has Heavy Metals invest in some speculative uranium stock. Mary's action breaches her duty of:

A) obedience  
B) due care  
C) loyalty  
D) ultra vires

Answer: A  
Diff: 1  
Topic: Liability of Corporate Directors and Officers  
Skill: Factual Application
90) Mark is the treasurer of Sky-Hi-Tech Corporation and, as such, he is responsible for protecting the assets of the corporation. One of Mark's subordinates, Jill, is in charge of reconciling the monthly corporate bank statements. Over a period of several months, Jill embezzles a large amount of money from Sky-Hi-Tech, covering up the theft using her bank reconciliations. If Mark had adequately supervised Jill, she could not have embezzled this money. Mark's actions (or inactions) constitute a breach of his duty of:

A) obedience
B) due care
C) loyalty
D) ultra vires
E) This is not a violation of any duty due to the business judgment rule.

Answer: B
Diff: 1
Topic: Liability of Corporate Directors and Officers
Skill: Factual Application

91) There are no accountants on the board of the Oriole Corporation. The board routinely relies on a CPA to explain the financial situation of the corporation. The board does not do an independent analysis of the CPA's report. In these circumstances, the board is:

A) violating the duty of loyalty
B) violating the duty to exercise due care
C) violating the business judgment rule
D) violating the duty of obedience
E) not violating any duty

Answer: E
Diff: 2
Topic: Liability of Corporate Directors and Officers
Skill: Factual Application
92) Cindy is one of the seven members of the board of directors of a corporation that sells suntan oils and sunscreen lotions. The corporation has developed an oil that actually increases the skin's sensitivity to the rays of the sun, allowing persons to tan very quickly. At a meeting of the board of directors, the other six directors have voted to introduce this product and market it aggressively. Mary strongly disagrees with the board's action, fearing lawsuits in the short term by persons who are burned using the lotion and in the long term by persons who develop skin cancer. Mary wants to avoid personal liability for what she sees as a foolish decision. Mary:

A) must resign from the board in order to avoid liability
B) is automatically protected because she voted against the decision
C) is protected from liability only if she notifies all shareholders of her dissent
D) can either resign from the board, register her dissent in the minutes of the meeting, or deliver written dissent to the secretary at the meeting or by registered mail immediately thereafter
E) is protected only if the product and its advertising carry notice of her dissent

Answer: D
Diff: 2
Topic: Liability of Corporate Directors and Officers
Skill: Factual Application

93) Hank is a director of the Cardinal Corporation. Cardinal is in the business of marketing new inventions. Katrina has just invented a new product and wants to have it marketed by Cardinal, so she shows and discusses the new product with Hank. Hank thinks the new product has the potential to generate huge profits, so Hank suggests that he handle the marketing personally, leaving Cardinal out of it. Hank's action is best described as which of the following?

A) a violation of the duty prohibiting self-dealing
B) a violation of the duty prohibiting usurping a corporate opportunity
C) a violation of the duty prohibiting competition with the corporation
D) a violation of the duty prohibiting insider trading
E) not a violation of any duty

Answer: B
Diff: 3
Topic: Liability of Corporate Directors and Officers
Skill: Factual Application
94) Betty is a director of the Good Thunder Corporation. Good Thunder wants to buy a tract of land on which to build a new factory. Betty owns such a tract of land, and sells it to Good Thunder without disclosing that she owns the land. Betty is paid the fair market value of the land. Betty's action is best described as which of the following?
   A) a violation of the duty prohibiting self-dealing
   B) a violation of the duty prohibiting usurping a corporate opportunity
   C) a violation of the duty prohibiting competition with the corporation
   D) a violation of the duty prohibiting insider trading
   E) not a violation of any duty

Answer: A
Diff: 2
Topic: Liability of Corporate Directors and Officers
Skill: Factual Application

95) John is a director for Dream Drive Corporation. Dream Drive is in the business of selling insurance. John sees how lucrative this field is and starts a new corporation to sell insurance. John has violated his duty of:
   A) obedience
   B) loyalty
   C) care
   D) A and B only
   E) John has violated no duty.

Answer: B
Diff: 2
Topic: Liability of Corporate Directors and Officers
Skill: Factual Application

96) Bob and Rob each own 50 of the 100,000 issued and outstanding shares of Synapsegap Corporation. If Bob develops a product and starts a company that competes with the Synapsegap product, he:
   A) has violated the duty of loyalty to Synapsegap by competing with Synapsegap
   B) has violated the duty of loyalty to Synapsegap by self-dealing in a similar product
   C) has not violated any duty, but must sell his shares of stock in Synapsegap
   D) has not violated any duty so long as he has notified Synapsegap of his actions
   E) has not violated any duty, and need not give notice nor sell his stock

Answer: E
Diff: 3
Topic: Liability of Shareholders
Skill: Factual Application
97) There are 100,000 shares of outstanding stock outstanding for a corporation. A shareholders' meeting is called to amend the articles of incorporation. At the meeting, 50,001 shares attend the meeting to vote on the proposed amendment. Is there a quorum present? If 25,001 vote to amend the articles, does the amendment pass?

A) There is a quorum present, and a vote of 25,001 will be sufficient to pass the amendment.
B) There is a quorum present, but a vote of less than 50% of the outstanding shares of stock will result in the failure of the proposed amendment.
C) There is not a quorum present, but the 25,001 votes are sufficient to pass the amendment.
D) There is not a quorum present, and the number of votes will not result in passage of the amendment.

Answer: A
Diff: 3
Topic: Shareholders
Skill: Legal Concepts

98) Sue owns 500 shares of stock in a company that has 10,000 outstanding shares. The company declares a stock dividend of 10%. How many stock dividend shares will Sue receive?

A) 25
B) 50
C) 250
D) 500

Answer: B
Diff: 3
Topic: Shareholders
Skill: Legal Concepts

99) Shareholders agreements are entered into by the shareholders of many closely held corporations. What are the purposes of such agreements? What are the risks for shareholders of entering into such agreements? Under what circumstances should a court refuse to enforce such agreements?

Answer: The primary purpose of these agreements is to give shareholders control over who else can become a shareholder of the corporation, much like partners have. The restrictions can affect the market value of the stock, although a well-drafted agreement can reduce that problem. Courts generally enforce these agreements so long as they are not unconscionable.
Diff: 2
Skill: Ethics and Policy

100) The management of corporations frequently solicit proxies for a management-supported board of directors. What is the risk to shareholders of blindly granting these proxies?

Answer: The officers and directors of a corporation are supposed to answer to the shareholders. If the shareholders do not take a sufficiently active role in selecting the directors, management might propose board members who have the best interests of the officers, not the best interests of the corporation, primary in their actions.
Diff: 2
Skill: Ethics and Policy
101) How broad should the business judgment rule be in protecting officers and directors from liability for their actions? What is the purpose of the rule? What are the difficulties in its application?

Answer: The rule protects the officers and directors from lawsuits for errors in business judgment. The rule does not mean that officers and directors have no responsibility for their actions. They can be fired or removed from their position. One of the difficulties in applying the rule is distinguishing between negligence and honest judgment errors.  
Diff: 2  
Skill: Ethics and Policy

102) Several recent college graduates perfect a new beer that uses large amounts of garlic in the brewing process. They form a corporation called Garlicbrew, Inc. to produce and market this beer. Nance buys 100 shares of the 10,000 shares in Garlicbrew's initial public offering. Nance wants access to corporate records in order to learn more about the company so she can be a more informed shareholder. She also wants to learn about Garlicbrew because she is considering starting a company to develop and market a beer that uses onions in the brewing process. The corporate officers refuse to let Nance have access to any records of the corporation. Can Nance force the officers to allow her access?

Answer: Nance has an absolute right to inspect shareholders lists, the articles, bylaws, and minutes of shareholders' meeting within the last 3 years. Beyond that, she would need to demonstrate a proper purpose, something she would have difficulty doing here.  
Diff: 2  
Topic: Shareholders  
Skill: Factual Application

103) Stableblades, Inc. holds a patent on an inline skate that differs from others on the market in that it has two rows of wheels. These skates are not quite as fast as regular inline skates, but are much more stable and are designed for older persons and persons who skate only occasionally. Mary is a shareholder of Stableblades. Stableblades has been selling this product for several years, and there are no similar products on the market. Twice in the past couple of years, Stableblades threatened litigation over patent infringement, successfully preventing competitors from introducing similar products. Recently, another competitor actually introduced a similar product that Mary believes infringes on Stableblades' patent. Mary has tried to get the board to take action, but they refuse to do so. Mary suspects that some of the board members would like to be elected to the board of the competitor some day, and this is the reason for their inaction. Explain Mary's options in this situation.

Answer: Mary could file a derivative suit on behalf of the corporation, or she could file a suit against the directors for breach of the duty of loyalty if she can show that they are not filing the suit in order to gain personally. She could also get support of other shareholders and replace the board members. The board possibly could be protected by the business judgment rule.  
Diff: 3  
Topic: Shareholders  
Skill: Factual Application
104) Roger is a director of the RST Corporation, which is engaged in the business of creating and marketing toys and games. A proposal is made to the board to manufacture and market a toy bird that really flies. Market surveys have been done to indicate that the toy would be a good seller, and engineering studies have been done testing the feasibility of such a product. Roger reviews this information and votes in favor of producing this new toy. The vote was 7 to 4 in favor. RST produces and markets this new toy bird, but sales are very slow. After several years of losing money, RST discontinues this toy. Lynn, a shareholder of RST, thinks the toy bird venture was a waste of time and money. In fact, she thinks the idea was so bad, that she sues Roger for breach of his fiduciary duty of due care in making the decision to proceed with the bird. Discuss the general standards of due care of a director of a corporation, and determine whether Roger is liable in this situation.

Answer: Roger is probably protected by the business judgment rule. The fact that six others voted in favor could help Roger support his defense that the idea was not so outlandish as to amount to a failure to exercise due care.

Diff: 2
Topic: Liability of Corporate Directors and Officers
Skill: Factual Application

105) Ted has just been elected to the board of directors of Funfones Corporation at its January annual meeting. Ted has considerable business experience and will be a valuable addition to the board. Ted was heavily promoted for the board by Tim, the president of Funfones and owner of 24 percent of the shares of Funfones' common stock. Tim and Ted were fraternity brothers in college and have had business contact for almost 20 years. Less than a week after being elected to the board, Ted and Tim end up in a dispute over a bet on the Superbowl football championship. Tim properly gives notice for a special shareholder meeting to vote to remove Ted from the board. At this meeting, the shareholders vote to remove Ted from the board. Ted objects. Discuss Ted's legal situation.

Answer: The shareholders are generally free to elect and recall board members for any reason or no reason at all. Assuming that Ted was not given a fixed-term contract as a board member, Tim and the shareholders were within their rights to remove Ted from the board.

Diff: 2
Topic: Rights of Directors
Skill: Factual Application
106) Dawn is a director of the Manello Corporation. Bert, a friend of Dawn's and an inventor, creates a new product. Bert wants Manello to handle the production and marketing of this new product, so Bert discusses his new invention with Dawn. Dawn thinks the new invention will be a huge success, but in order to maximize her personal income, Dawn suggests to Bert that she handle the manufacturing and marketing, leaving Manello out of it completely. Bert agrees. Discuss the propriety of Dawn's actions in this situation. Would the outcome be any different if Dawn were merely a shareholder owning 4 percent of Manello?

Answer: Dawn has violated the duty of loyalty by usurping a corporate opportunity. Only if she presented this opportunity to the corporation and the corporation rejected it could she take this opportunity for herself. As a mere shareholder, Dawn would not have a duty of loyalty and would be free to take this opportunity for herself.

Diff: 2
Topic: Rights of Directors
Skill: Factual Application

107) Bob is a shareholder in Gadgets, Inc. He owns 400 shares of the 10,000 shares outstanding. Gadgets has been in business for 14 years and Bob has been a shareholder for the entire time. Gadgets has been profitable over the years, but has paid a dividend only once, and that was 8 years ago. The stock of Gadgets is not listed on a stock exchange. Gadgets has recently introduced a couple of unsuccessful products which have lost money. Bob wants to sue the board of directors for the losses caused by the unsuccessful products and to compel the payment of dividends. Discuss Bob's options and any other factors that might be relevant to the outcome of such a suit. What other options, if any, does Bob have?

Answer: Bob has no right to dividends, and cannot compel payment. The board's actions are probably covered by the business judgment rule, but the board members could be liable if they failed to exercise due care. If Bob could get the support of other shareholders, they could either pressure the board into paying a dividend or could replace the board members with persons who would declare a dividend. Likewise, Bob and other shareholders holding a sufficient number of shares could replace the board with persons whose business strategy more closely matches their own.

Diff: 2
Topic: Rights of Directors
Skill: Factual Application

108) Bob formed Bob's Brake Repair, Inc. in 1995. Bob has been the only shareholder since the corporation was formed. Bob has never worried about the corporate formalities since, as the only shareholder, he didn't worry about suing himself. He kept a single bank account and didn't always use the word "incorporated" on his signs and work orders. Recently, the brakes failed on a customer's car shortly after one of Bob's employees had repaired them. Can the person injured by the brake failure recover from Bob's personal assets?

Answer: The corporation is liable for any negligence on the part of its employees, and a court would likely "pierce the corporate veil" due to Bob's failure to follow corporate formalities. In piercing the corporate veil, Bob would be personally liable for the corporate debts, including any liability in connection with the failed brakes.

Diff: 2
Topic: Liability of Shareholders
Skill: Factual Application
1) Corporate shareholders do not have the right to vote on mergers and charter amendments.

Answer: FALSE
Diff: 2
Topic: Proxy Solicitation

2) The Securities and Exchange Commission has no authority to regulate the solicitations of proxies.

Answer: FALSE
Diff: 1
Topic: Proxy Solicitation

3) A proxy holder may be a director or officer of the corporation.

Answer: TRUE
Diff: 2
Topic: Proxy Solicitation

4) A copy of the proxy, the proxy statement and all other solicitation materials must be filed with the SEC at least 30 days before materials are sent to shareholders.

Answer: FALSE
Diff: 1
Topic: Proxy Solicitation

5) A shareholder may present an issue on a proxy for a vote by the shareholders only if the management agrees with the proposal.

Answer: FALSE
Diff: 1
Topic: Proxy Solicitation

6) If a proxy contest involves an issue of policy, the corporation must reimburse the incumbent management for its expenses only if it wins the proxy contest.

Answer: FALSE
Diff: 1
Topic: Proxy Solicitation
7) If a group desires to solicit proxies to oppose a management action, management has the choice of mailing the proxy materials for the dissenting group or providing the dissenting group with a list of shareholders.

Answer: TRUE
Diff: 1
Topic: Proxy Solicitation

8) Management is entitled to recover its proxy contest costs for all policy issue contests.

Answer: TRUE
Diff: 1
Topic: Proxy Solicitation

9) Shareholders desiring to communicate with other shareholders through mass mailing must file the communication with the SEC only if the shareholder is seeking a proxy as part of the communication.

Answer: TRUE
Diff: 2
Topic: Proxy Solicitation

10) When proxies are solicited, each issue must be able to be voted on separately.

Answer: TRUE
Diff: 2
Topic: Proxy Solicitation

11) Corporations are required to make detailed disclosures of the compensation of the chief executive officer and its four other most highly compensated executives for the most recent 3 years.

Answer: TRUE
Diff: 1
Topic: Proxy Solicitation

12) Most shareholder resolutions have a good chance of being enacted because large-scale investors usually support management.

Answer: FALSE
Diff: 2
Topic: Shareholder Resolution
13) The difference between a merger and a consolidation is that, in a merger, one of the original corporations survives; in a consolidation, neither of the original corporations survives.

Answer: TRUE
Diff: 1
Topic: Mergers and Acquisitions

14) In a merger, the shareholders of the merged corporation always receive stock of the surviving corporation.

Answer: FALSE
Diff: 2
Topic: Mergers and Acquisitions

15) The Revised Model Business Corporation Act has deleted all references to consolidations.

Answer: TRUE
Diff: 1
Topic: Mergers and Acquisitions

16) Corporate consolidations are used more often today than in the past.

Answer: FALSE
Diff: 1
Topic: Mergers and Acquisitions

17) In a share exchange, the separate legal existence of one of the corporations ceases.

Answer: FALSE
Diff: 2
Topic: Mergers and Acquisitions

18) Ordinarily, a merger requires approval of both boards of directors and the shareholders of both corporations.

Answer: TRUE
Diff: 2
Topic: Mergers and Acquisitions

19) A short-form merger is a simplified form of merger that can be used so long as more than 90 percent of the shareholders of both corporations approve of the transaction in advance.

Answer: FALSE
Diff: 2
Topic: Mergers and Acquisitions
20) If the management of a company desires to sell most of the assets of the business outside the regular course of business, the board of directors must recommend this action and the shareholders must vote to approve it.

Answer: TRUE
Diff: 1
Topic: Mergers and Acquisitions

21) The articles of incorporation or corporate bylaws can require the approval of a surpramajority to approve a merger.

Answer: TRUE
Diff: 1
Topic: Mergers and Acquisitions

22) The board of directors may sell most of the corporation's assets without shareholder approval.

Answer: FALSE
Diff: 1
Topic: Mergers and Acquisitions

23) The dissenting shareholder appraisal right allows a shareholder to request appraisal of the shares to be acquired in a merger, and the tender offer price will be adjusted based on the appraisal.

Answer: FALSE
Diff: 2
Topic: Dissenting Shareholder Appraisal Rights

24) A shareholder loses the ability to exercise the appraisal right by voting in favor of the proposed action.

Answer: TRUE
Diff: 2
Topic: Dissenting Shareholder Appraisal Rights

25) A shareholder exercising her appraisal right can petition the court to determine the value of shares if she believes that the corporation has set the value too low.

Answer: TRUE
Diff: 2
Topic: Dissenting Shareholder Appraisal Rights
26) A shareholder must be notified of the existence of his or her appraisal rights before a transaction such as a merger can be voted on.

Answer: TRUE
Diff: 2
Topic: Dissenting Shareholder Appraisal Rights

27) Federal law requires that the target company be notified of a tender offer before the offer is made.

Answer: FALSE
Diff: 2
Topic: Tender Offers

28) The Williams Act requires that tender offers be open at least 20 days.

Answer: TRUE
Diff: 1
Topic: Tender Offers

29) Shareholders are not allowed to make individual decisions whether to sell their shares to the tender offeror.

Answer: FALSE
Diff: 2
Topic: Tender Offers

30) The fair price rule in the Williams Act requires that tender offers be made for a fair price.

Answer: FALSE
Diff: 2
Topic: Tender Offers

31) The Williams Act provides that if fraud is committed, both civil and criminal charges may be brought.

Answer: TRUE
Diff: 2
Topic: Tender Offers

32) The pro-rata rule holds that the shares must be purchased on a pro-rata basis if too many shares are tendered.

Answer: TRUE
Diff: 1
Topic: Tender Offer Rules
33) Once a shareholder has tendered his or her shares, he or she may not withdraw them before the closing of the tender offer.

Answer: FALSE  
Diff: 2  
Topic: Tender Offer Rules

34) A poison pill refers to a target company in a hostile takeover selling off valuable pieces of itself to make itself less attractive to the potential buyer.

Answer: FALSE  
Diff: 1  
Topic: Fighting a Tender Offer

35) A golden parachute exists when an officer is provided special, generous severance pay if the officer is terminated due to the purchase of the corporation by another corporation.

Answer: TRUE  
Diff: 1  
Topic: Fighting a Tender Offer

36) When a company is the target of a hostile takeover, it cannot issue additional stock simply to make the takeover more expensive for the acquiring company.

Answer: FALSE  
Diff: 1  
Topic: Fighting a Tender Offer

37) The board of directors has a fiduciary duty to shareholders in taking action relative to a hostile takeover.

Answer: TRUE  
Diff: 1  
Topic: Fighting a Tender Offer

38) The term greenmail refers to the agreement of the tender offeror to abandon its tender offer and not purchase any additional stock.

Answer: FALSE  
Diff: 2  
Topic: Fighting a Tender Offer
39) The business judgment rule protects the decisions of the board of directors in situations where it acts in good faith that the action taken was in the best interests of the corporation and its shareholders.

Answer: TRUE
Diff: 1
Topic: Business Judgment Rule

40) State antitakeover statutes became unconstitutional once the Williams Act regulated using federal law in this area.

Answer: FALSE
Diff: 1
Topic: State Antitakeover Statutes

41) The purpose of a proxy is to:
   A) allow a shareholder to transfer shares to another
   B) allow a shareholder to place shares in trust
   C) allow a shareholder to assign her right to vote
   D) allow a shareholder to assign her dividends to another
   E) initiate a tender offer

Answer: C
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts

42) If management desires to solicit proxies from shareholders, it must:
   A) file the proposed proxy, proxy statement, and other solicitation material with the SEC and obtain SEC approval prior to distributing the solicitation
   B) file the proposed proxy, proxy statement, and other solicitation material with the SEC at least 30 days in advance of the distribution
   C) file the proposed proxy, proxy statement, and other solicitation material with the SEC at least 10 days in advance of the distribution
   D) file the proposed proxy, proxy statement, and other solicitation material with the SEC at least 10 days in advance, but only if financial statements will be distributed
   E) not file anything with the SEC unless the SEC receives complaints about the materials that are distributed

Answer: C
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts
43) In order for a proxy to become valid, the shareholder must:
   A) complete a written proxy document and file it with the SEC
   B) complete a written proxy document, file it with the SEC, and receive the appropriate approval from the SEC
   C) complete a written proxy document and deliver it to the proxy holder
   D) complete a written proxy document and deliver it to the corporation
   E) reach agreement with the proxy holder, but no written documentation is required

Answer: D
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts

44) A shareholder's proxy can be granted to:
   A) other shareholders only
   B) officers only
   C) officers or directors only
   D) shareholders who are also officers or directors
   E) anyone

Answer: E
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts

45) Solicitation of proxies is regulated under:
   A) the Securities Act of 1933
   B) the Securities Exchange Act of 1934
   C) the Williams Act
   D) the Proxy Solicitation Act of 1968
   E) the Uniform Commercial Code

Answer: B
Diff: 1
Topic: Proxy Solicitation
Skill: Legal Concepts

46) A proxy statement must include information about which of the following?
   A) who is soliciting the proxy and the matter for which the proxy is being solicited
   B) who is soliciting the proxy and the estimated likelihood that the matter will be approved
   C) who is soliciting the proxy and the number of proxies already executed on the matter
   D) who is soliciting the proxy and pro forma financial statements assuming that the matter for which the proxy is sought is approved

Answer: A
Diff: 3
Topic: Proxy Solicitation
Skill: Legal Concepts
47) Which of the following is not a possible consequence of including fraudulent information in a proxy solicitation?
   A) criminal action initiated by the justice department
   B) fines imposed on shareholders who granted proxies
   C) civil action by the Securities and Exchange Commission
   D) an order requiring a new election on the matter for which proxies were sought
   E) a suit by an injured shareholder for damages from the wrongdoer

Answer: B
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts

48) Which of the following best describes a proxy contest?
   A) Opposing factions of shareholders seek different prices for their shares.
   B) Opposing factions of shareholders seek proxies so they can vote other shareholders’ shares on a matter.
   C) Members of the board of directors seek the support of other board members on a matter to be voted on by the board.
   D) Opposing factions of shareholders seek to influence board members to vote in a certain way on a matter before the board of directors.

Answer: B
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts

49) In a proxy contest, what obligation does management have to the dissenting group of shareholders?
   A) Management must mail the proxy solicitation materials of the dissenting group.
   B) Management must provide the dissenting group with a list of all shareholders.
   C) Management must identify the leading representative(s) of the dissenting group in management’s own proxy materials.
   D) Management must either mail the proxy solicitation materials of the dissenting group or provide the dissenting group with a list of all shareholders.
   E) Management must not provide false or misleading information about the dissenting group or the issue in controversy in its own proxy solicitation materials, but otherwise has no obligations to the dissenting group.

Answer: D
Diff: 3
Topic: Proxy Solicitation
Skill: Legal Concepts
50) Under what circumstances can management recover from the corporation the costs it incurs in a proxy contest?
   A) under all circumstances
   B) in all proxy contests management wins
   C) in all proxy contests involving issues of policy, whether or not management wins
   D) in all proxy contests involving issues of policy, and in the case of contests concerning personal matters, if management wins
   E) in all proxy contests involving issues of policy that management wins, but never for contests involving personal issues

Answer: C
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts

51) Under what circumstances can a dissenting group of shareholders recover from the corporation the costs it incurs in a proxy contest?
   A) under all circumstances
   B) in all proxy contests which the dissenting group wins
   C) in all proxy contests involving issues of policy, whether or not the dissenting group wins
   D) in all proxy contests involving issues of policy, and in the case of contests concerning personal matters, if the dissenting group wins
   E) in all proxy contests involving issues of policy that the dissenting group wins, but never for contests involving personal issues

Answer: E
Diff: 2
Topic: Proxy Solicitation
Skill: Legal Concepts

52) In a proxy contest involving management on one side and dissenting shareholders on the other side, what is true about the right to recover the costs incurred in conducting the proxy fight?
   A) Neither side can recover its costs in the proxy contest.
   B) If the contest involves a policy issue, the winning side can recover its costs from the losing side.
   C) The victorious side can always recover its costs from the corporation in a contest involving a policy issue.
   D) Management is the only side that can ever recover its costs from the corporation in a proxy contest involving a personal issue.
   E) Each side can recover its costs from the corporation in a proxy contest involving matters of policy regardless of the outcome.

Answer: C
Diff: 3
Topic: Proxy Solicitation
Skill: Legal Concepts
53) A transaction in which two corporations combine such that afterwards only one of them still exists and owns all the assets previously owned by either corporation is called a:
   A) merger
   B) consolidation
   C) purchase of assets
   D) share exchange

Answer: A
Diff: 1
Topic: Mergers and Acquisitions
Skill: Legal Concepts

54) Which of the following best describes a merger?
   A) Two corporations jointly purchase a third corporation and operate it as a joint venture.
   B) Two corporations are combined to form a new third corporation, and the original two corporations cease to exist.
   C) Two corporations are combined, with one of the original corporations surviving and the other ceasing to exist.
   D) One corporation acquires all of the shares of a second corporation, with both corporations retaining their separate legal existence, the second a subsidiary of the first.
   E) One corporation sells substantially all of its assets to a second corporation, with both corporations retaining their separate legal existence.

Answer: C
Diff: 2
Topic: Mergers and Acquisitions
Skill: Legal Concepts

55) Which of the following best describes a share exchange?
   A) Two corporations jointly purchase a third corporation and operate it as a joint venture.
   B) Two corporations are combined to form a new third corporation, and the original two corporations cease to exist.
   C) Two corporations are combined, with one of the original corporations surviving and the other ceasing to exist.
   D) One corporation acquires all of the shares of a second corporation, with both corporations retaining their separate legal existence, the second a subsidiary of the first.
   E) One corporation sells substantially all of its assets to a second corporation, with both corporations retaining their separate legal existence.

Answer: D
Diff: 2
Topic: Mergers and Acquisitions
Skill: Legal Concepts
56) A transaction in which two corporations combine such that afterwards neither of the combining corporations continues to exist, but that a new corporation is formed is called a:
   A) merger
   B) consolidation
   C) purchase of assets
   D) share exchange
   E) hostile takeover

Answer:  B
Diff: 1
Topic: Mergers and Acquisitions
Skill: Legal Concepts

57) Which of the following forms of business combinations is seldom used today because of the advantages of other forms?
   A) merger
   B) consolidation
   C) purchase of assets
   D) share exchange
   E) hostile takeover

Answer:  B
Diff: 1
Topic: Mergers and Acquisitions
Skill: Legal Concepts

58) Which of the following corporate transactions requires the approval of a majority of the shareholders of the corporation planning to undertake the transaction?
   A) merger
   B) consolidation
   C) sale of assets in the normal course of business
   D) A, B, and C
   E) A and B only

Answer:  E
Diff: 1
Topic: Mergers and Acquisitions
Skill: Legal Concepts
59) In an ordinary merger, what approvals are needed?
   A) Recommendation by both boards of directors and votes of the shareholders of each corporation.
   B) Votes by both boards of directors, but shareholders need not approve.
   C) Vote by the board of directors of the surviving corporation, and for the corporation that does not survive, recommendation by the board of directors and vote by the shareholders.
   D) For both corporations, a vote by the shareholders, but no action by the board of directors.
   E) No approvals needed by the surviving corporation, and for the corporation that does not survive, recommendation by the board of directors and vote by the shareholders.
Answer: A
Diff: 3
Topic: Mergers and Acquisitions
Skill: Legal Concepts

60) In an ordinary merger, if the number of voting shares increases by 20 percent or less, this eliminates which needed approvals when compared to ordinary mergers where the number of shares increases by more than 20 percent?
   A) shareholders of the surviving corporation
   B) shareholders of both corporations
   C) shareholders and the board of directors of the surviving corporations
   D) shareholders and the board of the corporation that does not survive
   E) The approval requirements are the same whether the increase in voting shares of the surviving corporation is more or less than 20 percent.
Answer: A
Diff: 3
Topic: Mergers and Acquisitions
Skill: Legal Concepts

61) In a short-form merger, which approvals are needed?
   A) Votes by both boards of directors, but shareholders need not approve.
   B) Vote by the board of directors of the surviving corporation, and for the corporation that does not survive, recommendation by the board of directors and vote by the shareholders.
   C) Vote by the board of directors of the surviving corporation.
   D) For both corporations, a vote by the shareholders, but no action by the board of directors.
   E) No approvals are needed by the surviving corporation, and for the corporation that does not survive, recommendation by the board of directors and vote by the shareholders.
Answer: C
Diff: 3
Topic: Mergers and Acquisitions
Skill: Legal Concepts
62) What is required in order for a merger to be conducted under the short-form merger procedure?
   A) An increase of less than 20 percent in the number of outstanding shares of the surviving corporation is required.
   B) Agreement by both boards of directors to use the short-form procedure is required.
   C) Approval by the Securities and Exchange Commission to use the short-form procedure is required.
   D) Ownership by the surviving parent corporation of at least 90 percent of the shares of the nonsurviving (subsidiary) corporation prior to the merger is required.
   E) The sale, prior to the merger, by the nonsurviving corporation of all its noncash assets is required.

Answer: D
Diff: 1
Topic: Mergers and Acquisitions
Skill: Legal Concepts

63) In a merger, or consolidation of corporations, a dissenting shareholder may elect to receive the fair value of her share instead of being part of the restructuring. This is called the shareholders':
   A) dividend right
   B) appraisal right
   C) merger right
   D) voting right
   E) ultra vires right

Answer: B
Diff: 2
Topic: Dissenting Shareholder Appraisal Rights
Skill: Legal Concepts

64) In order to exercise the appraisal right where a shareholder is opposed to a merger, the shareholder must:
   A) give the corporation notice of demanding cash payment for the shares, with the notice given prior to the vote on the matter
   B) notify the corporation of the amount that the shareholder is demanding as cash payment for the shares
   C) not vote in favor of the proposed merger
   D) A and C only

Answer: D
Diff: 2
Topic: Dissenting Shareholder Appraisal Rights
Skill: Legal Concepts
65) If a dissenting shareholder who has exercised his appraisal right is dissatisfied with the corporation's determination of the fair market value of the shares, then:
   A) The shareholder has no further recourse.
   B) The shareholder must choose to receive the appraisal amount or cancel the exercise of the appraisal right and accept the terms of the merger or other transaction.
   C) The shareholder must pay for a new appraisal of the shares and seek that amount in court.
   D) The corporation must petition the court to determine the fair value of the shares.

Answer: D
Diff: 2
Topic: Dissenting Shareholder Appraisal Rights
Skill: Legal Concepts

66) What is a tender offer?
   A) It is an offer made directly to the shareholders of a corporation for those shareholders' shares.
   B) It is an offer made directly to the board of directors of the corporation to be acquired.
   C) It is an offer made by the use of proxies granted by the shareholders of the corporation to be acquired.
   D) It is an offer to acquire another corporation that has been approved by the Securities and Exchange Commission prior to the making of the offer.

Answer: A
Diff: 2
Topic: Tender Offers
Skill: Legal Concepts

67) When the management of the target corporation of a tender offer opposes the tender offer, it can:
   A) purchase the shares of its shareholders as treasury stock, but little more
   B) petition the Securities and Exchange Commission to have the offer voided
   C) exercise its appraisal rights
   D) petition the board of directors to adopt a resolution prohibiting sale by the shareholders to the entity who made the tender offer
   E) none of the above

Answer: E
Diff: 3
Topic: Tender Offers
Skill: Legal Concepts
68) Which of the following is **not** true about tender offers?
   A) The offer must remain open at least 20 business days from the commencement of the offer.
   B) The SEC must be notified of the terms of a tender offer at least 10 days before it is made.
   C) If the offeror increases the tender price, that higher price must be paid even to those who already accepted the offer at the earlier, lower price.
   D) Any increase in the price offered or the maximum number of shares that the offeror will take requires that the effective time of the offer be extended at least 10 days.
   E) There is no appraisal right for persons who do not want to accept the offer.

Answer:  B  
Diff: 3  
Topic:  Tender Offers  
Skill:  Legal Concepts

69) In a leveraged buyout, which of the following is true?
   A) Stock of one corporation is traded for the stock of another.
   B) Following the borrowing of large amounts of capital, the acquiring corporation merges with the corporation being bought out.
   C) The corporation being acquired typically issues a large amount of additional common stock.
   D) The debt financing used in a leveraged buyout usually carries an attractive interest rate for the issuer.

Answer:  B  
Diff: 3  
Topic:  Tender Offers  
Skill:  Legal Concepts

70) Which of the following is **not** a correct description of a defensive strategy to a tender offer?
   A) Selling a crown jewel refers to a sale by the target corporation of an asset that was particularly attractive to the tender offeror.
   B) A white knight merger refers to a merger with a different purchaser that is friendlier toward management than the company that made the tender offer.
   C) A poison pill is a strategy built into contracts, bylaws, and so forth, that can make any purchase of the corporation more expensive, such as leases that automatically expire upon the purchase and would require renegotiation, likely at a higher price.
   D) Under a standstill agreement, shareholders holding a large number of shares of the target corporation agree that none of them will sell to the tender offeror, even if the tender offeror raises the offer price.
   E) A greenmail payment is a payment, usually at greater than fair market value, made by the target corporation to the tender offeror for shares already owned by the tender offeror in exchange for the tender offeror dropping the tender offer.

Answer:  D  
Diff: 3  
Topic:  Fighting a Tender Offer  
Skill:  Legal Concepts
71) If a company that is the target of a hostile tender offer locates another corporation that will be friendlier to management and agrees to be taken over by this second company, this action is often referred to as:

A) a reverse tender offer
B) a greenmail payment
C) the selling of a crown jewel
D) adopting a poison pill
E) a white knight merger

Answer: E
Diff: 2
Topic: Fighting a Tender Offer
Skill: Legal Concepts

72) In determining whether antitakeover tactics are legal, the management must show that the actions taken were reasonable in relation to the threat posed, and that there was a danger to:

A) corporate policy and effectiveness
B) the best interests of the corporation and its shareholders
C) the national economy
D) Both A and B must be shown.
E) Both A and C must be shown.

Answer: B
Diff: 2
Topic: Fighting a Tender Offer
Skill: Legal Concepts

73) In evaluating whether management's actions are appropriate in response to a hostile tender offer, the primary concern is usually that management might have improperly:

A) demanded too high a price for the corporation's stock
B) put its interests ahead of those of the shareholders
C) put persons that favor management on the board of directors
D) tried to implement changes to the corporate structure too quickly

Answer: B
Diff: 2
Topic: Fighting a Tender Offer
Skill: Legal Concepts
74) Many states have enacted antitakeover statutes to regulate takeover activity within their states. However, there is a federal statute governing tender offers. Therefore, these state statutes are:
   A) constitutional
   B) constitutional as long as it is possible to comply with both the state and federal laws
   C) unconstitutional, because they violate the Commerce Clause
   D) unconstitutional, because they violate the Supremacy Clause
   E) unconstitutional, because they violate the First Amendment

Answer: B
Diff: 2
Topic: State Antitakeover Statutes
Skill: Legal Concepts

75) Bob has decided to solicit proxies from shareholders of Sunset Corporation. Bob owns two shares of Sunset, which have a share price of $48. Bob is soliciting the proxies in order to elect a friend of his to the board of directors. Bob's friend is reasonably intelligent but has no business experience. In his proxy solicitation, Bob accurately describes his friend and his background and indicates that the proxy is being sought in order to elect this friend to the board of directors. Bob does not disclose why he thinks his friend should be on the board of directors. Nor does Bob disclose what effect he thinks his friend being on the board will have on the earnings of the company. Two weeks before starting to solicit proxies, Bob filed copies of his proxy materials with the Securities and Exchange Commission. Bob:
   A) has not properly prepared the proxy statement because he did not disclose the effect on the earnings of the company of electing his friend to the board
   B) cannot solicit proxies because he has not owned at least $1,000 of stock for 2 years
   C) can solicit the proxies only if he has obtained approval from the board of directors
   D) will be able to recover the costs of this proxy contest, even if his friend is not elected
   E) has complied with applicable proxy requirements

Answer: E
Diff: 3
Topic: Proxy Solicitation
Skill: Legal Concepts
76) Over the years, Maple Corporation has gradually been acquiring the stock of Spruce Corporation. Maple Corporation has increased its purchases of Spruce Corporation in the current year. At the beginning of the year, Maple owned 64 percent of Spruce, but by early August owned 91 percent. What is the easiest and quickest method for Maple to merge with Spruce?
   A) complete a reverse merger where Spruce is the surviving corporation
   B) complete the merger in such a way that the number of common shares of Maple outstanding does not increase by more than 20 percent
   C) complete a short-form merger requiring the approval only of the board of directors of Maple Corporation
   D) complete a leveraged buyout of Spruce

Answer: B
Diff: 2
Topic: Mergers and Acquisitions
Skill: Legal Concepts

77) Company X wants to acquire Company Y. Company X gives some of its own stock (X stock) to all of the shareholders of Y Company in exchange for their Y stock. Afterwards, Company X owns all of the Company Y stock. This transaction is called a(n):
   A) merger
   B) consolidation
   C) purchase of assets
   D) share exchange
   E) hostile takeover

Answer: D
Diff: 1
Topic: Mergers and Acquisitions
Skill: Legal Concepts

78) Marvin owns several thousand shares of Elm Street Corporation. Hickory Street Corporation has proposed a merger with Elm Street where Hickory Street will be the surviving corporation. Hickory Street is proposing to give each current Elm Street shareholder some Hickory Street stock and some cash for each share of Elm Street. Marvin is opposed to some of the corporate policies of Hickory Street and does not want to own any of its stock. What is Marvin's best course of action in this situation?
   A) Marvin can hope to obtain the support of other shareholders in opposing the merger, but must go along with the merger if it is approved.
   B) Marvin can hope to convince the board of directors of Elm Street to oppose the merger, but if he is unsuccessful, he must go along with the merger.
   C) Marvin can invoke his appraisal right, and would be entitled to receive cash for his shares even though the merger plan includes the receipt of Hickory Street shares.
   D) Marvin can invoke his appraisal right, but because part of the price paid for the Elm Street shares is in the form of stock rather than cash, his appraisal right is limited.

Answer: C
Diff: 3
Topic: Dissenting Shareholder Appraisal Rights
Skill: Legal Concepts
79) Robin Corporation has made a tender offer to acquire 80 percent of the shares of Cardinal Corporation at $58 per share. Because only 68 percent of Cardinal's shares have been tendered, the board of Robin wants to raise its offer price to $65 per share. Robin must:
   A) cancel the first tender offer and start over
   B) keep the higher offer open for at least 20 days
   C) pay the $65 to all shareholders who accepted at $58 per share
   D) not complete the merger unless at least 90 percent of Cardinal's shares are tendered

Answer: C
Diff: 2
Topic: Tender Offers
Skill: Legal Concepts

80) JKL corporation has acquired 7 percent of Target Corporation in a hostile takeover attempt. Target is opposed to this takeover, so Target offers to purchase the 7 percent of its shares owned by JKL for $40 per share. The actual fair market value of that stock is $25 per share. JKL accepts the offer. This is an example of:
   A) a golden parachute and is illegal
   B) greenmail and is illegal
   C) a golden parachute and is legal
   D) greenmail and is legal
   E) a poison pill and is legal

Answer: D
Diff: 3
Topic: Fighting a Tender Offer
Skill: Legal Concepts

81) At the time Corporation A was created, the management was concerned about potential hostile takeovers, so in the articles of incorporation it included a provision that all of Corporation A's contracts would expire if the ownership of Corporation A changed hands. This antitakeover technique is best described as:
   A) selling a crown jewel
   B) a poison pill
   C) a white knight merger
   D) a reverse merger
   E) a golden parachute

Answer: B
Diff: 2
Topic: Fighting a Tender Offer
Skill: Legal Concepts
82) Tandem Corporation is the target of a hostile takeover by Alpha Corporation. Management of Tandem fears for its jobs because of statements made by Alpha's management about the need to streamline the management of Tandem. Tandem works out a deal with Beta Corporation for the two corporations to merge with Beta surviving. Beta has indicated that it will leave present management intact. Two years after the merger with Beta, an independent consultant reports that there are too many levels of management in the combined corporation and that 30 percent of management positions should be eliminated. In this circumstance, which of the following occurred?

A) Tandem prevented the merger with Alpha with a poison pill.
B) Tandem prevented the merger with Alpha by a white knight merger with Beta, which was an illegal tactic.
C) Tandem prevented the merger with Alpha by a white knight merger with Beta, which was legal; Tandem's management is liable to shareholders for the loss of profits due to the excessive levels of management.
D) Tandem prevented the merger with Alpha by a white knight merger with Beta, which was legal; Tandem's management is not liable to shareholders for the loss of profits due to the excessive levels of management assuming it is protected by the business judgment rule.

Answer: D
Diff: 3
Topic: Fighting a Tender Offer
Skill: Legal Concepts

83) Corporation L is the target of a hostile takeover by Corporation O. Corporation L's most valuable asset is its oil fields. To stop the takeover, Corporation L decides to sell its oil fields. This antitakeover technique is best described as:

A) selling a crown jewel
B) a poison pill
C) a white knight merger
D) a reverse merger
E) a golden parachute

Answer: A
Diff: 1
Topic: Fighting a Tender Offer
Skill: Legal Concepts
84) Norm, Cliff and Sam form a limited liability company. Norm contributes $20,000, Cliff $30,000 and Sam $50,000. The operating agreement does not state how profits and losses are to be apportioned. The company makes a $60,000 profit during the year. Under the ULLCA, how will profits be divided?

A) Norm will receive $12,000, Cliff $18,000, and Sam $30,000.
B) Norm will receive $20,000, Cliff $20,000, and Sam $20,000.
C) Norm will receive $18,000, Cliff $12,000, and Sam $30,000.
D) Norm will receive $15,000, Cliff $15,000, and Sam $30,000.

Answer: B
Diff: 1
Topic: Fighting a Tender Offer
Skill: Legal Concepts

85) In recent years shareholders have increasingly attempted to use shareholders' meetings as a forum to encourage corporations to operate in accordance with the views of one or some shareholders with respect to various policy issues. Common examples include environmental issues and human rights issues, especially for corporations with operations in other nations. Is this a proper forum for this particular type of activity? What are the arguments on each side of the issue? What other methods could these shareholders use to promote the viewpoints on these issues?

Answer: In some cases these activities are successful in bringing about changes, as happened with some corporations in connection with overseas plants operating in "sweatshop" conditions. This is proper activity if one believes that corporations have obligations beyond simply earning the maximum profits for shareholders.
Diff: 2
Skill: Ethics and Policy

86) Should shareholders encourage responsibility of corporations in which they invest, or should investors make those judgments by the choices of companies in which to invest? Which approach is more effective?

Answer: There is no clear answer to whether corporate policies are more influenced by actions and views of current shareholders or by large numbers refusing to invest in the corporation.
Diff: 1
Skill: Ethics and Policy

87) If a corporation's shareholders are supposed to have ultimate control over the corporation, is it appropriate for management to get involved in proxy contests among shareholders? Under what circumstances is it most appropriate for management to get involved?

Answer: In many cases, members of management are also shareholders, thus it would be difficult to preclude their involvement. Management is most appropriately involved when the issue is value to the shareholders, rather than management protection of its jobs.
Diff: 2
Skill: Ethics and Policy
88) Many persons believe that it is too easy for corporations to take over other corporations, and point to the large reductions in workforces which frequently result following mergers. Should there be limits placed on the ability to lay off employees following a business combination? What are the advantages and disadvantages of limited regulation of merger activity?

Answer: Many argue that mergers act as incentives for the management of a company to not become bloated, and that regulation will interfere with free market efficiency.
Diff: 1
Skill: Ethics and Policy

89) Jim "Thorny" Johnson is a shareholder of Staid Corporation who is informally head of a dissident group. Thorny engaged in three proxy contests with the board members of Staid. In the first, Thorny sought to recall one of the board members. This effort was successful. In the second, Thorny sought to have the company stop doing business with nations that have not signed the Montreal Protocol of 1987 dealing with the phasing out of substances thought to deplete the atmospheric ozone. This effort was unsuccessful. Thorny's third proxy contest sought having his pet poodle, Alicia, named the official mascot of Staid Corporation. This effort was successful, mainly because the board thought if they did this Thorny would not bother them in future proxy contests. The board members and Thorny incurred substantial expenses in conducting these proxy contests. Can either side recover any of these costs, and from whom?

Answer: The first and third are personal and neither side could recover. Assuming that the second is a policy issue, the directors could recover from Staid. Thorny could recover only if successful.
Diff: 3
Topic: Proxy Solicitation
Skill: Factual Application

90) Maple Corporation wants to acquire Foodcity Corporation, a chain of supermarkets. Both corporations are publicly traded. Maple Corporation has some cash, but not a large amount, and it needs to have ample cash for its operations. How might Maple be able to acquire Foodcity?

Answer: Maple could offer additional shares to the existing shareholders of Foodcity for their shares in a stock swap, merger, tender offer, or consolidation. Alternatively, Maple could borrow the money, possibly by issuing junk bonds in a leveraged buyout.
Diff: 2
Topic: Mergers and Acquisitions
Skill: Factual Application

91) The board of directors of Patty Corporation acquired Sandy Corporation by issuing junk bonds in a leveraged buyout. Patty Corporation was barely able to make the interest payment on the junk bonds and Patty Corporation suffered significant losses as a result. Will the business judgment rule protect Patty's board of directors from a suit by shareholders?

Answer: It will protect the board if the board acted in good faith on an informed basis.
Diff: 2
Topic: Tender Offers
Skill: Factual Application
92) Expansive Corporation made a tender offer of $65 per share to the shareholders of Hometown Corporation to acquire 75 percent, but no more than that, of the shares of Hometown. Because only 68 percent of the shares had been tendered in 30 days, Expansive offered $75 per share, and another 20 percent of the shares were tendered in 4 days. Expansive terminated the higher offer on the fifth day, paid $65 for all the shares tendered at that price, and paid $75 for some of the shares tendered at the higher price. Discuss Expansive's actions.

Answer: Under the Williams Act, Expansive must keep the increased offer open at least 10 business days, pay the $75 price for all shares acquired, and acquire shares tendered on a pro rata basis from all who tendered.
Diff: 2
Topic: Mergers and Acquisitions
Skill: Factual Application

93) Ramone is president of Rock Permanence, Inc. Flash in the Pan Corporation has just made a tender offer to the shareholders of Rock Permanence. Flash in the Pan is known for severe job cuts after takeovers, so Ramone and the other officers do the following:

1. They adopt contracts with the officers and other key managers that provide very generous severance pay if Flash in the Pan should acquire Rock Permanence.
2. They tell many shareholders that they will be hired if they do not accept the offer. Each of these shareholders is told to keep the arrangement secret and that they are one of only a select few who will be hired.
3. They distribute an article from a newspaper 2 years earlier that discussed the inept management of Flash in the Pan. They do not tell the shareholders that the publisher of the article had been successfully sued by Flash in the Pan because of false statements.
4. They send mailings to their shareholders calling the management of Flash in the Pan a "committee of the devil" and "shareholders' nightmare."

Discuss the appropriateness of the four listed actions by management.

Answer: There are many ways to fight a tender offer. No. 1 is probably acceptable so long as management reasonably believes these actions to be in the best interest of the corporation and its shareholders. No. 2 is not acceptable because it is fraudulent and because it is probably not in the best interest of the corporation to hire so many people. No. 3 is at least misleading if not fraudulent. No. 4 is probably acceptable assuming that the terms used are considered to be opinions.
Diff: 3
Topic: Fighting a Tender Offer
Skill: Factual Application
1) The LLC is a separate legal entity distinct from its members.

Answer: TRUE
Diff: 1
Topic: Limited Liability Company (LLC)

2) The Uniform Limited Liability Company Act only covers problems that arise in the formation of a limited liability company.

Answer: FALSE
Diff: 1
Topic: The Uniform Limited Liability Company Act

3) Limited liability companies are authorized by federal law.

Answer: FALSE
Diff: 1
Topic: The Uniform Limited Liability Company Act

4) An LLC is taxed at the entity level.

Answer: FALSE
Diff: 1
Topic: Taxation of LLCs

5) Most LLCs elect to be taxed as a corporation.

Answer: FALSE
Diff: 2
Topic: Taxation of LLCs

6) An LLC may own and transfer personal property.

Answer: TRUE
Diff: 1
Topic: Powers of an LLC
7) The owners of LLCs are called shareholders.

Answer: FALSE
Diff: 1
Topic: Member's Limited Liability

8) A member personally guaranteeing any obligation of an LLC will experience a personal loss only up to his or her capital contribution.

Answer: TRUE
Diff: 2
Topic: Member's Limited Liability

9) An LLC is liable for any loss or injury caused to anyone as a result of a wrongful act or omission by a member or manager, but not by an agent or an employee of the LLC who commits the wrongful act while acting within the ordinary course of business of the LLC.

Answer: FALSE
Diff: 2
Topic: Liability of an LLC

10) Managers of LLCs are personally liable for the debts, obligations, and liabilities of the LLC they manage.

Answer: FALSE
Diff: 2
Topic: Liability of Managers

11) If a member or a manager of an LLC negligently causes injury or death to another person, he or she is personally liable to the injured person or the heirs of a deceased person.

Answer: TRUE
Diff: 1
Topic: Liability of the Tortfeasors

12) An LLC can generally be operated for any lawful purpose except certain regulated industries and certain professions.

Answer: TRUE
Diff: 1
Topic: Formation of an LLC

13) An LLC can be formed in the state even though it can conduct business in all other states.

Answer: TRUE
Diff: 1
Topic: Formation of an LLC
14) The name of an LLC must indicate in some fashion that it is an LLC.

Answer: TRUE
Diff: 1
Topic: Formation of an LLC

15) An LLC may not be organized by only one member such as a sole proprietor.

Answer: FALSE
Diff: 2
Topic: Formation of an LLC

16) An LLC is an at-will LLC unless it is designated as a term LLC.

Answer: TRUE
Diff: 1
Topic: Formation of an LLC

17) A member's capital contribution to an LLC may be in the form of a patent.

Answer: TRUE
Diff: 2
Topic: Formation of an LLC

18) A general partnership may not convert to an LLC.

Answer: FALSE
Diff: 1
Topic: Formation of an LLC

19) Members may draft an agreement whereby the profits of an LLC are not to be shared equally.

Answer: TRUE
Diff: 1
Topic: Formation of an LLC

20) Losses from an LLC have to be distributed in the same proportion.

Answer: FALSE
Diff: 1
Topic: Formation of an LLC

21) A member's distributitional interest in an LLC is personal property.

Answer: TRUE
Diff: 2
Topic: Formation of an LLC
22) An LLC may only be member-managed.

Answer: FALSE
Diff: 2
Topic: Management of an LLC

23) In a member-managed LLC, any matter relating to the LLC's business is decided by a majority vote of the members.

Answer: TRUE
Diff: 2
Topic: Management of an LLC

24) Members who are not managers of a manager-managed LLC still have rights to manage the LLC regardless of the operating agreement.

Answer: FALSE
Diff: 2
Topic: Management of an LLC

25) A nonmanager member of an LLC is entitled to remuneration for services performed for the LLC including the winding up of the business of the LLC.

Answer: FALSE
Diff: 3
Topic: Management of an LLC

26) Nonmanager members in a manager-managed LLC can bind the LLC to contracts.

Answer: FALSE
Diff: 2
Topic: Agency Authority to Bind an LLC to Contracts

27) In a member-managed LLC, all members have agency authority to bind the LLC to contracts.

Answer: FALSE
Diff: 2
Topic: Agency Authority to Bind an LLC to Contracts

28) A party may usurp an LLC's business opportunity, as this will not breach the duty of loyalty owed to the LLC.

Answer: FALSE
Diff: 1
Topic: Duty of Loyalty Owed to an LLC
29) If a member-manager commits an ordinarily negligent act, he or she is not liable to the LLC.

Answer: TRUE
Diff: 2
Topic: Limited Duty of Care Owed to an LLC

30) A member has the power to withdraw from a term LLC prior to the time specified.

Answer: TRUE
Diff: 2
Topic: Dissolution of an LLC

31) Where a member's disassociation from an LLC is not wrongful, the LLC must purchase the member's distributional interest.

Answer: TRUE
Diff: 1
Topic: Dissolution of an LLC

32) Where a disassociating member of an LLC is entitled to payment for her interest, she is entitled to fair market value even if the operating agreement provides otherwise.

Answer: FALSE
Diff: 2
Topic: Dissolution of an LLC

33) At the conclusion of a term LLC's term, a majority vote by the members to continue operating will result in the creation of a new term LLC.

Answer: FALSE
Diff: 2
Topic: Dissolution of an LLC

34) If a member disassociates him or herself from an at-will LLC, the LLC must only purchase the disassociating member's distributional interest on the expiration of the specified term of the LLC.

Answer: FALSE
Diff: 3
Topic: Dissolution of an LLC

35) Constructive notice is not sufficient when a member disassociates him or herself from the LLC.

Answer: FALSE
Diff: 2
Topic: Dissolution of an LLC
36) After dissolution and winding up, an LLC may terminate its existence.

Answer: TRUE
Diff: 1
Topic: Winding Up an LLC's Business

37) Accountants, lawyers, and doctors are among the professionals allowed to create a limited liability partnership.

Answer: TRUE
Diff: 1
Topic: Limited Liability Partnership (LLP)

38) In order for an LLP to conduct business in a state other than the one it is organized in, it must register as a foreign LLP in any state in which it wants to conduct business.

Answer: TRUE
Diff: 2
Topic: Limited Liability Partnership (LLP)

39) The authority for the formation of LLCs comes from:
   A) state statutes
   B) federal statutes
   C) federal administrative regulations
   D) federal court decisions
   E) state court decisions

Answer: A
Diff: 1
Topic: Nature of the Limited Liability Company
Skill: Legal Concepts

40) Which of the following is true about limited liability companies?
   A) At least one member must have unlimited liability.
   B) They can be formed without any specific steps taken by the owners.
   C) In most cases, they can choose whether to be taxed as a partnership or corporation.
   D) The owners are called shareholders.
   E) They cannot have centralized management by only a few members.

Answer: C
Diff: 2
Topic: Nature of the Limited Liability Company
Skill: Legal Concepts
41) If a member of an LLC executes a personal guarantee for the debt of an LLC, which of the following is true?
   A) The personal guarantee would be unenforceable because it would circumvent the limited liability of the member.
   B) The personal guarantee would result in personal liability of the member for any obligation of the LLC.
   C) Because of the member's apparent authority, the personal guarantee would create liability for all other members if the LLC is a member-managed LLC.
   D) The member will have personal liability according to the terms of the guarantee, but would not be personally liable for any other obligations of the LLC.

Answer: D  
Diff: 3  
Topic: Nature of the Limited Liability Company  
Skill: Legal Concepts

42) A limited liability company with more than one member is taxed as a partnership:
   A) in all circumstances
   B) only if at least four of six listed attributes are present in the limited liability company
   C) only if no more than four of six listed attributes are present in the limited liability company
   D) only if all six listed attributes are present
   E) if the limited liability company has not elected to be taxed as a corporation

Answer: E  
Diff: 2  
Topic: Nature of the Limited Liability Company  
Skill: Legal Concepts

43) In general, for what purpose(s) can an LLC be formed?
   A) only to practice a profession, such as accountancy or medicine
   B) only for the stated purposes in the Uniform Limited Liability Company Act
   C) only for the purposes that the Internal Revenue Service has recognized as valid LLC purposes
   D) for any lawful purpose

Answer: D  
Diff: 2  
Topic: Organizing Procedures  
Skill: Legal Concepts
44) Which of the following is true about selection of a name under which to operate an LLC?
   A) The name must indicate that the company is an LLC.
   B) The LLC can use trademarked names so long as the trademark is not being used by another LLC.
   C) A name cannot be reserved until the LLC has come into existence.
   D) A nontrademarked name that is similar to a name used by another business may not be used.
   E) A and D only

Answer: E  
Diff: 2  
Topic: Organizing Procedures  
Skill: Legal Concepts

45) Which of the following is not true about limited liability companies under the Uniform Limited Liability Company Act?
   A) Limited liability companies can be formed with only one member.
   B) Limited liability companies can only be taxed as partnerships.
   C) A limited liability company must use the words "limited liability company" in its name or use "LLC" or "LC."
   D) In order to form a limited liability company, articles of organization must be filed with the state.

Answer: B  
Diff: 2  
Topic: Organizing Procedures  
Skill: Legal Concepts

46) Which of the following is a reason to form a limited liability company rather than an S corporation?
   A) There is no limit on the number of owners of a limited liability company, whereas the number of shareholders of an S corporation is limited.
   B) All owners of a limited liability company have limited liability, but not all owners of an S corporation have limited liability.
   C) A limited liability company can be formed without formalities such as filing papers with the state, whereas an S corporation requires papers to be filed with the state.
   D) A limited liability company acts as a flow-through entity for income tax purposes, but an S corporation does not.

Answer: A  
Diff: 3  
Topic: Organizing Procedures  
Skill: Legal Concepts
47) An LLC must file what document with the secretary of state?
   A) articles of organization
   B) operating agreement
   C) profit and loss allocations of the members
   D) the names of the members
   E) B and D only

Answer: A
Diff: 2
Topic: Organizing Procedures
Skill: Legal Concepts

48) Which of the following is not required to be set forth in an LLC's articles of organization?
   A) the name and address of the LLC's agent for service of process
   B) the name and address of each organizer
   C) the process by which managers of the LLC are designated
   D) whether the LLC is a term LLC
   E) whether one or more of the members will be personally liable for the debts and obligations of the LLC

Answer: C
Diff: 2
Topic: Organizing Procedures
Skill: Legal Concepts

49) Based on duration, all LLCs can be classified as either:
   A) short-term or long-term
   B) fixed-length or variable-length
   C) term or at-will
   D) determined-length or undetermined-length
   E) self-determined or statute-determined

Answer: C
Diff: 2
Topic: Organizing Procedures
Skill: Legal Concepts
50) Which of the following is true about the capital contributions of members to an LLC?
   A) Capital contributions must be made in the form of cash.
   B) An unfulfilled promise to make a capital contribution is generally unenforceable.
   C) Members are required to make equal contributions in order to maintain their limited liability.
   D) A promise by a member to contribute services is excused if the member is unable to perform the particular services promised.
   E) A member who promised to make a capital contribution is not discharged from the promise if the member dies without having made the contribution.

   Answer: E
   Diff: 3
   Topic: Organizing Procedures
   Skill: Legal Concepts

51) Who can be selected as the agent for service of process for an LLC?
   A) only members of the LLC
   B) only members for member-managed LLCs, and only managers for manager-managed LLCs
   C) only the attorney for the LLC
   D) either a member of the LLC or the LLC's attorney, but no one else
   E) any party that the LLC selects so long as the party can receive service of process

   Answer: E
   Diff: 2
   Topic: Organizing Procedures
   Skill: Legal Concepts

52) Which of the following for an LLC is equivalent to a stock certificate for a corporation?
   A) certificate of authority
   B) certificate of interest
   C) certificate of control
   D) certificate of shares

   Answer: B
   Diff: 1
   Topic: Organizing Procedures
   Skill: Legal Concepts
53) Which types of businesses can be converted to an LLC?
   A) general partnerships only
   B) general partnerships and limited partnerships only
   C) corporations only
   D) corporations and limited partnerships only
   E) corporations, general partnerships, and limited partnerships

   Answer: E
   Diff: 2
   Topic: Organizing Procedures
   Skill: Legal Concepts

54) Which of the following is true when a general partnership is converted to an LLC?
   A) The property must be sold to a third party who then immediately sells it to the LLC.
   B) The conversion can be made retroactive for up to 2 years.
   C) The profit-and-loss sharing terms must remain the same as they were in the partnership.
   D) The members will retain unlimited personal liability for obligations incurred while the business was a partnership.
   E) The LLC will not be liable for obligations of the partnership.

   Answer: D
   Diff: 2
   Topic: Organizing Procedures
   Skill: Legal Concepts

55) When an LLC desires to do business in another state, it must obtain a(n):
   A) out-of-state business permit
   B) certificate of authority
   C) foreign agent authorization
   D) articles of organization exemption
   E) authorization to extend business out of state

   Answer: B
   Diff: 2
   Topic: Foreign Limited Liability Company
   Skill: Legal Concepts

56) The terms to describe an LLC from another state, and another nation, respectively, are:
   A) foreign; alien
   B) alien; offshore
   C) foreign; offshore
   D) interstate; foreign
   E) interstate; offshore

   Answer: A
   Diff: 2
   Topic: Foreign Limited Liability Company
   Skill: Legal Concepts

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57) Which of the following is true about operating agreements for LLCs?
A) All LLCs must have them, but they need not be filed.
B) They must be in writing in order to be enforceable.
C) All LLCs must have one, and they must be filed with the articles of organization.
D) Member-managed LLCs must have one, but they are not required for manager-managed LLCs.
E) They are not required, but are recommended.

Answer: E
Diff: 2
Topic: Operating a Limited Liability Company
Skill: Legal Concepts

58) For which of the following actions is an LLC responsible for damages if the action occurred within the ordinary course of the business of the LLC?
A) members and managers only
B) managers and agents only
C) managers, agents, and employees only
D) agents and employees only
E) members, managers, agents, and employees

Answer: E
Diff: 2
Topic: Operating a Limited Liability Company
Skill: Legal Concepts

59) If an LLC fails to follow formalities such as keeping minutes of meetings, then which of the following is true?
A) This failure will not result in imposing personal liability on any member.
B) All members will lose their limited liability.
C) The managers of a manager-managed LLC and all members of a member-managed LLC will lose limited liability.
D) Only the managers of a manager-managed LLC will lose limited liability.
E) Only the party or parties responsible for the failure will lose limited liability.

Answer: A
Diff: 2
Topic: Operating a Limited Liability Company
Skill: Legal Concepts
60) Based on management method, LLCs can be classified as either:
   A) member-managed or manager managed
   B) member-managed or professionally managed
   C) generally managed or micromanaged
   D) manager-managed or at-will-managed
   E) member-managed or term-managed

   Answer: A
   Diff: 2
   Topic: Operating a Limited Liability Company
   Skill: Legal Concepts

61) Which of the following is true about the ability of a member of an LLC to bind a member-
managed LLC to a contract?
   A) Members of the LLC have authority to bind the LLC, and this authority cannot be taken
      away.
   B) Members of the LLC have authority to bind the LLC to contracts only if this authority is
      granted in the operating agreement.
   C) Members of the LLC have authority to bind the LLC, and if this authority is restricted by
      agreement, then it will terminate any risk of the member binding the LLC to a contract.
   D) Members of the LLC have authority to bind the LLC, and if this authority is restricted by
      agreement, there remains a risk that the member retains apparent authority to bind the
      LLC unless appropriate steps are taken.

   Answer: D
   Diff: 2
   Topic: Operating a Limited Liability Company
   Skill: Legal Concepts

62) Which of the following is true about managers of a manager-managed LLC?
   A) All manager decisions must be approved by a majority vote of the members of the LLC.
   B) Decisions must be made by unanimous consent of the managers.
   C) The managers have the power to amend the operating agreement.
   D) Admitting new members can be done by the managers.
   E) Each manager has an equal right in the management of the company's business.

   Answer: E
   Diff: 2
   Topic: Operating a Limited Liability Company
   Skill: Legal Concepts
63) Who has the right to manage an LLC?
   A) all members in all LLCs
   B) all members in member-managed LLCs and only managers in manager-managed LLCs
   C) the members making the five largest capital contributions, and the managers, if any
   D) the organizers of the LLC and the managers, if any

Answer: B
Diff: 2
Topic: Operating a Limited Liability Company
Skill: Legal Concepts

64) Absent an agreement, which of the following is correct about a nonmanager member's right to compensation for services provided to an LLC?
   A) The member is entitled to compensation for any services rendered on behalf of the LLC.
   B) The member is entitled to compensation for any services that benefit the LLC.
   C) The member is not entitled to compensation for any services provided for the LLC.
   D) The member is entitled to compensation for services of winding up the business of the LLC, but not for any other services.
   E) The member is entitled to compensation for services so long as the LLC earns a profit in the year the service was provided by the member.

Answer: D
Diff: 2
Topic: Operating a Limited Liability Company
Skill: Legal Concepts

65) A member's ownership interest in an LLC is called a(n):
   A) dividend
   B) capital account
   C) distributional interest
   D) derivative interest

Answer: C
Diff: 1
Topic: Operating a Limited Liability Company
Skill: Legal Concepts

66) Of the following, who owes a fiduciary duty of loyalty to an LLC?
   A) all members of all LLCs
   B) members of member-managed LLCs and managers of manager-managed LLCs
   C) managers of manager-managed LLCs, but no other members of any LLCs
   D) all members of manager-managed LLCs, but no one in member-managed LLCs

Answer: B
Diff: 2
Topic: Fiduciary Duties of Care Owed to an LLC
Skill: Legal Concepts
67) The nonmanager members of a manager-managed LLC owe which fiduciary duties to the LLC?
   A) loyalty
   B) loyalty and due care
   C) good faith and fair dealing
   D) due care as well as good faith and fair dealing
   E) none of the above

   Answer: E
   Diff: 2
   Topic: Fiduciary Duties of Care Owed to an LLC
   Skill: Legal Concepts

68) Under the Uniform Limited Liability Company Act, the withdrawal of a member from an LLC is known as:
   A) disaffirmance
   B) voiding the interest
   C) disassociation
   D) dissolution

   Answer: C
   Diff: 2
   Topic: Dissolution and Winding Up
   Skill: Legal Concepts

69) If a member properly disassociates herself from an LLC, the member is entitled to receive:
   A) no payment because the disassociation is voluntary
   B) fair market value for the distributional interest
   C) the highest amount that a remaining current member is willing to pay for the interest
   D) the amount negotiated with a willing purchaser of the interest
   E) the amount originally invested by the member

   Answer: B
   Diff: 2
   Topic: Dissolution and Winding Up
   Skill: Legal Concepts
70) After disassociating from an LLC, a member retains apparent authority to bind the LLC:
   A) for 2 years to any party
   B) for 2 years to any party except those who know of the disassociation or who have received notice of it
   C) for a reasonable time to any party
   D) for a reasonable time to any party except those who have actual notice of the disassociation
   E) for 1 year to all parties

   Answer: B
   Diff: 2
   Topic: Dissolution and Winding Up
   Skill: Legal Concepts

71) Upon the expiration of the term of a term LLC, the LLC can be continued:
   A) as a term LLC by a majority vote of the members
   B) as a term LLC by a unanimous vote of the members
   C) as an at-will LLC by a majority vote of the members
   D) B or C only
   E) A, B, or C

   Answer: D
   Diff: 2
   Topic: Dissolution and Winding Up
   Skill: Legal Concepts

72) Two CPA firms, one having 70 partners, and one having 40 partners, are planning to form a new CPA firm. They want to use a form of business organization that will give each of the 110 owners of the new firm limited liability. What are the available options to meet this goal?
   A) a limited liability partnership or a limited liability company
   B) a limited liability partnership, a limited liability company, or an S corporation
   C) a limited liability partnership, a limited liability company, or a limited partnership
   D) a limited liability partnership, a limited partnership, or an S corporation

   Answer: A
   Diff: 3
   Topic: Nature of the Limited Liability Company
   Skill: Factual Application
73) Dan, Fran, and Stan want to establish and operate a mountain bike sales and rental shop. Dan and Fran will be actively involved in the management of the business, but Stan is investing most of the money. The three of them do not want to form a corporation, but want to use a form of business, if possible, that will give limited liability to each of them. Which of the following is true?

A) Because Dan and Fran will be actively managing the business, there is no form of business other than a corporation that will give them limited liability.

B) They could form either a limited liability company or possibly a limited liability partnership, and either of these would give limited liability to each of the three owners.

C) They could form a limited liability company and each have limited liability, but if they formed either a limited partnership or limited liability partnership, there would be at least one partner with unlimited liability.

D) They could each have limited liability in a properly formed limited partnership, limited liability partnership, or limited liability company.

Answer: B

Diff: 3

Topic: Nature of the Limited Liability Company
Skill: Factual Application

74) John is in the planning stages of forming a business with several others. John has heard that an LLC would provide the best of both worlds, that is, partnership taxation and limited liability. But John has also heard that one must very carefully structure an LLC or the Internal Revenue Service might deny partnership taxation. Lastly, John needs to review his overall tax situation because he thinks that corporate taxation might actually be better for his particular situation. Which of the following is true?

A) Unless structured with the precisely correct provisions and characteristics, an LLC risks a determination by the Internal Revenue Service that it will be taxed in a manner different than the owners intended.

B) The Internal Revenue Service now taxes all LLCs as partnerships.

C) The LLC can choose whether it wants to be taxed as a partnership or corporation, but once this determination is made, it will apply to all owners of the LLC.

D) Each of the owners of the LLC can choose partnership or corporate tax treatment of their income from the LLC, thus John will be free to choose corporate treatment even if all the other owners choose to be taxed as owning an interest in a partnership.

E) The Internal Revenue Service will determine the tax treatment, but this will be done separately for each owner based on that owner’s tax situation, thus it might determine partnership taxation for some members and corporate taxation for other owners.

Answer: C

Diff: 3

Topic: Nature of the Limited Liability Company
Skill: Factual Application
75) Thelma and Louise form an LLC for the purpose of operating road trip tours of the American southwest. In the articles of organization, they state, "the term of this limited liability company shall last until our travel company has operated 20 successful tours, at which point the term of this company shall end." Thelma and Louise have formed:

A) a term LLC because it has a set ending date  
B) a term LLC because all LLCs are set to terminate, even though many are set to terminate far in the future  
C) a term LLC because the event that terminates the LLC is reasonably able to be accomplished as of the time that the LLC is formed  
D) an at-will LLC because there is no specified time for the termination of the LLC  
E) an at-will LLC because any mention of an uncertain event in connection with the duration of an LLC causes the LLC to be at-will

Answer: D
Diff: 3
Topic: Organizing Procedures
Skill: Factual Application

76) Mary was an architect and was one of four members who joined an LLC that was going to develop a large new residential subdivision over the next several years. Mary agreed that as part of her contribution of capital she would contribute $100,000 and would provide 300 hours of time working on the architectural design of homes to be built by the LLC. Unfortunately, as Mary was out enjoying a walk one day, a driver in a sport utility vehicle was talking on a cell phone and struck Mary, killing her. When she was killed, Mary had paid $60,000 of her cash contribution and had already provided 240 hours of the design services. In these circumstances:

A) Mary's death discharges any unperformed obligation to contribute capital in the form of services, but her estate would be obligated for the unpaid $40,000.  
B) Mary's death discharges any obligation to contribute capital in either cash or services.  
C) Mary's death discharges neither obligation. Her estate will be obligated to pay the $40,000 and the fair value of the unperformed architectural services.  
D) Mary's death would normally discharge neither of the obligations, but because the architectural services were based on Mary's particular skill and judgment, her estate is liable only for the unpaid cash contribution.  
E) Mary's death discharges neither obligation, but her estate is liable only if payment of the amounts does not create an undue hardship for any beneficiary of her estate.

Answer: C
Diff: 3
Topic: Organizing Procedures
Skill: Factual Application
77) The Old Boys partnership has been around for decades and was formed by three college classmates in the 1960s, all of whom are still active in the partnership. There have been no changes in ownership over the years. The partners have heard about limited liability companies and want to get in on the benefits of limited liability that an LLC provides. They figure that they can reduce their liability insurance coverage if they form an LLC. Which of the following is true?

A) Old Boys can be converted to an LLC only if the conversion coincides with a change in ownership, thus they must either admit a new partner or have a partner withdraw.
B) Old Boys cannot make this conversion if the sole reason is to limit their liability.
C) Old Boys can make the conversion and, once effective, will enjoy limited liability for all obligations of the business, whenever incurred.
D) Old Boys can make the conversion, and once effective, will enjoy limited liability for all new obligations, but liability for obligations incurred while a partnership will not be affected.
E) Old Boys can make the conversion, but it must first dissolve and wind up the affairs of the partnership.

Answer: D
Diff: 3
Topic: Organizing Procedures
Skill: Factual Application

78) Lynda is a member of a manager-managed LLC but is not a manager. However, Lynda has considerable expertise in the business of the LLC. Lynda assisted the managers for the first couple of years of the LLC’s existence without any difficulties. During the third year, Lynda began to challenge some of the decisions made by the managers who had begun to shut Lynda out of most decisions. Lynda demands that as a member of the LLC she be allowed to participate in its management and that she be compensated for the services she is providing. In this case:

A) Lynda cannot demand a continued management role, but is entitled to compensation for the services already delivered.
B) Lynda will be allowed to participate in management and is entitled to compensation.
C) Lynda will be allowed to participate, but is not entitled to any compensation.
D) Lynda is not entitled to participate in management, nor is she entitled to compensation.

Answer: D
Diff: 2
Topic: Operating a Limited Liability Company
Skill: Factual Application
79) Barry, Harry, and Larry form an LLC. Barry contributes $100,000 in capital and the other two contribute $50,000 each. This LLC was structured as a manager-managed LLC with Harry designated as the manager. In reality, during the first year the three members actively took part in the management of the LLC. In fact, of the total time spent by the members managing the business, 60 percent of the time was spent by Larry, with Barry and Harry each contributing 20 percent of the time. The LLC was unexpectedly profitable in the first year and the members are in dispute over the allocation of profits. There are no provisions in their operating agreement covering profit allocations. Which of the following is true?

A) The members will divide all profits equally.
B) The members will divide all profits in accordance with their capital contributions.
C) The members are each entitled to an allocation based on the value of the services that each provided, with the residual allocated equally.
D) Harry, but not Barry or Larry, is entitled to an allocation based on the value of his services provided, with the residual allocated equally.
E) Larry, but not Barry or Harry, is entitled to an allocation based on the value of his services provided, with the residual allocated equally.

Answer: D
Diff: 3
Topic: Operating a Limited Liability Company
Skill: Factual Application

80) Eric is a member of a manager-managed LLC but is not a manager. This LLC invests in real estate and manages it as rental property in a college town. Eric has made several recommendations to the managers regarding property that he considers to be a good buy. Eric, however, seldom performed even the slightest investigation of the property before recommending it to the managing members. Eric also purchased a couple of rental properties on his own account, taking very careful and sneaky steps to ensure that the other members of the LLC did not learn of these purchases. Which duties has Eric violated?

A) loyalty
B) loyalty and care
C) loyalty, care, and good faith and fair dealing
D) good faith and fair dealing
E) none of these

Answer: E
Diff: 2
Topic: Fiduciary Duties of Care Owed to an LLC
Skill: Factual Application
81) Arthur, Betty, Charlie, Diane and Edward created a limited liability company. Arthur contributed $40,000, and each of the others contributed $10,000 to the capital. The group must vote on making a business decision. Arthur and Betty vote to take the action, while the others vote against it. Who wins?

A) Arthur and Betty win because the accumulated capital of the duo is greater than the other members.
B) Arthur and Betty win, because Arthur has seniority, having contributed more than any other member of the group.
C) Charlie, Diane and Edward win because they constitute a majority.
D) Neither group wins, because the vote has to be unanimous.

Answer: C
Diff: 2
Topic: Operating a Limited Liability Company
Skill: Factual Application

82) When choosing the form of business organization that a business will use, what additional factors should be considered if the business will be doing substantial business with entities in other nations?

Answer: One factor is under what circumstances the laws of the other nation will respect the limited liability of an entity that enjoys limited liability in the United States. Additionally, there might be other requirements, such as filing, that differ from those in the United States, and differ in the foreign nation depending on the type of entity.
Diff: 2
Skill: Ethics and Policy

83) Why do you think that the Internal Revenue Service adopted the "check-the-box" regulation allowing LLCs to choose their method of taxation?

Answer: Prior to the check-the-box regulation, an LLC had to structure its articles of organization precisely in order to achieve partnership taxation. This could usually be done, but a small error or oversight could result in unintended tax consequences. The IRS wisely eliminated the uncertainty and the complexity of choosing the form of taxation.
Diff: 2
Skill: Ethics and Policy

84) Maria is one of six members of a limited liability company. This is a manager-managed LLC, with two of the members named as managers. Maria and Vanessa, one of the managers, executed a personal guarantee (both their names on one guarantee) for a bank loan to the LLC. Although the LLC was successful for a couple of years, its debts now greatly exceed its assets and the members are considering liquidation. Discuss Maria's liability.

Answer: As a member of an LLC, Maria has limited liability. This means that Maria cannot be required to contribute to the satisfaction of the LLC's obligations based on her being a member. This would be true even if she were a manager. As a guarantor, Maria has personal liability, but only on the debt guaranteed and only in accordance with the terms of the guarantee. Maria would have a right to recover Vanessa's share of the guarantee if Maria paid any of Vanessa's share.
Diff: 2
Topic: Nature of the Limited Liability Company
Skill: Factual Application
85) Wally is a college senior with a business idea for a company to sell over the Internet. Wally has a generous aunt who has given him $10,000 for Christmas every year of his life. Wally has invested this money wisely and thus will not need other owners in his new company. Wally wants to form an LLC for its ease of operation, limited liability, and flow-through tax treatment. Wally is also trying to decide where to live, because he can run this business from anywhere there is a phone line. Discuss Wally's situation.

Answer: An LLC will meet Wally's needs. Wally needs to be aware that some states do not allow LLCs with only one owner. Wally's LLC will be taxed as a sole proprietorship unless Wally elects corporate tax treatment. The limited liability of Wally's company will not eliminate the need for liability insurance.

Diff: 2
Topic: Organizing Procedures
Skill: Factual Application

86) Jake and Kate are two members of an LLC with 15 members. This is a member-managed LLC with three of the members identified as the managers. Kate is one of these managers, though Jake is not. In reality, Jake and Kate together do most of the management for the LLC, contributing approximately equal amounts of time and energy. They both have spent some of their own money on behalf of the LLC. In one situation, Jake and Kate each put up $1,000 as a deposit on a contract entered into on behalf of the LLC that the other two managers voted to not perform. Jake and Kate want to be compensated for their time, want their expenses covered, and are worried about liability on the unperformed contract. Discuss their rights and liabilities.

Answer: As a manager, Kate is entitled to reasonable compensation for her time spent managing the LLC. Jake, as a mere member of a manager-managed LLC is not entitled to such compensation. All members are entitled to reimbursement for expenses, and to indemnification for losses. This would apply to the $1,000 deposit, as well as any losses or expenses incurred by Jake or Kate if the third party sues them for the unperformed contract. This assumes that Jake and Kate had authority. Kate's authority would be based on her role as a manager. Jake's authority would be based on Kate's actions as a manager in allowing Jake to take part in the contracting. If their authority to enter into this contract had been limited by agreement, they would not be entitled to indemnification from the LLC, but unless known by the third party, would not limit the third party from recovering the amount from Jake and Kate.

Diff: 3
Topic: Operating a Limited Liability Company
Skill: Factual Application
1) One advantage of franchising is that the different franchise outlets can have similar quality goods.

Answer: TRUE
Diff: 1
Topic: Franchises

2) Typically a franchisee is a subsidiary of the franchisor.

Answer: FALSE
Diff: 2
Topic: Franchises

3) A franchisee is also a licensee.

Answer: TRUE
Diff: 1
Topic: Franchises

4) An automobile dealership is an example of a distributor franchise.

Answer: TRUE
Diff: 1
Topic: Types of Franchises

5) Most fast-food franchises are chain-style franchises.

Answer: TRUE
Diff: 1
Topic: Types of Franchises

6) A company that has a franchise to manufacture and distribute Coca-Cola has a processing plant franchise.

Answer: TRUE
Diff: 1
Topic: Types of Franchises
7) State franchise administrators developed a uniform disclosure document called the Uniform Franchise Offering Circular.

Answer: TRUE
Diff: 1
Topic: State Disclosure Laws

8) The FTC mandates that franchisors make full presale disclosure nationwide to prospective franchisees.

Answer: TRUE
Diff: 2
Topic: FTC's Franchise Rule

9) A franchisor who violates FTC disclosure rules is subject to an injunction and civil fines.

Answer: TRUE
Diff: 1
Topic: FTC's Franchise Rule

10) Franchisors are not permitted to make sales projections to hypothetical franchisees.

Answer: FALSE
Diff: 1
Topic: FTC's Franchise Rule

11) The Lanham Trademark Act allows franchisors as well as others to register their trademarks and service marks with the Patent and Trademark Office in Washington, D.C.

Answer: TRUE
Diff: 1
Topic: Trademark Law and Trade Secrets

12) Franchisors are never the owners of product formulas.

Answer: FALSE
Diff: 2
Topic: Trademark Law and Trade Secrets

13) Franchise agreements frequently include training requirements for franchisees and their employees.

Answer: TRUE
Diff: 1
Topic: The Franchise Agreement
14) A franchisee is usually free to set its own cleanliness and quality standards.

Answer: FALSE
Diff: 1
Topic: The Franchise Agreement

15) A franchise agreement will normally contain capital requirements for the franchisee.

Answer: TRUE
Diff: 1
Topic: The Franchise Agreement

16) The cost of supplies purchased from the franchisor is usually not a franchise fee payable to the franchisor.

Answer: FALSE
Diff: 2
Topic: Franchise Fees

17) An assessment fee is a fee for the continued use of the franchisor's trade name, property, and assistance.

Answer: FALSE
Diff: 2
Topic: Franchise Fees

18) Licensing occurs when the owner of intellectual property contracts to permit another party to use intellectual property.

Answer: TRUE
Diff: 2
Topic: Licensing

19) Joint ventures are usually formed to pursue ongoing business operations rather than to focus on a single project or transaction.

Answer: FALSE
Diff: 1
Topic: Joint Venture

20) Two or more companies in the same industry who agree to ally themselves to accomplish a set objective would be considered to be a strategic alliance.

Answer: TRUE
Diff: 2
Topic: Strategic Alliance
21) A strategic alliance partner is also a potential competitor.

Answer: TRUE
Diff: 2
Topic: Strategic Alliance

22) Franchises account for approximately what percent of total retail sales in the United States?
   A) 15
   B) 25
   C) 40
   D) 50
   E) 65

Answer: B
Diff: 2
Topic: Franchises
Skill: Legal Concepts

23) Which of the following is not an advantage of franchising?
   A) The franchisor can reach new markets.
   B) The franchisor gets major tax advantages.
   C) The franchisee has access to the franchisor's knowledge and resources.
   D) Consumers are assured of uniform product quality.

Answer: B
Diff: 2
Topic: Franchises
Skill: Legal Concepts

24) Which of the following is not one of the common general forms of franchises?
   A) distributorship
   B) processing plant
   C) manufacturing
   D) chain-style
   E) area

Answer: C
Diff: 1
Topic: Types of Franchises
Skill: Legal Concepts
25) A Ford Motor Company dealership is an example of what type of franchise?
   A) distributorship
   B) processing plant
   C) service
   D) chain-style

Answer: A
Diff: 1
Topic: Types of Franchises
Skill: Legal Concepts

26) The federal agency that covers franchise law is:
   A) the Interstate Commerce Commission
   B) the Justice Department
   C) the Federal Trade Commission
   D) the Patent and Trademark Office

Answer: C
Diff: 1
Topic: State Disclosure Laws
Skill: Legal Concepts

27) One of the first state franchise disclosure laws was passed in 1971 in:
   A) California
   B) Texas
   C) New York
   D) Delaware
   E) Illinois

Answer: A
Diff: 1
Topic: State Disclosure Laws
Skill: Legal Concepts

28) What type of law is franchise law?
   A) state law only
   B) federal law only
   C) both federal and state law
   D) state law, based only on common law

Answer: C
Diff: 2
Topic: State Disclosure Laws
Skill: Legal Concepts
29) A standard form disclosure document used by franchisors seeking franchises is:
   A) the prospectus  
   B) the Uniform Franchise Offering Circular  
   C) the Standard Franchisee Operating Agreement  
   D) the Standard Franchisor Disclosure Form

   Answer: B  
   Diff: 2  
   Topic: State Disclosure Laws  
   Skill: Legal Concepts

30) The federal requirement related to franchisor disclosure to prospective franchisees is found in the:
   A) Multiple-Outlet Sales Disclosure Act  
   B) FTC Franchise Rule  
   C) Fair Trade Commission Act  
   D) Truth-in-Advertising Act

   Answer: B  
   Diff: 1  
   Topic: State Disclosure Laws  
   Skill: Legal Concepts

31) Which of the following is not part of the FTC franchise rule?
   A) Franchisors must make certain additional disclosures if sales projections are included in materials.  
   B) The Uniform Franchise Offering Circular meets the requirements of the FTC franchise rule.  
   C) The rule contains certain minimum disclosures that must be made to prospective franchisees.  
   D) The disclosure materials must be filed with the FTC.  
   E) Franchisors in violation are subject to civil fines of up to $10,000 per violation.

   Answer: D  
   Diff: 2  
   Topic: State Disclosure Laws  
   Skill: Legal Concepts
32) Which of the following is true about the FTC franchise rule with respect to earnings projections made by a franchisor in materials provided to prospective franchisees?

A) Because they are inherently misleading, financial projections cannot be made.
B) Any earnings projections must be based on the actual results of an existing franchisee.
C) Any earnings projections cannot be based on an actual franchisee and must be based on a hypothetical franchisee and be relevant to the franchisee receiving the information.
D) The franchisor can provide projections based on either actual or hypothetical franchisees, but if projections are provided, certain additional disclosures must be made.
E) The franchisor can provide projections based on either actual or hypothetical franchisees, but can be liable for damages to the franchisee if the results are not reasonably achievable.

Answer: D  
Diff: 3  
Topic: State Disclosure Laws  
Skill: Legal Concepts

33) Which of the following items are generally not found in a franchise agreement?

A) quality control standards  
B) secret formulas  
C) training requirements  
D) covenants not to compete  
E) agreements as to franchise fees

Answer: B  
Diff: 2  
Topic: The Franchise Agreement  
Skill: Legal Concepts

34) The most important assets of a franchisor are its:

A) physical plant and property  
B) right to receive franchise fees  
C) right to terminate franchises at will  
D) business name and reputation  
E) right to set and maintain retail prices

Answer: D  
Diff: 2  
Topic: The Franchise Agreement  
Skill: Legal Concepts
35) Once a franchisee has been given a franchise, she may:
   A) use the relevant trademark in any way she wants
   B) use the trademark only as provided in the franchise agreement
   C) buy needed products from any supplier without regard to what the franchise agreement says
   D) sell additional franchises to other interested parties
   E) A and B only

Answer: B
Diff: 2
Topic: The Franchise Agreement
Skill: Legal Concepts

36) Which of the following is **not** one of the fees typically found in a franchise agreement?
   A) initial license fee
   B) royalty fee
   C) assessment fee
   D) lease fee
   E) termination fee

Answer: E
Diff: 2
Topic: The Franchise Agreement
Skill: Legal Concepts

37) Which of the following remedies is generally available for breach of a franchise agreement?
   A) rescission
   B) restitution
   C) damages
   D) A or B only
   E) A, B, or C

Answer: E
Diff: 1
Topic: The Franchise Agreement
Skill: Legal Concepts
38) Which of the following is true in a typical franchise situation?
   A) Trademarks and service marks are sold to the franchisee.
   B) A franchisee granted a license to use a trademark cannot be found guilty of trademark infringement.
   C) A franchisee can be found liable for misappropriating trade secrets even if the item has no patent or trademark protection.
   D) Trade secrets are generally protected under federal law.

   Answer: C
   Diff: 2
   Topic: Trademark Law and Trade Secrets
   Skill: Legal Concepts

39) Richard Manufacturing Co. manufactures a product and licenses retail dealers to sell that product to the public. Richard does not sell to the public. This type of franchise is called a(n):
   A) distributorship franchise
   B) processing plant franchise
   C) chain-style franchise
   D) area franchise
   E) agency franchise

   Answer: A
   Diff: 1
   Topic: Types of Franchises
   Skill: Factual Application

40) A soft drink company would franchise its bottling plants under which form of franchise?
   A) distributorship franchise
   B) processing plant franchise
   C) chain-style franchise
   D) area franchise
   E) agency franchise

   Answer: B
   Diff: 1
   Topic: Types of Franchises
   Skill: Factual Application

41) A snowmobile manufacturer would franchise its dealers under which form of franchise?
   A) distributorship franchise
   B) processing plant franchise
   C) chain-style franchise
   D) area franchise
   E) agency franchise

   Answer: A
   Diff: 1
   Topic: Types of Franchises
   Skill: Factual Application
42) Gloria wants to franchise her carpet cleaning business. Under the Federal Trade Commission rules on disclosure, which of the following items does Gloria not need to disclose?
   A) a description of the franchisor's business
   B) a listing of the grounds for termination of the franchise
   C) a disclosure as to restrictions on the franchisee's inventory
   D) how much Gloria will profit from each franchise
   E) recent financial statements of the franchisor

Answer: D
Diff: 3
Topic: State Disclosure Laws
Skill: Factual Application

43) Richard wants to franchise his pastry business. However, he has no knowledge of what laws govern franchises. Richard comes to you for advice. Which laws govern franchises of this type?
   A) state contract law
   B) Federal Agency law
   C) state statutes covering franchises
   D) A, B, and C
   E) B and C only

Answer: D
Diff: 2
Topic: State Disclosure Laws
Skill: Factual Application

44) Jonathon has a business that he has franchised to 10 franchisees over the last 6 years. In seeking additional franchises, which of the following is true about financial disclosures to potential new franchisees?
   A) He must include income statements and balance sheets for each franchisee that has been in operation for 3 years or more.
   B) He must include financial forecasts and appropriately label them.
   C) He must include hypothetical examples and appropriately label them.
   D) He must include aggregate income statements and balance sheets, which combine amounts for all franchises that have been in business 3 years or more.
   E) He must include 3 years of income statements and balance sheets for the franchisor.

Answer: E
Diff: 3
Topic: State Disclosure Laws
Skill: Factual Application
45) Rachel has a business that she has franchised to hundreds of franchisees over the last twenty years. In seeking additional franchisees, which of the following is true about financial disclosures to potential new franchisees?

A) She must include income statements and balance sheets for each existing franchisee.
B) She must include income statements and balance sheets for each franchisee that has been operating for 3 years or more, and if none, she must use hypothetical examples.
C) She can choose whether to include actual income statements and balance sheets of existing franchisees or use hypothetical examples, but she must do one or the other.
D) She is not required to make any financial disclosures about franchisees, but if she chooses to make such disclosures, she can make them in any way she chooses.
E) She is not required to make any financial disclosures about franchisees, but if she chooses to make such disclosures, she must make certain additional disclosures, with the specific required disclosures depending on whether she provides actual results of existing franchisees or hypothetical examples.

Answer: E
Diff: 3
Topic: State Disclosure Laws
Skill: Factual Application

46) What remedies are generally available to the aggrieved party for the breach of a franchise agreement if it is the franchisee of a distributorship-type franchise who is the aggrieved party?

A) rescission only
B) restitution only
C) damages only
D) rescission and restitution only
E) rescission, restitution, and damages

Answer: E
Diff: 1
Topic: The Franchise Agreement
Skill: Factual Application

47) The Squirrel Tail Ale Microbrewery has granted a franchise to Jimmy to run a Squirrel Tail Ale Brewpub in Chicago. Jimmy opens the brewpub, but has started purchasing a less expensive beer and selling it in this brewpub as Squirrel Tail Ale. Jimmy has most likely:

A) breached the franchise agreement, but nothing more
B) infringed the trademark of Squirrel Tail Ale
C) not done anything wrong because requiring the sale of Squirrel Tail Ale would be an illegal tying arrangement
D) perhaps done something wrong, but he could not lose his franchise because it is against public policy to unilaterally terminate a franchise

Answer: B
Diff: 2
Topic: The Franchise Agreement
Skill: Factual Application
48) Which statute would a franchisee be violating if she continued to use the trademark of a franchisor after the franchise had been terminated?
   A) the Domestic Corrupt Practices Act
   B) the Franchisor Trademark Protection Act
   C) the Lanham Trademark Act
   D) the Franchise Investment Law

Answer: C
Diff: 2
Topic: Trademark Law and Trade Secrets
Skill: Factual Application

49) Why do you think there are specific statutes affecting termination of gasoline service station franchises and automobile dealership franchises? Why don't all franchisees receive the same protections as franchisees in these two industries? Why do you think the Petroleum Marketing Practices Act was not passed until 1979 even though gasoline service station franchise arrangements had been in existence for decades before 1979?

Answer: These groups have lobbying groups, and are in industries where there is a high degree of market concentration among franchisors. The petroleum dealer's act was passed following a large number of service station franchise terminations during the gasoline supply interruptions of the 1970s. The law generally does protect all franchisees from wrongful termination.
Diff: 2
Skill: Ethics and Policy

50) Why has the federal government chosen to regulate the activities of franchisors? Why are parties to franchise agreements not given the same flexibility and freedoms as in most other contracts?

Answer: There is vastly unequal bargaining power in many cases, and the franchise agreement relates to the franchisee's means of earning a living. The record of abuses, and the fact that potential franchisees are often too willing to part with their money in their quest for quick and easy wealth supports government intervention in this area.
Diff: 2
Skill: Ethics and Policy

51) What are the ethical issues involved in franchising businesses in foreign nations when doing so puts local businesses out of business and may cause cultural disruptions?

Answer: One aspect of this difficult issue is whether the franchise will actually increase employment and wealth in the foreign nation, and whether the changes brought about by the franchise operation would occur through some other means anyway.
Diff: 1
Skill: Ethics and Policy
52) Mike is considering opening a barbecue restaurant. He can either design his own, or obtain a franchise for a "Bubba's Roadkill Barbecue House," which does not actually serve roadkill. What factors should Mike consider in deciding which course of action to take?

Answer: A franchise would allow access to expertise, established name, marketing assistance, etc., all at a cost of money and decreased flexibility. Terms of any franchise agreement would be crucial.

Diff: 3
Topic: Franchises
Skill: Factual Application

53) Bob obtains a franchise to operate a "Tofu Sweets" retail dessert store. All of the store's desserts are tofu-based. Each dessert treat has a trademarked name, and is made using a secret formula and process. As a franchisee, Bob purchases some of the items ready to sell, but others must be individually prepared in the store. After operating the store for a few months, Bob starts buying the tofu for the items made in the store from another source because it is less expensive. The quality is not as high, but most customers do not seem to notice the difference. The franchisor terminates Bob's franchise, but he immediately opens his own store under the name "Sweet Tofu Treats" and begins selling products identical to those that were prepared at the "Tofu Sweets" store. What claims could the "Tofu Sweets" franchisor bring against Bob? Discuss each of them.

Answer: The most likely claims are trademark infringement, misappropriation of trade secrets, breach of the franchise agreement, and patent infringement, if any products are patented.

Diff: 3
Topic: Trademark Law and Trade Secrets
Skill: Factual Application
1) The SEC is composed of five members who are appointed by the President.

Answer:  TRUE
Diff:  1
Topic:  The Securities and Exchange Commission (SEC)

2) The Securities and Exchange Commission was created as part of the Securities Exchange Act of 1934.

Answer:  TRUE
Diff:  1
Topic:  The Securities and Exchange Commission (SEC)

3) Pyramid sales schemes are not securities for purposes of federal securities law.

Answer:  FALSE
Diff:  1
Topic:  Definition of a Security

4) The Howery test is used to determine whether investment contracts are classified as securities for purposes of the federal securities laws.

Answer:  FALSE
Diff:  2
Topic:  Definition of a Security

5) The SEC issues ratings on the estimated risk of investing in a particular security.

Answer:  FALSE
Diff:  1
Topic:  The Securities Act of 1933 - Registration of Securities

6) The Securities Act of 1933 primarily regulates the issuance of securities.

Answer:  TRUE
Diff:  1
Topic:  The Securities Act of 1933 - Registration of Securities
7) Generally, unless the SEC objects, a registration statement does not become effective until 20 days after it is filed.

Answer: TRUE
Diff: 1
Topic: The Securities Act of 1933 - Registration of Securities

8) An issuer may be a new company selling securities through an initial public offering.

Answer: TRUE
Diff: 2
Topic: The Securities Act of 1933 - Registration of Securities

9) A covered issuer need not file a written registration statement, as the SEC does not require any written formalities.

Answer: FALSE
Diff: 2
Topic: The Securities Act of 1933 - Registration of Securities

10) Issuers can place tombstone ads during the waiting period.

Answer: TRUE
Diff: 1
Topic: The Securities Act of 1933 - Registration of Securities

11) Under the Securities Act of 1933, at the latest, a final prospectus must be provided to a purchaser of securities by the time the sale is confirmed.

Answer: TRUE
Diff: 1
Topic: The Securities Act of 1933 - Registration of Securities

12) A prospectus has no real purpose other than to file a registration with the SEC.

Answer: FALSE
Diff: 1
Topic: Prospectus

13) A prospectus is used as a selling tool by the issuer.

Answer: TRUE
Diff: 2
Topic: Prospectus
14) Investors who purchase unregistered securities have no recourse against the sellers.

Answer: FALSE  
Diff: 2  
Topic: Sale of Unregistered Securities

15) Regulation A allows issuers to sell up to $100,000 of securities to the public during a 12-month period.

Answer: FALSE  
Diff: 2  
Topic: Regulation A Offerings

16) Misrepresentations about an offer or sale are considered to be a violation of the Securities Act of 1933.

Answer: TRUE  
Diff: 1  
Topic: Violations of the Securities Act of 1933

17) The omission of a material fact on a registration statement may be a violation of Section 11 of the Securities Act of 1933 unless the defendant utilizes the due diligence defense.

Answer: TRUE  
Diff: 3  
Topic: Violations of the Securities Act of 1933

18) Anyone who willfully violates the Securities Act of 1933 may be fined as well as imprisoned.

Answer: TRUE  
Diff: 1  
Topic: Violations of the Securities Act of 1933

19) Securities transactions not made by an issuer are exempt from registration.

Answer: TRUE  
Diff: 1  
Topic: Transactions Exempt from Registration

20) An issuer can qualify for an intrastate offerings exemption in only one state.

Answer: TRUE  
Diff: 1  
Topic: Transactions Exempt from Registration
21) The private placement exception to registration of securities allows raising an unlimited amount of capital from an unlimited number of accredited investors.

Answer: TRUE
Diff: 2
Topic: Transactions Exempt from Registration

22) Under the small offering exemption of the Securities Act of 1933, the securities can be sold to only a limited number of unaccredited investors.

Answer: FALSE
Diff: 2
Topic: Transactions Exempt from Registration

23) Under the Securities Act of 1933, once securities have been issued through a private placement, the holders of those securities are free to sell them on the open market.

Answer: FALSE
Diff: 1
Topic: Transactions Exempt from Registration

24) No more than 35 nonaccredited investors may purchase securities pursuant to a private placement exemption.

Answer: TRUE
Diff: 2
Topic: Transactions Exempt from Registration

25) Rule 10b-5, which prohibits securities fraud, applies only to the securities of companies listed on the major stock exchanges.

Answer: FALSE
Diff: 1

26) Companies that are covered under the Securities Exchange Act of 1934 are subject to ongoing filing requirements even if they are not making new offerings of securities.

Answer: TRUE
Diff: 1

27) Any company with assets of more than $5 million and at least 500 shareholders is subject to the reporting requirements of the Securities Exchange Act of 1934.

Answer: TRUE
Diff: 1
28) Negligence causing a material misstatement will subject a party to liability under Rule 10b-5 of the Securities Exchange Act of 1934.

Answer: FALSE
Diff: 2

29) Regulation FD prohibits companies from leaking important information to securities professionals before the information is disclosed to the public.

Answer: TRUE
Diff: 2

30) Employees may not violate insider-trading rules.

Answer: FALSE
Diff: 1
Topic: Insider Trading

31) A tippee is liable for acting on information that he or she should have known was not public.

Answer: TRUE
Diff: 1
Topic: Insider Trading

32) An insider may be a representative hired by a company on a temporary and nonemployee-type status.

Answer: TRUE
Diff: 2
Topic: Insider Trading

33) The Insider Trading Sanctions Act passed in 1984 allows the SEC to impose a fine of up to three times the amount of illegal profits gained from insider trading.

Answer: TRUE
Diff: 1

34) The Insider Trading Sanctions Act provides for probation for illegal benefits received from insider trading.

Answer: FALSE
Diff: 1
Topic: Insider Trading Sanctions Act
35) An insider is liable for so-called short-swing profits only if she has used inside information.

Answer: FALSE
Diff: 1
Topic: Short-Swing Profits

36) Under Section 16 of the Securities Act of 1934, a statutory insider includes any shareholder owning 5 percent or more of an equity security of a corporation.

Answer: FALSE
Diff: 2
Topic: Short-Swing Profits

37) Which of the following is true about the 1933 and 1934 securities acts?
A) The 1934 Act superseded the 1933 Act and covers all aspects of securities issuance and trading.
B) The 1933 Act covers securities listed on stock exchanges, and the 1934 Act covers nonlisted securities.
C) The 1933 Act covers the initial issuance of securities, and the 1934 Act covers the subsequent trading of securities.
D) The 1933 Act covers the initial issuance and subsequent trading of stocks, and the 1934 Act covers the initial issuance and subsequent trading of bonds.

Answer: C
Diff: 1
Topic: The Securities and Exchange Commission (SEC)
Skill: Legal Concepts

38) Which of the following is not one of the functions of the Securities and Exchange Commission?
A) adopting rules to further the functions of the securities laws
B) providing government-backed insurance to purchasers of securities
C) investigating securities violations
D) bringing enforcement actions against suspected violators of securities laws
E) regulating securities brokers and advisors

Answer: B
Diff: 2
Topic: The Securities and Exchange Commission (SEC)
Skill: Legal Concepts
39) Which of the following are securities?
   A) investment contracts, stocks, and bonds, but not warrants
   B) stocks, bonds, and preorganization subscription agreements, but not investment contracts
   C) bonds and common stocks, but not preferred stocks
   D) common and preferred stocks, but not bonds
   E) stocks, bonds, preorganization subscription agreements, and investment contracts

   Answer: E
   Diff: 2
   Topic: Definition of a Security
   Skill: Legal Concepts

40) In order for an investment contract to be classified as a security, which of the following is required?
   A) an investment of money
   B) a common enterprise
   C) the expectation that profit form the enterprise will result from the efforts of others
   D) A, B, and C
   E) A and C only

   Answer: D
   Diff: 2
   Topic: Definition of a Security
   Skill: Legal Concepts

41) What is the significance of the Howery test under federal securities law?
   A) It determines a security's type.
   B) It determines whether stocks and bonds are securities.
   C) It determines whether investment contracts are securities.
   D) B and C only
   E) A, B, and C

   Answer: C
   Diff: 2
   Topic: Definition of a Security
   Skill: Legal Concepts
42) Which of the following is true about the relationship between the registration statement and the prospectus?
   A) Only the registration statement is required to be filed with the SEC, and only the prospectus must be provided to purchasers of securities.
   B) Both the registration statement and the prospectus must be submitted to the SEC, and both are required to be provided to prospective purchasers of securities.
   C) Both the registration statement and the prospectus must be submitted to the SEC, but only the Prospectus is required to be provided to prospective purchasers of securities.
   D) Both the registration statement and the prospectus must be submitted to the SEC, but only the Registration Statement is required to be provided to prospective purchasers of securities.
   E) Both the registration statement and the prospectus must be submitted to the SEC, but either may be submitted to prospective investors, so long as one is.
   
   Answer: C
   Diff: 2
   Topic: Definition of a Security
   Skill: Legal Concepts

43) Which of the following items is not required to be included in a registration statement?
   A) description of the securities
   B) the price at which the securities will sell
   C) description of the issuer's business
   D) description of how the proceeds are to be used
   E) audited (certified) financial statements
   
   Answer: B
   Diff: 2
   Topic: Definition of a Security
   Skill: Legal Concepts

44) The general purpose of the Securities Act of 1933 is:
   A) to allow the issuance of only those securities whose level of risk has been approved by the SEC
   B) to provide that all securities issued have adequate insurance coverage
   C) to provide that all relevant information is disclosed to potential purchasers of new issues of securities
   D) to provide potential purchasers of securities with a safety rating system
   E) to provide that relevant information about publicly traded securities is provided to investors at least quarterly
   
   Answer: C
   Diff: 2
   Topic: Definition of a Security
   Skill: Legal Concepts
45) Which of the following statements is true about activities allowed in connection with a public offering?

A) Generally, the waiting period is 20 days.
B) During the prefiling period, the issuer may "condition the market."
C) During the waiting period, the issuer may sell and deliver securities, as long as a prospectus is provided to the investor.
D) After the registration statement is effective, the issuer may sell and deliver securities without giving the investor a prospectus.
E) A prospectus only need be delivered when the sale is closed.

Answer: A
Diff: 2
Topic: Definition of a Security
Skill: Legal Concepts

46) Under the Securities Act of 1933, which of the following is true about activities of the issuer during the waiting period?

A) The issuer cannot condition the market during the waiting period.
B) The issuer can make preliminary sales to accredited investors during the waiting period.
C) The issuer can distribute a preliminary prospectus during the waiting period.
D) The issuer cannot place tombstone ads during the waiting period.
E) The issuer may not make any offers to sell the securities during the waiting period.

Answer: C
Diff: 2
Topic: Definition of a Security
Skill: Legal Concepts

47) Which of the following is correct regarding the final prospectus?

A) It must be delivered to all purchasers prior to, or at the time of, sale or delivery of the security to the investor.
B) It must be delivered at the time of sale or delivery of the security only if the issuer has not already provided a preliminary prospectus.
C) It must be provided to each potential purchaser before an offer can be made to that purchaser.
D) It must be available before tombstone ads can be placed.
E) It is filed before the waiting period can begin.

Answer: A
Diff: 3
Topic: Definition of a Security
Skill: Legal Concepts
48) What does Regulation A under the Securities Act of 1933 provide?
   A) exemption of certain types of securities from registration
   B) exemption of certain securities transactions from registration
   C) a simplified registration for some securities offerings under a certain dollar amount
   D) state regulation in place of federal regulation for certain small offerings
   E) that tombstone ads can be placed during the waiting period

   Answer: C
   Diff: 1
   Topic: Definition of a Security
   Skill: Legal Concepts

49) When selling securities under Regulation A, which of the following is true?
   A) Issuers must limit the sales of the securities to accredited investors.
   B) Issuers cannot sell more than $5,000,000 of securities in 1 year under Regulation A.
   C) All issuers must provide an offering statement.
   D) Sales are limited to 25 unaccredited investors.
   E) There are restrictions on the resale of the securities.

   Answer: B
   Diff: 2
   Topic: Definition of a Security
   Skill: Legal Concepts

50) Which of the following is not correct about the intrastate offering exception under the Securities Act of 1933?
   A) The issuer must be a resident of the state for which the exemption is claimed.
   B) The issuer can qualify for the exemption in only one state.
   C) The issuer must do business only in the state for which the exemption is claimed.
   D) The purchasers must all be residents of the state for which the exemption is claimed.

   Answer: C
   Diff: 2
   Topic: Transactions Exempt from Registration
   Skill: Legal Concepts

51) Which of the following is not an accredited investor for purposes of the private placement exemption under the Securities Act of 1933?
   A) a person with a net worth of at least $1,000,000
   B) a corporation or partnership with total assets in excess of $5,000,000
   C) a director of a corporation that is the issuer
   D) a person who had an income of at least $200,000 in the most recent year

   Answer: D
   Diff: 3
   Topic: Transactions Exempt from Registration
   Skill: Legal Concepts
52) Which of the following is true about resale restrictions under the Securities Act of 1933?
   A) Securities sold under the small offering exemption do not have any resale restrictions.
   B) Issuers of securities that are subject to resale restrictions are required to obtain an
      affidavit from each purchaser acknowledging that the resale of the securities is restricted.
   C) The restrictions on resale generally last 5 years.
   D) The restriction generally does not need to be noted on the security itself.

   Answer: B
   Diff: 2
   Topic: Transactions Exempt from Registration
   Skill: Legal Concepts

53) An issuer of securities subject to resale restrictions must do each of the following except:
   A) require each purchaser to sign an affidavit acknowledging the resale restriction
   B) place a legend on the stock certificate describing the restriction
   C) include a description of the restriction in the registration statement
   D) notify the transfer agent to not record a transfer that would violate the restriction

   Answer: C
   Diff: 2
   Topic: Transactions Exempt from Registration
   Skill: Legal Concepts

54) Under the 1933 Securities Act, a person responsible may be held liable for:
   A) intentional fraud
   B) a material omission or misstatement
   C) failure to file a registration statement or deliver a prospectus as required by law
   D) A, B, and C
   E) B and C only

   Answer: D
   Diff: 1
   Topic: Liability Provisions of the Securities Act of 1933
   Skill: Legal Concepts

55) Under Section 24 of the Securities Act of 1933, the maximum penalty is imprisonment for:
   A) 1 year
   B) 2 years
   C) 5 years
   D) 10 years
   E) 20 years

   Answer: C
   Diff: 1
   Topic: Liability Provisions of the Securities Act of 1933
   Skill: Legal Concepts
56) Section 11 of the Securities Act of 1933 provides:
   A) criminal liability for intentional misstatements only
   B) civil liability for intentional misstatements only
   C) civil liability for intentional misstatements or for misstatements where negligence led to
   the false statement
   D) criminal liability for selling securities without a prospectus

Answer: C
Diff: 2
Topic: Liability Provisions of the Securities Act of 1933
Skill: Legal Concepts

57) The common defense available in a Section 11 action of the Securities Act of 1933 is:
   A) the reasonable person defense
   B) the due diligence defense
   C) the no injury to plaintiff defense
   D) the private placement defense
   E) the de facto compliance defense

Answer: B
Diff: 1
Topic: Liability Provisions of the Securities Act of 1933
Skill: Legal Concepts

58) Under the due diligence defense to a Section 11 action under the Securities Act of 1933, which of the following is true?
   A) Only the issuer can assert a due diligence defense.
   B) Any defendant can assert a due diligence defense.
   C) Any defendant except the issuer can assert a due diligence defense.
   D) The due diligence defense must be asserted together by all defendants, or not at all.
   E) Existence of the defense will replace criminal liability with a lesser civil liability.

Answer: C
Diff: 2
Topic: Liability Provisions of the Securities Act of 1933
Skill: Legal Concepts

59) The Securities Exchange Act of 1934 covers the following except:
   A) trading of certain securities following their initial issuance
   B) regulation of securities exchanges
   C) initial issuances of securities that are exempt under the 1933 Act
   D) ongoing periodic financial reporting by companies listed on national exchanges

Answer: C
Diff: 2
Skill: Legal Concepts
60) Which of the following does not, by itself, subject a corporation to the reporting requirements of the Securities Exchange Act of 1934?
   A) assets of at least $5,000,000 and more than 500 shareholders
   B) equity securities are traded on a national exchange
   C) sales of at least $1,000,000 and more than 1,000 shareholders
   D) making a registered offering under the Securities Act of 1933

Answer: C
Diff: 2
Skill: Legal Concepts

61) Rule 10b-5 of the Securities Exchange Act of 1934 applies to:
   A) issuances of securities if they are covered by a registration statement
   B) trading of securities if the trading is done on a national exchange
   C) only transactions connected with a merger of consolidation
   D) any transfer of securities
   E) only transfers made in violation of a transfer restriction

Answer: D
Diff: 2
Skill: Legal Concepts

62) Under the Securities Exchange Act of 1934, reporting companies must file which of the following reports?
   A) in all cases, annual, quarterly, and monthly reports
   B) in all cases, annual and quarterly reports; and monthly reports when a material event occurs
   C) in all cases, annual reports; and quarterly reports when a material event occurs
   D) in all cases, annual reports; and quarterly and monthly reports when a material event occurs
   E) in all cases, only annual reports are required; quarterly or monthly reports are optional

Answer: B
Diff: 3
Skill: Legal Concepts
63) Under Rule 10b-5, an insider with material nonpublic information:
   A) may sue the corporation to make a profit by buying or selling that company's stock
   B) must disclose the information
   C) must either abstain from trading in that company's stock or disclose the information to the person he is trading with
   D) must abstain from trading in any and all stock

   Answer: C
   Diff: 2
   Skill: Legal Concepts

64) Under Rule 10b-5, which is true about insiders?
   A) Officers and directors are insiders, but employees who are not officers are not insiders.
   B) Officers and directors are insiders, but lawyers or accountants that are hired only on a temporary basis are not insiders.
   C) Employees at all levels in a company are insiders, as well as lawyers, accountants, and consultants even when hired only on a temporary basis.
   D) Agents hired on a temporary nonemployee basis to provide services to the company are not insiders.

   Answer: C
   Diff: 2
   Topic: Insider Trading
   Skill: Legal Concepts

65) When an insider discloses material insider information to a noninsider tippee, the tipper is liable for:
   A) the tipper's own trading only
   B) the tippee's profits, but not the profits made by any remote tippees
   C) the profits of both the immediate tippee and the profits of any remote tippees
   D) the profits of all traders during the period before the information became public

   Answer: C
   Diff: 3
   Topic: Insider Trading
   Skill: Legal Concepts
Under Rule 10b-5, if a noninsider (the tippee) receives material nonpublic information from an insider (the tipper), the tippee:

A) may use it to make a profit by buying or selling that company's stock
B) may use it to make a profit by buying or selling that company's stock, only if the tipper voluntarily disclosed the nonpublic information
C) must disclose that information
D) must either abstain from trading in that company's stock or disclose the information to the person with whom he is trading
E) must abstain from trading in any and all stock

Answer: D
Diff: 2
Topic: Insider Trading
Skill: Legal Concepts

What is the general reason for restrictions against insider trading under the Securities Exchange Act of 1934?

A) Corporate insiders should not own stock in the corporation because it is a conflict of interest.
B) Use of inside information is unfair to the other party to the transaction and goes against the philosophy of allowing all participants in the market having the same information.
C) Insider trading generally leads to lower stock prices.
D) Insider trading results in an imbalance of buyers and sellers in the market.
E) The value of a prospectus is compromised when insider trading is conducted.

Answer: B
Diff: 2
Topic: Insider Trading
Skill: Legal Concepts

What actions can the SEC take against a violator of the Securities Exchange Act of 1934?

A) It may enter into consent orders with defendants.
B) It may seek injunctions in Federal District Court.
C) It may seek a court order requiring defendants to disgorge illegal profits.
D) It may seek civil penalties up to three times the illegal profits from insider trading.
E) All of the above.

Answer: E
Diff: 1
Skill: Legal Concepts
69) Is there a private right of action under Section 10b-5 of the Securities Exchange Act of 1934?
   A) Yes; the Act expressly provides one.
   B) No; there is not such a right under the Act.
   C) There is a private cause of action, but only if consent to sue is received from the SEC.
   D) There is no express private right of action, but courts have implied one.

Answer: D
Diff: 2
Skill: Legal Concepts

70) Who is classified as a statutory insider under Section 16(a) of the Securities Exchange Act of 1934?
   A) officers and directors, but only if they own at least 10 percent of the outstanding shares
   B) all officers and directors
   C) anyone, such as accountants or lawyers, who has provided services to the corporation
   D) anyone, whether or not an officer or director, who owns at least 10 percent of the outstanding shares of a corporation
   E) B and D

Answer: E
Diff: 2
Topic: Short-Swing Profits
Skill: Legal Concepts

71) Which of the following is true about Section 16(a) of the Securities Exchange Act of 1934 relating to short-swing profits?
   A) It applies only to officers and directors of the corporation.
   B) It provides for recovery from a statutory insider by the other party to the transaction.
   C) It covers any trades occurring within 1 year of each other.
   D) It provides that any profits on trades occurring within 6 months of each other made by a statutory insider belong to the corporation.

Answer: D
Diff: 2
Topic: Short-Swing Profits
Skill: Legal Concepts
72) Which of the following is not a function of the new rules promulgated in 1991 by the SEC concerning Section 16?

A) It clarifies the definition of officer so that only persons who perform policymaking functions are considered officers.
B) It creates a new form, which must be filed by all insiders within 45 days of the end of the company's year.
C) It sets new limits on program trading by insiders.
D) It requires companies to disclose delinquent filing of Section 16 forms in their proxy statements.
E) It relieves insiders of short-swing profit liability where the first trade occurred prior to the person becoming an insider even if there is another trade after the person becomes an insider within 6 months of the first trade.

Answer: C

Diff: 3
Topic: Short-Swing Profits
Skill: Legal Concepts

73) Spruce, Inc. wishes to issue new stock to raise capital. Spruce is incorporated, and does all its business in Indiana. Spruce intends to offer and sell its new stock only to residents of Indiana, and to restrict sales to individuals from other states for the proper time. Which of the following best describes the status of Spruce's new stock?

A) This transaction is exempt as an intrastate offering.
B) This transaction is exempt as an intrastate offering, but only if Spruce sells only to accredited investors.
C) This transaction is exempt as an intrastate offering, but only if Spruce issues less than $1.5 million in securities.
D) This transaction is exempt as a private placement.
E) Since the securities are traded only in intrastate commerce, the securities themselves are exempt.

Answer: A

Diff: 2
Topic: Transactions Exempt from Registration
Skill: Factual Application
74) David has put together a limited partnership to invest in oil exploration. He wants to sell limited partnership interests to investors. David plans to sell these interests to both accredited and nonaccredited investors. Which of the following best describes the status of David's partnership interests as to the 1933 Securities Act?

A) Limited partnership interests are not securities under the 1933 Act, so David is exempt.
B) This transaction is exempt as a private placement.
C) This transaction is exempt as a private placement only if David sells to no more than 35 accredited investors.
D) This transaction is exempt as a private placement only if David sells to no more than 35 nonaccredited investors.
E) This transaction is exempt as a private placement only if David sells no more than $1.5 million worth of securities.

Answer: D
Diff: 3
Topic: Transactions Exempt from Registration
Skill: Factual Application

75) The CPA firm of Peterson and Peterson was hired by Hickory Street Corporation to audit its financial statements in connection with its initial public offering in 1998. Since then Peterson and Peterson has been retained to audit the financial statements in connection with the filings required under the Securities Exchange Act of 1934. In 2006, Peterson and Peterson discovered that all the financial statements audited in 2003, 2004, and 2005 contained material misstatements. Peterson and Peterson negligently performed all of these audits, but did not know of the misstatements. Which is true about Peterson and Peterson's liability under Section 11 of the Securities Act of 1933 and under Rule 10b-5 of the Securities Exchange of 1934?

A) The firm is liable under both Section 11 and Rule 10b-5.
B) The firm is liable under Section 11, but not under Rule 10b-5.
C) The firm is liable under Rule 10b-5, but not under Section 11.
D) The firm is liable under neither Section 11, nor under Rule 10b-5.

Answer: B
Diff: 3
Skill: Factual Application
Robert is the vice president of a medium-size corporation that operates retail sporting goods stores in seven states. Robert has considerable stock that he purchased and received over the years while working there. Robert has purchased no stock for the last 3 years because all his excess funds have gone toward college expenses for his oldest son. Robert's daughter will begin college in the fall, and Robert needs to sell some stock. Robert knows that one of the retail locations where the corporation owns the real estate was once used as a toxic dump. The corporation is legally obligated to clean up this site, and the costs will have a material effect on the corporation's net income for several years. This information is not yet public. Robert can:

A) freely sell his stock without any liability because it has been more than 6 months since he purchased any stock
B) sell his stock only if he tells the purchaser about the liability for cleaning up the toxic waste
C) sell his stock only if he gets prior clearance from the Securities and Exchange Commission
D) sell his stock only to an accredited investor
E) not sell his stock under any circumstances until the information about the toxic waste becomes public

Answer: B
Diff: 2
Topic: Insider Trading
Skill: Factual Application

Walter was the president of JKL, Inc. JKL intended to purchase Target Co. JKL's intent was not public information, and when it became public, Target's stock would increase significantly in value. Walter bought no stock himself, but told his best friend of JKL's plan, and his friend bought 1,000 shares of Target Co. Ten months later, when the merger was publicly announced, the friend sold Target's stock and made a large profit. Several stockholders of Target sue Walter and his friend under the provisions of the Securities Acts. What results?

A) Walter has violated no law, because Walter did not purchase any stock.
B) The friend has violated no law because this nonpublic information is not considered material.
C) The friend has violated no law, because the friend is not an insider.
D) Both Walter and his friend have violated Rule 10b-5.
E) Both Walter and his friend have violated the Securities Act of 1933.

Answer: D
Diff: 2
Topic: Insider Trading
Skill: Factual Application
78) Caroline is riding the elevator when she overhears two men talking about a proposed merger. It seems that Strawberry Corporation is going to acquire all the stock of Maple Co. Caroline asks the two men what they are talking about, and they say that when this news becomes public, Maple Co.’s stock will increase dramatically in price. They tell Caroline that this is private information and that she is not to tell anyone. Caroline buys some Maple Co. stock. Several months later, after the merger is announced, Caroline sells her stock for a large profit. Assuming all the information Caroline had was material, nonpublic information, which of the following best describes Caroline’s situation?

A) Caroline has violated no law, because she is not an insider.
B) Caroline has violated no law, because she did not know the men she overheard.
C) Caroline has violated no law, because she had already heard the main points of the information before asking about it.
D) Caroline has probably violated the 1934 Securities and Exchange Act.
E) Caroline has probably violated the 1933 Securities Act.

Answer: D
Diff: 2
Topic: Insider Trading
Skill: Factual Application

79) Jill is president of Starship Enterprises, Inc. She bought stock in Starship on January 1, 2002, and sold it for a profit on March 1, 2003. Jill used no nonpublic information when she bought or sold the stock. Which of the following best describes Jill’s situation?

A) Jill has not violated any law.
B) Jill has violated the insider trading rules, and the profit belongs to the corporation.
C) Jill has violated the short-swing profits rule, and the profit belongs to the corporation.
D) Jill has violated the securities registration law.
E) both B and C

Answer: C
Diff: 1
Topic: Short-Swing Profits
Skill: Factual Application
80) Robert was the president of JKL, Inc. JKL intended to purchase Target Co. JKL's intent was not public information, and when it became public, Target's stock would increase significantly in value. Robert individually bought 1,000 shares of Target Co. Ten months later, when the merger was publicly announced, Robert sold Target's stock and made a large profit. Assuming that Robert is guilty of a violation under the 1934 Securities and Exchange Act, what are the possible consequences?

A) The persons who sold Robert the stock could rescind the sale and recover their stock.
B) The persons who sold Robert the stock could sue Robert for damages.
C) The government could charge Robert with criminal violations, leading to fines and/or imprisonment.
D) A, B, and C
E) B and C only

Answer: D
Diff: 3
Skill: Factual Application

81) A company is planning a security offering. To drum up public demand, the corporate officers go on a publicity campaign to tout the prospectus of the company and to publicize the securities issue. Additionally, annual reports are sent to all shareholders. Are these actions permitted?

A) Yes; both actions are permissible.
B) The public relations campaign is permissible, but the mailing of annual reports is prohibited.
C) The public relations campaign is illegal, but the mailing of the annual reports is permissible.
D) No; neither action is permissible.

Answer: C
Diff: 3
Skill: Factual Application

82) A corporate employee is deemed to be an insider, and buys shares of company stock on May 1, 2008. He leaves his employment on June 1, 2008. When can he sell his stock without violating SEC Section 16?

A) November 1, 2008
B) December 1, 2008
C) May 1, 2009
D) June 1, 2009

Answer: A
Diff: 3
Skill: Factual Application
83) Why were the Securities Acts passed, given that ordinary contract law provides many remedies for persons who have been the victim of fraud, and other such crimes?

Answer: One reason is to prevent the fraud in the first place through the liability provisions. A second is that many injured investors could not prove an ordinary fraud case, and many would not bother to file one because of the size of any potential recovery.
Diff: 1
Skill: Ethics and Policy

84) Is liability under Section 11 of the Securities Act of 1933 too broad? Should parties be liable even without scienter? Does the due diligence defense put too much of the burden of proof on defendants?

Answer: The result of Section 11 is that often the burden of proof is on the defendant to prove proper conduct. Where the proof is not available, the defendant will lose the suit.
Diff: 1
Skill: Ethics and Policy

85) Are the rules on short-swing profits under Section 16(b) of the Securities Exchange Act of 1934 too restrictive or not restrictive enough? Merely because one is a statutory insider, is it proper to limit his or her ability to make a profit on the company's stock? Alternatively, should the 6-month period be longer? What is the theory behind making the profits belong to the corporation?

Answer: One rationale for the law is the difficulty of proving who had inside information at any particular time. The law assumes that the insiders do have inside information, a reasonable assumption. One idea behind the corporation having a claim to the profits is that the insiders should be devoting their efforts toward the long-term health of the company, not making profits in the short term buying and selling the company's stock.
Diff: 2
Skill: Ethics and Policy

86) For an investment contract, why is one of the requirements for the contract to be classified as a security that the arrangement be one where the profits are made through the efforts of others?

Answer: Where one must put her own efforts in to make a profit, such as a partner in a general partnership, one will investigate the opportunity more thoroughly. It is simply too easy to get investors to invest in a scam when the investor is promised great returns with no effort put in. Lastly, when one does the work herself, she has more control over the outcome.
Diff: 2
Skill: Ethics and Policy
87) John operates a sailboat charter service in the U.S. Virgin Islands. He currently has a fleet of 10 boats and would like to have a larger fleet, but would have to obtain additional investors, which he does not want to do. He is considering having investors buy sailboats, which he would maintain and operate as part of his charter fleet. He would enter into a contract that would sell the boat to the investor and provide for the investor to pay John a monthly fee for the maintenance of the boat, and would provide for the sharing of profits between John and the investor. Discuss whether this investment is a security under the 1933 and 1934 Securities Acts.

Answer: An investment contract in which an investor expects to make a profit off the efforts of others is a security. Here, all the efforts are undertaken by John, thus this arrangement is likely a security.
Diff: 2
Topic: Definition of a Security
Skill: Factual Application

88) Wondercures, Inc. is a drug research and manufacturing firm. Wondercures is currently a privately held corporation. The owners of Wondercures believe that they could greatly increase the company's profitability with an infusion of new capital. This would have to come by issuing stock to additional investors. The owners of Wondercures believe that they would need about $20 million in order to carry out their expansion plans. Discuss the options available to Wondercures, and the advantages and disadvantages of each.

Answer: A regular registration is expensive, but would be more attractive to investors because the stock acquired would not be subject to restrictions. Regulation A would not be available because it is limited to $5 million in a 12-month period. If Wondercures does 80 percent of its business in one state, it could qualify for the intrastate exemption, but would be restricted to issuing stock to investors in that state. Wondercures would not qualify for the small offering exemption. Wondercures could make use of a private placement. This would incur smaller transaction costs compared to a regular registration, but the stock would be restricted from resale for 2 years. This would make the stock less appealing to many potential investors. Another disadvantage to the private placement is that it can be offered to only 35 nonaccredited investors.
Diff: 3
Topic: Definition of a Security
Skill: Factual Application

89) Mary wants to invest in some rental property near a major university. Mary approaches Sally and proposes that Sally invest half the down payment in an apartment complex. Mary would devote the majority of the efforts in managing the apartments. Sally would devote some time to managing the complex and would receive 30 percent of the profits. They plan to operate the complex as a partnership. Is Sally's investment in the apartment complex a security under the 1933 and 1934 Securities Acts?

Answer: Because Sally is putting her own efforts into the enterprise and operating it as a general partnership, it would not be classified as a security.
Diff: 2
Topic: Definition of a Security
Skill: Factual Application
90) Harmon, Inc. is a manufacturer of auto parts and wishes to issue new stock to raise capital. Harmon is incorporated and does all of its business in Indiana. Harmon would like to offer its stock regionally, but is flexible depending on the circumstances. There are also several wealthy, sophisticated individuals who would like to purchase Harmon stock. Discuss the methods available to issue Harmon stock exempt from SEC registration.

Answer: Harmon could use the intrastate offering exemption, but would be limited to selling to investors in Indiana. There is no dollar limit. Harmon could also use a private placement, which would also have no dollar limit, but the offering could be made only to a maximum of 35 unaccredited investors, although there is no limit on the number of accredited investors. Under rule 504, Harmon could issue up to $1 million in securities over a 12-month period, with no limit on the number of accredited or unaccredited investors.

Diff: 3
Topic: Transactions Exempt from Registration
Skill: Factual Application

91) Bluegrass Inc. is incorporated and does all of its business in the state of Kentucky. Bluegrass has planned to issue $5,000,000 in new stock. Bluegrass has 10 potential investors, nine of whom live in Kentucky, and one who lives in Ohio. Only one of these potential investors is accredited. Can Bluegrass qualify for any of the registration exemptions under the Securities Act of 1933?

Answer: Bluegrass can qualify for a private placement. It is offering too much to qualify under Rule 504 and cannot qualify for the intrastate offering because of the investor in Ohio.

Diff: 3
Topic: Transactions Exempt from Registration
Skill: Factual Application

92) Smith and Company, CPAs, performed the audit work for a large corporation in connection with its registration statement. Smith and Company performed the work according to all appropriate professional standards, but the corporation had cleverly made the inventory look much greater than it actually was. Because the company did not have as much inventory as was indicated on the financial statements, the company was worth much less than it appeared to be. Smith and Company has been named in a lawsuit under Section 11 of the Securities Act of 1933. Even though Smith and Company properly performed the audit, and the fraud on the part of the corporation was such that it would not be uncovered by an audit, Smith and Company cannot prove any of this in court because all of its audit working papers and computer documentation was accidentally shredded. Discuss Smith and Company's legal situation.

Answer: Under Section 11, a plaintiff needs to prove only that there was a material misstatement and that someone was injured as a result. The due diligence defense essentially places the burden of proof on Smith and Company, and even though Smith and Company did nothing wrong, it looks doubtful that they will prove their due diligence defense.

Diff: 2
Topic: Liability Provisions of the Securities Act of 1933
Skill: Factual Application
93) Jones is an appraiser who was hired by Monolith Corporation to appraise a number of its properties in connection with financial statements to be issued in connection with a registration statement. Because Monolith Corporation has a high turnover of investment real estate, Jones was hired again for help in preparing the annual financial statements for each of the next 2 years. It turns out that Jones was negligent in performance of all the appraisals that led to material misstatements on the financial statements of all years concerned. Jones did not know that the appraisals or financial statements were misstated. Discuss Jones' legal situation.

Answer: Jones would be liable under Section 11 of the Securities Act of 1933. As an expert, he is subject to the act. Jones' negligence is sufficient for liability; intent, or scienter, need not be proven. Due diligence would be a defense, but Jones probably cannot prove it. Because of the lack of scienter, Jones would not be liable under Rule 10b-5 of the Securities Exchange Act of 1934.

Diff: 3
Skill: Factual Application

94) Mary is an assembly-line worker at a computer company. Mary becomes aware that an improvement is being made in the company's primary computer, which will significantly increase profits. Mary tells a friend to buy stock in the company. The friend does so and tells two other persons to do the same. The Company's profits increase greatly, and all three who purchased stock sell at a great profit. Discuss the liability of the parties.

Answer: Mary, as an insider tipper, is liable for the profits of all three purchasers, as is Mary's friend. The two remote tippees are liable for their own profits if they had inside information and knew or should have known that the information was not public.

Diff: 2
Topic: Insider Trading
Skill: Factual Application

95) Fred is an officer at Hill Corporation. Fred, with no inside information, sells 100 shares of Hill stock in May at $50, and in July he buys 250 shares at $40. Is Fred liable for short-swing profits?

Answer: Fred is liable. Any purchase and sale can be matched, and here a $40 purchase and $50 sale occurred within 6 months of each other (of 100 shares), even though Fred could not have actually sold any of the $40 shares.

Diff: 2
Topic: Short-Swing Profits
Skill: Factual Application
1) Businesses organized in the United States are subject to the laws of other countries in which they operate.

Answer: TRUE  
Diff: 1  
Topic: Law and Ethics

2) All ethical standards have been enacted as law.

Answer: FALSE  
Diff: 1  
Topic: Law and Ethics

3) If something is legal, it is also ethical.

Answer: FALSE  
Diff: 1  
Topic: Law and Ethics

4) Under ethical fundamentalism, persons look to an outside source to decide whether a course of action is appropriate.

Answer: TRUE  
Diff: 1  
Topic: Business Ethics

5) Ethical fundamentalism permits a person to determine right and wrong for himself.

Answer: TRUE  
Diff: 1  
Topic: Business Ethics

6) Utilitarianism requires taking the course of action that provides the greatest good to society.

Answer: FALSE  
Diff: 2  
Topic: Business Ethics
7) One advantage of utilitarianism is that there is no need for measuring the good of an action for society.

Answer: FALSE
Diff: 2
Topic: Business Ethics

8) The most favorable aspect of applying utilitarianism is that it is easy to estimate the good that results from different actions.

Answer: FALSE
Diff: 2
Topic: Business Ethics

9) Deontology is based on universal rules that require that all similar cases be treated alike with no exceptions.

Answer: TRUE
Diff: 1
Topic: Business Ethics

10) The concept of reversibility under Deontology allows that the rules be reversed in that the actor must utilize the rule he or she uses to judge the morality of someone else’s conduct.

Answer: TRUE
Diff: 2
Topic: Business Ethics

11) Those who abide by Kantian ethics behave by doing unto others as they would have done unto themselves.

Answer: TRUE
Diff: 2
Topic: Business Ethics

12) John Locke and Jean-Jacques Rousseau both proposed a social contract theory of morality under which each person is presumed to have entered into a social contract with all others in society to obey moral rules that are necessary for people to live in peace and harmony.

Answer: TRUE
Diff: 2
Topic: Business Ethics
13) Under the social contract theory of societal justice, members of society are obligated to obey the moral rules of society regardless of whether others obey those rules.

Answer: FALSE
Diff: 2
Topic: Business Ethics

14) The distributive justice theory has been criticized because its principles of justice are supposed to be chosen by persons who do not know their position in society, something that is unrealistic.

Answer: TRUE
Diff: 1
Topic: Business Ethics

15) Under Rawls's social justice theory, the least advantaged in society must receive special assistance to allow them to realize their potential.

Answer: TRUE
Diff: 2
Topic: Business Ethics

16) Ethical relativism allows an individual to evaluate the ethics of his actions based on his own feelings about what is ethical.

Answer: TRUE
Diff: 2
Topic: Business Ethics

17) John Stuart Mill is the best-known proponent of duty ethics.

Answer: FALSE
Diff: 1
Topic: Business Ethics

18) "Deontology" is another name for duty ethics.

Answer: TRUE
Diff: 1
Topic: Business Ethics

19) Under the traditional view of social responsibility, businesses owe a duty to take actions that maximize profits for shareholders.

Answer: TRUE
Diff: 1
Topic: The Social Responsibility of Business
20) Under the maximizing profits theory of the social responsibility of business, it is improper for a business to undertake charitable acts for the benefit of society if doing so reduces profits.

Answer: TRUE  
Diff: 1  
Topic: The Social Responsibility of Business

21) Under the maximizing profits theory of the social responsibility of business, a business should never voluntarily reduce its prices.

Answer: FALSE  
Diff: 1  
Topic: The Social Responsibility of Business

22) A business who spills oil that impacts land on which homes and businesses are built, but who compensates those whom it injures has met its moral minimum duty of the social responsibility of business.

Answer: TRUE  
Diff: 1  
Topic: The Social Responsibility of Business

23) Under the moral minimum theory of the social responsibility of business, it is acceptable for a business to injure others so long as the business has caused minimal injury.

Answer: FALSE  
Diff: 2  
Topic: The Social Responsibility of Business

24) Under the stakeholder interest theory of the social responsibility of business, a business has obligations to both shareholders, employees, and other stakeholders.

Answer: TRUE  
Diff: 2  
Topic: The Social Responsibility of Business

25) A criticism of the stakeholder interest theory of the social responsibility of business is that it is often impossible to determine how the interests of the different stakeholders should be balanced.

Answer: TRUE  
Diff: 1  
Topic: The Social Responsibility of Business
26) Under the corporate citizenship theory of the social responsibility of business, a business has multiple obligations, but these obligations are only to those who have some direct interest or connection with the business.

Answer: FALSE
Diff: 2
Topic: The Social Responsibility of Business

27) The corporate citizenship theory of social responsibility argues that businesses have the responsibility to do good for society.

Answer: TRUE
Diff: 1
Topic: The Social Responsibility of Business

28) Social audits have recently become mandatory for publicly traded corporations.

Answer: FALSE
Diff: 1
Topic: The Social Responsibility of Business

29) Which of the following statements is true regarding the relationship of law and ethics?
   A) The legal requirements will almost always be the same as the ethical requirements because the law is based on the ethical standards.
   B) In some cases ethics will require a higher standard of conduct than the law, but never vice versa.
   C) In some cases the law will require a higher standard of conduct than ethics, but never vice versa.
   D) Depending on the circumstances, the law can require a higher, lower, or the same standard of conduct as ethics demands.

Answer: D
Diff: 2
Topic: Law and Ethics
Skill: Legal Concepts
30) The Houston-based energy company that filed for Chapter 11 bankruptcy and whose business conduct is one of the grossest examples of corporate greed and fraud in America was the:
   A) Shell Oil Company
   B) Exxon Corporation
   C) Houston Oil and Gas Corporation
   D) Enron Corporation
   E) Mobil Oil Company

Answer: D
Diff: 2
Topic: Law and Ethics
Skill: Legal Concepts

31) Which of the following is correct with regard to the relationship between law and ethics?
   A) The rule of law and the golden rule of ethics demand the same response.
   B) The law may not permit something that would be ethically wrong.
   C) Lawful conduct is always ethical conduct.
   D) Although much of law is based on ethical standards, not all ethical standards have been enacted as law.

Answer: D
Diff: 2
Topic: Law and Ethics
Skill: Legal Concepts

32) Someone who makes moral decisions based on the guidance of an outside source, such as another person, is applying which moral theory?
   A) ethical relativism
   B) utilitarianism
   C) ethical fundamentalism
   D) Kantian ethics
   E) Rawls's distributive justice theory.

Answer: C
Diff: 1
Topic: Business Ethics
Skill: Legal Concepts
33) The moral theory of ethical fundamentalism can best be characterized by:
   A) the consultation of an outside source, such as a book or person, for ethical guidance
   B) the belief that the moral rules should be determined by persons who have a "veil of ignorance" about their place or station in society
   C) the belief that a person must decide what course of action is proper based on that person's own set of beliefs or feelings
   D) determining which course of action produces the greatest amount of good for the greatest number of people
   E) a set of universal rules based on reasoning that must be applied in all situations and is characterized by reversibility

Answer: A
Diff: 2
Topic: Business Ethics
Skill: Legal Concepts

34) Someone who believes that moral decisions should be made such that the greatest amount of good in total results from the actions believes in which moral theory?
   A) ethical relativism
   B) utilitarianism
   C) ethical fundamentalism
   D) Kantian ethics
   E) Rawls's distributive justice theory

Answer: B
Diff: 1
Topic: Business Ethics
Skill: Legal Concepts

35) Which of the following is a frequently raised criticism of "utilitarianism?"
   A) Under utilitarianism, moral and ethical rules are too rigid and fixed over time.
   B) Under utilitarianism, actions taken must harm the smallest number of people, thereby failing to consider the effect on the majority.
   C) Decisions made using utilitarianism require the measurement of qualities that are not subject to precise measurements.
   D) Decisions made using a utilitarian analysis are not allowed to take into account an individual's station or place in society.

Answer: C
Diff: 2
Topic: Business Ethics
Skill: Legal Concepts
36) Which course of action would utilitarianism require to be taken?
   A) the one that provides at least some good to the greatest number of people
   B) the one that provides the greatest overall good to society, even if the benefit of that
      alternative flows to only one person
   C) the one that harms the smallest number of individuals
   D) the one that places the greatest number of people in a better position than they were in
      previously

   Answer: B
   Diff: 2
   Topic: Business Ethics
   Skill: Legal Concepts

37) Which of the following best characterizes "utilitarianism?"
   A) the consultation of an outside source, such as a book or person, for guidance
   B) the belief that the moral rules should be determined by persons who have a "veil of
      ignorance" about their place or station in society
   C) the belief that a person must decide what course of action is proper based on that person's
      own set of beliefs or feelings
   D) determining which course of action produces the greatest amount of good for society
   E) a set of universal rules based on reasoning that must be applied in all situations and are
      characterized by reversibility

   Answer: D
   Diff: 2
   Topic: Business Ethics
   Skill: Legal Concepts

38) What did the appeals court rule when General Motors was sued in Ypsilanti, Michigan?
   A) General Motors had to reduce the wages of its employees contrary to a collective
      bargaining agreement so that the factory would remain profitable.
   B) General Motors had to lay off a portion of the workforce at one of its other factories.
   C) General Motors could not outsource work currently being performed in its own factory.
   D) The promises made by General Motors to maintain continuous employment at its Willow
      Run plant were merely expressions of hope and did not amount to an enforceable
      promise.
   E) General Motors was contractually bound to the City of Ypsilanti to keep its Willow Run
      factory open.

   Answer: D
   Diff: 2
   Topic: Business Ethics
   Skill: Legal Concepts
39) The golden rule, "Do unto others as you would have them do unto you," is most directly reflected in which moral theory?
   A) ethical relativism
   B) utilitarianism
   C) ethical fundamentalism
   D) Kantian ethics
   E) Rawls's distributive justice theory

Answer: D
Diff: 2
Topic: Business Ethics
Skill: Legal Concepts

40) Kantian ethics can best be characterized by:
   A) the consultation of an outside source, such as a book or person, for guidance
   B) the belief that the moral rules should be determined by persons who have a "veil of ignorance" about their place or station in society
   C) the belief that a person must decide what course of action is proper based on that person's own set of beliefs or feelings
   D) determining which course of action produces the greatest amount of good for the greatest number of people
   E) a set of universal rules based on reasoning that must be applied in all situations and is characterized by reversibility

Answer: E
Diff: 2
Topic: Business Ethics
Skill: Legal Concepts

41) Deontology is another term applied to:
   A) ethical relativism
   B) utilitarianism
   C) ethical fundamentalism
   D) Kantian ethics
   E) Rawls's distributive justice theory

Answer: D
Diff: 2
Topic: Business Ethics
Skill: Legal Concepts
42) Which of the following is **not** a part of the beliefs of Kantian Ethics?
   A) All cases should be treated alike.
   B) The applicability of "do unto others as you would have them do unto you."
   C) Choosing a course of action based on what does the greatest good for society.
   D) Abiding by the rules applied to others in making decisions.

   Answer: C  
   Diff: 2  
   Topic: Business Ethics  
   Skill: Legal Concepts

43) When the city of Ypsilanti, Michigan sued General Motors Corporation for reneging on its implied promise to stay in town in return for tax breaks, what did the appellate court find?
   A) The agreement was generally unethical and illegal.
   B) GM made no promise to stay put in Ypsilanti as a quid pro quo for tax abatements.
   C) Tax abatement agreements provide societal benefits.
   D) There would be a gross inequity if GM were allowed to close its plant in Ypsilanti.

   Answer: B  
   Diff: 2  
   Topic: Business Ethics  
   Skill: Legal Concepts

44) What does the "veil of ignorance" require under Rawls's distributive justice theory?
   A) Ethical obligations are decided by less intelligent members of society so that they can be understood by all.
   B) Ethical obligations in society should not be made public, because if they were, individuals would strive to merely do the minimum.
   C) Ethical obligations should be determined by persons who do not know their place in society.
   D) Persons who have suffered an injustice should not be able to learn the identity of the person causing the injustice, at least when it is practical to keep this information from the person who was harmed.

   Answer: C  
   Diff: 1  
   Topic: Business Ethics  
   Skill: Legal Concepts
45) Rawls's social justice theory includes which of the following?
   A) the consultation of an outside source, such as a book or person, for guidance
   B) the belief that the moral rules should be determined by persons who have a "veil of ignorance" about their place or station in society
   C) the belief that a person must decide what course of action is proper based on that person's own set of beliefs or feelings
   D) determining which course of action produces the greatest amount of good for the greatest number of people
   E) a set of universal rules based on reasoning that must be applied in all situations and are characterized by reversibility

Answer: B
Diff: 2
Topic: Business Ethics
Skill: Legal Concepts

46) Someone who believes that the principles of justice and moral duties are based on universal rules, and that the actor must abide by the same rules being applied to others, believes in which moral theory?
   A) ethical relativism
   B) utilitarianism
   C) ethical fundamentalism
   D) Kantian ethics
   E) Rawls's distributive justice theory

Answer: E
Diff: 1
Topic: Business Ethics
Skill: Legal Concepts

47) What is the Japanese concept of "kyosei"?
   A) the theory that requires that businesses should maximize profits for shareholders
   B) the concept that a business has a duty to maximize profits while avoiding harm to others
   C) the rule that businesses must avoid illicit operation
   D) the concept of living and working together for the common good

Answer: B
Diff: 3
Topic: Business Ethics
Skill: Legal Concepts
48) Someone who makes moral and ethical decisions based on his own beliefs is applying which moral theory?
   A) ethical relativism  
   B) utilitarianism  
   C) ethical fundamentalism  
   D) Kantian ethics  
   E) Rawls's distributive justice theory  
   Answer: A  
   Diff: 1  
   Topic: Business Ethics  
   Skill: Legal Concepts

49) Which two philosophers proposed a social contract theory of morality?
   A) John Locke and Jean-Jacques Rousseau  
   B) Jeremy Bentham and John Stuart Mill  
   C) Karl Marx and Joseph Story  
   D) Milton Friedman and Henry Ford  
   E) R. J. Reynolds and Arthur Anderson.  
   Answer: A  
   Diff: 2  
   Topic: Business Ethics  
   Skill: Legal Concepts

50) The moral theory of ethical relativism can best be characterized by:
   A) the consultation of an outside source, such as a book or person, for guidance  
   B) the belief that the moral rules should be determined by persons who have a "veil of ignorance" about their place or station in society  
   C) the belief that a person must decide what course of action is proper based on that person's own set of beliefs or feelings  
   D) determining which course of action produces the greatest amount of good for the greatest number of people  
   E) a set of universal rules based on reasoning that must be applied in all situations and is characterized by reversibility  
   Answer: C  
   Diff: 2  
   Topic: Business Ethics  
   Skill: Legal Concepts
51) Which of the following is a criticism of ethical relativism?
   A) Moral and ethical rules are too rigid and fixed over time.
   B) Some persons would take actions that they believe to be moral, but which most persons in society believe to be immoral.
   C) Decisions require the measurement of qualities that are not subject to precise measurements.
   D) Decisions are not allowed to take into account a particular person's station or place in society.

Answer: B  
Diff: 2  
Topic: Business Ethics  
Skill: Legal Concepts

52) Which ethical theory holds that individuals must decide what is ethical based on their own feelings as to what is right or wrong?
   A) ethical fundamentalism
   B) ethical relativism
   C) utilitarianism
   D) Kantian ethics

Answer: B  
Diff: 2  
Topic: Business Ethics  
Skill: Legal Concepts

53) Which of the following is not one of the Caux Round Table Principles for International Business?
   A) Avoidance of Illicit Operations
   B) Support for Multilateral Trade
   C) Promotion of Multiculturalism
   D) Respect for the Environment
   E) Responsibility of Business Beyond Shareholders Toward Stakeholders

Answer: C  
Diff: 2  
Topic: The Social Responsibility of Business  
Skill: Legal Concepts
54) The theory of business social responsibility that holds that a business owes duties solely to produce the highest return for its shareholders is:
   A) the moral minimum theory
   B) the maximizing profits theory
   C) the stakeholder interest theory
   D) the corporate citizenship theory
   E) the social audit theory

Answer: B
Diff: 1
Topic: The Social Responsibility of Business
Skill: Legal Concepts

55) Which social responsibility theory has been advocated by Nobel Prize-winning economist Milton Friedman?
   A) maximizing profits
   B) moral minimum
   C) stakeholder interest
   D) corporate citizenship
   E) corporate social audit

Answer: A
Diff: 2
Topic: The Social Responsibility of Business
Skill: Legal Concepts

56) Which of the following actions is consistent with the maximizing profits theory of the social responsibility of business?
   A) raising wages because it is expected to lower employee turnover and long-term overall compensation expenses
   B) raising wages because it is believed that workers are underpaid relative to the industry average and that employee relations will be improved even though overall compensation expenses will increase
   C) raising wages to avoid a strike that would cost more than the increased costs of the wage increase
   D) A and C only
   E) A, B, and C

Answer: D
Diff: 2
Topic: The Social Responsibility of Business
Skill: Legal Concepts
57) What was the outcome of the case against the R.J. Reynolds Tobacco Company for its use of the Joe Camel character in promoting its cigarettes?

A) The court found that the company had engaged in unfair business practices.
B) The court ruled that the use of the character was unethical, but not illegal.
C) The plaintiffs dropped the case because of the cost of litigating against a large corporation.
D) Prior to trial, the company agreed to end the use of the Joe Camel character.

Answer: D
Diff: 2
Topic: The Social Responsibility of Business
Skill: Legal Concepts

58) One of the outcomes in the car repair fraud case against Sears was which of the following?

A) Sears had to cease its car repair business for a period of time.
B) Sears had to refund amounts customers had paid for certain car repairs during a specified period of time.
C) Sears had to provide free car repairs in the future for customers who had paid for certain car repairs during a specified period of time.
D) Sears had to provide coupons toward Sears products and services for customers who had paid for certain car repairs during a specified period of time.

Answer: D
Diff: 2
Topic: The Social Responsibility of Business
Skill: Legal Concepts

59) The theory of business social responsibility that holds that the obligation of a business is to earn a profit while not harming others, but if it does cause harm, it must compensate the victims for the harms caused, is:

A) the moral minimum theory
B) the maximizing profits theory
C) the stakeholder interest theory
D) the corporate citizenship theory

Answer: A
Diff: 1
Topic: The Social Responsibility of Business
Skill: Legal Concepts
60) The Foreign Corrupt Practices Act prevents each of the following **except**:  
A) bribes to foreign officials  
B) bribes to foreign political party officials  
C) bribes to candidates for office in foreign nations  
D) bribes to foreign officials if the payment is legal under the local written laws  

Answer: D  
Diff: 2  
Topic: The Social Responsibility of Business  
Skill: Legal Concepts  

61) The theory of business social responsibility that holds that a business owes duties to the various constituencies, such as customers and employees, in addition to the shareholders is:  
A) the moral minimum theory  
B) the maximizing profits theory  
C) the stakeholder interest theory  
D) the corporate citizenship theory  

Answer: C  
Diff: 1  
Topic: The Social Responsibility of Business  
Skill: Legal Concepts  

62) The theory of business social responsibility that holds that a business has a duty to generally do good for society is:  
A) the moral minimum theory  
B) the maximizing profits theory  
C) the stakeholder interest theory  
D) the corporate citizenship theory  

Answer: D  
Diff: 1  
Topic: The Social Responsibility of Business  
Skill: Legal Concepts  

63) The four theories of social responsibility of business discussed in the text can best be described as:  
A) laws, only one of which applies in each state  
B) laws, more than one of which can apply in a particular state  
C) mutually exclusive policies on which laws should be based  
D) policies on which laws should be based, more than one of which might be proper  

Answer: D  
Diff: 3  
Topic: The Social Responsibility of Business  
Skill: Legal Concepts
64) A business that is concerned solely with the financial implications of alternate courses of action is applying which theory of the social responsibility of business?
   A) moral minimum
   B) maximizing profits
   C) stakeholder interest
   D) corporate citizenship

   Answer: B
   Diff: 2
   Topic: The Social Responsibility of Business
   Skill: Legal Concepts

65) A business that is willing to sacrifice some income in order to avoid harm to others is applying which theory of the social responsibility of business?
   A) moral minimum
   B) maximizing profits
   C) stakeholder interest
   D) corporate citizenship

   Answer: A
   Diff: 2
   Topic: The Social Responsibility of Business
   Skill: Legal Concepts

66) A business that undertakes activities that benefit persons who are in no way connected with the business is applying which theory of the social responsibility of business?
   A) moral minimum
   B) maximizing profits
   C) stakeholder interest
   D) corporate citizenship

   Answer: D
   Diff: 2
   Topic: The Social Responsibility of Business
   Skill: Legal Concepts

67) Which of the theories of the social responsibility of business includes obligations of a business to parties other than shareholders?
   A) corporate citizenship only
   B) stakeholder interest only
   C) stakeholder interest and corporate citizenship
   D) moral minimum and stakeholder interest
   E) moral minimum, stakeholder interest, and maximizing profits

   Answer: C
   Diff: 3
   Topic: The Social Responsibility of Business
   Skill: Legal Concepts
68) Constituency statutes most directly relate to which theory of the social responsibility of business?
   A) moral minimum  
   B) maximizing profits  
   C) stakeholder interest  
   D) corporate citizenship

Answer: C  
Diff: 2  
Topic: The Social Responsibility of Business  
Skill: Legal Concepts

69) A procedure which can be used to assess the moral health of a corporation is the:
   A) social audit  
   B) Valdez checkup  
   C) corrupt practices inventory  
   D) minimum moral assessment

Answer: A  
Diff: 1  
Topic: The Social Responsibility of Business  
Skill: Legal Concepts

70) Mary owns her own business and has just attended a cash flow management seminar where it was suggested the businesses should delay paying their suppliers as long as absolutely possible even if doing so violates the stated payment terms. Mary decides to continue paying her suppliers on time in accordance with their payment terms because Mary would like her customers to pay her on time. Mary has reached her decision in accordance with:
   A) ethical relativism  
   B) utilitarianism  
   C) ethical fundamentalism  
   D) Kantian ethics

Answer: D  
Diff: 3  
Topic: Business Ethics  
Skill: Factual Application
Peter runs an auto air conditioning repair shop. Because of the phase-out of the ozone-depleting refrigerants used in older auto air conditioners, auto air conditioning repairers have become subject to numerous new laws and regulations, some of which are costly and burdensome to comply with. Although it costs him more, Peter decides to follow all the statutes and regulations so long as everyone else does the same. Peter has reached his decision in accordance with:

A) ethical relativism
B) utilitarianism
C) ethical fundamentalism
D) Kantian ethics
E) Rawls's distributive justice theory

Answer: E
Diff: 3
Topic: Business Ethics
Skill: Factual Application

Peter runs an auto air conditioning repair shop. Because of the phase-out of the ozone-depleting refrigerants used in older auto air conditioners, auto air conditioning repairers have become subject to numerous new laws and regulations, some of which are costly and burdensome to comply with. This results in much higher costs for air conditioning repairs for many owners of older cars. By not following some of these regulations, Peter can repair these older cars at a much lower cost. Peter believes that the good that comes from the reduced repair costs outweighs the resulting incremental damage to the environment, and thus decides to not follow the regulations. Peter has reached his decision in accordance with:

A) ethical relativism
B) utilitarianism
C) ethical fundamentalism
D) Kantian ethics
E) Rawls's distributive justice theory

Answer: B
Diff: 3
Topic: Business Ethics
Skill: Factual Application
73) A famous psychologist has written a highly acclaimed book targeted at victims of domestic abuse. This book gives practical advice on getting out of such abusive relationships and avoiding further injury prior to getting out of the relationship. Pat thinks the book is excellent, but knows that many persons who could benefit from the book are unaware of its existence and unable to afford its $39.95 price. Pat is considering photocopying significant portions of the book and selling the photocopied portions to such persons at the cost of photocopying, which is much less than $39.95. In using a utilitarianism approach to decide whether to undertake this, Pat would:
   A) look to an outside source regarding the photocopying and selling
   B) look for a universal rule about photocopying and selling such material
   C) try to determine the fairest thing to do
   D) determine if the total good to the world would be increased if Pat were to undertake the photocopying and selling of the copied book sections

Answer: D
Diff: 3
Topic: Business Ethics
Skill: Factual Application

74) Big Green Company is considering introducing a new product to replace an existing product. The new product would result in increased revenues, but slightly lower overall profits because the product will cause injury to a few users and Big Green will compensate persons who are injured. The introduction of this product would be the proper decision under:
   A) both the moral minimum theory and the profit maximization theory
   B) neither the moral minimum theory nor the profit maximization theory
   C) the moral minimum theory, but not under the profit maximization theory
   D) the profit maximization theory, but not under the moral minimum theory

Answer: C
Diff: 3
Topic: Social Responsibility of Business
Skill: Factual Application

75) OSHA has promulgated regulations requiring employers to provide a certain baseline level of breathing protection to employees. Your company is quite successful, and you can afford to provide a level of breathing protection that exceeds OSHA requirements. Should you?
   A) The company has a regulatory and ethical obligation to provide the highest level of protection possible if it can afford it.
   B) The company has a regulatory requirement to buy the best equipment available, but not an ethical requirement.
   C) The company does not have a regulatory requirement, but does have an ethical obligation.
   D) The company has neither a regulatory nor ethical requirement to provide the best equipment available.

Answer: C
Diff: 3
Skill: Factual Application
76) The increasing use of the Internet and computers generally has made it much easier for businesses to gather, process, and distribute information about its customers, as well those who are not customers. To what extent should business be able to gather and sell this information?

Answer: This widespread practice raises questions about privacy and the growing problem of identity theft. Under the moral minimum theory, one must ask if a business causes harm by merely gathering and selling information. Under stakeholder interest the business should consider customers’ interests.

Diff: 2
Skill: Ethics and Policy

77) Beginning in about 1990, many credit card issuers began marketing more aggressively to college students on the basis that they have considerable future earning potential even though their current income is not very high. Prior to 1990, most credit card issuers required cosigners, who would typically be the students' parents. This has led to far more students incurring excessive debt. This has required some students to work longer hours while in college and to have more debt-related problems after getting out of college. Furthermore, employers are increasingly using credit information in the hiring selection process so that some students' debt problems adversely affect their ability to find a job. Evaluate the propriety of these marketing efforts.

Answer: One question is who causes these problems. If the cause is the cardholder's unwise decisions, then the issuer has done no wrong. But if the issuer is part of the cause, then the issuer might have violated the moral minimum theory because it has caused harm. Any such harm would be difficult to quantify. Utilitarianism would ask if the overall good increased from these credit cards.

Diff: 2
Skill: Ethics and Policy

78) A company is planning to promote its services heavily via telemarketing. The company has learned that the majority of those to be called are strongly opposed to receiving telemarketing calls. In addition, many of the persons who will be called are elderly who might decide to purchase the product even though they do not really need it or cannot afford it. Discuss the appropriateness of proceeding with this plan under the different theories of the social responsibility of business.

Answer: The telemarketing plan is presumably aimed toward maximizing profits. Whether the plan meets the moral minimum would depend on whether the company is the cause of any harm due to unwanted telemarketing calls or elderly customers purchasing unneeded products. Under stakeholder interests, the company would need to consider the needs of its customers, many of whom might be better served by other marketing methods. Under corporate citizenship, being a good corporate citizen might include avoiding such marketing methods.

Diff: 2
Skill: Ethics and Policy
79) Assume that a drug company has recently developed a new weight-loss drug that is available only by doctor's prescription. This drug has some significant side effects, but is quite effective for helping individuals lose weight. The drug is being heavily advertised directly to the public, resulting in large numbers of individuals contacting their doctors in order to get a prescription for the drug. Because of the side effects, this drug is intended only for persons who are severely overweight. Some of the advertising for this drug emphasizes the happiness and beauty that can result when one is slender, leading many doctors to over prescribe the drug. Discuss the drug company's actions in light of the theories of the social responsibility of business.

Answer: The company's actions are presumably aimed at maximizing profits. It is likely that the moral minimum is being violated as there is likely injury that is not being compensated. The patients' needs are possibly not being addressed under the stakeholder interest theory, and the promotion of the "skinniness is godliness" belief might violate corporate citizenship.
Diff: 2
Skill: Ethics and Policy

80) The government has proposed demolishing 800 of 2,000 units in a low-income public housing project that has become crime-ridden and in poor repair. These 800 units will be replaced with 300 units, half of which will be for low-income families, and half for moderate-income families, resulting in fewer low-income housing units in total. Evaluate this proposal under utilitarianism.

Answer: There might be more overall good if crime and other problems are reduced, but crime, as well as residents, might simply be displaced to other parts of the community. Other factors in evaluating what amounts to the overall good include the demand for low-income housing, other options for those displaced, and the current project vacancy rate, which would affect the actual numbers displaced.
Diff: 2
Skill: Ethics and Policy

81) Compare and contrast the views held by Milton Friedman regarding the ethical responsibility of a corporate business to that of someone following the stakeholder interest theory of social responsibility.

Answer: Milton Friedman asserted that in a free society, "There is one and only one social responsibility of business— to use its resources and engage in activities designed to increase its profits as long as it stays within the rules of the game." To Friedman, following the "rules of the game" meant engaging in open and free competition without deception and fraud. Someone who follows the stakeholder interest theory of social responsibility would say that, although a corporation does have an obligation to its shareholders, there are also others to whom the corporation or business owes an obligation. These others include employees, customers, suppliers, creditors, and the local community.
Diff: 2
Skill: Ethics and Policy
1) Administrative agencies have been referred to as the fourth branch of government.

Answer: TRUE
Diff: 1
Topic: Government Regulation

2) The FCC and the FAA both regulate specific industries.

Answer: TRUE
Diff: 1
Topic: Government Regulation

3) Administrative agencies have delegated authority to regulate an individual industry or a specific area of commerce.

Answer: TRUE
Diff: 1
Topic: Administrative Agencies

4) Administrative agencies are created by federal, state, and local governments.

Answer: TRUE
Diff: 1
Topic: Administrative Agencies

5) The Department of Justice and the Department of Commerce are part of the executive branch of the government.

Answer: TRUE
Diff: 1
Topic: Administrative Agencies

6) Some administrative agencies created by Congress are not part of the executive branch.

Answer: TRUE
Diff: 1
Topic: Administrative Agencies
7) Administrative agencies often enforce statutes that are created by Congress.

Answer: TRUE
Diff: 1
Topic: Administrative Agencies

8) Administrative law is exclusively procedural law.

Answer: FALSE
Diff: 1
Topic: Administrative Law

9) The federal Administrative Procedure Act sets procedural rules for state agencies.

Answer: FALSE
Diff: 2
Topic: Administrative Law

10) Industry is one area that is not subject to administrative regulation.

Answer: FALSE
Diff: 2
Topic: Administrative Law

11) Administrative law is comprised of mostly substantive law.

Answer: FALSE
Diff: 1
Topic: Administrative Law

12) An administrative law judge's decision is issued in the form of a judgment once the jury returns a verdict.

Answer: FALSE
Diff: 2
Topic: Administrative Law

13) Administrative agencies were established as a separate branch of the government in the U.S. Constitution.

Answer: FALSE
Diff: 1
Topic: Delegation of Powers
14) An administrative agency must be created by either the legislative or the executive branch of the government.

Answer:  TRUE  
Diff: 2  
Topic:  Delegation of Powers

15) An administrative agency has no inherent powers and thus has only the powers delegated to it when it was established.

Answer:  TRUE  
Diff: 2  
Topic:  Delegation of Powers

16) Federal administrative agencies must adhere to procedures that are presented in the Administrative Procedure Act.

Answer:  TRUE  
Diff: 2  
Topic:  Delegation of Powers

17) It is constitutional for an administrative agency to have powers of all three branches of the government.

Answer:  TRUE  
Diff: 2  
Topic:  Delegation of Powers

18) It is unconstitutional for an administrative agency to act beyond its specifically delegated powers.

Answer:  TRUE  
Diff: 1  
Topic:  Delegation of Powers

19) Administrative agencies may grant licenses.

Answer:  TRUE  
Diff: 1  
Topic:  Delegation of Powers

20) Administrative agencies may not issue subpoenas.

Answer:  FALSE  
Diff: 2  
Topic:  Delegation of Powers
21) Administrative agencies are not subject to the same Fourth Amendment restrictions regarding search and seizures as police who are involved in search and seizures.

Answer: FALSE
Diff: 1
Topic: Delegation of Powers

22) The Administrative Procedure Act forbids judicial review of federal administrative agency actions.

Answer: FALSE
Diff: 2
Topic: Judicial Review of Administrative Agency Actions

23) Decisions of state administrative agencies may be appealed to the appropriate federal court.

Answer: FALSE
Diff: 1
Topic: Judicial Review of Administrative Agency Actions

24) If an administrative agency has decided the interpretation of statutory language, the reviewing court must accept the judgment of the administrative agency.

Answer: FALSE
Diff: 2
Topic: Standards of Judicial Review

25) An administrative agency's decision may be overturned if it does not meet the appropriate standard of review.

Answer: TRUE
Diff: 2
Topic: Standards of Judicial Review

26) Documents classified by the President to be in the interests of national security are subject to disclosure.

Answer: FALSE
Diff: 1
Topic: Disclosure of Administrative Agency Actions

27) Records that would interfere with law enforcement proceedings are exempt from disclosure.

Answer: TRUE
Diff: 1
Topic: Disclosure of Administrative Agency Actions
28) The Government in the Sunshine Act opens most federal administrative agency meetings to the public.

Answer:  TRUE  
Diff:  2  
Topic:  Disclosure of Administrative Agency Actions

29) The Equal Access to Justice Act was designed to protect federal administrative agencies from harassment.

Answer:  FALSE  
Diff:  1  
Topic:  Disclosure of Administrative Agency Actions

30) The federal Privacy Act provides that federal administrative agencies can maintain only information about an individual that is relevant and necessary to accomplish a legitimate agency purpose.

Answer:  TRUE  
Diff:  1  
Topic:  Disclosure of Administrative Agency Actions

31) Administrative agencies are often informally referred to as:

A) courts of no resort
B) the fourth branch of government
C) the Mini Congress
D) the constitutional aberration
E) the rule-mongers

Answer:  B  
Diff:  1  
Topic:  Government Regulation  
Skill:  Legal Concepts

32) Examples of federal government agencies include the following except:

A) the Securities and Exchange Commission
B) the National Labor Relations Board
C) the Private Transportation Protection Agency
D) the Federal Aviation Administration
E) the Interstate Commerce Commission

Answer:  C  
Diff:  2  
Topic:  Government Regulation  
Skill:  Legal Concepts
33) Which level(s) of government can create administrative agencies?
   A) federal only
   B) state and federal only
   C) state and local only
   D) state only
   E) federal, state, and local

Answer: E
Diff: 1
Topic: Administrative Agencies
Skill: Legal Concepts

34) Administrative agencies can:
   A) interpret laws
   B) enforce laws
   C) both A and B
   D) neither A nor B

Answer: C
Diff: 1
Topic: Administrative Agencies
Skill: Legal Concepts

35) The statute that covers the operations of federal agencies is the:
   A) Agency Enforcement Act
   B) Federal Agency Conduct Act
   C) Administrative Agency Execution Act
   D) Administrative Procedure Act
   E) Delegated Powers Administration Act

Answer: D
Diff: 1
Topic: Administrative Law
Skill: Legal Concepts

36) With respect to administrative agencies, the delegation doctrine provides that:
   A) agencies have the power to delegate their powers to their employees
   B) agencies have the power to delegate their powers to those parties that they regulate
   C) agencies have only the powers given to them by the enabling action that created them
   D) agencies have all powers necessary for them to carry out their functions
   E) agencies have all powers not reserved to the federal government in the U.S. Constitution

Answer: C
Diff: 3
Topic: Administrative Law
Skill: Legal Concepts
37) Administrative agencies have only the powers granted to them when created under the:
   A) limited grant of power doctrine
   B) enumerated powers doctrine
   C) agency supremacy doctrine
   D) agency restraint doctrine
   E) delegation doctrine

Answer: E
Diff: 2
Topic: Administrative Law
Skill: Legal Concepts

38) An agency can have which of the functions of the government?
   A) legislative only
   B) executive only
   C) legislative or judicial only
   D) executive or judicial only
   E) executive, legislative, or judicial

Answer: E
Diff: 1
Topic: Administrative Law
Skill: Legal Concepts

39) An agency can:
   A) adopt a new rule
   B) prosecute a violation of a rule
   C) adjudicate a dispute over the violation of a rule
   D) B or C only
   E) A, B, or C

Answer: E
Diff: 1
Topic: Administrative Law
Skill: Legal Concepts

40) When an administrative agency adopts a new rule, it is exercising which kind of power?
   A) executive
   B) legislative
   C) judicial
   D) both legislative and executive
   E) none of the above

Answer: B
Diff: 2
Topic: Delegation of Powers
Skill: Legal Concepts
41) In an administrative judicial proceeding, the party against whom the proceeding is being held is called the:
   A) defendant
   B) appellant
   C) witness
   D) deponent
   E) respondent

Answer: E
Diff: 1
Topic: Judicial Review of Administrative Agency Actions
Skill: Legal Concepts

42) The person who presides over an administrative judicial proceeding is called a(n):
   A) judicial administrator
   B) magistrate
   C) administrative law judge
   D) agency judicial clerk
   E) justice of the agency

Answer: C
Diff: 1
Topic: Judicial Review of Administrative Agency Actions
Skill: Legal Concepts

43) Compared to the rules of evidence in a court proceeding, the rules of evidence in an administrative judicial proceeding:
   A) are more restrictive in allowing evidence to be admitted
   B) are more liberal in allowing evidence to be admitted
   C) are essentially the same with respect to what evidence can be admitted
   D) are more liberal in allowing evidence to be admitted in state agency proceedings and more restrictive in federal agency proceedings

Answer: B
Diff: 2
Topic: Judicial Review of Administrative Agency Actions
Skill: Legal Concepts

44) An administrative law judge's decision is issued as:
   A) an order
   B) a judgment
   C) a request for further action
   D) a mandate for enforcement
   E) a notice

Answer: A
Diff: 1
Topic: Judicial Review of Administrative Agency Actions
Skill: Legal Concepts
45) An agency review of an order of an administrative law judge can result in new findings of:
   A) fact only
   B) law only
   C) fact and law
   D) neither fact nor law

   Answer: C
   Diff: 1
   Topic: Judicial Review of Administrative Agency Actions
   Skill: Legal Concepts

46) Which of the following is correct regarding administrative law judges?
   A) They are employed by the administrative agency for which they hear cases.
   B) They decide questions of both law and fact.
   C) They must state reasons for their decisions.
   D) all of the above
   E) B and C only

   Answer: D
   Diff: 2
   Topic: Judicial Review of Administrative Agency Actions
   Skill: Legal Concepts

47) Which of the following statutes gives the public access to most documents in the possession of federal agencies?
   A) the Freedom of Information Act
   B) the Government in the Sunshine Act
   C) the Administrative Procedure Act
   D) the Equal Access to Justice
   E) the Privacy Act

   Answer: A
   Diff: 1
   Topic: Disclosure of Administrative Agency Actions
   Skill: Legal Concepts

48) Which of the following statutes requires certain federal agency meetings to be open to the public?
   A) the Freedom of Information Act
   B) the Government in the Sunshine Act
   C) the Administrative Procedure Act
   D) the Equal Access to Justice
   E) the Privacy Act

   Answer: B
   Diff: 1
   Topic: Disclosure of Administrative Agency Actions
   Skill: Legal Concepts
49) Which of the following statutes allows a party to recover attorney's fees from an agency if that agency has engaged in outrageous conduct in connection with an agency action?
   A) the Freedom of Information Act
   B) the Government in the Sunshine Act
   C) the Administrative Procedure Act
   D) the Equal Access to Justice
   E) the Privacy Act

   Answer: D
   Diff: 1
   Topic: Disclosure of Administrative Agency Actions
   Skill: Legal Concepts

50) Which of the following statutes provides that government agencies can maintain only that information about an individual that is necessary to accomplish a legitimate purpose?
   A) the Freedom of Information Act
   B) the Government in the Sunshine Act
   C) the Administrative Procedure Act
   D) the Equal Access to Justice
   E) the Privacy Act

   Answer: E
   Diff: 1
   Topic: Disclosure of Administrative Agency Actions
   Skill: Legal Concepts

51) Which of the following best describes the Equal Access to Justice Act?
   A) It provides that a party contesting an administrative agency's action can proceed either within the agency or through the court system.
   B) It provides that a party who has been the subject of administrative action that was extremely outrageous can recover her attorneys' fees and other costs from the agency.
   C) It provides that actions filed with an administrative agency judicial body must be heard in the order in which they were filed.
   D) It provides that administrative agencies must provide an attorney to a party involved in a judicial hearing if the party cannot afford an attorney.

   Answer: B
   Diff: 2
   Topic: Disclosure of Administrative Agency Actions
   Skill: Legal Concepts
52) Mary had applied for a permit with a federal administrative agency to operate a business within the boundaries of a popular national forest. The agency grants a limited number of these permits that allow operation of the business during the busy tourist season. The agency has turned down Mary's application even though she received a permit in the prior year, paid the related fees on time, and violated none of the permit's conditions. The agency granted a permit to a different applicant who had never run this type of business previously. If Mary appeals the decision to a court, what standard of review will it most likely use?

A) the arbitrary and capricious abuse of process test
B) the substantial evidence test
C) the unwarranted by the facts test
D) the unfair result test

Answer: A
Diff: 2
Topic: Judicial Review of Administrative Agency Actions
Skill: Factual Application

53) A federal administrative agency has recently adopted an informal interpretive rule that has resulted in Randi's home being worth considerably less than it was previously. Randi believes that the agency official made a mistake because she believes that the rule changes the law rather than interprets it. Randi wants to sue the official who adopted the rule and have the rule overturned. Randi can:

A) not sue the official, but can appeal to a court to change the rule if it is final
B) not sue the official, but can appeal to a court to change the rule if it is not final
C) sue the official, and appeal to a court if the rule is final
D) sue the official, but cannot appeal to a court because this is an informal rule
E) not sue the official, nor appeal to a court because this is an informal rule

Answer: A
Diff: 2
Topic: Judicial Review of Administrative Agency Actions
Skill: Factual Application

54) Why are there so many more administrative agencies today than in the early years of our nation?

Answer: There is one Congress, one Supreme Court, and one president today, just as was the case over 200 years ago, but there are more than 250 million people compared to around 3 million when the country was founded. Consider also the increased complexity of society, and agencies become a necessity.

Diff: 2
Skill: Ethics and Policy
55) Why are courts generally reluctant to overturn the decisions made by administrative agencies?

Answer: The persons in agencies are experts in the subject matter of the agency. Judges are reluctant to substitute their judgment for that of the agency. Furthermore, one function of agencies is to take work away from the three branches of the government, and an overly active review policy by the courts would defeat this purpose.
Diff: 2
Skill: Ethics and Policy

56) Wally has a 40-acre piece of land in the mountains outside Reno. Because of fire threats, the county has adopted a new permitting process and adopted new regulations that require any residential structure to be no more than a half-mile from a road that is accessible to firefighting equipment. This effectively prevents Wally from building a house on any of the land that has a view. This reduces the market value of the land, and reduces Wally's enjoyment of the land. Has there been a taking?

Answer: Zoning regulations generally do not constitute a taking, and here Wally is still able to make use of the land, although not precisely as he would like.
Diff: 2
Topic: Government Regulation Versus Compensable "Taking" of Property
Skill: Factual Application

57) William wants to start an airport limousine service in a large city, but must apply for a permit. Part of the permitting process requires that he demonstrate that there is an unmet need for the service. In his application, William detailed stories of long waits and poor service from existing services. William was turned down because the board that reviews the applications concluded that there was no unmet need. Discuss William's options at this point.

Answer: William must exhaust remedies within this agency and wait until the decision is final within the agency. At that point he could appeal to the relevant court, but the "arbitrary and capricious" test that the court would use would make it difficult for him to prevail. The board members have immunity.
Diff: 2
Topic: Government Regulation Versus Compensable "Taking" of Property
Skill: Factual Application

Answer: TRUE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

2) The FDA has the power to obtain search warrants, conduct inspections, and obtain orders for seizure of products.

Answer: TRUE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

3) The FDCA is administered by the U.S. Department of Health.

Answer: FALSE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

4) Food additives need not be approved by the FDA before they can be sold to the public.

Answer: FALSE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

5) Criminal violations of the FDCA are referred to the U.S. Department of Justice for prosecution.

Answer: TRUE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

6) Federal law states that food does not have to be entirely pure to be distributed or sold.

Answer: TRUE
Diff: 2
Topic: Food, Drug, and Cosmetic Safety
7) Under the FDCA, some contamination of foods is lawful.

Answer: TRUE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

8) The FDA is unable to withdraw approval for a drug once the approval process is complete.

Answer: FALSE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

9) Eye shadow and other cosmetics are subject to FDA regulation.

Answer: TRUE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

10) The FDA has the power to prevent the sale of cosmetics posing dangers to users, but does not have the power to prohibit their sale solely on the basis that they make unsubstantiated claims, such as claims that they promote virility.

Answer: FALSE
Diff: 2
Topic: Food, Drug, and Cosmetic Safety

11) The regulation of pacemakers, kidney dialysis machines, and so forth is not governed by the FDA.

Answer: FALSE
Diff: 1
Topic: Food, Drug, and Cosmetic Safety

12) Regulations under the Nutrition Labeling and Education Act require food processors to establish standard definitions for light, low fat, natural, and other routinely used terms.

Answer: TRUE
Diff: 2
Topic: Food, Drug, and Cosmetic Safety

13) The law is more lax with nonprescription drug manufacturers, as it does not require that the method of use be given to consumers.

Answer: FALSE
Diff: 2
Topic: Regulation of Drugs
14) Approval of new drug applications is fairly expedient.

Answer: FALSE
Diff: 1
Topic: Regulation of Drugs

15) Ordinary household soap is included in the Food and Drug Administration's definition of cosmetics.

Answer: FALSE
Diff: 1
Topic: Regulation of Cosmetics

16) Cosmetics unlike drugs do not require warnings as to carcinogens.

Answer: FALSE
Diff: 2
Topic: Regulation of Cosmetics

17) Unfortunately there has been no law to date to regulate quack medical devices on the market.

Answer: FALSE
Diff: 1
Topic: Regulation of Medical Devices

18) The Consumer Product Safety Commission is part of the Food and Drug Administration.

Answer: FALSE
Diff: 1
Topic: Product Safety

19) The Consumer Product Safety Commission is empowered to conduct research on the safety of consumer products.

Answer: TRUE
Diff: 1
Topic: Product Safety

20) A private party may not sue to prevent violations of the CPSC rules and regulations.

Answer: FALSE
Diff: 1
Topic: Product Safety
21) The United States has agreed to the United Nations-sponsored Biosafety Protocol.
Answer: TRUE
Diff: 1
Topic: Product Safety

22) The FDA administers the Fair Packaging and Labeling Act.
Answer: FALSE
Diff: 2
Topic: Product Safety

23) The Poison Prevention Packaging Act requires manufacturers to provide "childproof" containers for all household products.
Answer: TRUE
Diff: 1
Topic: Product Safety

24) The Federal Trade Commission Act was enacted in 1914.
Answer: TRUE
Diff: 1
Topic: Unfair and Deceptive Practices

25) Advertising is false and deceptive if it makes an unsubstantiated claim.
Answer: TRUE
Diff: 2
Topic: Unfair and Deceptive Practices

26) The bait and switch is a type of deceptive advertising under Section 5 of the Federal Trade Commission Act.
Answer: TRUE
Diff: 1
Topic: Unfair and Deceptive Practices

27) Some states allow a 3-day window in which a consumer may cancel door-to-door sales contracts.
Answer: TRUE
Diff: 2
Topic: Unfair and Deceptive Practices
28) The Truth-in-Lending Act covers both creditors who regularly, and occasionally, extend credit for goods or services to consumers.

Answer: FALSE
Diff: 2
Topic: Debtor Protection Law

29) Regulation Z requires disclosure of the annual percentage rate, but not the total amount of the finance charge.

Answer: FALSE
Diff: 2
Topic: Debtor Protection Law

30) Creditors who violate the Consumer Leasing Act are subject to the same criminal and civil penalties as those stated in the Truth-in-Lending Act.

Answer: TRUE
Diff: 2
Topic: Debtor Protection Law

31) If a consumer purchases faulty merchandise with her credit card, she may withhold payment for that merchandise until the problem is resolved.

Answer: TRUE
Diff: 1
Topic: Debtor Protection Law

32) In order to withhold payment for faulty merchandise purchased with a credit card, the consumer must first try to resolve the issue with the merchant involved.

Answer: TRUE
Diff: 1
Topic: Debtor Protection Law

33) If a consumer-debtor receives a billing statement that she believes contains an error and notifies the creditor of the error in writing within the appropriate time period, the creditor must investigate the alleged error and report back to the consumer-debtor.

Answer: TRUE
Diff: 1
Topic: Debtor Protection Law
34) Under the Equal Credit Opportunity Act, there are restrictions on the information asked for in a credit application so long as the credit-granting decision is not based on an improper reason.

Answer: TRUE
Diff: 2
Topic: Equal Credit Opportunity Act

35) Under the Fair Credit Reporting Act, credit agencies can provide credit information to potential employers.

Answer: TRUE
Diff: 2
Topic: Credit Reporting, Billing, and Collection Laws

36) A consumer who disagrees with an item in a credit reporting agency's files can submit a 100-word written statement about the item and that statement must become part of the consumer's credit file.

Answer: TRUE
Diff: 2
Topic: Credit Reporting, Billing, and Collection Laws

37) The Fair Debt Collection Practices Act does not apply to the actions of creditors in collecting their own debts.

Answer: TRUE
Diff: 1
Topic: Credit Reporting, Billing, and Collection Laws

38) Over which of the following products does the FDA not have jurisdiction to regulate?
   A) prescription drugs
   B) aspartame, the sweetening agent in Nutra-Sweet
   C) cigarettes
   D) artificial hearts
   E) lipstick

Answer: C
Diff: 2
Topic: Food, Drug, and Cosmetic Safety
Skill: Legal Concepts
39) When was the Food, Drug, and Cosmetic Act passed?
   A) 1906
   B) 1933
   C) 1938
   D) 1946
   E) 1970

   Answer: C
   Diff: 1
   Topic: Food, Drug, and Cosmetic Safety
   Skill: Legal Concepts

40) If a food product is found to be imminently hazardous, which of the following actions are not remedies that the FDA may pursue?
   A) require a recall
   B) seize the products
   C) seek civil penalties
   D) seek criminal penalties
   E) force the dissolution of the offending company

   Answer: E
   Diff: 2
   Topic: Food, Drug, and Cosmetic Safety
   Skill: Legal Concepts

41) Which of the following is not one of the general purposes of the statutes regulating the manufacture, processing, distribution, and sale of food?
   A) ensuring the wholesomeness of foods
   B) ensuring that consumers receive value for the price of the food
   C) providing accuracy in labeling and packaging
   D) preventing injury to health

   Answer: B
   Diff: 2
   Topic: Food, Drug, and Cosmetic Safety
   Skill: Legal Concepts
42) Under the federal rules regulating food and drugs, which of the following is true?
   A) Food must be pure 100 percent before it can be sold to consumers.
   B) Food may contain certain impurities, such as insect parts, as long as it is not adulterated.
   C) If a food contains impurities, such as insect parts, these impurities must be disclosed on the food label.
   D) All food must be inspected by the government before it is sold.
   E) Food labels must contain a notice that all impurities cannot be eliminated.

Answer: B
Diff: 2
Topic: Food, Drug, and Cosmetic Safety
Skill: Legal Concepts

43) Which of the following is regulated by the FDA?
   A) eye shadow
   B) lipstick
   C) facial makeup
   D) All of these are correct.

Answer: D
Diff: 1
Topic: Food, Drug, and Cosmetic Safety
Skill: Legal Concepts

44) The following are actions that the FDA can take in regulating cosmetics except:
   A) prohibiting the distribution of misbranded cosmetics
   B) requiring proper labeling
   C) removing from commerce cosmetics that contain unsubstantiated claims of growing hair
   D) ordering sellers of ineffective products to provide purchasers with an effective substitute

Answer: D
Diff: 2
Topic: Food, Drug, and Cosmetic Safety
Skill: Legal Concepts

45) The authority to regulate which of the following was given to the FDA in 1976?
   A) organic foods
   B) Medicinal Devices
   C) Food Additives
   D) artificial sweeteners
   E) nonprescription drugs

Answer: B
Diff: 2
Topic: Food, Drug, and Cosmetic Safety
Skill: Legal Concepts
46) Which of the following is required under the Biosafety Protocol sponsored by the United Nations in the year 2000?
   A) Nations are free to prohibit the import of genetically altered foods without violating free-trade agreements.
   B) Genetically altered foods must be shipped in separate containers from foods that are not genetically altered.
   C) All genetically altered foods must be clearly labeled as such.
   D) Whenever genetically altered foods are offered for sale, comparable food that is not genetically altered must be made available at a comparable price.

Answer: C
Diff: 2
Topic: Other Acts Administered by the FDA
Skill: Legal Concepts

47) Which of the following is not one of the acts or amendments administered by the FDA?
   A) the Pesticide Amendment of 1954
   B) the Food Additives Amendment of 1958
   C) the Preservatives Act of 1959
   D) the Color Additives Amendment of 1960
   E) the Animal Drug Amendment of 1968

Answer: C
Diff: 3
Topic: Other Acts Administered by the FDA
Skill: Legal Concepts

48) Which of the following products would be covered by the Consumer Product Safety Act?
   A) toys
   B) automobiles
   C) aircraft
   D) firearms

Answer: A
Diff: 1
Topic: Product Safety
Skill: Legal Concepts
49) The Consumer Product Safety Commission is empowered to do all of the following except:
   A) adopt rules and regulations to interpret and enforce the Consumer Product Safety Act
   B) conduct research on the safety of consumer products
   C) issue comparative safety ratings of competing products
   D) order a manufacturing to recall, repair, or replace a dangerous product or take other corrective action
   E) the Consumer Product Safety Commission can do all of the above

Answer: C  
Diff: 2  
Topic: Product Safety  
Skill: Legal Concepts

50) Which of the following is not one of the acts that are enforced by the Consumer Product Safety Commission?
   A) the Flammable Fabrics Act
   B) the Motor Vehicle Safety Act
   C) the Wool Products Labeling Act
   D) the Child Protection and Toy Safety Act
   E) the Refrigerator Safety Act

Answer: B  
Diff: 3  
Topic: Product Safety  
Skill: Legal Concepts

51) Unfair and deceptive trade practices are generally regulated by the:
   A) Federal Trade Commission
   B) Food and Drug Administration
   C) Securities and Exchange Commission
   D) Consumer Product Safety Commission

Answer: A  
Diff: 1  
Topic: Product Safety  
Skill: Legal Concepts

52) The standard of whether advertising is false and deceptive is whether it would mislead:
   A) a reasonable person with a ninth-grade level of education
   B) the particular plaintiff in the lawsuit
   C) a reasonable consumer
   D) a consumer sophisticated in the type of product that was advertised

Answer: C  
Diff: 1  
Topic: Product Safety  
Skill: Legal Concepts
53) In order for a party to be liable for false and deceptive advertising, it must be shown that:
   A) the advertisement has deceived a majority of the persons who have seen it
   B) at least some persons have been deceived by it
   C) the plaintiff in the lawsuit was deceived by it
   D) the advertisement is likely to mislead a reasonable consumer
   E) the advertisement could possibly mislead some consumers

Answer: D  
Diff: 2  
Topic: Product Safety  
Skill: Legal Concepts

54) Which of the following practices is not a bait and switch?
   A) Running out of the advertised product because the high demand was not anticipated.
   B) Refusing to show customers the advertised product.
   C) Discouraging employees from selling the advertised product.
   D) Not having adequate supplies of the advertised product on hand.

Answer: A  
Diff: 2  
Topic: Product Safety  
Skill: Legal Concepts

55) Which of the following is not true about door-to-door sales in most states?
   A) In order to cancel a sale, the consumer must send a notice to the seller.
   B) There are protections for consumers because of the high pressure used in some door-to-door sales.
   C) The consumer usually has a reasonable time to cancel the sale.
   D) The salesperson must permit cancellation of the sale if the consumer gives notice within the appropriate time.

Answer: C  
Diff: 2  
Topic: Product Safety  
Skill: Legal Concepts

56) Under the Postal Reorganization Act, a person who receives unsolicited merchandise in the mail:
   A) must take reasonable steps to return it
   B) is obligated to pay for it only if the consumer makes beneficial use of it
   C) is obligated to pay for it in all circumstances where the consumer does not make reasonable efforts to return it
   D) is not obligated to return or pay for it, even if the consumer uses it

Answer: D  
Diff: 1  
Topic: Product Safety  
Skill: Legal Concepts
57) The disclosures required under the Truth-in-Lending Act are required for:
A) all consumer credit transactions exceeding $25,000
B) all consumer credit transactions not exceeding $25,000 and all transactions involving the consumer's principal residence as security
C) all consumer credit transactions and all transactions exceeding $25,000 involving the consumer's principal residence as security
D) all consumer credit transactions not exceeding $25,000 and all transactions involving any residence of the consumer as security

Answer: B
Diff: 2
Topic: Truth-in-Lending Act
Skill: Legal Concepts

58) Which of the following terms need not be disclosed under the Truth-in-Lending Act?
A) the annual percentage rate (APR)
B) the cash price of the product
C) the terms available from competitors
D) the total finance charge
E) amount of payments

Answer: C
Diff: 2
Topic: Truth-in-Lending Act
Skill: Legal Concepts

59) Which of the following terms is not required to be disclosed under the Truth-in-Lending Act?
A) the annual percentage rate of interest
B) the date the finance charge begins to accrue
C) the amount of attorneys fees to be charged if legal action is needed to collect the debt
D) the number of payments
E) the amount of late charges or delinquency penalties

Answer: C
Diff: 2
Topic: Truth-in-Lending Act
Skill: Legal Concepts

60) The Truth-in-Lending Act is administered by:
A) the Consumer Product Safety Commission
B) the Federal Reserve Board
C) the Federal Trade Commission
D) the Comptroller of the Currency

Answer: B
Diff: 1
Topic: Truth-in-Lending Act
Skill: Legal Concepts
61) The primary overall purpose of the Truth-in-Lending Act is to:

A) provide full disclosure of consumer credit transactions to borrowers and potential borrowers
B) speed up the processing and closing of consumer credit transactions
C) make consumer credit available to greater numbers of borrowers
D) make consumer credit transactions more affordable for borrowers
E) to provide increased flexibility in the terms of consumer credit transactions

Answer: A
Diff: 2
Topic: Truth-in-Lending Act
Skill: Legal Concepts

62) Which of the following is true regarding the Washington state antispam law?

A) It applies to all consumer credit transactions.
B) It prohibits false and misleading commercial e-mail messages.
C) It prohibits e-mail solicitors from using misleading information in the subject line or transmission path of any commercial e-mail message to Washington residents.
D) It only applies to messages originating in the state of Washington.
E) B and C only

Answer: E
Diff: 3
Topic: Truth-in-Lending Act
Skill: Legal Concepts

63) Which of the following is not required to be disclosed in a credit card application mailed directly to a consumer?

A) the annual percentage rate of interest
B) the maximum credit limit for which the individual will be considered
C) any minimum or fixed finance charge
D) any annual membership fee
E) any transaction charge for using the card for purchases

Answer: B
Diff: 2
Topic: Truth-in-Lending Act
Skill: Legal Concepts
64) Which of the following is true?
   A) The cardholder is always liable for the first $50 of unauthorized use of a lost credit card.
   B) Card issuers may not send unsolicited credit cards to consumers.
   C) For defective goods that were purchased using a credit card, the consumer must first try to resolve the dispute with the merchant before withholding payment to the card issuer.
   D) The Truth-in-Lending Act sets the maximum amounts for various fees, such as late payment fees, which card issuers can charge.

Answer: C
Diff: 3
Topic: Truth-in-Lending Act
Skill: Legal Concepts

65) Which of the following is true about the required disclosures on credit card applications?
   A) They must be contained on the application itself in all circumstances.
   B) In all cases they can either be contained on the application itself or the application can provide a toll-free telephone number and address where the information can be obtained.
   C) They must be contained on the application itself in direct solicitations to consumers, but for applications generally available to the public, they may either be contained on the application itself or the application may provide a toll-free telephone number and address where the information can be obtained.
   D) The card issuer has the option to provide the information within 30 days after the account is activated if the issuer has not provided the information on the application.

Answer: C
Diff: 3
Topic: Truth-in-Lending Act
Skill: Legal Concepts

66) Which of the following is not true about the Equal Credit Opportunity Act?
   A) It was enacted in 1975.
   B) It applies to all creditors who extend or arrange credit in the ordinary course of their business.
   C) It allows creditors 60 days to notify an applicant of the decision on a credit application.
   D) It requires creditors to give specific reasons for the denial of credit.
   E) A consumer can recover for emotional distress from a violator of the act.

Answer: C
Diff: 3
Topic: Equal Credit Opportunity Act
Skill: Legal Concepts
67) What must a credit reporting agency do if a consumer disputes an item in the consumer's credit records of the agency?

A) It must make a note in the records that the consumer disputes the item.
B) It must investigate the item and report back to the consumer the results of that investigation.
C) It must investigate the item and report back to the consumer the results of that investigation, and make a note in the records if the consumer continues to dispute the item.
D) It must investigate the item and report back to the consumer the results of that investigation, and must allow the consumer to file a 100-word written statement if the consumer continues to dispute the item. This statement becomes a permanent part of the consumer's credit file.
E) It must refer the matter to the merchant; then the consumer and the merchant are responsible for reaching a solution, which will be noted in the credit records.

Answer: D
Diff: 3
Topic: Fair Credit Reporting Act
Skill: Legal Concepts

68) The Fair Debt Collection Practices Act:

A) prohibits creditors from suing debtors to collect their debts
B) applies to all creditors who collect debts
C) basically prohibits abusive, deceptive, and unfair practices by collection agencies in the collection of debts
D) both A and C
E) both B and C

Answer: C
Diff: 1
Topic: Fair Credit Reporting Act
Skill: Legal Concepts

69) Under the Fair Debt Collection Practices Act, a covered debt collector may not contact the debtor:

A) at work if the debtor objects
B) at home after 6 p.m.
C) if the debtor is represented by an attorney
D) if the debtor has told the collector on the phone to not contact him again
E) if the debtor has previously promised to pay the past due debt

Answer: C
Diff: 2
Topic: Fair Credit Reporting Act
Skill: Legal Concepts
70) Just for fun, Sue took her new jar of peanut butter to a friend who works in a lab and asked him to analyze it. The friend then correctly reported to Sue that he had found 12 insect fragments in the 2-pound jar. Sue is disgusted and mad as she can be. Which of the following is true in these circumstances?

A) The maker of the peanut butter is liable for false and deceptive advertising if the presence of insect fragments was not noted on the label.
B) The maker of the peanut butter is liable for selling adulterated food because the insect fragments were present.
C) The maker of the peanut butter violated the Nutrition Labeling and Education Act if it did not include the nutrients and other information from the insect parts on the nutrition label.
D) The maker of the peanut butter has not violated any food cleanliness or safety standards.
E) A and B

Answer: D
Diff: 2
Topic: Food, Drug, and Cosmetic Safety
Skill: Factual Application

71) Which of the following situations would not be deceptive under Section 5 of the Federal Trade Commission Act?

A) A shaving cream manufacturer uses Plexiglas covered with sand to represent sandpaper in demonstrating its product, without disclosing that the Plexiglas is not sandpaper.
B) An ice cream manufacturer uses scoops of mashed potatoes to represent ice cream in its commercials, because ice cream melts too fast.
C) An ice cream manufacturer uses scoops of mashed potatoes to represent ice cream in its commercials, and then shows a close-up of the potatoes and mentions how rich the ice cream looks.
D) A mouthwash manufacturer states that its product helps prevent colds, but there is not evidence to support this.

Answer: B
Diff: 2
Topic: Regulation of Product Safety
Skill: Factual Application

72) Which of the following statements would not be deceptive under Section 5 of the Federal Trade Commission Act?

A) "This toothpaste cleans 50 percent better than others," but this claim cannot be proven.
B) "This car is a great car," but it is not a great car.
C) "This car is a 2002 PT Cruiser" when it really is a 2001 model.
D) "This deodorant keeps you drier than any other brand," but there is no evidence of this.

Answer: B
Diff: 2
Topic: Regulation of Product Safety
Skill: Factual Application
73) Steven owns his own home. Carl is a salesperson for the A-1 Home Improvement Company. Carl comes to Steven's house, without invitation, and sells Steven some replacement windows on credit. Steven uses his house as collateral for these windows. Later, Steven decides that he does not want the windows. Which of the following best describes Steven's possible actions?

A) Steven has 3 business days to cancel the contract.
B) Steven has 7 business days to cancel the contract.
C) If A-1 failed to notify Steven of his right to cancel the contract, Steven has 2 years to cancel the contract.
D) Steven is liable under the contract; he has no right to cancel the contract.

Answer: A
Diff: 2
Topic: Regulation of Product Safety
Skill: Factual Application

74) Nicole is president of the Blue Valley Credit Card Company. Nicole is concerned with the liability of the company for any use of the Blue Valley cards it has issued. Which of the following statements regarding credit cards is false?

A) A customer must apply for a credit card before Blue Valley may issue a card.
B) A credit cardholder is liable only for up to $50 of unauthorized charges if his card is stolen.
C) If a purchaser buys a faulty product with a credit card, the purchaser may withhold payment to the credit card company until the dispute is settled.
D) If a credit card is stolen, and the cardholder notifies the company of the theft before any unauthorized charges are made, the holder is not liable for any unauthorized charges.

Answer: A
Diff: 3
Topic: Truth-in-Lending Act
Skill: Factual Application

75) Brandy is the manager of the credit department of a large retail store. One of Brandy's functions is to review applications for credit submitted by the store's customers. Brandy is in the process of revising the credit application form and she wants some advice. Which of the following statements concerning the credit granting process is true?

A) The credit application may never ask about marital status.
B) The credit application may never ask about childbearing intentions.
C) The credit application may never consider public assistance payments as income.
D) The credit application may never consider alimony as income.
E) Both A and B are true.

Answer: B
Diff: 2
Topic: Truth-in-Lending Act
Skill: Factual Application
76) Janet was refused credit from a department store based upon a credit report. Janet obtained a copy of that credit report, and found several errors in it. Janet is interested in knowing what she can do to correct these errors and comes to you for advice. Which of the following actions is not available to Janet?

A) forcing the agency to reinvestigate the data in her file
B) filing a written statement giving her side of the disputed information
C) recovering compensatory and punitive damages if the misrepresentations were negligent
D) forcing the agency to notify persons who received the disputed information and giving a new report

Answer: C
Diff: 2
Topic: Credit Reporting, Billing, and Collection Laws
Skill: Factual Application

77) Miriam has just purchased a business, but she is unsure of some of the rules and regulations that may apply to her. She comes to you with the following situations and her understanding of the consequences. Which of the following statements is true?

A) If Miriam mails unordered merchandise to a potential customer, that customer must either pay for it or send it back.
B) If Miriam sells faulty merchandise and accepts a credit card, the credit card company will still pay Miriam with no questions asked.
C) If Miriam grants credit, she may ask about marital status and childbearing plans, as long as the information is used only to determine ability to pay.
D) If Miriam collects her own accounts, she may call the debtor at inconvenient times.
E) Only two of the above are true.

Answer: D
Diff: 2
Topic: Credit Reporting, Billing, and Collection Laws
Skill: Factual Application

78) In which of the following circumstances can Bob, a bill collector, contact a consumer debtor?

A) at home, at 8 p.m.
B) if the debtor is at a social event
C) at the debtor's place of employment over the objections of the employer
D) if the debtor is represented by an attorney
E) if the debtor has given written notice that she refuses to pay the debt

Answer: A
Diff: 2
Topic: Credit Reporting, Billing, and Collection Laws
Skill: Factual Application
79) Why was consumer protection not part of the law of the United States until relatively recently? Have consumer protection laws become too strong?

Answer: One reason is that the quantity, complexity, and availability of consumer products greatly increased in the twentieth century. With increasing complexity and greater availability to less sophisticated consumers, these consumers became less able, on average, to evaluate a product's safety.

Diff: 2
Skill: Ethics and Policy

80) Credit files of potential borrowers are increasingly being evaluated using a "credit score" that reports the person's creditworthiness as a single number. What are the advantages and disadvantages of this controversial practice?

Answer: This practice allows all borrowers to be evaluated objectively, but if the model used to calculate the score is biased, then this "objective" score will also be biased. Many argue that it is really impossible to convert a multifaceted characteristic like creditworthiness into a single-dimensional number.

Diff: 2
Skill: Ethics and Policy

81) Should the Federal Trade Commission take a hands-off approach to regulating deceptive advertising? Should consumers be responsible for verifying the claims in advertisements? Why or why not? In what circumstances might regulation be most appropriate?

Answer: Some argue that it should be the consumer's responsibility to determine if product claims are accurate. Regulation is most justified in areas where consumers are least able to judge, for themselves, the veracity of claims.

Diff: 2
Skill: Ethics and Policy

82) Under what circumstances should the Food and Drug Administration speed up the approval process for new drugs? What are the risks of this and how might they be minimized?

Answer: This might be most appropriate for drugs related to AIDS and cancer where the drug extends the life of a terminally ill patient that would otherwise die. Long-term side effects are not an issue for these patients. If approved, study of such drugs should continue.

Diff: 2
Skill: Ethics and Policy
83) The Disco Shop sells stereos in all price ranges from inexpensive to very expensive. The sales people work on commission. They earn a 20 percent commission on the expensive items and only 2 percent on the cheaper items, leading the sales people to prefer selling the more expensive items. Disco makes more profit on the more expensive items. Is this an unlawful bait and switch?

Answer: This is probably not a bait and switch by itself because for a bait and switch to occur there must generally be some kind of advertising enticement to get customers in the store seeking the low-priced item, after which the salespersons attempt to sell a higher priced item.

Diff: 2
Topic: Regulation of Product Safety
Skill: Factual Application

84) Maggie is a homeowner. An unsolicited door-to-door salesperson came to Maggie's house and sold her an encyclopedia set. Maggie decided that she no longer wants the encyclopedia. What can Maggie do?

Answer: Maggie can probably rescind or cancel the contract within 3 business days. Otherwise, she could get out of the contract only if there was deception or a breach of some sort.

Diff: 1
Topic: Regulation of Product Safety
Skill: Factual Application

85) A furniture store in a college town advertised a convertible futon sofa sleeper as "Big enough to sleep two people; nice oak finish; wide choice of fabrics; $199." Bob is interested in the item and goes to the store. When he arrives at the store he is told that there are only a few left and that there wasn't one set up. The salesperson says that he does not know where the ones in the warehouse are and that it will take a while to locate them. The salesperson tries to interest Bob in some of the more expensive models in the showroom, but Bob is not interested. Finally, Bob is able to see the $199 model. Even when opened out as a bed, it is several inches narrower than a full-size mattress. In addition, the finish on the wood is poorly applied. Lastly, Bob is told that the only fabric colors are white, gray, and black, and that they are currently out of stock on the gray and white. Has the store violated Federal Trade Commission regulations?

Answer: This is probably a bait-and-switch scheme. In addition, the ad for the $199 futon could be deceptive. The statement about sleeping two people is probably deceptive because most people would equate that with being at least as big as a full-size bed, even though this sofa could probably sleep two people. The statement about the oak finish is probably not deceptive, but more a matter of opinion or taste. Even though one could debate the meaning of "wide choice" of fabrics, it would certainly not include a choice of only three colors, only one of which is in stock.

Diff: 3
Topic: Regulation of Product Safety
Skill: Factual Application
86) Jerry joined a compact disc club that entitled him to purchase three compact discs for $10. There was no obligation to purchase additional discs, but the agreement provided that "about once a month you will receive notification of the disc of the month. If you want this disc, do nothing. If you do not want the selection, you must return the card indicating so." Jerry has been receiving these cards about every 3 weeks. Sometimes he forgets to return the cards. In addition, he has received some compact discs for which he had not received cards and which he did not order. Must Jerry pay for any of these?

Answer: Although, generally, unsolicited merchandise does not have to be paid for, Jerry is obligated to pay for the ones received pursuant to the agreement. The others need not be paid for or returned, unless they are the result of a mistake, a possibility here. There might be a deceptive advertising issue over receiving cards every 3 weeks, rather than once a month.

Diff: 2
Topic: Regulation of Product Safety
Skill: Factual Application

87) Rick had enjoyed a long spending spree where he had charged too much on his credit cards and was now having difficulty making even the minimum payments. Rick went to a local finance company to set up a home equity loan (requiring him to pledge his home as security) that he would use to pay off the credit cards. He signed a loan agreement that indicated that he would have 120 monthly payments of $404.89, but disclosed nothing else about the loan. A couple of months later Rick has started using his credit cards again. He is discussing his financial situation with a friend who then looks at the loan agreement. The friend determines that Rick is paying a high rate of interest, and tells Rick that the lender will be able to repossess Rick's house if he defaults on this loan. Can Rick get out of the loan?

Answer: In many circumstances, he could simply pay it off without penalty, and will have to return the funds in any event. Otherwise, he had 3 days to rescind, or 3 years if the lender did not inform him of this right.

Diff: 2
Topic: Truth-in-Lending Act
Skill: Factual Application
88) One day while Mary is at home, a vacuum cleaner salesperson drops by her house unannounced. Mary did not need a new vacuum cleaner, but after the demonstration and some high-pressure selling, she signed a contract, paying $600 by charging it on one of her bank credit cards. A week later, when she first used the vacuum cleaner, it did not work properly. She was unable to locate the person who sold it to her, so she refused to pay her credit card for the amount of the vacuum cleaner. The credit card company reported her as being delinquent on her account. Persons from the credit card company then started calling her late at night demanding payment, and called her at work. Several months later, the credit card company turned the account over to a debt collection agency. Representatives of the debt collection agency also called her at home late at night and at work. She later learned that the disputed amount was reported as delinquent to a credit reporting agency, which refused to eliminate it from her records. What are the legal implications to Mary of the above events?

Answer: Mary had 3 days to rescind the sale, but this time had passed by the time she attempted to do so. She could withhold payment from the credit card issuer, assuming she had first tried to resolve the dispute with the merchant who sold her the vacuum cleaner. Representatives of the credit card company are not covered by the Fair Debt Collection Practices Act; thus, they can call at inconvenient times, although this may not have been a valid debt at the time. The collection agency was violating the Fair Debt Collection Practices Act by calling at late hours. Mary can require the credit agency to include a statement of up to 100 words about the dispute of the amount reported as delinquent.

Diff: 3
Topic: Truth-in-Lending Act
Skill: Factual Application

89) Mark owes a debt to the First Bank, which has turned the debt over to the Ace Debt Collection Service for collection. Ace has called his home on several occasions, visited his home on some occasions, and even visited his place of employment, trying to collect this debt. Mark has also received letters from Ace indicating that if he does not pay the debt, he will be sued and his property may be taken to pay the debt. Discuss in general the limitations placed on debt collectors concerning the time and place they may contact debtors. Also, discuss whether any of the tactics described above violate the law governing debt collecting and what Mark can do, if anything, to keep Ace from contacting him in the future.

Answer: As a debt collection agency, Ace can contact Mark only between 8 a.m. and 9 p.m. and cannot contact him at inconvenient places, or at work, if his employer objects. Mark can notify Ace in writing that he refuses to pay the debt and does not want Ace to contact him again.

Diff: 2
Topic: Credit Reporting, Billing, and Collection Laws
Skill: Factual Application
1) The Environmental Protection Agency can initiate proceedings in court against suspected violators of federal environmental laws.

Answer: TRUE  
Diff: 1  
Topic: Environmental Protection

2) The Environmental Protection Agency has limited ability in ordering remedies for violations of federal environmental laws.

Answer: FALSE  
Diff: 1  
Topic: Environmental Protection

3) An environmental impact statement has no real purpose other than to fulfill a federal requirement when new legislation is proposed.

Answer: FALSE  
Diff: 2  
Topic: Environmental Protection

4) The National Environmental Policy Act requires that the federal government and state governments consider the adverse impact of their actions on the environment.

Answer: FALSE  
Diff: 1  
Topic: Environmental Protection

5) The Environmental Quality Assessment Report is the document required under the National Environmental Policy Act to assess environmental impacts of government actions.

Answer: FALSE  
Diff: 2  
Topic: Environmental Protection

6) An environmental impact statement must discuss alternatives to the proposed action.

Answer: TRUE  
Diff: 1  
Topic: Environmental Protection
7) The public has the right to review and comment on environmental impact statements.

Answer: TRUE
Diff: 1
Topic: Environmental Protection

8) NEPA applies to actions by the federal government.

Answer: TRUE
Diff: 2
Topic: Environmental Protection

9) Congress set national ambient air quality standards in the Clean Air Act.

Answer: FALSE
Diff: 2
Topic: Air Pollution

10) Automobile emissions are one of the major sources of air pollution.

Answer: TRUE
Diff: 1
Topic: Air Pollution

11) Under the Clean Air Act, existing sources of pollution must adopt the best available technology to reduce air pollution.

Answer: FALSE
Diff: 1
Topic: Air Pollution

12) Under the Clean Air Act, areas that are classified as nonattainment areas are further classified based on the degree to which they exceed the ozone standard.

Answer: TRUE
Diff: 2
Topic: Air Pollution

13) The Clean Air Act requires new stationary sources of pollution to meet stricter standards than older existing stationary sources.

Answer: TRUE
Diff: 2
Topic: Air Pollution
14) The EPA can order the recall of automobiles that do not meet air pollution standards.

Answer: TRUE
Diff: 1
Topic: Air Pollution

15) Operators of mobile sources can buy or sell the right to emit carbon monoxide.

Answer: FALSE
Diff: 1
Topic: Air Pollution

16) In trading sulfur dioxide emission allowances, the quantity of allowances received is less than the allowance given up by the other company.

Answer: TRUE
Diff: 2
Topic: Air Pollution

17) The federal government has adopted regulations governing indoor air quality.

Answer: FALSE
Diff: 2
Topic: Air Pollution

18) States may prepare but are not required to prepare a state implementation plan to compare its standards against federal standards.

Answer: FALSE
Diff: 2
Topic: Air Pollution

19) The first federal water pollution statute was passed in the late nineteenth century.

Answer: TRUE
Diff: 2
Topic: Water Pollution

20) To date there has not been any act that regulates water pollution.

Answer: FALSE
Diff: 1
Topic: Water Pollution
21) New point sources of water pollution must use best practical control technology.
Answer: FALSE
Diff: 2
Topic: Water Pollution

22) The Clean Water Act regulates the temperature of water discharged into public waterways.
Answer: TRUE
Diff: 1
Topic: Water Pollution

23) Wetlands require a permit from the Army Corps of Engineers in order to be filled or dredged.
Answer: TRUE
Diff: 1
Topic: Water Pollution

24) A permit is required to dump wastes into the ocean.
Answer: TRUE
Diff: 1
Topic: Water Pollution

25) The Environmental Protection Agency may establish water pollution control standards for places like mines, paper mills, and other stationary sources of water pollution.
Answer: TRUE
Diff: 2
Topic: Water Pollution

26) Electric utility companies and manufacturing plants are excluded from the Clean Water Act.
Answer: FALSE
Diff: 2
Topic: Water Pollution

27) The filling or dredging of wetlands is forbidden unless a permit has been obtained.
Answer: TRUE
Diff: 2
Topic: Water Pollution

28) The federal government is primarily responsible for enforcing the Safe Water Drinking Act.
Answer: FALSE
Diff: 2
Topic: Water Pollution
29) The Oil Pollution Act of 1990 is administered by the U.S. Coast Guard.

Answer: TRUE
Diff: 2
Topic: Water Pollution

30) Under federal law, new pesticides that are hazardous may be prohibited from sale, but old pesticides that existed before the law was enacted may not be prohibited from sale.

Answer: FALSE
Diff: 1
Topic: Toxic Substances and Hazardous Waste

31) New chemicals must be tested by the manufacturers before marketing, and the manufacturers must keep records of the test results, but they need to report results to the EPA only for chemicals found to pose an environmental or health risk.

Answer: FALSE
Diff: 2
Topic: Toxic Substances and Hazardous Waste

32) The Toxic Substances Control Act requires that the Environmental Protection Agency identify toxic pollutants that cause serious illness or death to wildlife.

Answer: FALSE
Diff: 1
Topic: Toxic Substances and Hazardous Waste

33) The Environmental Protection Agency may remove toxic substances from commerce.

Answer: TRUE
Diff: 1
Topic: Toxic Substances and Hazardous Waste

34) The Environmental Protection Agency has no control over the registrations of pesticides, as Congress dictates which ones will be suspended and which ones will be sold.

Answer: FALSE
Diff: 2
Topic: Toxic Substances and Hazardous Waste

35) The Resource Conservation and Recovery Act is primarily concerned with cleaning up hazardous wastes from past pollution.

Answer: FALSE
Diff: 2
Topic: Toxic Substances and Hazardous Waste
36) Under the Resource Conservation and Recovery Act, hazardous wastes are tracked from the time that they are generated until their ultimate disposal.

Answer:  TRUE  
Diff:  2  
Topic:  Toxic Substances and Hazardous Waste

37) The Secretary of the Interior has the authority to declare a form of wildlife as being either endangered or threatened.

Answer:  TRUE  
Diff:  1  
Topic:  Endangered Species

38) The Endangered Species Act applies only to private persons who take any endangered species.

Answer:  FALSE  
Diff:  1  
Topic:  Endangered Species

39) Most states are lax about requiring that private industry prepare an environmental impact statement for proposed developments.

Answer:  FALSE  
Diff:  2  
Topic:  State Environmental Protection Laws

40) States have enacted few environmental statutes because of the comprehensive federal statutes.

Answer:  FALSE  
Diff:  1  
Topic:  State Environmental Protection Laws

41) Which of the following best describes the overall scheme of pollution regulation in the United States?
   A) exclusively federal law
   B) exclusively state law with minimal federal oversight
   C) exclusively state law, but with considerable federal oversight
   D) primarily federal law, but considerable state law as well
   E) a series of uniform state laws

Answer:  D  
Diff:  2  
Topic:  Environmental Protection  
Skill:  Legal Concepts
42) Prior to the passage of federal environmental law statutes, environmental actions were based on:
   A) private nuisance only
   B) public nuisance only
   C) private nuisance if brought by an individual and public nuisance if by the government
   D) private nuisance when the polluter was a private entity, and public nuisance when the polluter was a governmental entity

   Answer: C
   Diff: 2
   Topic: Environmental Protection
   Skill: Legal Concepts

43) State environmental statutes are valid:
   A) in no circumstances
   B) if they were passed prior to any conflicting federal statutes
   C) if they do not conflict with a federal law or unduly burden interstate commerce
   D) if they have a similar purpose as a federal environmental law
   E) in all circumstances

   Answer: C
   Diff: 2
   Topic: Environmental Protection
   Skill: Legal Concepts

44) The Environmental Protection Agency has which of the following powers?
   A) adopt regulations
   B) initiate judicial proceedings
   C) adopt regulations and hold hearings
   D) adopt regulations and initiate judicial proceedings
   E) adopt regulations, hold hearings, and initiate judicial proceedings

   Answer: E
   Diff: 2
   Topic: Environmental Protection
   Skill: Legal Concepts

45) Under federal laws, which of the following statements regarding an environmental impact statement (EIS) is false?

   Answer: A
   Diff: 2
   Topic: Environmental Protection
   Skill: Legal Concepts
46) Which of the following is true about environmental impact statements?
A) The public is not allowed to comment on environmental impact statements.
B) They can be used in court as evidence in a lawsuit challenging an action as violating the National Environmental Policy Act.
C) They are required only for projects where the federal government itself undertakes the actual construction of the project.
D) All federal, state, and local governmental actions require an environmental impact statement.
E) Private activities also require an environmental impact statement.

Answer: B
Diff: 2
Topic: Environmental Protection
Skill: Legal Concepts

47) Which of the following statements best describes the procedures under the Clean Air Act?
A) The federal government sets and enforces the standards.
B) The state governments set and enforce the standards.
C) The federal government sets the standards; the state governments enforce the standards; if the states do not adequately enforce the standards, the federal government may enforce them.
D) The state governments set the standards; the federal government enforces the standards; if the federal government does not adequately enforce the standards, the states may enforce them.
E) Both the federal and state governments set standards and each enforces its own standards.

Answer: C
Diff: 2
Topic: Air Pollution
Skill: Legal Concepts

48) Which of the following is true about the Clean Air Act?
A) Congress set national ambient air quality standards for a number of pollutants.
B) Congress set goals, but not standards for a number of pollutants.
C) Congress directed the EPA to set ambient air quality standards for certain pollutants, but the EPA has not yet set the standards due to scientific uncertainty.
D) Congress directed the EPA to set ambient air quality standards for certain pollutants, and standards have been set thus far for carbon monoxide and sulfur oxide, among others.
E) Congress ordered the states to set ambient air quality standards, and most states have thus far set at least some ambient air quality standards.

Answer: D
Diff: 3
Topic: Air Pollution
Skill: Legal Concepts
49) Which of the following is not required of a state's compliance plan for a nonattainment area?
   A) identification of major sources of air pollution
   B) required installation of pollution control equipment on major sources
   C) provision of adequate state funding for the installation of pollution control equipment
   D) institution of a permit system for new sources of air pollution
   E) implementation of an inspection system for mobile sources

Answer: C
Diff: 3
Topic: Air Pollution
Skill: Legal Concepts

50) Which of the following is not true about air pollution controls on automobiles?
   A) Automobiles and light duty trucks must meet air pollution standards.
   B) There are standards relating to automotive fuels and additives.
   C) The EPA can require manufacturers to recall and correct vehicles not meeting air pollution standards.
   D) The EPA has limited the amount of driving that can be done in nonattainment areas.
   E) The use of leaded fuel additives was prohibited after 1995.

Answer: D
Diff: 2
Topic: Air Pollution
Skill: Legal Concepts

51) The EPA standards for toxic air pollutants:
   A) require that all such pollutants that have any risks to humans be eliminated
   B) require that companies use the best available technology to minimize these pollutants
   C) allow for safe levels of these pollutants to exist
   D) A and B only

Answer: C
Diff: 1
Topic: Air Pollution
Skill: Legal Concepts

52) Which of the following is true about EPA regulation of toxic air pollutants under Section 112 of the Clean Air Act?
   A) Sources must obtain zero emission levels of the identified toxic pollutants.
   B) The same technological standards apply to both existing and new sources.
   C) The EPA standards for toxic substances do not take into account economic or technological feasibility.
   D) Polluters must install reasonably available control technology.
   E) Fewer than 50 specific chemicals have been listed as toxic.

Answer: C
Diff: 2
Topic: Air Pollution
Skill: Legal Concepts
53) Under the Clean Air Act, the Environmental Protection Agency must set minimum emission standards for toxic air pollutants. Which of the following statements best describes the test used for setting these standards?

A) All pollutants with any risk are prohibited.
B) Standards must set an ample margin of safety for the public.
C) Standards must balance safety and the cost of reducing the pollutants.
D) Standards must balance safety and the current technology available for reducing pollutants.
E) Standards must balance safety, cost, and the current technology available for reducing pollutants.

Answer: B
Diff: 3
Topic: Air Pollution
Skill: Legal Concepts

54) Which of the following is not true about the trading of pollution credits, or rights, under the 1990 amendments to the Clean Air Act?

A) It applies to emissions of sulfur dioxide.
B) Companies can add pollution equipment, and if this reduces their emissions below the acceptable level, the excess rights or pollution capacity can be sold.
C) The EPA must approve trades of pollution credits.
D) A company that has unused rights to emit 1,000 pounds of sulfur dioxide can sell the right to another company, and the other company could then emit those 1,000 pounds of sulfur dioxide.
E) Futures contracts exist on pollution rights under this program.

Answer: D
Diff: 3
Topic: Air Pollution
Skill: Legal Concepts

55) The concept of selling pollution credits is permitted:

A) only by the Clean Air Act
B) only by the Clean Water Act
C) only by the Clean Water and Clean Air Acts
D) only by the Hazardous Waste Act
E) by all of the federal environmental laws

Answer: A
Diff: 1
Topic: Air Pollution
Skill: Legal Concepts
56) The trading of air pollution rights, or allowances, is provided for under the Clean Air Act for which pollutant(s)?
   A) carbon monoxide only
   B) particulates and carbon monoxide only
   C) carbon monoxide and carbon dioxide only
   D) sulfur dioxide and carbon monoxide only
   E) sulfur dioxide only

   Answer: E
   Diff: 1
   Topic: Air Pollution
   Skill: Legal Concepts

57) The first federal statute addressing water pollution was:
   A) The Clean Waterways Act of 1842
   B) The River and Harbor Act of 1886
   C) The Sanitary Drinking Water Act of 1932
   D) The Federal Water Pollution Control Act of 1948

   Answer: A
   Diff: 1
   Topic: Water Pollution
   Skill: Legal Concepts

58) Which of the following is true?
   A) In order to dredge or fill a wetland, a permit is needed from the EPA.
   B) The federal government has primary enforcement responsibility for the Safe Drinking Water Act.
   C) A permit is needed for dumping toxic wastes in the ocean, but not for wastes that are nontoxic.

   Answer: D
   Diff: 3
   Topic: Water Pollution
   Skill: Legal Concepts
59) Under the Clean Water Act, point sources of water pollution, such as factories, are required to install pollution control equipment. Which of the following best describes the standards for this required equipment?

A) Existing point sources must use the best practical technology; new point sources must use the best available technology.
B) New point sources must use the best practical technology; existing point sources must use the best available technology.
C) Both new and existing point sources must use the best practical technology.
D) Both new and existing point sources must use the best available technology.

Answer: A
Diff: 1
Topic: Water Pollution
Skill: Legal Concepts

60) Which of the following is not true about the Clean Water Act?

A) Primary enforcement responsibility is with the federal government.
B) The EPA issues permits allowing persons to discharge water pollutants.
C) The act has water quality standards that determine which bodies of water can be used for drinking water.
D) New point sources are required to use best available control technology.

Answer: A
Diff: 2
Topic: Water Pollution
Skill: Legal Concepts

61) Under the National Pollutant Discharge Elimination System:

A) permits are granted by the EPA to discharge pollutants in water
B) no new permits are granted to discharge pollutants into water
C) old permits to discharge pollutants into water are being phased out
D) permits to discharge pollutants into water can be bought, sold, or traded

Answer: A
Diff: 2
Topic: Water Pollution
Skill: Legal Concepts
62) What is the National Pollutant Discharge Elimination System?
   A) It is a program to shut down water pollution point sources.
   B) It is a technology assistance program to reduce water pollution.
   C) It is a program that grants permits to parties desiring to discharge pollutants into water.
   D) It is a set of regulations covering sewage treatment plants.
   E) It is a system to encourage recycling and reuse of pollutants that would otherwise be discharged into water.

   Answer:  C
   Diff: 2
   Topic:  Water Pollution
   Skill:  Legal Concepts

63) Which of the following is true?
   A) Toxic substances are prohibited from manufacture or sale under the Toxic Substances Control Act.
   B) Pesticides do not need to be registered with the EPA if they are nontoxic.
   C) The EPA can cancel the registration of a previously registered pesticide if it finds that its use would cause unreasonable adverse effects on the environment.
   D) Under the Insecticide, Fungicide and Rodenticide Act, there are no regulations on the use of these products once they have been registered.

   Answer:  C
   Diff: 2
   Topic:  Toxic Substances and Hazardous Waste
   Skill:  Legal Concepts

64) Which of the following statements is false?
   A) Hazardous waste includes toxic air pollution.
   B) Under the National Environmental Policy Act, an environmental impact statement is required only for actions of the federal government.
   C) The EPA has established national standards for drinking water.
   D) In determining safe levels of toxic air pollutants, neither the cost nor technology is considered.
   E) Both states and private parties may be reimbursed from the Superfund.

   Answer:  A
   Diff: 2
   Topic:  Toxic Substances and Hazardous Waste
   Skill:  Legal Concepts
65) The Resource Conservation and Recovery Act addresses:
   A) energy efficiency standards for specified products
   B) mandatory recycling programs for certain specified substances
   C) the transportation, storage, and disposal of hazardous wastes
   D) export limitations on products that cause significant pollution in their manufacture
   E) the cleanup of hazardous waste sites

Answer: C
Diff: 1
Topic: Toxic Substances and Hazardous Waste
Skill: Legal Concepts

66) Which of the following is true about the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Responses, Compensation and Liability Act (CERCLA)?
   A) CERCLA regulates hazardous waste of government agencies, and RCRA regulates wastes of private entities.
   B) CERCLA regulates liquid hazardous waste, and RCRA regulates solid hazardous waste.
   C) CERCLA regulates hazardous waste on land, and RCRA regulates hazardous waste located in bodies of water.
   D) CERCLA regulates the cleanup of existing hazardous waste sites, and RCRA regulates the handling and disposal of currently produced hazardous materials.

Answer: D
Diff: 2
Topic: Toxic Substances and Hazardous Waste
Skill: Legal Concepts

67) Which of the following is not true about the Comprehensive Environmental Response, Compensation, and Liability Act?
   A) More than 25,000 hazardous waste sites have been identified.
   B) The sites are ranked and the highest sites are placed on a priority list.
   C) The EPA performs all site cleanups, and then can recover the costs from responsible parties.
   D) A party can be required to pay the entire cost of cleaning a site even if only partly responsible for the pollution.
   E) The act contains requirements to notify the government immediately of spills and accidents involving hazardous materials.

Answer: C
Diff: 3
Topic: Toxic Substances and Hazardous Waste
Skill: Legal Concepts
68) Which of the following statements is false?
   A) The Superfund applies only to hazardous waste, not pollution in general.
   B) Liability for the improper disposal of hazardous material is joint and several.
   C) If the current owner of the hazardous waste site did not generate the hazardous waste, she will not be liable under the Superfund legislation.
   D) The EPA is empowered to set standards for radioactivity in the environment.

   Answer: C
   Diff: 2
   Topic: Toxic Substances and Hazardous Waste
   Skill: Legal Concepts

69) Under the Superfund legislation, who may be held liable for the cleanup costs of a hazardous waste site?
   A) only the generator of the waste
   B) only the generator and the transporter
   C) only the generator, transporter, and owner of the land at the time of the waste disposal
   D) the generator, the transporter, the owner of the land at the time of disposal, and the current owner
   E) only the transporter of the waste and owner of the land at the time of disposal

   Answer: D
   Diff: 2
   Topic: Toxic Substances and Hazardous Waste
   Skill: Legal Concepts

70) Which of the following is true about the regulation of nuclear power plants and radiation pollution by the Nuclear Regulatory Commission (NRC) and the Environmental Protection Agency (EPA)?
   A) The NRC regulates all aspects of nuclear power plant operation and nuclear waste disposal.
   B) The NRC licenses and monitors the operations of nuclear power plants, and the EPA regulates the disposal of nuclear waste and regulates thermal pollution from power plants.
   C) The NRC licenses and monitors the operations of nuclear power plants and regulates thermal pollution from the plant, and the EPA regulates the disposal of nuclear waste.
   D) The NRC licenses nuclear power plants, and the EPA regulates all aspects of the construction and operation of the plant as well as the disposal of nuclear waste.

   Answer: B
   Diff: 3
   Topic: Toxic Substances and Hazardous Waste
   Skill: Legal Concepts
71) Under the Endangered Species Act:
   A) actions that harm an endangered species are prohibited
   B) actions that harm an endangered species are subject to a cost-benefit analysis to determine feasibility
   C) only governmental actions are covered
   D) A and C only
   E) B and C only

   Answer: A
   Diff: 1
   Topic: Endangered Species
   Skill: Legal Concepts

72) The Endangered Species Act:
   A) prohibits the taking of any threatened animals without a permit
   B) prohibits the taking of any endangered animal
   C) permits endangered or threatened animals to be taken if there is no cost-effective way to avoid the taking
   D) permits the endangered or threatened animals to be taken if only a small number of them are destroyed
   E) applies only to takings by the federal and state governments

   Answer: B
   Diff: 1
   Topic: Endangered Species
   Skill: Legal Concepts

73) Which of the following is not one of the federal statutes protecting wildlife?
   A) The Migratory Bird Treaty Act
   B) The Wild Free-Roaming Horses and Burros Act
   C) The Wild Game Preservation Act
   D) The Fishery Conservation and Management Act
   E) The Fish and Wildlife Coordination Act

   Answer: C
   Diff: 3
   Topic: Endangered Species
   Skill: Legal Concepts
74) The two categories under which animals can be listed in the Endangered Species Act are:
   A) endangered and protected
   B) endangered and extinct
   C) threatened and protected
   D) marine and terrestrial
   E) endangered and threatened

Answer: E  
Diff: 1  
Topic: Endangered Species  
Skill: Legal Concepts

75) Which of the following is true about the need to file an environmental impact statement?
   A) Federal government actions are the only actions that require an environmental impact statement.
   B) Federal government actions always require an environmental impact statement, and in some states, an environmental impact statement is required for state government actions, it is never required for actions of private entities.
   C) Federal government actions always require an environmental impact statement, and in some states, an environmental impact statement is required for state government actions; and in some states, it is required for private actions as well.
   D) Federal government actions always require an environmental impact statement, and in some states, an environmental impact statement is required for private actions, but it is never required for state government actions.

Answer: C  
Diff: 3  
Topic: State Environmental Protection Laws  
Skill: Legal Concepts

76) Andy is planning to develop a certain parcel of land. There are some questions as to whether or not a federal environmental impact statement is required. Which of the following could be a good reason that an environmental impact statement is not required?
   A) The action is taken by a state government.
   B) The action is taken by a private entity.
   C) The action is taken by a federal agency.
   D) Both A and B are good reasons.
   E) A, B, and C are good reasons.

Answer: D  
Diff: 2  
Topic: Environmental Protection  
Skill: Factual Application
77) A federal government agency is planning to build a dam in Maine. The land where the dam will be located, and the area that will be under the lake to be formed, is currently all privately owned. Which of the following correctly describes the requirement for an environmental impact statement?
   A) An environmental impact statement is not required because the land is private.
   B) An environmental impact statement is required only if the land will become federal land before the dam is built.
   C) An environmental impact statement is required only if any of the land affected is classified as wetland.
   D) An environmental impact statement is required because it is the federal government that is undertaking his project.
   E) An environmental impact statement is required unless the EPA grants a waiver.

Answer: D
Diff: 3
Topic: Environmental Protection
Skill: Factual Application

78) The National Forest Service has proposed granting permission to a ski area to expand and cut ski trails and construct lifts on some national forest service land. Which of the following items is not required to be included in the related environmental impact statement?
   A) a description of the affected environment
   B) the impact of the proposal on the environment
   C) identification and discussions of alternatives to the action
   D) identification of the parties who support the action
   E) a cost-benefit analysis of the proposed action and the alternatives

Answer: D
Diff: 3
Topic: Environmental Protection
Skill: Factual Application

79) Kennedy Corporation has an old plant that is currently exceeding the sulfur dioxide emissions level set by the Clean Air Act. Kennedy cannot afford to reduce production enough to come into compliance. What alternatives does Kennedy have?
   A) Kennedy can buy pollution credits from the U.S. government.
   B) Kennedy can buy pollution credits from another company that has such credits.
   C) Kennedy can buy pollution credits from either another company or the U.S. government.
   D) Kennedy has no alternative but to reduce emissions.

Answer: B
Diff: 2
Topic: Air Pollution
Skill: Factual Application
80) Deep South Power Company wants to build a new power plant on the shore of a river. The site is on land classified as wetlands. Which of the following is **not** true about Deep South's obligations?

A) Deep South must obtain a discharge permit for any water pollution discharges.
B) Deep South must obtain a permit from the Army Corps of Engineers before dredging or filling any wetlands.
C) Deep South must comply with any temperature requirements on the temperature of any waters discharged.
D) Deep South must use the best available control technology that is cost-effective.
E) Deep South must report to the public the amounts of any discharges of the chemicals listed in the Comprehensive Environmental Response, Compensation, and Liability Act.

Answer: D  
Diff: 3  
Topic: Water Pollution  
Skill: Factual Application

81) Brilliant Manufacturing has just opened a new plant located on a major river. The manufacturing facility emits some pollutants into this river, but the plant was constructed using the best available control technology. Brilliant has not obtained any permits from the EPA or notified the EPA of its new plant. In these circumstances, has Brilliant violated the Clean Water Act?

A) Yes, because new sources of water pollution are not permitted under the act.
B) Yes, because it did not use the appropriate technology in constructing its plant.
C) Yes, because it did not obtain a discharge permit from the EPA.
D) No, because its plant was built using best available control technology.
E) No, because there is no violation if Brilliant's pollution does not cause adverse effects on the water quality of the river.

Answer: C  
Diff: 3  
Topic: Water Pollution  
Skill: Factual Application

82) Wally owns 40 acres along a river. He is planning to build a home near the river, and a friend has just informed him that the land where Wally is planning to build the house is on wetlands. In this circumstance, what must Wally do in order to be able to fill in the wetlands for the construction of his house?

A) Nothing, because this is the action of a private individual on private land.
B) Nothing, so long as the house will not emit any pollutants into the nearby river.
C) File an environmental impact statement.
D) Obtain a permit from the Army Corps of Engineers.
E) File an environmental impact statement and obtain a permit from the Army Corps of Engineers.

Answer: D  
Diff: 3  
Topic: Water Pollution  
Skill: Factual Application
83) Gary owns 100 acres of land that he wants to develop into a timeshare resort. Gary has owned this land since 1968, but never developed it. It has recently been learned that the purple-bellied robin, an extremely rare bird listed as an endangered species, inhabits this land. The land has been declared critical habitat for the bird. Which of the following is true?

A) Gary must prepare an environmental impact statement in order to develop the land.
B) The development of the land will likely be prohibited because it is critical habitat for the purple-bellied robin.
C) Because this is privately owned land and there is no government action involved, Gary can proceed with development without preparing an environmental impact statement.
D) Gary must obtain a permit from the Army Corps of Engineers but does not need to prepare an environmental impact statement.
E) Gary must prepare an environmental impact statement, and if the project is allowed to move forward, he must then acquire a permit from the Army Corps of Engineers.

Answer: B
Diff: 3
Topic: Endangered Species
Skill: Factual Application

84) According to the United States Supreme Court, the appropriate amount of punitive damages that should be paid for the Exxon Valdez oil spill is:

A) $4.5 billion
B) $4.0 billion
C) $2.5 billion
D) $500 million

Answer: D
Diff: 3
Skill: Factual Application

85) Should one nation have the power to restrict pollution that drifts within its borders from a neighboring nation? If so, under what conditions? How should such disputes be settled?

Answer: Recovery has been allowed for this under international law. This is an area where treaties can be effective.
Diff: 2
Skill: Ethics and Policy

86) Do the wealthier nations of the world have an obligation to assist the less wealthy nations in the development and implementation of programs and technology to reduce pollution?

Answer: Even apart from any obligation, such assistance could benefit people in all nations through reduced pollution. Furthermore, where the pollution sources are owned and operated by corporations in wealthier nations, some argue there is an ethical duty to make the overseas plants at least as clean as those in the country where the corporation is based.
Diff: 2
Skill: Ethics and Policy
87) What role should scientific uncertainty play in establishing pollution standards? For example, how strongly should the United States and other nations act to control global warming if there is conflicting and uncertain scientific evidence about the extent of the problem and the effects of proposed remedial actions? Who should decide which evidence or theory is more likely correct?

Answer: Uncertainty as to the extent of a problem known to exist is probably not a reason to delay addressing the problem. On the other hand, there are stronger arguments for waiting to address a problem until there is greater scientific certainty as to the existence of a problem.
Diff: 2
Skill: Ethics and Policy

88) Who should bear the cost of cleaning up nuclear waste from old nuclear waste plants? Should it be those who used the power in the past, those who currently live in the vicinity, or the nation as a whole?

Answer: This raises the economic argument for pollution control that the costs of pollution are a cost that should be charged to the parties creating the problem. The users of electricity from these plants should have been charged an amount to cover the waste disposal and cleanup costs.
Diff: 2
Skill: Ethics and Policy

89) Millie has great plans to become rich and retire young. She has purchased some land near Glacier National Park in Montana. She originally planned to operate her business on this land. Her business is a new advanced high-tech go-kart track. One feature of this track is to have the turns banked at a higher angle, allowing higher speeds. Another feature is smaller go-karts that younger children can drive. Millie remembers her childhood; being dragged on family vacations and being told to look at boring scenery when all she wanted was some fun and action. She will even offer baby sitting services so that parents can drop the kids off and enjoy the park while the kids are getting worn out. Millie has just learned about the possibility of leasing some National Forest Service land at a better location closer to the park entrance. She would need to get a permit. She is afraid that the permit might be turned down because of the traffic and noise that her business would create. Discuss how the National Environmental Policy Act could affect Millie's plans.

Answer: Millie would need to prepare an environmental impact statement in order to operate on the forest service land. The granting of the permit would be considered to be federal action. If operated on her own land, Millie would not need an EIS, but would need to comply with other environmental statutes such as the Endangered Species Act.
Diff: 2
Topic: Environmental Protection
Skill: Factual Application
90) Roscoe Corporation has several manufacturing plants in the industrial park. Roscoe wants to increase production, but doing so would cause his air pollution emissions to exceed his limits. Roscoe cannot afford to either build a new plant or install new pollution control devices. Discuss any possible solutions to Roscoe's problem.

Answer: Roscoe might be able to shift emissions from one plant to another, or more heavily utilize the plants that pollute least. Roscoe also might be able to purchase pollution credits from others in the open market for sulfur dioxide emissions.

Diff: 2
Topic: Air Pollution
Skill: Factual Application

91) Great Plains Electric Company has several electric power plants that emit sulfur dioxide. Under EPA regulations, each of these plants can emit a certain amount of sulfur dioxide in a year. The limits on these plants will all be reduced by about 10 percent in a couple of years from the present. What options should Great Plains consider when deciding how to meet the new standards?

Answer: Great Plains should consider the costs of various methods of compliance. It could invest in pollution control equipment, replace one or more of its power plants, and purchase pollution credits from other companies. In addition, Great Plains could invest in programs designed to decrease the demand for power, such as providing rebates to customers to invest in energy-efficient technologies. In addition, the company might be able to switch to a cleaner burning fuel.

Diff: 3
Topic: Air Pollution
Skill: Factual Application
92) Pat has just graduated from a major university with a combined degree in engineering and marketing. Pat is planning to start a business to develop a new type of corn chip and packaging. By using special technology both in the product itself and in the packaging, Pat has developed corn chips that will stay fresh in the original packaging for several years after they are produced. Pat's planned factory site is located on some wetlands adjacent to a major river. Pat plans to produce the packaging and process the corn chips in the same factory. Pat knows that the special plastics for the packaging will result in the production of hazardous waste, and that the production process will produce toxic air pollutants. In addition, there will be some wastewater from the plant. The production process results in the water being heated to a high temperature. Lastly, because of the storage of the food on the premises prior to production, Pat will need to use chemicals to control rats, bugs, and other pests. Discuss the environmental laws that might affect Pat.

Answer: Pat will need to get a permit from the Army Corps of Engineers to fill or dredge the wetlands. Pat will need to build her plant using the best available control technology for the air and water pollutants, except that maximum achievable control technology must be used with respect to the toxic air pollutants. Pat must obtain a discharge permit for any water discharges and may have to allow the water to cool before allowing discharge. Pat must annually report the emitted amounts of any chemicals listed under the Superfund statute. If Pat develops any new chemicals that are toxic, these may be subject to the Toxic Substances Control Act.

Diff: 3
Topic: Air Pollution
Skill: Factual Application
1) The Robinson-Patman Act was the first antitrust law enacted in the United States.

Answer: FALSE
Diff: 2
Topic: Federal Antitrust Laws

2) The first antitrust laws were passed in the late 1800s.

Answer: TRUE
Diff: 1
Topic: Federal Antitrust Laws

3) The aggressiveness with which antitrust laws are enforced differs considerably based on the politics of the President of the United States.

Answer: TRUE
Diff: 1
Topic: Federal Antitrust Laws

4) Antitrust laws were designed to limit anticompetitive behavior.

Answer: TRUE
Diff: 1
Topic: Federal Antitrust Laws

5) Most of the major antitrust statutes provide for both civil and criminal penalties.

Answer: FALSE
Diff: 1
Topic: Federal Antitrust Laws

6) All federal criminal antitrust enforcement is done by the Justice Department.

Answer: FALSE
Diff: 1
Topic: Federal Antitrust Laws
7) A consumer can recover from a violation of an antitrust law, but only if he or she deals directly with the violator.

Answer: TRUE
Diff: 1
Topic: Federal Antitrust Laws

8) Under the rule of reason for violations under the Sherman Act, certain restraints of trade can be legal in some circumstances and illegal in others.

Answer: TRUE
Diff: 1
Topic: Section 1 of the Sherman Act - Restraints of Trade

9) The Sherman Act is the only major antitrust act with criminal sanctions.

Answer: TRUE
Diff: 2
Topic: Section 1 of the Sherman Act - Restraints of Trade

10) A per se violation of the Sherman Act is illegal regardless of the circumstances in which the activity took place.

Answer: TRUE
Diff: 1
Topic: Section 1 of the Sherman Act - Restraints of Trade

11) A corporation may be fined up to $100 million per violation of the Sherman Act.

Answer: FALSE
Diff: 2
Topic: Section 1 of the Sherman Act - Restraints of Trade

12) Reasonable restraints of trade are lawful under the rule of reason.

Answer: TRUE
Diff: 1
Topic: Rule of Reason

13) The history and duration of the restraint have no impact on applying the rule of reason.

Answer: FALSE
Diff: 2
Topic: Rule of Reason
14) A restraint that is automatically in violation of Section 1 of the Sherman Act is said to be a *per se* violation.

Answer: TRUE  
Diff: 1  
Topic: Rule of Reason

15) Under the Sherman Act, some horizontal price-fixing arrangements are allowed under the rule of reason.

Answer: FALSE  
Diff: 1  
Topic: Horizontal Restraints of Trade

16) Under the Sherman Antitrust Act, division of markets on a product line basis is a rule of reason violation, whereas division of markets on a geographic basis is a *per se* violation.

Answer: FALSE  
Diff: 2  
Topic: Horizontal Restraints of Trade

17) Horizontal price-fixing occurs when the competitors in the same type of business agree to set the price of goods or services they sell.

Answer: TRUE  
Diff: 2  
Topic: Horizontal Restraints of Trade

18) A refusal to deal is the same as a group boycott.

Answer: TRUE  
Diff: 2  
Topic: Horizontal Restraints of Trade

19) Today, resale price maintenance is a *per se* violation for both price floors and price ceilings.

Answer: FALSE  
Diff: 1  
Topic: Vertical Restraints of Trade

20) Vertical restraints on trade occur when two or more parties on different levels of distribution enter into a contract.

Answer: TRUE  
Diff: 1  
Topic: Vertical Restraints of Trade
21) If Any Town Blinds, a miniblind manufacturer, sells its miniblinds to retailers that agree to resell them at the prices set by the manufacturer, then Any Town Blinds would be involved in a violation of Section 1 of the Sherman Act.

Answer: TRUE  
Diff: 2  
Topic: Resale Price Maintenance

22) The rule of reason has no application when determining the legality of nonprice vertical restraints on trade.

Answer: FALSE  
Diff: 2  
Topic: Nonprice Vertical Restraints

23) A firm can unilaterally decide not to deal with another firm without violating the law.

Answer: TRUE  
Diff: 2  
Topic: Defenses to Section 1 of the Sherman Act

24) The doctrine of conscious parallelism states that if competing firms reach similar independent judgments to not deal with a particular supplier, it will be considered evidence of a conspiracy.

Answer: FALSE  
Diff: 2  
Topic: Defenses to Section 1 of the Sherman Act

25) Under the Noerr doctrine two or more persons may petition the government to enact laws or take other action without violating the antitrust laws.

Answer: TRUE  
Diff: 2  
Topic: Defenses to Section 1 of the Sherman Act

26) To be liable for a Section 2 violation of the Sherman Antitrust Act, there must be concerted action between two or more firms.

Answer: FALSE  
Diff: 2  
Topic: Section 2 of the Sherman Act - Monopolization
27) In a Sherman Act Section 2 action, a court need not define both the relevant geographic market and the relevant product or service market.

Answer: FALSE
Diff: 2
Topic: Section 2 of the Sherman Act - Monopolization

28) Under Section 2 of the Sherman Act, possession of monopoly power is wrongful regardless of how the monopoly power was obtained.

Answer: FALSE
Diff: 2
Topic: Section 2 of the Sherman Act - Monopolization

29) For an antitrust action to be sustained under Section 2 of the Sherman Act, the defendant must possess monopoly power in the relevant market.

Answer: TRUE
Diff: 1
Topic: Section 2 of the Sherman Act - Monopolization

30) The U.S. government antitrust case against Microsoft was based upon alleged violations of both Sections 1 and 2 of the Sherman Act.

Answer: TRUE
Diff: 2
Topic: Section 2 of the Sherman Act - Monopolization

31) The term relevant market is important in determining a defendant's monopoly power.

Answer: TRUE
Diff: 2
Topic: Defining the Relevant Market

32) Plaintiffs often argue for a narrow definition of the defendant's product or service market.

Answer: TRUE
Diff: 2
Topic: Defining the Relevant Market

33) If a hardware store chain on the East Coast merged with a hardware store chain on the West Coast, it would be a horizontal merger.

Answer: FALSE
Diff: 1
Topic: Section 7 of the Clayton Act - Mergers
34) If a steel company acquired an iron mining company, it would be a vertical merger.

Answer: TRUE
Diff: 1
Topic: Section 7 of the Clayton Act - Mergers

35) If a textbook publisher acquired a paper mill, it would be a backward vertical merger.

Answer: TRUE
Diff: 2
Topic: Section 7 of the Clayton Act - Mergers

36) The potential competition theory can be used under the Clayton Act to prevent mergers of companies that do not currently compete in each other's markets, but are perceived as having the potential to compete with one another.

Answer: TRUE
Diff: 2
Topic: Section 7 of the Clayton Act - Mergers

37) Section 7 of the Clayton Act gave the federal government the power to prevent anticompetitive mergers.

Answer: TRUE
Diff: 1
Topic: Section 7 of the Clayton Act - Mergers

38) The traditional way to determine the line of commerce that will be affected by a merger is by applying the functional interchangeability test.

Answer: TRUE
Diff: 2
Topic: Section 7 of the Clayton Act - Mergers

39) The failing company doctrine is not a valid defense to a Section 7 Action.

Answer: FALSE
Diff: 2
Topic: Defenses to Section 7 Actions

40) If a merger allows two or more small companies to merge without liability under Section 7, then the court will permit the merger to take place.

Answer: TRUE
Diff: 2
Topic: Defenses to Section 7 Actions
41) The Clayton Act governs tying arrangements involving goods only.

Answer: FALSE
Diff: 1
Topic: Section 3 of the Clayton Act - Tying Arrangements

42) Where quality control of products is an issue, tying arrangements can be legal.

Answer: TRUE
Diff: 2
Topic: Section 3 of the Clayton Act - Tying Arrangements

43) The cost-justification defense to price discrimination applies only to the cost of manufacture, not to shipping or advertising.

Answer: FALSE
Diff: 2
Topic: Section 2 of the Clayton Act - Price Discrimination

44) The meeting-the-competition defense does not allow a seller to lower his price below that of his competitor even if it is discriminatory.

Answer: TRUE
Diff: 1
Topic: Section 2 of the Clayton Act - Price Discrimination

45) Only a seller may be held liable under the price discrimination laws.

Answer: FALSE
Diff: 2
Topic: Section 2 of the Clayton Act - Price Discrimination

46) Quantity or volume discounts are lawful to the extent they are supported by cost savings.

Answer: TRUE
Diff: 2
Topic: Section 2 of the Clayton Act - Price Discrimination

47) Price discrimination is lawful if it is in response to "changing conditions in the market or the marketability of the goods."

Answer: FALSE
Diff: 2
Topic: Defenses to Section 2(a) Actions
48) Treble damages are available in a civil suit for violation of Section 5 of the Federal Trade Commission Act.

Answer: FALSE
Diff: 2
Topic: Section 5 of the Federal Trade Commission Act - Unfair Methods of Competition

49) A party can violate Section 5 of the Federal Trade Commission Act, by violating the "spirit" of the antitrust laws even though no specific provision of the antitrust laws is violated.

Answer: TRUE
Diff: 2
Topic: Section 5 of the Federal Trade Commission Act - Unfair Methods of Competition

50) Labor unions are exempt from antitrust laws.

Answer: TRUE
Diff: 1
Topic: Exemptions from Antitrust Laws

51) Professional baseball and football have been found to be exempt from antitrust laws.

Answer: FALSE
Diff: 1
Topic: Exemptions from Antitrust Laws

52) The primary source of the antitrust laws is:
   A) the United States Constitution
   B) the Uniform Commercial Code
   C) the Federal Trade Commission
   D) Federal Statutes
   E) common law

Answer: D
Diff: 1
Topic: Overview of Federal Antitrust Laws
Skill: Legal Concepts

53) Which of the following is not one of the antitrust statutes?
   A) the Sherman Act
   B) the Clayton Act
   C) the Federal Trade Commission Act
   D) the Fair Competition Regulation Act
   E) the Robinson-Patman Act

Answer: D
Diff: 2
Topic: Overview of Federal Antitrust Laws
Skill: Legal Concepts
54) The antitrust laws were passed in response to general changes in the national business environment caused by:
   A) the United States gaining independence from England
   B) the expansion of the United States west of the Mississippi River following the Louisiana Purchase
   C) the rise of the railroads and industrialization in the latter part of the 1800s
   D) the stock market crash of 1929 and the Great Depression
   E) the rapid boom in consumer products following the Second World War

Answer: C
Diff: 2
Topic: Overview of Federal Antitrust Laws
Skill: Legal Concepts

55) The maximum fines, per violation, that can be imposed in a Sherman Act criminal case are:
   A) $1 million for an individual and $10 million for a corporation
   B) $10 million for both individuals and corporations
   C) $10 million for a corporation and $350,000 for an individual
   D) $3.5 million for a corporation and $350,000 for an individual
   E) $1 million for an individual and $3 million for a corporation

Answer: C
Diff: 3
Topic: Antitrust Penalties
Skill: Legal Concepts

56) What is the usual effect of a nolo contendere plea by the defendant in a government antitrust case?
   A) A penalty imposed on the defendant without an admission of guilt.
   B) A penalty imposed on the defendant without an admission of guilt and automatic liability to any private plaintiffs in related cases.
   C) A requirement that a defendant cease business in the line of business or market where the violation occurred.
   D) An admission of guilt accompanied by a lighter penalty than if a verdict of guilty were issued following a trial.
   E) No penalty in the current case, but an increased penalty for any similar future violation.

Answer: A
Diff: 3
Topic: Antitrust Penalties
Skill: Legal Concepts
57) Which of the following is true about restraints of trade?
   A) Under the *per se* rules, all restraints of trade are illegal.
   B) Under the rule of reason, all restraints of trade are illegal.
   C) Some acts are illegal *per se*, but other actions must be judged by the rule of reason.
   D) Price-fixing is always judged by the rule of reason.
   E) Tying agreements are always illegal *per se*.

Answer: C
Diff: 2
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Legal Concepts

58) What is the legal significance of the distinction between rule of reason violations and *per se* violations under the Sherman Act?
   A) Rule of reason violations must be proven beyond a reasonable doubt, and *per se* violations must be proven with a preponderance of the evidence.
   B) Rule of reason violations require an agreement with at least one other party, but *per se* violations can occur without an agreement with others.
   C) Rule of reason violations relate to horizontal situations, and *per se* violations relate to vertical situations.
   D) Rule of reason violations relate to actions brought by private parties, and *per se* violations relate to actions brought by the government.
   E) Rule of reason violations might be proven to be acceptable, but *per se* violations cannot be acceptable under any circumstances.

Answer: E
Diff: 3
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Legal Concepts

59) Horizontal price-fixing occurs when:
   A) one or more companies charge the same prices for goods at all their stores for an unreasonable length of time
   B) a manufacturer requires its independent dealers to sell its products at a given price
   C) a company with the entire market on a patented product sells the product at a fixed price
   D) two or more competing companies agree on the prices to charge for their products
   E) prices are determined with reference to an index, such as the average price of crude oil, which neither the seller nor the purchaser can control

Answer: D
Diff: 3
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Legal Concepts
60) Which of the following best describes horizontal division of markets?
A) An agreement by competitors to serve only a designated portion of the market for their products.
B) Any action in which a company distributes some products in one geographic area and other products in another geographic area.
C) Any action in which a company charges different prices for a product depending on the geographic market.
D) An agreement under which two companies agree to jointly market related products, such as sport utility vehicles and outdoor sports equipment.
E) The granting of exclusive geographic territory to salespersons.

Answer: A
Diff: 3
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Legal Concepts

61) A horizontal division of markets can be a *per se* violation of the Sherman Act if it is based on:
A) geography
B) customers
C) products
D) geography and customers
E) A, B, and C

Answer: E
Diff: 2
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Legal Concepts

62) Which kind(s) of boycott(s) violate the antitrust laws?
A) an agreement among competitors to boycott a particular supplier
B) an agreement among competitors to not sell to a particular customer
C) an agreement among competitors to boycott a particular supplier and an agreement among competitors to not sell to a particular customer
D) any refusal to sell to a particular customer or purchase from a particular supplier
E) any refusal to sell to a particular customer

Answer: C
Diff: 2
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Legal Concepts
63) Following the U.S. Supreme Court decision in State Oil Company v. Khan, the following actions by a distributor imposed on the retail sellers of its products will be evaluated under the rule of reason:
   A) price ceilings
   B) price floors
   C) both price ceilings and price floors
   D) neither price ceilings nor price floors

Answer: A
Diff: 2
Topic: Vertical Restraints of Trade
Skill: Legal Concepts

64) Resale price maintenance occurs when:
   A) a retailer refuses to lower its price even though competitors have lowered their prices
   B) a wholesaler refuses to offer volume discounts to its high-volume customers
   C) a manufacturer sells its products only to those dealers who agree to charge a certain price
   D) a manufacturer sells its products to its dealers for the same price in all states even though the retail market is much more competitive in some states than in others
   E) competitors agree to sell their products for the same price

Answer: C
Diff: 3
Topic: Vertical Restraints of Trade
Skill: Legal Concepts

65) Which of the following can be a rule of reason antitrust violation?
   A) horizontal price-fixing
   B) horizontal market divisions
   C) vertical price-fixing
   D) group boycotts
   E) C and D

Answer: E
Diff: 2
Topic: Vertical Restraints of Trade
Skill: Legal Concepts
66) Which of the following best describes the activities allowable under the Noerr doctrine?
   A) Competitors can work together to lobby for passage of laws without being in violation of the antitrust laws.
   B) Competitors can agree on the prices at which they will sell their products when the agreement results in lower prices for consumers.
   C) Mergers will be allowed under the antitrust laws when one of the companies would have failed in the absence of a merger.
   D) Monopoly power is not a violation when it was acquired through superior business skill.
   E) A company is free to compete or not compete with any other business, so long as the decision is made unilaterally.

Answer: A
Diff: 2
Topic: Defenses to Section 1 of the Sherman Act
Skill: Legal Concepts

67) To be guilty of monopolization, the defendant must:
   A) possess monopoly power
   B) have obtained the monopoly power by some improper act or be abusing the monopoly power
   C) must be part of a conspiracy, combination, or contract
   D) A, B, and C
   E) A and B only

Answer: E
Diff: 1
Topic: Section 2 of the Sherman Act - Monopolization
Skill: Legal Concepts

68) Which of the following is true about the Sherman Act?
   A) Liability under Section 1 for restraint of trade requires agreement with another party, but liability under Section 2 for monopolization does not.
   B) Liability under Section 2 for monopolization requires agreement with another party, but liability under Section 1 for restraint of trade does not.
   C) Liability under either Section 1 or Section 2 requires agreement with another party.
   D) A business can be liable under either Section 1 or Section 2 without any agreement with another party.

Answer: A
Diff: 2
Topic: Section 2 of the Sherman Act - Monopolization
Skill: Legal Concepts
69) Under Section 2 of the Clayton Act, rather than making a presumption about whether monopoly power exists, the courts will examine all the facts and circumstances to determine whether monopoly power exists when the defendant holds between ________ percent and ________ percent of the relevant market.
   A) 30; 80
   B) 20; 70
   C) 0; 50
   D) 33; 70
   E) 50; 70

Answer: B
Diff: 2
Topic: Section 2 of the Sherman Act - Monopolization
Skill: Legal Concepts

70) In determining the lawfulness of a merger, which of the following factors need not be shown?
   A) an actual lessening of competition
   B) the relevant product market
   C) the relevant geographic market
   D) the likelihood of a substantially lessening of competition or the tendency to create a monopoly

Answer: A
Diff: 2
Topic: Section 7 of the Clayton Act - Mergers
Skill: Legal Concepts

71) Which of the following actions could be acceptable if the purpose is to prevent a company from going bankrupt?
   A) price-fixing
   B) resale price maintenance
   C) price-fixing and setting a price floor
   D) merger with another firm
   E) merger with another firm and resale price maintenance

Answer: D
Diff: 3
Topic: Section 7 of the Clayton Act - Mergers
Skill: Legal Concepts
72) If a paper manufacturer merged with a printing company, it would be a:
    A) horizontal merger
    B) vertical merger
    C) market extension merger
    D) product extension merger
    E) conglomerate merger

Answer: B
Diff: 1
Topic: Section 7 of the Clayton Act - Mergers
Skill: Legal Concepts

73) Which of the following theories is not used to examine the legality of conglomerate mergers?
    A) the market closure theory
    B) the unfair advantage theory
    C) the potential competition theory
    D) the potential reciprocity theory
    E) A and D are not used

Answer: A
Diff: 2
Topic: Section 7 of the Clayton Act - Mergers
Skill: Legal Concepts

74) The Hart-Scott-Rodino Antitrust Improvement Act led to rules requiring:
    A) that certain activities are classified as per se violations
    B) that failing companies be rescued through mergers whenever possible
    C) that violators of antitrust laws be liable for treble damages
    D) that mergers be allowed if United States competitiveness in world markets is improved
    E) that the Federal Trade Commission and the Justice Department be notified in advance of any merger involving certain firms

Answer: E
Diff: 2
Topic: Section 7 of the Clayton Act - Mergers
Skill: Legal Concepts

75) The following are required to be proven in order to use the failing company doctrine except for which of the following?
    A) There is no other reasonable alternative for the failing company.
    B) No other purchaser is available.
    C) The failure of the failing company is not due to negligence of its management.
    D) The assets of the failing company would disappear from the market without the merger.

Answer: C
Diff: 3
Topic: Section 7 of the Clayton Act - Mergers
Skill: Legal Concepts
76) Which of the following best describes a tying arrangement?
   A) Two companies jointly market their products or services.
   B) A seller requires the purchase of one product or service in order to be able to purchase a second product or service.
   C) A seller sets her price according to a market index.
   D) A seller offers a volume discount for purchases of large quantities.
   E) A seller refuses to deliver merchandise until payment has been received.

Answer: B
Diff: 2
Topic: Section 3 of the Clayton Act - Tying Arrangements
Skill: Legal Concepts

77) Which of the following is true about tying arrangements?
   A) Tying arrangements are always illegal.
   B) Tying arrangements are always legal.
   C) Tying arrangements are legal for companies without monopoly power and illegal for companies with monopoly power.
   D) Tying arrangements are illegal unless there is a justifiable reason for the seller to have the tying arrangement.
   E) Tying arrangements are legal so long as the purchaser is not harmed.

Answer: D
Diff: 2
Topic: Section 3 of the Clayton Act - Tying Arrangements
Skill: Legal Concepts

78) Which of the following is not a defense to a price discrimination charge?
   A) cost justification
   B) failing company
   C) changing conditions
   D) meeting the competition
   E) A and C only

Answer: B
Diff: 2
Topic: Section 2 of the Clayton Act - Price Discrimination
Skill: Legal Concepts
79) Which of the following is not a basis for an unfair competition claim under Section 5 of the Fair Trade Commission Act?
   A) The action violates a provision of the Sherman Act.
   B) The action violates the "spirit" of the antitrust laws.
   C) The action allows the party to earn excessive profits.
   D) The action violates public policy.
   E) The action is oppressive or unscrupulous.

   Answer: C
   Diff: 2
   Topic: Section 5 of the Federal Trade Commission Act - Unfair Methods of Competition
   Skill: Legal Concepts

80) Which of the following organizations is exempt from the antitrust laws?
   A) labor unions
   B) railroads
   C) businesses that are substantially regulated by the states
   D) A, B, and C
   E) A and B only

   Answer: D
   Diff: 2
   Topic: Exemptions from Antitrust Laws
   Skill: Legal Concepts

81) Antitrust laws apply to which of the following?
   A) labor unions
   B) professional football
   C) professional baseball
   D) agricultural cooperatives
   E) All of these are correct.

   Answer: C
   Diff: 2
   Topic: Exemptions from Antitrust Laws
   Skill: Legal Concepts
82) Orange Mist Corporation has been charged by the government with violating the antitrust laws. Orange Mist wants to dispose of this matter without a trial, but it is worried about possible private actions in the future. If Orange Mist wants to minimize its possible future exposure, which of the following is the best way for it to plead?

   A) Guilty, because this is not an admission of wrongdoing or liability.
   B) Guilty, because this plea cannot be used in subsequent private action.
   C) Nolo contendere, because this plea cannot be used against Orange Mist in a subsequent private action.
   D) Per se, because this plea cannot be used in a subsequent private action.
   E) It does not matter because the plea here cannot be used in a subsequent private action in any case.

Answer:  C
Diff: 3
Topic:  Antitrust Penalties
Skill:  Factual Application

83) Two supermarkets agree to charge $3.50 for a gallon of milk, which is a fair price in the locality. This action is:

   A) horizontal price-fixing
   B) a horizontal market division
   C) vertical price-fixing
   D) a group boycott
   E) legal, because the price agreed upon was fair

Answer:  A
Diff: 1
Topic:  Section 1 of the Sherman Act - Restraints of Trade
Skill:  Factual Application

84) Both Lemon Light, Inc. and Orange Mist Corporation are soft drink distributors in Capital City. The soft drink business is highly competitive, profit margins are razor thin, and both companies are on the brink of bankruptcy. To save themselves, they agree to not sell soft drinks at a price below $3 per six-pack. This is a fair price; it allows both of them to make a fair profit; and the customers still get a relatively inexpensive drink. This action by Lemon Light and Orange Mist is:

   A) Legal, because they set a fair price.
   B) Legal, because they were on the brink of bankruptcy.
   C) Legal, because they did not set an absolute price, but only set a minimum price.
   D) Illegal, because it is horizontal price fixing.
   E) Illegal, because it is vertical price fixing.

Answer:  D
Diff: 2
Topic:  Section 1 of the Sherman Act - Restraints of Trade
Skill:  Factual Application
85) Sam and Amanda are both beer distributors in Center City. They agree not to sell beer to Skipper's Pizza Parlor because they find dealing with Skipper to be difficult. This action is:
   A) a horizontal market division
   B) a vertical market division
   C) a group boycott
   D) both A and C
   E) legal, because the same action could have been reached unilaterally

Answer: C  
Diff: 2  
Topic: Section 1 of the Sherman Act - Restraints of Trade  
Skill: Factual Application

86) Bargain Basement, Inc. is a discount house. It buys brand name products from various manufacturers and sells them at below the suggested retail price. This practice has angered some of those manufacturers who believe that their products are high quality and should not be sold at bargain basement prices. Several of those manufacturers agree that they will no longer sell their products to Bargain Basement. This action is:
   A) legal, because it was unilateral
   B) legal, because it was reasonable under the rule of reason
   C) an illegal group boycott
   D) an illegal horizontal market division
   E) an illegal vertical market division

Answer: C  
Diff: 2  
Topic: Section 1 of the Sherman Act - Restraints of Trade  
Skill: Factual Application

87) A manufacturer distributes his products to retailers. However, the manufacturer requires that the retailers charge their customers a price set by the manufacturer. Anyone who does not charge these prices is terminated as a distributor. This action is:
   A) horizontal price-fixing
   B) a horizontal market division
   C) vertical price-fixing
   D) legal, because it is judged by the rule of reason

Answer: C  
Diff: 2  
Topic: Section 1 of the Sherman Act - Restraints of Trade  
Skill: Factual Application
88) Arlee owns a fast-food franchise. He purchases his supplies from various distributors around the area. Arlee's soft drink distributor decides not to deal with Arlee anymore, because Arlee is too demanding and always pays his bills late. Several other distributors individually reach the same decision. This action is:
   A) legal, because it was unilateral
   B) legal, because it was reasonable under the rule of reason
   C) an illegal group boycott
   D) an illegal horizontal market division
   E) an illegal vertical market division

Answer: A
Diff: 2
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Factual Application

89) A clothing maker requires the retailers it deals with to sell all the clothing at a fixed price. In examining a retailer's challenge to this practice, a court would:
   A) examine this arrangement on a rule of reason basis
   B) invalidate the arrangement in its entirety
   C) certainly allow the retailer to sell the clothes for less than the stated price, but examine whether or not the retailer could sell at higher than the stated price using a rule of reason analysis
   D) allow the arrangement only if neither party possessed monopoly power

Answer: C
Diff: 3
Topic: Section 1 of the Sherman Act - Restraints of Trade
Skill: Factual Application

90) Which of the following actions taken by a company with monopoly power would not give rise to a cause of action for monopolization or attempt to monopolize?
   A) getting a patent on a new invention
   B) creating excess capacity for the production of a certain product
   C) charging a price that is below its cost to drive a competitor out of business
   D) buying the entire market of a raw material to prevent competitors from acquiring any

Answer: A
Diff: 3
Topic: Section 2 of the Sherman Act - Monopolization
Skill: Factual Application
91) Texas Western is an international oil company engaged in the exploration for oil, the refinement of oil, and the distribution of oil products. Hollywood, Inc. is a national producer of films. Texas wants to merge with Hollywood. This would be what type of merger?
   A) horizontal  
   B) vertical  
   C) market extension  
   D) conglomerate

Answer: D  
Diff: 2  
Topic: Section 7 of the Clayton Act - Mergers  
Skill: Factual Application

92) A large electronics manufacturer has focused on the computer and office machines markets. Recently, it introduced a video cassette recorder. The manufacturer has frequently considered entering the home entertainment markets, but recently proposed merging with a television and stereo equipment manufacturer rather than entering the market by itself. This merger could be challenged on the basis of:
   A) the potential competition theory  
   B) the improper line of business combination theory  
   C) the market extension theory  
   D) the forward vertical merger theory  
   E) the fraud on the market theory

Answer: A  
Diff: 2  
Topic: Section 7 of the Clayton Act - Mergers  
Skill: Factual Application

93) Real Value, Inc. is a national distributor of food items. It manufactures and distributes virtually every type of food product, but it does not have a breakfast cereal line. Mixing Mills is the nation's leading manufacturer and distributor of breakfast cereals, which is all that it produces. Real Value wants to merge with Mixing Mills. This would be what type of merger?
   A) horizontal  
   B) vertical  
   C) market extension  
   D) conglomerate

Answer: C  
Diff: 2  
Topic: Section 7 of the Clayton Act - Mergers  
Skill: Factual Application
94) The Dream Drive Corporation is a major manufacturer of automobiles in the United States. The Jupiter Company is a small manufacturer of automobiles in the United States. Dream Drive is willing to purchase and merge with Jupiter. No one else is willing to do so. Without some merger, Jupiter is doomed to extinction. Although this merger might usually be prohibited as anticompetitive, which of the following defenses would probably apply?
   A) the small company doctrine
   B) the toehold doctrine
   C) the failing company doctrine
   D) the handhold doctrine
   E) the unfair advantage theory

Answer: C
Diff: 2
Topic: Section 7 of the Clayton Act - Mergers
Skill: Factual Application

95) A manufacturer makes two products, Axobos and Belandos. Axobos are in very high demand, but Belandos are not. The manufacturer requires everyone who wants to buy any Axobos to also buy some Belandos. This action is:
   A) horizontal price-fixing
   B) a horizontal market division
   C) vertical price-fixing
   D) a vertical market division
   E) a tying arrangement

Answer: E
Diff: 2
Topic: Section 3 of the Clayton Act - Tying Arrangements
Skill: Factual Application

96) Texbeer Company manufactures and distributes beer only in Texas. National Breweries manufactures and distributes beer nationally, including in Texas. National lowers its prices in Texas, but nowhere else, selling its beer at below costs, to drive Texbeer out of business. Texbeer sues for price discrimination. In this situation, which of the following is true?
   A) This is illegal primary line price discrimination.
   B) This is illegal secondary line price discrimination.
   C) This is illegal tertiary line price discrimination.
   D) This is legal because of the changing conditions.
   E) This is legal because of meeting the competition.

Answer: A
Diff: 3
Topic: Section 2 of the Clayton Act - Price Discrimination
Skill: Factual Application
97) Tarco is a manufacturer and national distributor of spark plugs. It charges $8 per set for its plugs. Reemco manufactures and distributes spark plugs on the East Coast. In order to get customers away from Tarco, Reemco sells its plugs in New York City for $7 per set. Tarco learns of this and drops its prices to $7 per set only in New York. A Los Angeles customer of Tarco learns of this and sues Tarco for price discrimination. What is the most likely outcome?

A) This is legal because of cost justification.
B) This is legal because of changing conditions.
C) This is legal because of meeting the competition.
D) This is illegal price discrimination.

Answer: C
Diff: 2
Topic: Section 2 of the Clayton Act - Price Discrimination
Skill: Factual Application

98) Marvin Airlines is an established airline that is suddenly experiencing competition from a new airline, Cheapflites, in some of its markets. Cheapflites is a no frills airline that has a marketing policy claiming that all of its tickets are fully refundable. Marvin Airlines has rescheduled many of its flights to leave 15 minutes later than the Cheapflites flight for the same route. Prior to the departure of each Cheapflites flight, a Marvin employee goes to the Cheapflites waiting area with a megaphone and announces that they will allow Cheapflites passengers to fly on Marvin for $10 less than the cost of their Cheapflites ticket and get full service as a bonus. Because the Cheapflites tickets are fully refundable, most Cheapflites passengers accept the offer. Under the antitrust and unfair competition laws, which of the following is most likely true?

A) Marvin will not be in violation of any laws unless it has monopoly power.
B) Marvin will not be in violation of any laws unless it has agreed with at least one other airline to engage in this activity.
C) This is an illegal tying arrangement because Marvin makes its offer only to those people who also have a Cheapflites ticket.
D) Marvin is likely in violation of Section 5 of the Federal Trade Commission Act even if it is not in violation of the specific provisions of the antitrust laws.
E) Marvin will not be in violation of any laws because seats on a no frills airline would not be considered a substitute for seats on a full-service airline.

Answer: D
Diff: 2
Topic: Section 5 of the Federal Trade Commission Act - Unfair Methods of Competition
Skill: Factual Application
99) Three of the largest automobile dealers agreed among themselves as to what price they would pay to manufacturers for windshields to put in new vehicles. Would this constitute illegal price-fixing? If so, what kind?
   A) No. This is not illegal price fixing.
   B) Yes. This is buyers' illegal per se price fixing.
   C) Yes. This is sellers' illegal per se price fixing.
   D) Yes. This is both buyers' and sellers' illegal per se price fixing.

Answer: B
Diff: 2
Skill: Factual Application

100) A publishing company acquires a paper mill. This is an example of a:
   A) Backward Horizontal Merger
   B) Backward Vertical Merger
   C) Forward Horizontal Merger
   D) Forward Vertical Merger

Answer: B
Diff: 2
Skill: Factual Application

101) The force with which the antitrust laws are enforced differs greatly depending on who is President at the time. Is it proper that these laws should be enforced much more rigorously under some presidential administrations than under others? How could a more consistent enforcement policy be put in place?

Answer: Because prosecutors always use judgment and exercise discretion, it is probably impossible to eliminate discretion in this area.
Diff: 2
Skill: Ethics and Policy

102) In many antitrust cases the definition of the relevant market is the most important issue. The determination of the relevant market often determines the outcome of the entire case, yet there is much subjectivity in the determination of the relevant market. Should there be more rigid guidelines for relevant market determination? Why or why not?

Answer: It would be impossible to eliminate the subjectivity in this area because of the nature of the marketplace in general. It is often impossible to determine with certainty what competes with what.
Diff: 2
Skill: Ethics and Policy
103) Many laws require a determination of actual injury before liability or guilt is determined. Is it fair that under the Clayton Act a merger may be prevented merely because the merger is "likely" to substantially lessen competition or create a monopoly? Whether or not you agree with this requirement, why do you think it was put into place?

Answer: Once a merger is allowed, in most circumstances it could not be reversed. Thus, an evaluation of potential injury is probably the best way to avoid injury.
Diff: 2
Skill: Ethics and Policy

104) With the increased globalization of business, and the lowering of trade barriers through agreements such as the North American Free Trade Agreement, should the determination of the relevant market be modified? For products or services where there are foreign firms competing in the United States market, are the antitrust laws obsolete?

Answer: The general approach is the same, except that the courts must be sure to consider worldwide competitors in evaluating monopoly power. Foreign competition does not make the antitrust laws obsolete, although the presence of foreign competition might result in a company not having monopoly power where it would have had monopoly power without the foreign competition.
Diff: 2
Skill: Ethics and Policy

105) A car manufacturer sells several lines of cars with separate dealers for each line of cars. In some smaller markets, a single dealer may carry more than one line of the manufacturer's cars. Because of customer dissatisfaction over the traditional haggling and negotiating over new car prices, the manufacturer decides to change one of its car lines to fixed price/no negotiation selling. All dealers are required to adopt this policy. The suggested retail sticker price is lowered to become the actual selling price of the car rather than the traditional starting point for price negotiations. Discuss any antitrust implications of this policy.

Answer: Assuming that the dealers are independently owned, this could be viewed as a resale price maintenance arrangement. Questions include whether the fixed prices are mandatory, and what the consequences would be for cutting prices.
Diff: 3
Topic: Vertical Restraints of Trade
Skill: Factual Application
Assume that in Colorado the ski resorts can be classified as "large" and "small" and that there are 12 large and 15 small resorts. Some owners own more than one resort. Assume that there are two owners, each of whom owns two large resorts, who plan to merge. Currently, each owner's two resorts have approximately 15 percent to 20 percent of the Colorado ski market. Each owner's two resorts have about 30 percent to 35 percent of the Colorado Front Range day skier (those from the Colorado Springs, Denver, and Fort Collins areas who drive to a resort, ski, and drive home all in one day) market. Assume that Colorado resorts combined have about 40 percent of the Rocky Mountain ski market and about 15 percent of the national ski market. Discuss what is the relevant market and the factors that would be considered in determining whether the merger should be allowed.

Answer: The crucial factor in the analysis is the relevant geographic market that could be defined as narrowly as the day skier market from the front range area of Colorado, to as broad as the United States (or even North American) ski market. The line of commerce test would probably be downhill skiing and snowboarding, but could possibly be more broadly defined as winter recreation, or something else. The presumptive illegality tests from Philadelphia National Bank would be applied, and the court would determine the effect of the merger on competition. Diff: 3
Topic: Section 7 of the Clayton Act - Mergers
Skill: Factual Application

Rocketski has been in business for several years, and had acquired approximately a 5 percent share of the downhill ski market. During the seventh and eighth years in business, because of a design innovation, its sales increased to the point that it could not meet demand. At about the same time, Rocketski introduced a line of ski bindings that has not been very successful. Rocketski then made a slight modification to its ski so that its own bindings are the only ones that can be used without having to use a special adapter plate. Rocketski then began selling all of its skis as ski/binding packages. Some of the dealers objected, but went ahead and purchased from Rocketski because of the popularity of the product and because the package was reasonably priced. Most retailers are able to sell most of the packages to customers, but some customers who want Rocketskis want different bindings. Discuss the antitrust implications of these actions.

Answer: This is likely an illegal tying arrangement even though the price charged is reasonable. Diff: 2
Topic: Section 3 of the Clayton Act - Tying Arrangements
Skill: Factual Application
108) A car manufacturer was selling several lines of cars, all of which did not include any radios, or tape or CD players, as standard equipment. Fewer and fewer customers were purchasing cars with the optional sound system because the manufacturer's sound systems were overpriced and of inferior quality compared to available aftermarket systems. In fact, some dealers had begun to order all cars with no sound system and install higher quality systems at the dealerships. This manufacturer's cars were popular, so the manufacturer suddenly made a radio tape player standard on its less expensive models and a radio CD player standard on its more expensive models. It raised the prices of the cars by the amount that had previously been charged for the options. At the same time, the manufacturer changed the shape and installation of the sound systems so that no current aftermarket systems could be installed neatly into the dashboard. Discuss any possible antitrust law violations.

Answer: If the cars and sound systems are considered to be separate products, this could be viewed as an illegal tying arrangement. This would probably not be the case if a purchaser could delete the standard sound system and receive a reasonable credit or price reduction. There might also be a monopolization claim under Section 2 of the Sherman Act for the modification to prevent car owners from reasonably installing other brands of sound systems.

Diff: 3
Topic: Section 3 of the Clayton Act - Tying Arrangements
Skill: Factual Application

109) Great North Refining distributes its products to wholesalers in 24 states. It usually charges the same prices to all its customers. In Kansas, where there are several competing distributors with overlapping geographical market areas, it has sold some products at lower prices to certain distributors in order to meet prices that a Kansas refiner has offered to these distributors. Whenever one of these distributors offers proof to Great North of a lower price on a similar product from the Kansas refiner, Great North meets the price of the Kansas refiner. Heartland Oil Distributors purchases products regularly from Great North Refining, but has not done business with the Kansas refinery for several years because of a previous dispute. Heartland has tried to get the same lower prices from Great North that the other Kansas distributors have been getting, but Great North has refused to give the lower price unless Heartland can submit a price quote from the Kansas refiner. Discuss Great North's liability for price discrimination.

Answer: The lower price to Kansas distributors was probably protected by the meeting the competition defense and was legal. Heartland might have a price discrimination claim. It is reasonable for Great North to demand some proof of a competitor's price, but Heartland cannot provide a price quote. Great North could be liable of monopolization if it is trying to drive Heartland out of business.

Diff: 3
Topic: Section 2 of the Clayton Act - Price Discrimination
Skill: Factual Application
1) Real property can become personal property if it is removed from the land.

Answer: TRUE
Diff: 2
Topic: Personal Property

2) Stock certificates are tangible personal property.

Answer: FALSE
Diff: 1
Topic: Personal Property

3) All tangible property is classified as either real or personal.

Answer: TRUE
Diff: 2
Topic: Personal Property

4) All property can be classified as either real or personal.

Answer: TRUE
Diff: 1
Topic: Personal Property

5) Property that is permanently affixed to the land is called a fixture.

Answer: TRUE
Diff: 1
Topic: Personal Property

6) Fixtures are removed by the seller of real property when the real property is sold.

Answer: TRUE
Diff: 1
Topic: Personal Property
7) Generally, minerals, crops, and timber are personal property both while attached to the land and when severed from the land.

Answer: FALSE
Diff: 1
Topic: Personal Property

8) Animals such as pets are not considered to be tangible personal property.

Answer: FALSE
Diff: 2
Topic: Personal Property

9) Acquiring property by capture is much less important today than it was in the early days of the United States.

Answer: TRUE
Diff: 1
Topic: Acquiring Ownership in Personal Property

10) A gift requires actual delivery in order to be effective.

Answer: FALSE
Diff: 1
Topic: Acquiring Ownership in Personal Property

11) The person giving a gift is called the donee.

Answer: FALSE
Diff: 1
Topic: Acquiring Ownership in Personal Property

12) Courts presume that a gift was accepted unless there is evidence to the contrary.

Answer: TRUE
Diff: 1
Topic: Acquiring Ownership in Personal Property

13) A gift "causa mortis" is ineffective if the donor recovers from the existing illness or peril.

Answer: TRUE
Diff: 1
Topic: Acquiring Ownership in Personal Property
14) A gift "causa mortis" can be revoked by the donor at any time prior to death.

Answer:  TRUE
Diff:  1
Topic:  Acquiring Ownership in Personal Property

15) Making a gift of real property by delivering the deed to the recipient (donee), is an example of constructive or symbolic delivery.

Answer:  TRUE
Diff:  1
Topic:  Acquiring Ownership in Personal Property

16) Under the Uniform Gifts to Minors Act, gifts made to minors are within the sole control of the minor.

Answer:  FALSE
Diff:  2
Topic:  Acquiring Ownership in Personal Property

17) Accession refers to an increase in the market value of a piece of property.

Answer:  FALSE
Diff:  2
Topic:  Acquiring Ownership in Personal Property

18) In property law, confusion refers to an owner being unable to determine the extent of his property.

Answer:  FALSE
Diff:  1
Topic:  Acquiring Ownership in Personal Property

19) The acquisition of personal property requires that a number of formalities be met before a transfer of ownership can take place.

Answer:  FALSE
Diff:  1
Topic:  Acquiring Ownership in Personal Property

20) Catching fish with a license is an example of the acquisition of property by possession or capture.

Answer:  TRUE
Diff:  1
Topic:  Acquiring Ownership in Personal Property
21) The most common method of acquiring title to property is by finding it.

Answer: FALSE
Diff: 1
Topic: Acquiring Ownership in Personal Property

22) One way to acquire property is by production.

Answer: TRUE
Diff: 1
Topic: Acquiring Ownership in Personal Property

23) The mere giving of a key to where personal property is kept is insufficient to satisfy the delivery requirement to call it a gift.

Answer: FALSE
Diff: 2
Topic: Acquiring Ownership in Personal Property

24) A gift inter vivos is a gift made in contemplation of death.

Answer: FALSE
Diff: 1
Topic: Acquiring Ownership in Personal Property

25) A gift *causa mortis* takes precedence over a prior conflicting will.

Answer: TRUE
Diff: 1
Topic: Acquiring Ownership in Personal Property

26) The Uniform Gift to Minors Act make it possible for adults to make irrevocable gifts of money and securities to minors.

Answer: TRUE
Diff: 1
Topic: Acquiring Ownership in Personal Property

27) A person who dies without a will usually has his or her property distributed to his or her heirs according to the relevant state's inheritance statute.

Answer: TRUE
Diff: 2
Topic: Acquiring Ownership in Personal Property
28) Accession that occurs naturally usually belongs to the first buyer to give notice to the seller.

Answer: FALSE
Diff: 2
Topic: Acquiring Ownership in Personal Property

29) If an improvement to property was wrongfully made by an individual other than the owner, the owner will be allowed to acquire title to the improved property without having to pay the improver for the value of the improvements.

Answer: TRUE
Diff: 1
Topic: Acquiring Ownership in Personal Property

30) Title to goods may not be acquired by confusion.

Answer: FALSE
Diff: 2
Topic: Acquiring Ownership in Personal Property

31) Generally, a finder of lost property has superior rights to that property against everyone, except the original owner.

Answer: TRUE
Diff: 1
Topic: Mislaid, Lost, and Abandoned Property

32) The finder of lost property acquires the same rights as the finder of mislaid property.

Answer: FALSE
Diff: 1
Topic: Mislaid, Lost, and Abandoned Property

33) The distinction between lost and mislaid property is based on whether the property was tangible or intangible.

Answer: FALSE
Diff: 1
Topic: Mislaid, Lost, and Abandoned Property

34) Estray statutes provide that finders of lost property will always eventually acquire title to it.

Answer: FALSE
Diff: 2
Topic: Mislaid, Lost, and Abandoned Property
35) If the owner of lost or mislaid property ceases trying to locate it, the property can become abandoned.
Answer: TRUE
Diff: 1
Topic: Mislaid, Lost, and Abandoned Property

36) Bailments can be express, implied, written, or oral.
Answer: TRUE
Diff: 1
Topic: Bailments

37) If the owner of an automobile lends the automobile to a friend, a bailment has been created.
Answer: TRUE
Diff: 1
Topic: Bailments

38) Bailees are allowed to commingle fungible goods.
Answer: TRUE
Diff: 1
Topic: Bailments

39) When a bailment terminates, the bailee is legally obligated to do as the bailor directs with the property.
Answer: TRUE
Diff: 1
Topic: Bailments

40) An ordinary bailment occurs when the bailee is requested to care for the bailor's property as a favor.
Answer: TRUE
Diff: 1
Topic: Ordinary Bailments

41) If bailed property is destroyed while in the possession of the bailee, the bailee is presumed to be liable.
Answer: TRUE
Diff: 2
Topic: Ordinary Bailments
42) The highest duty of care is owed by bailees when the bailment is for the sole benefit of the bailee.

Answer: TRUE
Diff: 2
Topic: Ordinary Bailments

43) In most cases, a bailment for hire is considered to be for the benefit of the bailee.

Answer: FALSE
Diff: 2
Topic: Ordinary Bailments

44) Bailments are established to continue for an indefinite period of time.

Answer: FALSE
Diff: 1
Topic: Ordinary Bailments

45) A bailment at will can be terminated at any time by only the bailor.

Answer: FALSE
Diff: 2
Topic: Ordinary Bailments

46) A warehouse is liable only for loss or damage to bailed property caused by its own negligence.

Answer: TRUE
Diff: 2
Topic: Ordinary Bailments

47) Common carriers are held to a general duty of care if goods are lost, damaged, destroyed or stolen.

Answer: FALSE
Diff: 2
Topic: Ordinary Bailments

48) Innkeepers may not limit their liability regardless of notification to their guests of the dollar limit placed on liability for a guest's property.

Answer: FALSE
Diff: 1
Topic: Ordinary Bailments
49) A stock certificate is an example of:
   A) tangible, personal, private property
   B) intangible, personal, private property
   C) intangible, real, private property
   D) intangible, personal, public property
   E) tangible, real, public property

   Answer: B
   Diff: 2
   Topic: Personal Property
   Skill: Legal Concepts

50) All property can be classified into which of the following?
   A) intellectual and personal
   B) personal and impersonal
   C) real and illusory
   D) personal and fixtures
   E) real and personal

   Answer: E
   Diff: 1
   Topic: Personal Property
   Skill: Legal Concepts

51) An airline ticket for travel to Honolulu and back is what kind of property?
   A) real tangible
   B) real intangible
   C) personal tangible
   D) personal intangible

   Answer: D
   Diff: 2
   Topic: Personal Property
   Skill: Legal Concepts

52) Which is true about fixtures?
   A) A fixture is personal property that has become real property, and an important aspect of whether an item is a fixture is whether the real property would be damaged upon the item's removal.
   B) If an item is a fixture, it is personal property.
   C) The seller of property generally keeps the fixtures when the property is sold.
   D) "Trade fixtures" are generally a part of the associated real property.

   Answer: A
   Diff: 2
   Topic: Personal Property
   Skill: Legal Concepts
53) In order to be legally effective to transfer title, a gift must meet all of the following requirements except:
   A) present intent by the donor to make the gift
   B) consideration on the part of the donee
   C) delivery of the subject matter to the donee
   D) acceptance of the gift by the donee

Answer: B
Diff: 1
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts

54) A gift *causa mortis* differs from an inter vivos gift in that a gift *causa mortis*:
   A) has different requirements regarding consideration
   B) requires witnesses to be effective
   C) can only be made to family members
   D) sometimes is automatically revoked

Answer: D
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts

55) When an animal owned by someone has offspring, the party who owns the mother has acquired the offspring by:
   A) gift
   B) production
   C) accession
   D) inheritance
   E) confusion

Answer: C
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts

56) If a farmer takes some grain to a storage facility and later returns to retrieve an equal quantity of grain that is not the same grain placed in storage, the farmer has acquired ownership of the retrieved grain by:
   A) succession
   B) production
   C) accession
   D) mixture
   E) confusion

Answer: E
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts
57) Which of the following is true when someone accidentally makes an improvement to the personal property of another where the owner was unaware of the improvement until after it had been made?

A) The property owner gets to keep the improvement in all circumstances and is not required to pay for it.
B) The property owner gets to keep the improvement in all cases, but must pay the party who improved it the reasonable value of the improvement.
C) The party who made the improvement can remove it if this is possible, otherwise the owner of the property gets to keep the improvement and is not required to pay for it.
D) The party who made the improvement can remove it if this is possible, otherwise the owner of the property gets to keep the improvement and must pay the party who improved it the reasonable value of the improvement.

Answer: C
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts

58) The finder of lost property acquires:

A) no rights in the property
B) rights that are good against everyone but the true owner
C) rights that are good against everyone including the true owner
D) rights to use the property until it must be turned over to the state
E) a life estate in the found property

Answer: B
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts

59) If lost personal property is found by an employee in a business establishment, who has the superior rights to that property?

A) the finder/employee
B) the owner of the business
C) the police department
D) the state government
E) the federal government

Answer: A
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts
60) The distinction between lost property and mislaid property depends upon:
   A) whether the true owner later finds it
   B) whether the true owner intentionally placed the property in the place where it was found
   C) whether the property belonged to a minor or an adult
   D) whether the property was found on public or private property

Answer: B
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts

61) One of the purposes of estray statutes is to:
   A) deprive careless people of their property as punishment for losing it
   B) allow finders of lost or mislaid property to acquire clear title if certain requirements are met, thus preventing the original owner from reclaiming it
   C) determine whether found property is lost or mislaid property
   D) allow the state to gain title to lost or mislaid property

Answer: B
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Legal Concepts

62) A bailment is:
   A) usually the preliminary step to a permanent transfer of goods
   B) the rightful possession of goods by someone other than the owner
   C) a quantity of harvested hay packaged in a size that is easy to transport
   D) required to be in writing in order to be effective
   E) characterized by a splitting of title into legal and beneficial components

Answer: B
Diff: 2
Topic: Bailments
Skill: Legal Concepts

63) Which of the following is not necessary for bailment?
   A) personal property
   B) actual delivery of possession
   C) duty to return the property to the owner
   D) B and C
   E) A and B

Answer: B
Diff: 2
Topic: Bailments
Skill: Legal Concepts
64) Historically, the bailee must exercise what level of care in a bailment for the bailee's exclusive benefit?
   A) utmost
   B) minimal
   C) ordinary
   D) strict liability

   Answer: A
   Diff: 1
   Topic: Ordinary Bailments
   Skill: Legal Concepts

65) A bailment where money is paid from one party to the other is usually described as:
   A) solely for the benefit of the bailor
   B) solely for the benefit of the bailee
   C) for the mutual benefit of the bailor and the bailee
   D) solely for the benefit of the bailor or bailee, depending on which received the money that changed hands

   Answer: C
   Diff: 2
   Topic: Ordinary Bailments
   Skill: Legal Concepts

66) Alfred owns a bed and breakfast called Al's Quaint B&B in Somewhere, Maine. Rita Ritz has decided to stay at Al's for a week. She displays her wealth by wearing a four-carat diamond ring, a ruby necklace and bracelet, and a Versace purse. Al's has never had any reports of thefts in the 26 years he's operated his bed and breakfast. In the event of a theft, which of the following must Al do in order to limit his liability?
   A) He must provide a safe for his guests valuables.
   B) He must make the safe available for his guests.
   C) He must post a sign of his limit of liability notifying his guests of the same.
   D) All of these are correct.
   E) None of these are correct.

   Answer: E
   Diff: 2
   Topic: Ordinary Bailments
   Skill: Legal Concepts
67) Which of the following is not one of a common carrier's traditional exceptions to liability for goods in its possession?

A) damage caused by an act of God  
B) damage caused by an act of a public enemy  
C) damage caused by an act of the shipper  
D) damage caused by an act or event not foreseeable by the common carrier  
E) damage caused by the inherent nature of the goods  

Answer: D  
Diff: 3  
Topic: Ordinary Bailments  
Skill: Legal Concepts

68) Edward's Warehouse stores a variety of generic goods for several distributors in Anytown. Which of the following describes Edward's liability for the bailed goods should something happen to them?

A) strict liability  
B) comparative liability  
C) ordinary negligence  
D) criminal liability  

Answer: C  
Diff: 2  
Topic: Ordinary Bailments  
Skill: Legal Concepts

69) Some trees were cut down and made into lumber, and the lumber was used to build a house. What type of property were the trees while growing, as lumber, and as part of the house, respectively?

A) real, real, real  
B) personal, real, real  
C) personal, personal, real  
D) real, real, personal  
E) real, personal, real  

Answer: E  
Diff: 2  
Topic: Personal Property  
Skill: Factual Application
70) Mary owns a farm. On the farm is a barn, a tractor, and some crops growing in the fields. Which of the following statements is **not** true regarding Mary's property?

A) All of Mary's property mentioned above is tangible.
B) The crops are real property until they are harvested, when they become personal property.
C) The tractor is a fixture.
D) The barn is real property, although at some point in the past the supplies used to build it were
E) personal property.

Answer: C
Diff: 3
Topic: Personal Property
Skill: Factual Application

71) You call by phone to a concert ticket service and use your credit card to purchase two tickets to the "Elvis Reincarnation Tour" concert scheduled for July 4. Assuming that Elvis truly has returned and will play at the show, which of the following is true after you hang up the phone.

A) You have acquired no property now, but will when the concert starts.
B) You have just acquired tangible personal property.
C) You have just acquired intangible personal property.
D) You have acquired no property now, but will when the concert tickets arrive in the mail.

Answer: C
Diff: 3
Topic: Personal Property
Skill: Factual Application

72) Which of the following would be classified as tangible personal property?

A) a desk
B) built-in cabinets
C) a copyright
D) a field of corn
E) All of these are correct.

Answer: A
Diff: 2
Topic: Personal Property
Skill: Factual Application
73) Roger buys lumber and supplies and builds a very expensive desk. Roger has acquired title to this desk by:
   A) purchase
   B) production
   C) gift
   D) accession
   E) confusion

Answer: B
Diff: 1
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

74) George wants to give a dining room table to Colleen. The table is in a self-serve storage unit. George gives the key to the storage unit to Colleen. Colleen takes the key, showing the appropriate gratitude. Which of the following statements best describes this situation?
   A) George has made a valid gift to Colleen.
   B) This gift is not valid because there is no donative intent.
   C) This gift is not valid because there is no delivery.
   D) This gift is not valid because there is no acceptance.
   E) This gift is not valid because there is no consideration.

Answer: A
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

75) A couple of weeks before her sister graduates, Dorothy says to her, "I promise to give you a new mountain bike when you graduate." Her sister graduates and Dorothy takes the bike to her sister, who is thrilled to get the bike. Her sister loves the way it rides, but Dorothy has a change of mind. Dorothy sues to recover the bike from her sister. A court is most likely to rule that:
   A) Her sister must give the bike back because a promise to make a gift is not enforceable.
   B) The sister must give the bike back because all the requirements of a gift have not been met.
   C) The sister must give the bike back if Dorothy has asked for its return within a reasonable time.
   D) The sister need not give the bike back because the gift has been completed.
   E) The sister need not give the bike back, but must pay Dorothy a reasonable amount if she wants to keep the bike and Dorothy requests this within a reasonable time.

Answer: D
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application
76) Grandpa calls Billy and says, "I want you to have my toy train set. I'll bring it by next week." Billy says that he would love to have it. Grandpa dies unexpectedly that afternoon, and in his will leaves everything to Alicia, Billy's cousin. Which is true?
   A) Billy gets the train because of the agreement with Grandpa.
   B) Billy gets the train because there was donative intent on Grandpa's part and he (Billy) accepted the gift.
   C) Alicia gets the train because Grandpa had not yet taken the train to Billy.
   D) Billy gets at least part interest in the train because Grandpa cannot treat his cousins unequally in his will.
   E) Alicia and Billy now each have a half interest in the train because Grandpa and Billy owned the train as tenants in common at the time of Grandpa's death.

Answer: C
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

77) Bob is camping in the mountains one cold winter with a friend of his, Alfred. Bob writes a postcard to his college roommate that says, "Dear Frank, I am giving you the antique desk in my Denver home. Come pick it up once I am back in town. With kind regards from your freezing cold friend, Bob." Bob freezes to death at his campsite an hour later. Bob has no will but his wife is his only heir. What is true?
   A) Bob made an effective gift causa mortis to Frank.
   B) So long as Frank wants the desk, he has the required donative intent.
   C) Bob has made a voidable promise.
   D) An effective gift has not been made here.
   E) Frank will be entitled to the desk if, after Bob's death, he learns of the unmailed postcard.

Answer: D
Diff: 2
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

78) Victor had a priceless painting that he wanted to give to Gwen, but Victor wanted to keep it hanging in his house so he could see it. Victor physically gave the painting to Gwen, who immediately loaned it back to Victor, so Victor could keep it until Victor died. Upon Victor's death, Gwen claims the painting. Which of the following best describes this situation?
   A) Victor has made a valid gift to Gwen.
   B) This gift is not valid because there is no donative intent.
   C) This gift is not valid because the purported delivery is ineffective.
   D) This gift is not valid because there is no acceptance.
   E) This gift is not valid because there is no consideration.

Answer: A
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application
79) Melissa's cat Fluffy has a litter of five kittens. Melissa owns the kittens by:
   A) gift
   B) accession
   C) confusion
   D) inheritance
   E) bailment

Answer: B
Diff: 1
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

80) A customer goes into a restaurant and sits down at a table where she finds a Wyoming state road map and four unused Jackson Hole lift tickets paper clipped to the map sitting on the table. This is most likely:
   A) abandoned property because it was left by the previous customer
   B) lost property entitling the finder to keep it
   C) an uncompleted gift to the waitperson
   D) mislaid property that the finder should turn over to the restaurant
   E) property of the Jackson Hole Ski area

Answer: D
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

81) You are at a booth in a restaurant and find some tickets on the seat of the booth. These tickets are to the opening Olympic ceremonies in Salt Lake City in 2002, but contain no name or other indication as to whose they are. Which of the following could be crucial as to whether you or the restaurant would get the tickets?
   A) whether they are tangible or intangible property
   B) whether they are real or personal property
   C) whether the tickets have already been paid for or not
   D) whether the tickets are a treasure trove
   E) whether the tickets are lost or mislaid property

Answer: E
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application
82) Assuming that the true owner cannot be found which of the following is most likely to be considered mislaid property?
   A) a wallet found on the seat of an airplane
   B) a pair of sunglasses on the floor of an airplane
   C) a purse in the overhead storage bin above a seat in an airplane
   D) an unopened bag of peanuts on the floor of an airplane

Answer: C  
Diff: 2  
Topic: Acquiring Ownership in Personal Property  
Skill: Factual Application

83) You find a wallet on the ground in the parking lot of your apartment complex. Which is most likely true?
   A) This is lost property and you must make a reasonable effort to locate the true owner.
   B) This is mislaid property and you must make a reasonable effort to locate the true owner.
   C) This is mislaid property so you need not make a reasonable effort to locate the true owner.
   D) This is abandoned property and would be considered a gift because the original owner no longer wanted it.

Answer: A  
Diff: 3  
Topic: Acquiring Ownership in Personal Property  
Skill: Factual Application

84) Martha is eating at the China Groves restaurant. She finishes and departs, leaving her purse at the table. An employee of the restaurant, Jack, finds the purse and notifies the owner of the restaurant. Going in order from superior to inferior rights, who has the best rights for the purse?
   A) Martha, Jack, restaurant owner
   B) Martha, restaurant owner, Jack
   C) Jack, restaurant owner, police
   D) Restaurant owner, Jack, Martha, police
   E) Restaurant owner, Martha, police, Jack

Answer: B  
Diff: 3  
Topic: Acquiring Ownership in Personal Property  
Skill: Factual Application
85) Katrina is walking through a store when she accidentally drops her wallet. Katrina does not know that she has dropped it, so she continues on. Billy finds the wallet and notifies the owner of the store. Going in order from superior to inferior rights, who has the best right to the wallet.
   A) Katrina, storeowner, Billy
   B) Katrina, storeowner, police, Billy
   C) Katrina, Billy, storeowner
   D) Katrina, police, storeowner, Billy

Answer: C
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

86) Marvin is walking down the alley looking in trash cans just to see what is there. He finds an old, broken baseball trophy that the owner has obviously thrown away. Marvin has always wanted such a trophy, so he takes it home. Marvin has:
   A) stolen the trophy
   B) acquired the trophy by finding lost property
   C) acquired the trophy by accession
   D) acquired the trophy by claiming abandoned property
   E) acquired the trophy by capture

Answer: D
Diff: 1
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

87) Kim goes to a restaurant for supper. She gives her expensive jacket to the coat-check person and receives a claim check. Later, when Kim is about to leave, she discovers that her jacket is missing. Which of the following best describes this situation?
   A) This is a bailment.
   B) This is not a bailment because there is no personal property.
   C) This is not a bailment because there was no taking of possession by a bailee.
   D) This is not a bailment because the bailee had no duty to return the goods.
   E) This is not a bailment because there was no compensation paid.

Answer: A
Diff: 2
Topic: Bailments
Skill: Factual Application
88) Karen is going downtown to shop. She pulls her car into a parking lot, stops, pays for and receives a ticket, parks her car, and leaves. Karen keeps her keys and may get her car at any time. Several hours later, when Karen returns, she learns her car has been stolen. Which of the following statements best describes this situation?

A) This is a bailment.
B) This is not a bailment because there is no personal property.
C) This is not a bailment because there was no taking of possession by a bailee.
D) This is not a bailment because the bailee had no duty to return the goods.
E) This is not a bailment because there was no compensation paid.

Answer: C
Diff: 2
Topic: Bailments
Skill: Factual Application

89) Which of the following situations is not a bailment for mutual benefit?

A) Acme Moving Company agrees to haul Smith's furniture from Maine to California.
B) John's neighbor agrees to watch John's cat while John is on vacation.
C) Ajax Warehouse agrees to store Jane's piano in its warehouse.
D) Rocko's Dry Cleaners agrees to store Rachel's fur coat for the summer.
E) George's Rent-All rents Jack a floor sander.

Answer: B
Diff: 2
Topic: Ordinary Bailments
Skill: Factual Application

90) Scott was going out of town on a business trip. He lived in a bad neighborhood, so he wanted to leave his car in his friend Lori's driveway for safekeeping. Lori agreed to allow Scott to do this for no charge. Scott gave Lori the keys in case the car had to be moved. While Scott was away, the car was stolen through no fault of Lori's. Scott now sues Lori for the value of his car. What result?

A) Lori is liable; she owed a duty of reasonable care, which she did not meet.
B) Lori is liable; she owed a duty of utmost care, which she did not meet.
C) Lori is not liable; she owned duty of slight care, which she did not meet.
D) Lori is not liable: she owed no duty since this was a gratuitous bailment.
E) Lori is not liable; she owed a duty of slight care, which she met.

Answer: E
Diff: 3
Topic: Ordinary Bailments
Skill: Factual Application
91) Amy owned a collection of antique swords. Amy agrees to allow Mark to display the swords at his office building at no charge. Mark picks up the swords, places them in the back seat of his car and drives to the building. He stops along the way, parks and locks his car, and goes into a store to buy something. When he returns, someone has broken into the car and stolen all of Amy's swords. Amy sues Mark for the value of the swords. In this situation:
   A) Mark is liable; he owed a duty of ordinary care, which he did not meet.
   B) Mark is liable; he owed a duty of utmost care, which he did not meet.
   C) Mark is liable; he owed a duty of slight care, which he did not meet.
   D) Mark is liable; he is an insurer of Amy's swords.
   E) Mark is not liable; he owed a duty of ordinary care, which he met by locking the doors of the car.

Answer: B
Diff: 3
Topic: Ordinary Bailments
Skill: Factual Application

92) Which of the following situations generally does not create a bailment?
   A) renting a safety deposit box
   B) parking your car in a commercial parking lot, if you keep your keys
   C) a conditional sales contract
   D) loaning your lawn mower to a neighbor
   E) keeping your neighbor's cat while she is away

Answer: B
Diff: 2
Topic: Ordinary Bailments
Skill: Factual Application

93) Kathy needs to drive to a city some distance away. Kathy's car is in for repairs, so Kathy borrows Gloria's car at no charge. While Kathy is driving on the highway, one of the tires comes off the car, Kathy crashes, and is seriously injured. Gloria did not know of the defect, but a reasonable inspection would have indicated that a repair was needed. Kathy sues Gloria. In this situation:
   A) Gloria is not liable because this is a lease and not a bailment.
   B) Gloria is not liable because she did not know of the defect.
   C) Gloria is not liable because she did not charge Kathy for using the car.
   D) Gloria is liable because she is an insurer of Kathy's safety.
   E) Gloria is liable because she should have discovered the defect by inspection.

Answer: B
Diff: 3
Topic: Ordinary Bailments
Skill: Factual Application
94) Beth is leaving for vacation for 2 weeks and is concerned about her antique Thunderbird because she does not have a garage. She reaches an agreement with a neighbor, Billy, for Billy to store her car in his garage for the 2 weeks for $100. While she is gone, Billy drives the car approximately 100 miles. In this circumstance:

A) So long as the total amount driven is a reasonable amount for 2 weeks, Billy has done nothing wrong.
B) Because all bailments grant the right to use the bailed property, Billy has done nothing wrong.
C) Billy had no right to use the car because a bailment cannot simultaneously grant a right of use.
D) Billy had no right to use the car unless the bailment agreement provided one.
E) Billy had the right to use the car so long as there was no wear and tear on it as a result.

Answer: D
Diff: 2
Topic: Rights and Duties of Bailees and Bailors
Skill: Factual Application

95) Dean is preparing to go into surgery. He tells his friend, Jerry, "You have been such a good friend to me all of my life. I want you to take this ring and keep it if anything should happen to me in surgery." Jerry is uncomfortable and reluctant to accept the ring. Dean insists. Dean does well in surgery, and subsequently asks Jerry to return the ring. Must he?

A) No; this was a clear gift inter vivos, made during the life of Dean.
B) No, because Dean insisted that Jerry accept the ring.
C) Yes; Dean lacked the capacity to make such a gift during the duress of pending surgery.
D) Yes; Dean's death was a condition requisite for the gift to take effect.

Answer: D
Diff: 2
Skill: Factual Application

96) Why is there a distinction in the law between lost and mislaid property? Should someone who finds mislaid property in the public area of a store be able to recover it from the store if the true owner does not appear within a certain period of time to claim the property?

Answer: With mislaid property, the owner of the premises keeps it because the true owner might remember leaving it there and return for it. Allowing a finder of mislaid property to keep it if the true owner is not found encourages the finder of mislaid property to turn it over to the owner of the premises.
Diff: 2
Skill: Ethics and Policy
97) What is the logic behind the three different levels of the duty of care owed for bailments depending on who benefits from the bailment? Should these distinctions be eliminated? If so, what is the appropriate level of care to apply to all bailments?

Answer: The general idea was that the greater the benefit that the bailee received from the bailment, the greater the duty owed. Many states have eliminated these distinctions, and apply ordinary care to all bailments, but might consider the type of bailment in determining if the duty of ordinary care has been met.
Diff: 2
Skill: Ethics and Policy

98) What is the purpose of estray statutes? If you could write the perfect estray statute, what provisions would you include regarding the waiting period, duties of the state and finder, and the division of property between the state and the finder, and so forth.

Answer: The purpose of estray statutes is to encourage the finders of lost property to turn the property over so that attempts can be made to find the true owner. This has the added effect that those who lose property will know that it might have been turned in. Another benefit is clearing title if the true owner is not found, and rewarding the finder with good title in these circumstances.
Diff: 2
Skill: Ethics and Policy

99) Should laws of the United States be able to affect ownership and property rights of personal property that is physically located outside of the United States? Under what circumstances? What are some of the difficulties in determining the location of personal property?

Answer: United States law could determine the priority of claimants to such property who are U.S. citizens, but might not be able to determine the rights of those who are not U.S. citizens. With much intangible property, determining its location can be difficult.
Diff: 2
Skill: Ethics and Policy

100) Jean owns a champion female German shepherd named Abby. Jean had planned to breed Abby in the future, but before that could happen, Abby became pregnant. The only two dogs who could have been the father were a German shepherd and a standard poodle. This is because these were the only male dogs anywhere near Abby's house. Abby was normally kept in a fenced yard but had accidentally gotten out of the yard a couple of times. These were the only times that Abby could have become pregnant. Abby gave birth to a litter of eight purebred German shepherd puppies. As the puppies became a few weeks old it became obvious that they were championship quality. Abby mentioned to the owner of the puppies' father that Abby had given birth to some of his dog's offspring. The next day the father's owner notified Jean that he wanted four of the puppies and would go to court for them if Jean did not voluntarily give them to him. Discuss his claim.

Answer: He would be claiming the puppies by accession, but that right would belong to Jean.
Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

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101) John lives on the oceanfront in California. During a heavy rainstorm, there was a mudslide on his neighbor's land that spilled onto John's land, actually extending John's land out into the ocean about 20 yards. The neighbor wants to remove this mud and replace it. Can he do so?

Answer: If this was natural accession, it would be John's, otherwise the neighbor might reclaim it.

Diff: 3
Topic: Acquiring Ownership in Personal Property
Skill: Factual Application

102) Pat was an avid mountain biker who knew much about bicycle repair. Tom also was a mountain biker but did not know much about bicycles or their repair. The gears on Tom's bike were not working properly so he took his bike to Pat and asked if Pat could repair it. Pat said that was possible, so Tom left his bike with Pat for the week. Pat was able to fix and adjust the gears on Tom's bike so that they worked properly. Tom's bike was a top-of-the-line model, and much newer than Pat's bike. When Tom called Pat on Friday to see if the bike was ready for him to come pick up, Pat asked to keep the bike until Sunday. Pat wanted to try the bike out on Sunday on a ride with some friends. Tom told Pat that this was acceptable. On Saturday night, the bike was stolen off Pat's third floor apartment balcony where the bike was unlocked. Discuss whether Pat is liable to Tom for the loss.

Answer: The first issue is for whose benefit this bailment was. Initially, this was a bailment for the sole benefit of the bailor because Tom was benefiting from the repair. Pat, at that point, owed a duty of slight care. When Pat asked to keep the bike to use, they may have converted it to a mutual benefit requiring ordinary care. Alternatively, this could be viewed as a new and separate bailment for the bailee's benefit, with a duty of utmost care. Once the duty of care is determined, then one would determine whether that duty was met.

Diff: 3
Topic: Ordinary Bailments
Skill: Factual Application

103) Janice took her car to Jiffy Auto Repairs to have some work done. The repairs would take several days, so Janice left her car there overnight. One night, Janice's car was stolen. Discuss Jiffy's liability for the stolen car. What factors would you consider in determining this liability?

Answer: This would be classified as a mutual benefit bailment, placing a duty of ordinary care on the bailee. In determining whether the duty of care was met, the court would consider the type and value of the car, where it was parked, the theft risk in the neighborhood, and whether it was locked.

Diff: 3
Topic: Ordinary Bailments
Skill: Factual Application
104) Jackie is trying on clothes in the dressing room of Highspot Department Store. Jackie goes home, but leaves her purse in the dressing room. A Highspot employee, Maxine, finds the purse in the dressing room and gives it to the storeowner. Assuming Jackie never returns to claim the purse, who gets possession of the purse and its contents, assuming the purse is (a) lost, (b) mislaid, or (c) abandoned?

Answer: If the property is lost or abandoned, Maxine would have superior claim. If it is mislaid property, the owner of the premises would have superior claim.

Diff: 2
Topic: Ordinary Bailments
Skill: Factual Application

105) A college's student body includes a large number of commuter students. This college has lockers that are available for student use. Each locker has a combination lock. When a student is assigned a locker, the combination of the lock is given to the student. There are more lockers available than there are students who desire one. In addition, the record keeping of locker assignments was incomplete. Once a student is assigned a locker, the student generally keeps that locker until the student leaves the college. Because there is no separate lock to turn in, many students simply clean out their lockers when they leave, others do not even do this. It is also not possible to determine which lockers are currently being used by looking at them, contrary to the situation if there were separate removable locks. All this led to a situation where the college had no idea which lockers were currently occupied and in use and which lockers simply contained items left behind by former students. To remedy this situation, the college notified all students that all items had to be removed from the lockers within one week following the end of spring semester. At that point, all items left in the lockers would be discarded. Thereafter, anyone desiring a locker would be assigned one under a new assignment and record-keeping system. On the designated day when any remaining locker contents were to be removed, several employees opened the lockers and emptied the contents onto the floor. There were many items left in the lockers, mostly trash such as old lunch bags, notebooks, a few textbooks, and miscellaneous junk. The employees simply piled the items on the floor and were using large push brooms to sweep up the trash to place it in a dumpster. A couple of employees had salvaged some newer-looking textbooks hoping they could be sold back to the bookstore. Frank was sweeping this trash when for no particular reason he decided to pick up one of the many small paper bags from among the trash and look inside it. To his surprise, he discovered about $10,000 in cash, all $100 bills. The college has demanded that Frank turn the money over to the college. Frank claims that the money is his. There is some evidence that the money is related to illegal drug sales. Discuss the issues that would arise in determining who would get the money.
Answer: The first issue is whether the money was lost, mislaid, abandoned, or was college property. It was not likely lost, but was either mislaid or abandoned. Likely, the true owner placed it there intentionally. If the owner forgot it was there, it would be mislaid. Or, if the money was involved in illegal activity, the owner may have abandoned it for fear of being set up and watched if anyone went to that particular locker. A court might focus on its place in the pile of trash (rather than how it got into the locker) and say that at that point the college (through its employee) had abandoned it. A court might also look at whether Frank was acting on behalf of the college at the time he found it. The college could claim that when removed from the locker it became college property and would remain college property until abandoned by being placed in the dumpster, which never happened.

Diff: 3
Topic: Ordinary Bailments
Skill: Factual Application
1) The surface rights and the subsurface rights for the same parcel of real property can be owned by two different persons.

Answer: TRUE
Diff: 1
Topic: Real Property

2) In theory, mineral rights to land can extend to the center of the earth.

Answer: TRUE
Diff: 1
Topic: Real Property

3) In order for fixtures to be included in a sale of a building, the contract must so provide.

Answer: FALSE
Diff: 1
Topic: Real Property

4) Plant life that is severed from the land is considered personal property.

Answer: TRUE
Diff: 1
Topic: Real Property

5) The concept of real property involves the physical aspects of the land, such as trees, grass, and bushes.

Answer: FALSE
Diff: 1
Topic: Real Property

6) Radio towers and bridges are considered to be real property.

Answer: TRUE
Diff: 2
Topic: Real Property
7) Cultivated plant life is not considered to be real property.

Answer: FALSE
Diff: 2
Topic: Real Property

8) Throw rugs and furniture are classified as fixtures.

Answer: FALSE
Diff: 2
Topic: Real Property

9) Property rights do not exist in air space parcels.

Answer: FALSE
Diff: 2
Topic: Real Property

10) An estate is a large dwelling on land.

Answer: FALSE
Diff: 1
Topic: Estates in Land

11) A freehold estate is one in which the owner has a future interest in land.

Answer: FALSE
Diff: 1
Topic: Estates in Land

12) The highest form of land ownership is a fee simple absolute.

Answer: TRUE
Diff: 2
Topic: Estates in Land

13) Land held in fee simple absolute has no limitations on inheritability or duration.

Answer: TRUE
Diff: 1
Topic: Estates in Land

14) Fee simple defeasible can be thought of as complete ownership with a limitation, which if violated, results in the loss of the property.

Answer: TRUE
Diff: 1
Topic: Estates in Land
15) A life estate cannot be transferred.
Answer: FALSE  
Diff: 1  
Topic: Estates in Land

16) A person's ownership rights in real property are called an estate.
Answer: TRUE  
Diff: 1  
Topic: Estates in Land

17) If Bob holds a life estate and sells it to Sally, the life estate will terminate upon Sally's death.
Answer: FALSE  
Diff: 2  
Topic: Estates in Land

18) A life tenant may not mortgage the property in which he has a life estate.
Answer: FALSE  
Diff: 2  
Topic: Estates in Land

19) A life estate tenant must keep the property in repair and pay property taxes.
Answer: TRUE  
Diff: 1  
Topic: Estates in Land

20) Co-ownership of real property is known as concurrent ownership.
Answer: TRUE  
Diff: 1  
Topic: Concurrent Ownership

21) In joint tenancy, any owner may transfer her interest without the consent of the other joint tenants.
Answer: TRUE  
Diff: 1  
Topic: Concurrent Ownership

22) The right of survivorship is a feature of joint tenancy.
Answer: TRUE  
Diff: 1  
Topic: Concurrent Ownership
23) Any provision in a decedent's will that mentions the disposition of property held in joint tenancy will not be effective.

Answer: TRUE
Diff: 2
Topic: Concurrent Ownership

24) A parcel of property that is owned as tenants by the entirety can be owned by no more than two owners.

Answer: TRUE
Diff: 1
Topic: Concurrent Ownership

25) In a tenancy by the entirety, one tenant cannot transfer his interest without the consent of the other.

Answer: TRUE
Diff: 2
Topic: Concurrent Ownership

26) The community property laws apply only to married couples.

Answer: TRUE
Diff: 1
Topic: Concurrent Ownership

27) In a cooperative, an owner owns shares in a corporation that owns the entire building.

Answer: TRUE
Diff: 1
Topic: Concurrent Ownership

28) The owner of a condominium unit also owns the common elements in joint tenancy with the other condominium unit owners.

Answer: FALSE
Diff: 2
Topic: Concurrent Ownership

29) Only nine states recognize the co-ownership form of property known as community property.

Answer: TRUE
Diff: 1
Topic: Concurrent Ownership
30) A boat dock is a form of condominium-type ownership.

Answer: TRUE
Diff: 2
Topic: Concurrent Ownership

31) The owner of a life estate, a reversion, or remainder may sell that interest to a third party.

Answer: TRUE
Diff: 1
Topic: Future Interests

32) Remainders and remnants are two types of future interests.

Answer: FALSE
Diff: 1
Topic: Future Interests

33) If a reversion follows a life estate, upon the termination of the life estate, the property will transfer to someone other than the party who granted the life estate.

Answer: FALSE
Diff: 2
Topic: Future Interests

34) If a grantor creates a life estate in another person but does not indicate what will happen upon the termination of the life estate, the grantor holds a reversion.

Answer: TRUE
Diff: 2
Topic: Future Interests

35) If a remainder that follows a life estate is vested, it means that there are no unmet conditions for the holder of the remainder to take the property upon the death of the holder of the life estate.

Answer: TRUE
Diff: 2
Topic: Future Interests

36) George, the grantor, conveys property to Monica Simms, the grantee for life. George has no reversion interest in the property.

Answer: FALSE
Diff: 2
Topic: Future Interests
37) If a piece of property is sold at auction to satisfy a tax lien for unpaid taxes, any amount paid in excess of the amount of taxes owed is retained by the state.

Answer: FALSE
Diff: 1
Topic: The Transfer of Ownership of Real Property

38) If a state has a redemption period following a tax sale, the owner who was delinquent in paying taxes has a specified period to pay the back taxes and prevent the sale from being finalized.

Answer: TRUE
Diff: 2
Topic: The Transfer of Ownership of Real Property

39) One of the requirements to acquire property by adverse possession is to occupy the property without the express or implied permission of the owner.

Answer: TRUE
Diff: 1
Topic: The Transfer of Ownership of Real Property

40) A lessee who is complying with terms of the lease cannot acquire the leased premises by adverse possession.

Answer: TRUE
Diff: 2
Topic: The Transfer of Ownership of Real Property

41) A sale or conveyance is the least common method for transferring ownership rights in real property.

Answer: FALSE
Diff: 1
Topic: Transfer of Ownership of Real Property

42) A deed is a document that shows that property was transferred, but possession of the deed is no assurance that the holder of the deed still holds the property.

Answer: TRUE
Diff: 2
Topic: Transfer of Ownership of Real Property
43) A quitclaim deed provides the most amount of protection because only the grantor's interest is conveyed.

Answer: FALSE
Diff: 2
Topic: Transfer of Ownership of Real Property

44) One who owns property can bring a quiet title action to force noisy neighbors to allow the landowner the quiet enjoyment of her land.

Answer: FALSE
Diff: 2
Topic: Transfer of Ownership of Real Property

45) A quiet title action helps to determine an individual's ownership rights in a parcel of real property.

Answer: TRUE
Diff: 1
Topic: Recording Statutes

46) An abstract of title is a chronological history of the chain of title and encumbrances affecting the property.

Answer: TRUE
Diff: 1
Topic: Marketable Title

47) In a Torrens system, the owner of property has a certificate of title showing the ownership.

Answer: TRUE
Diff: 1
Topic: Marketable Title

48) The government may sell an owner's property for failure to pay taxes and then obtain a lien on the property for the amount of the taxes.

Answer: TRUE
Diff: 1
Topic: Tax Sale

49) An easement in gross occurs where the servient and dominant estates are adjacent.

Answer: FALSE
Diff: 2
Topic: Nonpossessory Interests
50) The owner of land that is subject to the easement cannot make any use of the land subject to the easement.

Answer: FALSE
Diff: 1
Topic: Nonpossessory Interests

51) Which of the following elements is the most important in determining whether personal property has become a fixture?

A) whether the property has been attached to the realty
B) whether the property is used in the same manner as the realty
C) whether the property can be removed without damaging the realty
D) the intent of the parties

Answer: C
Diff: 1
Topic: Real Property
Skill: Legal Concepts

52) Which of the following is not true about fixtures?

A) An item, such as a shelving unit, might be a fixture in some buildings, but not in others.
B) Factors considered in whether something is a fixture include the intent of the person who attached it and whether damage would be done to the building upon the item's removal.
C) A real property contract must list the fixtures to be included in the sale in order for them to be part of the sale.
D) Fixtures usually were personal property prior to becoming a fixture.

Answer: C
Diff: 2
Topic: Real Property
Skill: Legal Concepts

53) Real property includes:

A) natural plants growing on the land
B) cultivated plants growing on the land
C) both A and B
D) neither A nor B

Answer: C
Diff: 2
Topic: Real Property
Skill: Legal Concepts
54) Which of the following is true about subsurface rights?
   A) The surface rights and subsurface rights cannot be separated.
   B) The subsurface rights extend 100 yards below the surface.
   C) The subsurface rights are considered personal property.
   D) The most valuable subsurface rights in most instances are mineral rights.

Answer: D
Diff: 2
Topic: Real Property
Skill: Legal Concepts

55) Which form of real property ownership includes the greatest degree of ownership?
   A) fee simple limitless
   B) fee simple defeasible
   C) fee simple absolute
   D) absolute life estate
   E) remainder

Answer: C
Diff: 1
Topic: Estates in Land
Skill: Legal Concepts

56) Grantor transfers real property to the city for "as long as the property is used as a park." The city has a:
   A) fee simple absolute
   B) fee simple defeasible
   C) life estate
   D) reversion
   E) remainder

Answer: B
Diff: 1
Topic: Estates in Land
Skill: Legal Concepts

57) Which of the following is characteristic of fee simple absolute ownership?
   A) It is infinite in duration.
   B) It can be willed and inherited.
   C) It is the highest form of ownership.
   D) It does not end upon the happening of some event.
   E) All of the above.

Answer: E
Diff: 1
Topic: Estates in Land
Skill: Legal Concepts
58) Ownership of real property in fee simple defeasible means that:
   A) The ownership is for only a limited period of time.
   B) The ownership is absolute except that ownership may be lost upon the occurrence or
      nonoccurrence of some event.
   C) The property reverts to the grantor when some condition is met.
   D) Some type of joint ownership exists.
   E) The property was acquired through a donation.

Answer: B  
Diff: 3  
Topic: Estates in Land  
Skill: Legal Concepts

59) The holder of a life estate can do all of the following with her life estate except:
   A) sell it
   B) give it away
   C) leave it to someone in her will
   D) mortgage it
   E) lease it to another

Answer: C  
Diff: 2  
Topic: Estates in Land  
Skill: Legal Concepts

60) Can the holder of a life estate mortgage his life estate?
   A) Yes, with the only restrictions being those applicable to a mortgage of a fee simple
      interest.
   B) Yes, but only if the holder of the remainder interest or reversion also simultaneously
      mortgages that interest.
   C) Yes, so long as the mortgage term is limited to the length of the life estate.
   D) No, because of the uncertainty over how long the interest will last.
   E) No, because a life estate is not real property.

Answer: C  
Diff: 2  
Topic: Estates in Land  
Skill: Legal Concepts

61) A holder of a life estate has which of the following duties?
   A) to pay the property taxes on the property
   B) to keep the property in repair
   C) both A and B
   D) neither A nor B

Answer: C  
Diff: 2  
Topic: Estates in Land  
Skill: Legal Concepts
62) Which of the following is true about a life estate?
   A) The holder of a life estate may sell that interest to another.
   B) The holder of a life estate may not lease the property to a tenant because it is uncertain when the holder of the life estate may die.
   C) The holder of a life estate may lose his right if the remainderperson desires to re-enter the land.
   D) The holder of the life estate must be related to the remainderperson.

Answer: A
Diff: 2
Topic: Estates in Land
Skill: Legal Concepts

63) Which types of property interests can be sold?
   A) fee simple absolute only
   B) fee simple absolute and fee simple defeasible
   C) fee simple defeasible and life estate
   D) fee simple absolute and life estate
   E) fee simple absolute, fee simple defeasible, and life estate

Answer: E
Diff: 2
Topic: Estates in Land
Skill: Legal Concepts

64) Remainders and reversions:
   A) are both interests where property can or will return to the grantor
   B) differ in that a remainder is held by someone other than the grantor and the reversion is held by the original grantor
   C) cannot be bought or sold because they are future interests
   D) often exist when there is also a fee simple absolute ownership

Answer: B
Diff: 3
Topic: Future Interests
Skill: Legal Concepts
65) Which of the following is true about the situation where a party who owns a fee simple absolute conveys a life estate, but does not convey any other interest?
   A) Upon the death of the holder of the life estate, the property will go to the heirs of the holder of the life estate.
   B) The grantor has created a remainder, even though the identity of the holder of the remainder is not yet known.
   C) The grantor holds a fee simple defeasible.
   D) The grantor holds a reversion.
   E) The conveyance is invalid because it is incomplete.

Answer: D  
Diff: 2  
Topic: Future Interests  
Skill: Legal Concepts

66) Which of the following is true of co-ownership of real property?
   A) Joint tenancy and tenancy in common are two terms to describe the same legal arrangement.
   B) If it is unclear whether an arrangement is a joint tenancy or a tenancy in common, most courts will consider it to be a tenancy in common.
   C) Two owners who are married to each other cannot own the property as tenants in common.
   D) Tenancy by the entirety is often viewed as a special type of tenancy in common for persons married to each other.

Answer: B  
Diff: 3  
Topic: Concurrent Ownership  
Skill: Legal Concepts

67) What is the main purpose of tenancy by the entirety?
   A) To make it harder for married persons to own property together.
   B) To protect surviving spouses from unexpectedly not owning the deceased spouse's share of property upon the deceased spouse's death.
   C) To make sure that spouses each own an equal share of co-owned property
   D) To make sure that neither spouse can sell his or her share of co-owned property.

Answer: B  
Diff: 2  
Topic: Concurrent Ownership  
Skill: Legal Concepts
68) How does a tenancy by the entirety differ from a joint tenancy?
   A) In a tenancy by the entirety, the survivor gets the entire property when one co-owner dies.
   B) In a tenancy by the entirety, one co-owner cannot unilaterally sell his or her share.
   C) In a tenancy by the entirety, when there are two co-owners, each must own 50 percent.
   D) In a tenancy by the entirety, each co-owner owns an undivided interest in the whole.

Answer: B
Diff: 2
Topic: Concurrent Ownership
Skill: Legal Concepts

69) In which of the following forms of concurrent ownership may one party unilaterally transfer her portion without the consent of the other party(ies)?
   A) joint tenancy
   B) tenancy in common
   C) tenancy by the entirety
   D) A, B, and C
   E) A and B only

Answer: E
Diff: 2
Topic: Concurrent Ownership
Skill: Legal Concepts

70) If a conveyance of property to three concurrent owners is unclear as to the type of concurrent interest created, most courts would treat it as a:
   A) life estate
   B) tenancy by the entirety
   C) tenancy in common
   D) joint tenancy
   E) tenancy in partnership

Answer: C
Diff: 2
Topic: Concurrent Ownership
Skill: Legal Concepts
71) Which of the following provides that all assets acquired during a marriage, other than gifts and inheritances, belong equally to the two spouses?
   A) community property laws  
   B) joint tenancy  
   C) tenancy by the entirety  
   D) marital partnership laws  
   E) spousal equality laws  

   Answer: A  
   Diff: 1  
   Topic: Concurrent Ownership  
   Skill: Legal Concepts  

72) In a condominium development, the common areas are owned: 
   A) by the unit owners as joint tenants  
   B) by a corporation  
   C) by the homeowners association  
   D) by the unit owners as tenants in common  
   E) in fee simple defeasible by the unit owners  

   Answer: D  
   Diff: 1  
   Topic: Concurrent Ownership  
   Skill: Legal Concepts  

73) Unit owners have real estate title to their individual units in: 
   A) condominiums  
   B) cooperatives  
   C) both condominiums and cooperatives  
   D) neither condominiums nor cooperatives  

   Answer: A  
   Diff: 1  
   Topic: Concurrent Ownership  
   Skill: Legal Concepts  

74) A transfer of real property is also known as a: 
   A) commitment  
   B) quitclaim  
   C) conveyance  
   D) recording  

   Answer: C  
   Diff: 1  
   Topic: Transfer of Ownership of Real Property  
   Skill: Legal Concepts
75) Which of the following is not a requirement in order to obtain property by adverse possession?
   A) Possession must be open, visible, and notorious.
   B) Possession must be with original owner's knowledge that possessor intends to eventually acquire the property through adverse possession.
   C) Possession must be actual and exclusive.
   D) Possession must be continuous and peaceful.
   E) Possession must be hostile and adverse.

Answer: B
Diff: 3
Topic: Transfer of Ownership of Real Property
Skill: Legal Concepts

76) Which of the following would prevent someone from acquiring land by adverse possession?
   A) She lived on it secretly so that the original owner could not find out she was there.
   B) She never had to fight the original owner in order to remain on the land.
   C) She lived on the land without the original owner's permission.
   D) She was the only person who lived on the land in question.

Answer: A
Diff: 3
Topic: Transfer of Ownership of Real Property
Skill: Legal Concepts

77) Which of the following elements is not required for adverse possession?
   A) possession for the statutory period of time
   B) open, visible, and notorious possession
   C) hostile and adverse possession
   D) consent by the owner

Answer: D
Diff: 2
Topic: Transfer of Ownership of Real Property
Skill: Legal Concepts

78) Following a tax sale, the owner's right to pay the unpaid taxes and thereby prevent the tax sale from being effective is the right of:
   A) recovery
   B) rehabilitation
   C) redemption
   D) reacquisition
   E) reassessment

Answer: C
Diff: 2
Topic: Transfer of Ownership of Real Property
Skill: Legal Concepts
79) A deed must be recorded in order to:
   A) make the deed valid
   B) protect the purchaser from third parties to whom the seller might also have given deeds
   C) insure that the interest transferred is a fee simple
   D) put the property on the tax rolls

Answer: B
Diff: 2
Topic: Transfer of Ownership of Real Property
Skill: Legal Concepts

80) Recording statutes for real property:
   A) are optional in most parts of the country
   B) allow potential buyers to check whether there are any liens or mortgages on a piece of property
   C) guarantee that buildings meet certain minimum standards as far as condition goes
   D) eliminate the need to acquire title insurance because the chain of title can be traced

Answer: B
Diff: 2
Topic: Transfer of Ownership of Real Property
Skill: Legal Concepts

81) A deed is proof of:
   A) ownership of property
   B) value of property
   C) size of property
   D) transfer of property
   E) buildings that are on the property

Answer: D
Diff: 2
Topic: Transfer of Ownership of Real Property
Skill: Legal Concepts

82) A chronological history of the chain of title and encumbrances affecting a parcel of real property is known as:
   A) a certificate of title
   B) an abstract of title
   C) a Torrens certificate
   D) title insurance

Answer: B
Diff: 1
Topic: Marketable Title
Skill: Legal Concepts
83) How does an easement appurtenant differ from an easement in gross?
   A) An easement appurtenant is in writing.
   B) An easement appurtenant is permanent.
   C) The dominant estate of an easement appurtenant is adjacent to the servient estate.
   D) An easement appurtenant must be recorded.
   E) The right to enter the land exists only for an easement appurtenant.

   Answer:  C  
   Diff: 3  
   Topic:  Nonpossessory Interests  
   Skill:  Legal Concepts

84) A relatively short-term grant of permission to be on the land of another that can be revoked freely at any time is a(n):
   A) easement  
   B) defeasance  
   C) license  
   D) abstract  
   E) profit

   Answer:  C  
   Diff: 2  
   Topic:  Nonpossessory Interests  
   Skill:  Legal Concepts

85) In real estate law, the distinguishing feature of a profit is:
   A) the right to lease the property and keep the rents  
   B) the right to remove something from the property of another  
   C) the right to use the land of another  
   D) the right of an owner to exclude others from the land

   Answer:  B  
   Diff: 2  
   Topic:  Nonpossessory Interests  
   Skill:  Legal Concepts
86) Sean is walking home from school one day, notices a loose brick in the neighbor's house, and removes it, luckily not causing the house to fall down. When he walks into his house, Sean's mother asks Sean, "What kind of property is that in your hand?" Which would be a correct response?

   A) This is intangible property.
   B) This is real property because it was part of the neighbor's house.
   C) This is personal property because I found it myself.
   D) This is personal property because it is not attached to land or to anything on land.
   E) This is a fixture because it was personal property attached to real property.

Answer: D
Diff: 3
Topic: Real Property
Skill: Factual Application

87) Tom rents a furnished apartment from Linda. They have no written lease but Tom figures he'll be in this apartment a while, so he buys a new chair, hangs a mirror on the wall (on an existing nail) in the living room, and installs a new vanity and sink combination in the bathroom. Later, he moves out and wants to take all these items with him. Which of the following is true?

   A) Tom cannot take any of the items because he did not have a written lease.
   B) Tom cannot take any of the items because the apartment was furnished and all these items could be considered furnishings.
   C) Tom can take all the items because he did not have a written lease.
   D) Tom can take only the chair because the mirror and vanity were touching the walls of the building.
   E) Tom can take the chair and the mirror, but not the vanity since it was permanently attached to the walls of the building and has become a fixture.

Answer: E
Diff: 3
Topic: Real Property
Skill: Factual Application

88) John sells some property and the deed reads, "I transfer this property to the Boulder County Rat Kindness Society so long as it is used to promote kindness to rats, and if it ceases to be so used, then it comes back to the grantor (the seller)." The type of ownership estate created is:

   A) fee simple absolute
   B) fee simple defeasible
   C) fee simple subject to remainder
   D) life estate
   E) community property

Answer: B
Diff: 2
Topic: Freehold Estates
Skill: Factual Application
89) Bob owns a life estate in a ranch in Idaho. This means that:
   A) He can live on the ranch as long as he lives, but if he moves off the ranch, he loses it.
   B) He can live on the ranch as long as he lives, or he can sell this right to someone else.
   C) Bob, or his immediate family, can live on the ranch as long as at least one of them is still living.
   D) Bob must live on the ranch for the rest of his life.

Answer: B
Diff: 3
Topic: Freehold Estates
Skill: Factual Application

90) Sam sells property to Betty and delivers Betty a deed that says, "This property is conveyed to Betty so long as she never operates a bar on the premises." If she operates a bar on the premises, Sam Seller may take possession of the property. The type of interest that Betty has acquired is a:
   A) fee simple absolute
   B) fee simple defeasible
   C) fee simple limited
   D) fee simple remainder
   E) fee simple life estate

Answer: B
Diff: 1
Topic: Freehold Estates
Skill: Factual Application

91) Larry owns a life estate in a condominium in Clearwater, with the remainder going to Larry's nephew. Larry sells his life estate to Bob. Which is true?
   A) Bob's interest in the property will end when Larry dies.
   B) Bob will have the property for the rest of his life.
   C) Larry will get the property at Bob's death if Larry is still alive.
   D) The sale is ineffective because the holder of a life estate cannot sell it.

Answer: A
Diff: 3
Topic: Freehold Estates
Skill: Factual Application
92) Amy transfers a piece of realty, "to Bill for his life, and then to John." What type of ownership interest has Amy created?
   A) life estate to Bill; reversion to Amy
   B) life estate to Bill; reversion to John
   C) life estate to Bill; remainder to John
   D) life estate to Bill; remainder to John; reversion to Amy
   E) life estate to Bill; remainder to Amy

Answer: C
Diff: 2
Topic: Future Interests
Skill: Factual Application

93) Bob and Ray own a vacation home as joint tenants with each having 50 percent ownership. Ray then sells his 50 percent to Steven without Bob's knowledge. Two weeks later Steven dies unexpectedly. Which of the following is true?
   A) Steven's share of the property goes to Bob.
   B) Steven never got half the property because Ray's attempted sale was ineffective because it was made without Bob's knowledge.
   C) Steven's share of the property passes according to the terms of Steven's will.
   D) Steven's share of the property goes back to Ray.

Answer: C
Diff: 3
Topic: Concurrent Ownership
Skill: Factual Application

94) Sean decides to purchase some property in 50/50 ownership with one of the guys at work. They plan to build a vacation home on it. Sean wants to make sure that if he dies his wife and kids will get his share of the property. Sean and his friend should own the property as:
   A) joint tenants
   B) tenants in common
   C) tenants by the entirety
   D) tenants by the survivorship
   E) tenants for life and death

Answer: B
Diff: 2
Topic: Concurrent Ownership
Skill: Factual Application
95) Father transfers realty to his three children as tenants in common. This means that which of the following is true?
   A) Each child owns a specific one-third of that property.
   B) Only one child may possess that property at any one time.
   C) Each child has an undivided one-third interest in the entire property.
   D) The children own the property with rights of survivorship.
   E) Each child owns a life estate; reversion to father.

Answer: C
Diff: 2
Topic: Concurrent Ownership
Skill: Factual Application

96) Mary and Alice, friends, own a beachfront cottage as joint tenants. Because of gambling losses in Las Vegas, Alice must suddenly sell her half to Teri, which she does without telling Mary. The property is now owned by:
   A) Mary and Alice as joint tenants
   B) Mary and Alice as tenants in common
   C) Mary
   D) Teri and Mary as joint tenants
   E) Teri and Mary as tenants in common

Answer: E
Diff: 3
Topic: Concurrent Ownership
Skill: Factual Application

97) Rachel, Bonnie, and Cindy equally own real property as joint tenants. Cindy sells her one-third interest to Debbie. Neither Rachel nor Bonnie consented to this transfer. Both Rachel and Bonnie die before either Cindy or Debbie. What portion of this realty does Debbie now own?
   A) one-third
   B) two-thirds
   C) one-half
   D) all of it
   E) nothing; because Rachel and Bonnie did not consent to the transfer, it is void

Answer: A
Diff: 3
Topic: Concurrent Ownership
Skill: Factual Application
98) Bob and Mary are husband and wife, respectively. They co-own their home as tenants by the entirety. In early 1997, Bob, without Mary's knowledge, sells his share of the home to Alice, a ski instructor at Aspen Ski Area. Bob's will leaves all his property to Edith, a ski instructor at Sun Valley Ski Area. Bob unexpectedly dies on December 16, 1997. Who will own the home following his death?
   A) Edith and Mary will each own half.
   B) Edith will have total ownership.
   C) Alice and Mary will each own half.
   D) Mary will have total ownership.
   E) Alice will have total ownership.

Answer: D
Diff: 3
Topic: Concurrent Ownership
Skill: Factual Application

99) Jean's Grandmother, "Moms," lived in an assisted living facility, but had not sold her home of many years. Jean was a special granddaughter of Moms, partly because Jean often visited Moms even though Jean lived several hundred miles away. As a favor to Moms, Jean would go check on her house because otherwise it usually sat vacant. One time Jean got copies of the keys made and moved to the town where Moms lived and moved into Moms' home without Moms knowing about it. Jean lived in it as her own, even bringing her German shepherd with her. The neighbors erroneously assumed that Moms knew Jean was living there. Moms was very appreciative of Jean's long trips to visit her, not knowing that Jean was living in the same town. Although Moms liked Jean very much, she would absolutely not want Jean living in her house. Jean had pulled this off for several years. Her goal was to acquire the house by adverse possession. In these circumstances:
   A) Jean has earned the right to the home because of her care for Moms.
   B) Jean cannot acquire the home through adverse possession from a relative.
   C) Jean has acquired a life estate pour autre vie.
   D) Jean can acquire the home by adverse possession if she continues to meet the adverse possession requirements for the required period of time.
   E) The presence of Jean's vicious German shepherd will prevent her from meeting the "peaceful" requirement of adverse possession.

Answer: D
Diff: 3
Topic: Transfer of Ownership of Real Property
Skill: Factual Application
100) Gloria owns a piece of real property. She sells one-half of this property to Sam, but reserves the rights to cross over Sam's land to get to her remaining one-half. Gloria has created a(n):
   A) easement in gross
   B) easement appurtenant
   C) easement a pendre
   D) license
   E) profite

Answer: B
Diff: 2
Topic: Nonpossessory Interests
Skill: Factual Application

101) Abbot, Costello, Martin and Lewis purchase a building together as joint tenants with a right of survivorship. Before Martin dies, he executes a will stating that his share of the property is to be transferred to his friend, Frank. Martin later dies. What happens to his share?
   A) Frank inherits Martin's one-fourth interest in the property.
   B) The property will be transferred to Martin's estate.
   C) Martin's interest will transfer to Abbot, Costello and Lewis.
   D) Martin will reserve his interest in the property until all parties to the original deed are deceased.

Answer: C
Diff: 2
Skill: Factual Application

102) A certificate of title for an automobile is evidence of ownership for a car. What is a deed evidence of? Why is there a difference? Should the real estate law be changed so that deeds are proof of current ownership?

Answer: A deed shows that a property was transferred, but because the old deed is not needed for the next transfer, the deed by itself does not prove that the property has not been transferred again. The certificate of title system is in place largely to discourage theft by making it impossible to sell a vehicle without a certificate of title. Most real property, including virtually all land, is not at risk of being stolen.
Diff: 2
Skill: Ethics and Policy

103) The United States generally does not put restrictions on the ability of foreigners to own United States real estate whereas many other nations do. Should the United States impose such restrictions? If so, what kinds of restrictions?

Answer: In the late 1980s, there was much concern that persons from other nations were "buying up America." These concerns waned during the 1990s as the U.S. economy boomed.
Diff: 2
Skill: Ethics and Policy
104) Roger owned a piece of land. He moved a mobile home onto this land. The home was set on a concrete slab. The wheels and axles were removed from it, and it was tied down to the slab with wires. The home was hooked up to the city sewer and power lines. The value of the mobile home was about $10,000 and the value of the land was about $5,000. Later, Roger sold the land to Joy for $15,000. Roger now claims that the mobile home is personal property that does not go with the land. Joy claims that the mobile home is now a fixture. The mobile home could be removed from the land, but it would cause significant damage to the home. Describe the factors in general that are used to determine when personal property becomes a fixture to realty and apply those factors to determine whether the mobile home is a fixture in this case.

Answer: The most important factor is whether removal of the fixture would damage the real property. A second factor is intent. Here, it might not be crucial whether the mobile home would be damaged by its removal; there would probably not be much damage to the land. But Roger's intent in attaching the mobile home clearly seems to be that the mobile home was to be a fixture.

Diff: 3  
Topic: Real Property  
Skill: Factual Application

105) Bob purchased a home the contract for which contained a clause that said, "This sale does not include any personal property or fixtures." Bob noticed the provision when he signed the contract to purchase the house but did not worry about it because he had heard that fixtures were always included in a sale of real estate. When Bob moved in he was surprised to find that the refrigerator, a bathroom vanity, and the hardwood floor from the living room had been removed. In addition, two trees had been removed from the back yard. Discuss Bob's legal rights.

Answer: Fixtures are generally included in sales of real property but can be excluded by contract. The seller had the right to take the refrigerator, and possibly the bathroom vanity. But the living room floor and the trees are not fixtures, but rather part of the realty itself and should not have been taken.

Diff: 3  
Topic: Real Property  
Skill: Factual Application

106) Father owns three parcels of real estate. Father deeds Parcel 1 to his two sons, Andy and Sean, as joint tenants. Father deeds Parcel 2 to his two daughters, Cindy and Debbie, as tenants in common. Father deeds Parcel 3 to his church for "as long as this property is used for church purposes." Father, Andy, Sean, Cindy, and Debbie all die in that order. Who owns these three parcels now, and what ownership interests do they hold? Explain.

Answer: Parcel 1 went to Bill at Andy's death due to the right of survivorship, and then to Sean's heirs or as provided in his will. The ownership is fee simple absolute unless Sean provided otherwise in his will. Parcel 2 is owned half by Cindy's heirs or as provided in her will and half owned by Debbie's heirs or as provided in her will. These two groups share ownership as tenants in common. Ownership may be further split within each half if Cindy's will or Debbie's will so provided. The church has a fee simple defeasible in Parcel 3.

Diff: 3  
Topic: Concurrent Ownership  
Skill: Factual Application
107) Sam was a very wealthy man who owned numerous pieces of real estate. He owned four parcels with his wife as tenants by the entirety. Sam sold his share of each of these under the following circumstances: He sold the first without his wife's knowledge; sold the second with her knowledge but without her consent; sold the third with her oral consent but without her signature on the deed; and sold the fourth with her consent and signature on the deed. Shortly thereafter, Sam died. What happens to Sam's share of each of these pieces of property?

Answer: The first three belong to Sam's wife because the attempted transfers were ineffective, as each spouse must consent in writing. The grantee and Sam's wife own the fourth as tenants in common.
Diff: 3
Topic: Transfer of Ownership of Real Property
Skill: Factual Application

108) Two college students who were short of funds parked their VW microbus in a secluded wooded area of a nearby farmer's land. They soon found that this was a great way to live cheaply. Midway through their freshman year, the microbus quit running so it became their home although they could no longer drive it. They mounted solar cells on the roof, among other improvements. They lived there throughout their four years of college. After taking jobs at a big-five accounting firm they continued to use this spot as a weekend getaway a couple of weekends a month. They have now been doing this for 25 years. They have never received permission to be there nor been chased off. Can they acquire the land by adverse possession?

Answer: Their biggest problems would be whether the weekend visits amounted to actual occupation and continuous occupation. The other requirements appear to have been met.
Diff: 3
Topic: Transfer of Ownership of Real Property
Skill: Factual Application
1) A tenant's interest in the property is a nonfreehold estate.
   Answer: TRUE
   Diff: 1
   Topic: Landlord-Tenant Relationship

2) An oral lease with a 6-month term is generally enforceable.
   Answer: TRUE
   Diff: 1
   Topic: Landlord-Tenant Relationship

3) A lease for a fixed term of 8 months is a tenancy for years.
   Answer: TRUE
   Diff: 1
   Topic: Types of Tenancy

4) A tenancy for years terminates automatically, without notice, upon the expiration of the stated term.
   Answer: TRUE
   Diff: 1
   Topic: Types of Tenancy

5) Any lease that specifies a term, but states that payments are to be made at periodic intervals, is periodic tenancy.
   Answer: FALSE
   Diff: 1
   Topic: Types of Tenancy

6) A lease that specifies intervals when the rent is to be paid, such as month-to-month, but does not specify when the lease ends, is called a periodic tenancy.
   Answer: TRUE
   Diff: 2
   Topic: Types of Tenancy
7) If a month-to-month periodic tenancy exists, under common law either party must give 1 month's notice to terminate the tenancy.

Answer: TRUE
Diff: 1
Topic: Types of Tenancy

8) At common law, a tenancy at will terminates when either party dies.

Answer: TRUE
Diff: 1
Topic: Types of Tenancy

9) A tenancy at will cannot be created by implication.

Answer: FALSE
Diff: 1
Topic: Types of Tenancy

10) A tenant at sufferance may exist if a tenant retains possession of property after the expiration of a life estate.

Answer: TRUE
Diff: 1
Topic: Types of Tenancy


Answer: TRUE
Diff: 1
Topic: Types of Tenancy

12) The provisions of the federal Fair Housing Act do not apply to the rental of apartments in a building of four or fewer units where the owner lives in one of the units.

Answer: TRUE
Diff: 2
Topic: Types of Tenancy

13) The right of possession granted to a tenant in a lease is nonexclusive.

Answer: FALSE
Diff: 1
Topic: Landlord's and Tenant's Duties
14) The covenant of quiet enjoyment places responsibility on landlords for disturbances to the tenant from actions in the vicinity of the leased premises.

Answer: FALSE
Diff: 2
Topic: Landlord's and Tenant's Duties

15) A tenant who has been constructively evicted can sue for damages, but cannot terminate the lease.

Answer: FALSE
Diff: 2
Topic: Landlord's and Tenant's Duties

16) A landlord who fails to provide electricity to his tenants has constructively evicted them.

Answer: TRUE
Diff: 1
Topic: Landlord's and Tenant's Duties

17) A landlord may enter leased premises any time he or she wants, as he or she owns the premises.

Answer: FALSE
Diff: 2
Topic: Landlord's and Tenant's Duties

18) At common law, a landlord had no duty to maintain the leased premises.

Answer: TRUE
Diff: 1
Topic: Landlord's and Tenant's Duties

19) A landlord has great discretion as to when he or she has to deliver possession of leased premises to the tenant.

Answer: FALSE
Diff: 1
Topic: Landlord's and Tenant's Duties

20) An implied warranty of habitability generally applies to major problems, such as rodent infestations or structural problems.

Answer: TRUE
Diff: 1
Topic: Landlord's and Tenant's Duties
21) A tenant has a duty to not use the leased premises for unlawful purposes.

Answer: TRUE
Diff: 1
Topic: Landlord's and Tenant's Duties

22) A landlord does not have a right to limit the legal uses to which a tenant puts the property.

Answer: FALSE
Diff: 2
Topic: Landlord's and Tenant's Duties

23) Permanent damage by a tenant to leased premises that decreases the value of the property is known as waste.

Answer: TRUE
Diff: 1
Topic: Landlord's and Tenant's Duties

24) If a tenant disturbs other tenants in the same building, the problem must be resolved between the tenants, and the landlord cannot take any action.

Answer: FALSE
Diff: 2
Topic: Landlord's and Tenant's Duties

25) The term double net lease refers to an arrangement where the tenant is responsible for paying rent and property taxes.

Answer: FALSE
Diff: 2
Topic: Landlord's and Tenant's Duties

26) If a tenant is unreasonable, a landlord need not mitigate damages if a tenant has not paid his or her rent.

Answer: FALSE
Diff: 1
Topic: Landlord's and Tenant's Duties

27) If a tenant uses rented premises to smoke marijuana and pays his or her rent on time, a landlord may not terminate the lease.

Answer: FALSE
Diff: 1
Topic: Landlord's and Tenant's Duties
28) At common law, a landlord had no responsibility for injuries caused on the leased premises.

Answer: TRUE
Diff: 1
Topic: Premise Liability

29) A tenant who leaves a bag of marbles on the steps is liable to a visitor who trips on it.

Answer: TRUE
Diff: 1
Topic: Premise Liability

30) A landlord may sell leased property to a new owner, but the new owner takes the property subject to the existing lease.

Answer: TRUE
Diff: 2
Topic: Transfer of Rights to Leased Property

31) A landlord may unilaterally change the terms of a lease even if the lease has no provision allowing the change.

Answer: FALSE
Diff: 2
Topic: Transfer of Rights to Leased Property

32) When a tenant assigns a lease to another, all rights under the lease are transferred.

Answer: TRUE
Diff: 2
Topic: Transfer of Rights to Leased Property

33) Because an assignment by a tenant of the tenant's interest in the lease transfers all rights, the tenant's duties under the lease are discharged.

Answer: FALSE
Diff: 2
Topic: Transfer of Rights to Leased Property

34) In a sublease, a legal relationship is formed between a landlord and the sublessee.

Answer: FALSE
Diff: 2
Topic: Transfer of Rights to Leased Property
35) In a sublease, there is no legal relationship between the landlord and the sublessee.

Answer: TRUE
Diff: 2
Topic: Transfer of Rights to Leased Property

36) Rent control ordinances have generally been found to be an unconstitutional restriction on the freedom of contract.

Answer: FALSE
Diff: 1
Topic: Transfer of Rights to Leased Property

37) The determination of what constitutes a private nuisance is clearly specified in most states.

Answer: FALSE
Diff: 1
Topic: Private Regulation of Land Use

38) A restrictive covenant is a land use restriction that has voluntarily been agreed to by landowners.

Answer: TRUE
Diff: 1
Topic: Private Regulation of Land Use

39) Restrictive covenants are generally enforceable unless they violate the Constitution or a statute.

Answer: TRUE
Diff: 1
Topic: Private Regulation of Land Use

40) Public nuisances tend to affect a broader class of persons than do private nuisances.

Answer: TRUE
Diff: 1
Topic: Land Use Control

41) Zoning regulations are usually administered at the state level.

Answer: FALSE
Diff: 1
Topic: Land Use Control
42) An exception to using property in a way that is different from the current zoning ordinance is a variance.

Answer: TRUE  
Diff: 1  
Topic: Land Use Control

43) If a new zoning ordinance is enacted making an area a residential zone, an existing business would not have to close.

Answer: TRUE  
Diff: 1  
Topic: Land Use Control

44) The Civil Rights Act is a state statute that prohibits racial discrimination in the transfer of real property.

Answer: FALSE  
Diff: 1  
Topic: Land Use Control

45) The Fair Housing Act is a federal statute that states that it is all right for property owners to sell their homes to anyone whom they choose, regardless of reason, as that is only fair because the owners are the sellers.

Answer: FALSE  
Diff: 2  
Topic: Land Use Control

46) The Americans with Disabilities Act allows the private right of action as well as enforcement by the attorney general.

Answer: TRUE  
Diff: 2  
Topic: Americans with Disabilities Act of 1990

47) If the government takes the real property of another, it must compensate him or her under the theory of eminent domain.

Answer: TRUE  
Diff: 1  
Topic: Compensable Taking of Real Property
48) Which of the following describes the interest of the tenant in a landlord-tenant relationship?
   A) nonfreehold estate
   B) life estate
   C) leasehold estate
   D) both A and B
   E) both A and C

   Answer: E
   Diff: 1
   Topic: Landlord-Tenant Relationship
   Skill: Legal Concepts

49) A lease that stated that rent was to be paid on the first of each month, starting on June 1, 2002, but did not state when the lease ended would be a:
   A) tenancy for years
   B) periodic tenancy
   C) tenancy at will
   D) tenancy at sufferance
   E) tenancy in fee simple

   Answer: B
   Diff: 1
   Topic: Types of Tenancy
   Skill: Legal Concepts

50) How is a periodic tenancy terminated?
   A) automatically at the end of the lease term
   B) by appropriate notice by the landlord
   C) by appropriate notice by the tenant
   D) by appropriate notice by either party
   E) by either party with notice not being necessary

   Answer: D
   Diff: 2
   Topic: Types of Tenancy
   Skill: Legal Concepts

51) At common law, how much notice was necessary to terminate a periodic tenancy?
   A) 1 month
   B) 1 year
   C) one period, the length of the period being the period of the particular lease
   D) A periodic tenancy can be terminated without notice.
   E) A periodic tenancy is automatically terminated at the end of the period.

   Answer: C
   Diff: 2
   Topic: Types of Tenancy
   Skill: Legal Concepts
52) At common law, how much notice was necessary to terminate a tenancy for years?
   A) 1 month  
   B) 1 year  
   C) one period, the length of the period being the period of the particular lease  
   D) A tenancy for years can be terminated without notice.  
   E) A tenancy for years is automatically terminated at the end of the lease term.

   Answer: E
   Diff: 2
   Topic: Types of Tenancy
   Skill: Legal Concepts

53) Which of the following is not one of the nonfreehold estates that can be held by tenants?
   A) periodic tenancy  
   B) tenancy for years  
   C) tenancy in general  
   D) tenancy under lease  
   E) tenancy at sufferance

   Answer: D
   Diff: 1
   Topic: Types of Tenancy
   Skill: Legal Concepts

54) Which of the following types of tenancies are usually created by express agreement?
   A) tenancy for years and tenancy at will  
   B) periodic tenancy and tenancy at sufferance  
   C) tenancy for years and periodic tenancy  
   D) tenancy at sufferance and tenancy at will  
   E) periodic tenancy and tenancy at will

   Answer: C
   Diff: 2
   Topic: Types of Tenancy
   Skill: Legal Concepts

55) Under which type(s) of tenancy can the tenancy be terminated by the landlord without prior notice to the tenant?
   A) tenancy at will only  
   B) tenancy at sufferance only  
   C) tenancy at will and periodic tenancy only  
   D) tenancy at will and tenancy at sufferance only  
   E) tenancy at will, tenancy at sufferance, and periodic tenancy

   Answer: D
   Diff: 2
   Topic: Types of Tenancy
   Skill: Legal Concepts
56) Which of the following types of tenancy will continue indefinitely unless one party or the other takes action to terminate it?
   A) tenancy at will
   B) periodic tenancy
   C) tenancy for years
   D) A and B only
   E) A and C only

   Answer: D
   Diff: 2
   Topic: Types of Tenancy
   Skill: Legal Concepts

57) Under which type of tenancy is the tenant technically a trespasser?
   A) periodic tenancy
   B) tenancy for years
   C) tenancy at will
   D) tenancy under lease
   E) tenancy at sufferance

   Answer: E
   Diff: 1
   Topic: Types of Tenancy
   Skill: Legal Concepts

58) Rental of which of the following units is subject to the antidiscrimination housing provisions of the federal Fair Housing Act?
   A) an apartment in a four-unit building where the landlord lives in one of the units
   B) an apartment in a duplex where the landlord lives in the other unit
   C) a single family residence that is one of the three single-family residences owned by the landlord
   D) a unit in a duplex where the landlord does not live
   E) C and D

   Answer: D
   Diff: 2
   Topic: Types of Tenancy
   Skill: Legal Concepts

59) The Fair Housing Act contains nondiscrimination provisions related to:
   A) sales of housing
   B) rental of housing
   C) both A and B
   D) neither A nor B

   Answer: C
   Diff: 1
   Topic: Types of Tenancy
   Skill: Legal Concepts
60) The landlord has the right to enter the leased premises:
   A) only if specifically provided in the lease
   B) to make necessary repairs
   C) to inspect for waste
   D) to inspect for illegal use
   E) B and C only

Answer: A
Diff: 2
Topic: Landlord's Duty to Deliver Possession of the Leased Premises
Skill: Legal Concepts

61) Absent any agreement on this topic, a landlord's duty to deliver exclusive possession of
leased premises will terminate upon the following event(s):
   A) default by the landlord
   B) expiration of the lease term
   C) repairs to the leased property being necessary
   D) The landlord needs to show the property to prospective tenants once the present tenants
      have given notice of termination, assuming this is done at reasonable hours.
   E) both B and D

Answer: B
Diff: 3
Topic: Landlord's Duty to Deliver Possession of the Leased Premises
Skill: Legal Concepts

62) The landlord's duty to allow the tenant to peacefully possess the premises is known as:
   A) the duty against interference
   B) the noninterruption doctrine
   C) the tenant controls the household doctrine
   D) the covenant of quiet enjoyment

Answer: D
Diff: 2
Topic: Landlord's Duty to Deliver Possession of the Leased Premises
Skill: Legal Concepts

63) After being constructively evicted, which of the following remedies can a tenant usually
obtain?
   A) damages, and possession of the premises
   B) termination of the lease
   C) punitive damages
   D) A and B only
   E) A, B, and C

Answer: D
Diff: 2
Topic: Landlord's Duty to Deliver Possession of the Leased Premises
Skill: Legal Concepts
64) Under the warranty of quiet enjoyment, the landlord has the obligation to:
   A) not interfere with the tenant's use and enjoyment of the property
   B) ensure that the premises meet a minimum standard of livability
   C) take reasonable steps to ensure that the tenant is not unreasonably disturbed by persons on property adjoining the leased premises
   D) A and B only
   E) A, B, and C

Answer: A
Diff: 2
Topic: Landlord's Duty to Deliver Possession of the Leased Premises
Skill: Legal Concepts

65) Which of the following is true regarding the Americans with Disabilities Act requirements for landlords?
   A) New construction must be made accessible to persons with disabilities.
   B) New construction must obtain a certificate of accessibility from the EEOC.
   C) Only the attorney general can enforce the Act against a landlord.
   D) All existing buildings must be brought into compliance by 2005.
   E) In order to not discourage renovations of older buildings, alterations to existing buildings do not need to comply with the Act.

Answer: A
Diff: 2
Topic: Landlord's Duty to Deliver Possession of the Leased Premises
Skill: Legal Concepts

66) The courts of many states recognize that leased, residential premises must be fit, safe, and suitable for ordinary residential use. This rule is called:
   A) the warranty of quiet enjoyment
   B) the warranty of suitability
   C) the warranty of habitability
   D) the warranty to maintain the premises
   E) the warranty against private nuisance

Answer: C
Diff: 2
Topic: Landlord's Duty to Maintain the Leased Premises
Skill: Legal Concepts
67) What does an implied warranty of habitability provide?
   A) that the leased premises must meet some minimum standard for human habitation
   B) that the leased premises must meet a standard for habitation relative to the amount of rent
      provided for in the lease
   C) that the premises are in the same condition as they were at the beginning of the lease term
   D) that a reasonable tenant would find the premises acceptable

   Answer: A
   Diff: 2
   Topic: Landlord's Duty to Maintain the Leased Premises
   Skill: Legal Concepts

68) The implied warranty of habitability:
   A) is federal law applicable in all of the states
   B) is a uniform law that has been adopted in nearly all of the states
   C) is part of common law and applies in most states
   D) has been adopted in many states through either legislation or court decisions

   Answer: D
   Diff: 2
   Topic: Landlord's Duty to Maintain the Leased Premises
   Skill: Legal Concepts

69) Where the implied warranty of habitability has been breached, the tenant can do the
    following except:
    A) withhold from rent the reduction in value caused by the breach
    B) repair the problem and deduct the cost of repair from the rent
    C) cancel the lease if the breach amounts to constructive eviction
    D) require the landlord to provide alternative equivalent premises

   Answer: D
   Diff: 2
   Topic: Landlord's Duty to Maintain the Leased Premises
   Skill: Legal Concepts

70) Which of the following is not generally a duty owed by the tenant to a landlord?
   A) duty to pay rent
   B) duty to not commit waste
   C) duty to inform landlord of any condition affecting the value of the leased premises
   D) duty to not use the premises for illegal purposes
   E) duty to not disturb other tenants

   Answer: C
   Diff: 2
   Topic: Tenant's Duties
   Skill: Legal Concepts
71) Which of the following remedies may a landlord pursue if the tenant has failed to pay rent as required?
   A) evict the tenant
   B) sue for damages
   C) either A or B, or both
   D) either A or B, but not both

   Answer: C  
   Diff: 1  
   Topic: Tenant's Duties  
   Skill: Legal Concepts

72) Which of the following is not one of the types of commercial leases commonly used?
   A) gross lease
   B) double gross lease
   C) net lease
   D) double net lease
   E) triple net lease

   Answer: B  
   Diff: 1  
   Topic: Tenant's Duties  
   Skill: Legal Concepts

73) Under current law, which of the following is true about a landlord's duty to her tenants regarding safety of the premises?
   A) Because the tenant has sole possession of the premises, a landlord has no duty to the tenant with regard to safety.
   B) The landlord owes a duty of reasonable care to tenants, but not to others on the leased premises.
   C) The landlord owes a duty of reasonable care to both tenants and others on the leased premises.
   D) The landlord is strictly liable to tenants and owes a duty of reasonable care to others on the leased property.
   E) The landlord is strictly liable to tenants and to others on the leased premises.

   Answer: C  
   Diff: 1  
   Topic: Tort Liability of Landlords and Tenants  
   Skill: Legal Concepts
74) If a tenant transfers only some of his rights under a lease to another party, such that the original tenant is still liable on the lease, it is called a(n):
   A) assignment
   B) sublease
   C) restrictive covenant
   D) lease renewal
   E) illegal action

Answer: B
Diff: 1
Topic: Transferring Rights to Leased Property
Skill: Legal Concepts

75) If a tenant transfers all of his rights under a lease to another party, such that the original tenant is still liable on the lease, it is called a(n):
   A) assignment
   B) sublease
   C) restrictive covenant
   D) lease renewal
   E) illegal action

Answer: A
Diff: 1
Topic: Transferring Rights to Leased Property
Skill: Legal Concepts

76) Under which of the following transfers by a tenant of the tenant's rights in a lease is the tenant released from further obligation to the landlord?
   A) assignment
   B) sublease
   C) both A and B
   D) neither A nor B

Answer: D
Diff: 2
Topic: Transferring Rights to Leased Property
Skill: Legal Concepts

77) Under which of the following transfers by a tenant of the tenant's rights in a lease is the tenant obligated to make rent payments to the original landlord?
   A) assignment
   B) sublease
   C) both A and B
   D) neither A nor B

Answer: A
Diff: 2
Topic: Transferring Rights to Leased Property
Skill: Legal Concepts
78) Under which of the following transfers by a tenant of the tenant's rights in a lease can the landlord enforce the lease directly against the transferee of the rights?
   A) assignment  
   B) sublease  
   C) both A and B  
   D) neither A nor B

Answer: A  
Diff: 2  
Topic: Transferring Rights to Leased Property  
Skill: Legal Concepts

79) Under which of the following transfers by a tenant of the tenant's rights in a lease can the original tenant recover from the transferee of the rights if the original tenant suffers a loss as a result of the nonpayment of rent by the transferee of the rights?
   A) assignment  
   B) sublease  
   C) both A and B  
   D) neither A nor B

Answer: C  
Diff: 2  
Topic: Transferring Rights to Leased Property  
Skill: Legal Concepts

80) Under which of the following transfers by a tenant of the tenant's rights in a lease is the transferee obligated to make rent payments to the original tenant?
   A) assignment  
   B) sublease  
   C) both A and B  
   D) neither A nor B

Answer: B  
Diff: 2  
Topic: Transferring Rights to Leased Property  
Skill: Legal Concepts

81) When landowners in a certain area all agree to not make certain uses of their land that would otherwise be permitted, this would be an example of:
   A) restrictive covenants  
   B) private nuisances  
   C) variances  
   D) nonconforming uses  
   E) mutual takings

Answer: A  
Diff: 2  
Topic: Private Regulation of Land Use  
Skill: Legal Concepts
82) Where a landowner seeks permission to build a structure that does not comply with the current zoning regulations applicable to the land in question, the landowner would seek a(n):
   A) variance
   B) covenant exemption
   C) nuisance permit
   D) nonconforming use permit
   E) taking compensation

Answer: A
Diff: 1
Topic: Public Regulation of Land Use
Skill: Legal Concepts

83) Where a landowner owned an existing structure with four dwelling units in it when the zoning applicable to the parcel was changed to permit only single-family residences, the landowner would have a(n):
   A) variance
   B) covenant exemption
   C) private nuisance
   D) nonconforming use
   E) public nuisance

Answer: A
Diff: 1
Topic: Public Regulation of Land Use
Skill: Legal Concepts

84) Lance had a 2-year lease with Lisa. At the end of the 2 years, Lance stayed in the leased premises and kept making his rent payments. Lisa consented to this arrangement. This arrangement is best described as a:
   A) tenancy for years
   B) periodic tenancy
   C) tenancy at will
   D) tenancy at sufferance
   E) tenancy at fee simple

Answer: C
Diff: 2
Topic: Types of Tenancy
Skill: Factual Application
85) Brittney lives in an apartment building that has an attached parking lot. While Brittney was walking from the parking lot to the building, she was attacked and seriously injured. Brittney sued her landlord for not having adequate security. What is the most likely outcome of this case?

A) Brittney will win if she can prove that the landlord has prior notice of this type of criminal activity in the area.
B) Brittney will win if she can prove that the landlord could have taken steps to stop this type of crime.
C) Brittney will win if she can prove that lack of security was the proximate cause of her injuries.
D) Brittney must prove A, B, and C before she can win.
E) Brittney must prove only A and C before she can win.

Answer: D
Diff: 2
Topic: Tort Liability of Landlords and Tenants
Skill: Factual Application

86) Samuel leases an apartment from Bright Ways Apartments, signing a 2-year lease. After one year, Samuel is transferred to a new city, so he must give up his apartment. Samuel transfers his entire interest in this lease to Lisa. Lisa fails to make the rent payments as required, so Bright Ways sues both Samuel and Lisa. In this situation:

A) Because Samuel was transferred, the lease terminated as to him and only Lisa is liable.
B) Because this is an assignment, Samuel's interest is terminated and only Lisa is liable.
C) Because this is a sublease, Samuel's interest is terminated and only Lisa is liable.
D) Both Samuel and Lisa are liable for the rent.
E) Only Samuel is liable for the rent.

Answer: D
Diff: 2
Topic: Transferring Rights to Leased Property
Skill: Factual Application

87) James signed a 1-year lease for an apartment when he enrolled in Central State University. James signed a sublease with Jan for the remainder of the lease term. Assuming that this is a true sublease, to whom is Jan obligated to pay rent?

A) James
B) James's landlord
C) One half each to James and James's landlord
D) To either James or the landlord at Jan's option

Answer: A
Diff: 2
Topic: Transferring Rights to Leased Property
Skill: Factual Application
88) Daniel sells a piece of land to Marie. The deed contains a provision that prohibits the building of a three-or more story structure on this land. The provision binds not only Marie, but also all subsequent owners of this land. This provision is called:

A) an easement  
B) a restrictive covenant  
C) eminent domain  
D) a zoning ordinance  
E) a nonconforming use

Answer: B  
Diff: 2  
Topic: Private Regulation of Land Use  
Skill: Factual Application

89) Mark owns a lot where he would like to build a duplex, but the zoning ordinance only allows single-family homes. Mark believes that he should be able to build a duplex because his lot is larger than most in the neighborhood. In addition, Mark's land is worth less if only a single-family home can be built on it. Mark can:

A) sue the city on the grounds that the zoning ordinance amounts to a taking because it reduces the value of his land  
B) build the structure because it would not impose an undue hardship on the neighborhood and then apply for a special use permit once it was completed  
C) sue the city on the grounds that the ordinance is a private nuisance as it applies to Mark  
D) apply for a variance that would allow him to build contrary to the zoning regulations  
E) A and D

Answer: D  
Diff: 2  
Topic: Public Regulation of Land Use  
Skill: Factual Application

90) Joan rented an apartment. She has been complaining to her landlord that the roof has been leaking, and that paint is peeling from the doors. Does she have a legitimate complaint?

A) The leaky roof and the peeling paint both breach the landlord's implied warranty of habitability.  
B) Neither the leaky roof nor the peeling paint breach the landlord's implied warranty of habitability.  
C) The leaky roof violates the landlord's implied warranty of habitability.  
D) The peeling paint violates the landlord's implied warranty of habitability.

Answer: C  
Diff: 2  
Skill: Factual Application
91) Should states impose a warranty of habitability on landlords? What are the benefits and drawbacks of automatically imposing this warranty on landlords? Is the ability of a tenant to move to a different location sufficient incentive to encourage landlords to keep their premises livable?

Answer: In many circumstances, other remedies are available for rental housing that is truly unlivable, thus the lack of an implied warranty of habitability would not make much difference. These other remedies include breach of the lease agreement (for example, where a landlord assumed a duty to repair) and violations of building and housing codes. Some argue that the parties should be able to lease any kinds of premises to which they agree.
Diff: 2
Skill: Ethics and Policy

92) What are the benefits and drawbacks of rent control ordinances?

Answer: Although rent controls provide relief from high rents for some renters, they have a number of drawbacks. Depending on the terms of the specific rent control ordinance, landlords might charge higher rents on some apartments to make up for the controlled low rents on others. Neighbors in identical apartments might pay vastly different amounts in rent. Lastly, there can be a black market where tenants hold onto apartments that are renting below market rates and illegally rent them to others.
Diff: 2
Skill: Ethics and Policy

93) John and Mary are married and lease an apartment from Evergreen Apartments. The apartment building has its own laundry facilities in the basement. The laundry is accessible from the first floor of the building. The entrance to the building is on the first floor. The doors to the outside have no locks and there is no security guard. One evening while John was in the laundry, he was attacked and severely beaten. John sued Evergreen for failing to provide security. Discuss Evergreen’s liability.

Answer: Landlords have a duty to exercise reasonable care to prevent injury to those on their premises. Whether the landlord has done so here depends on factors such as the general character of the neighborhood and whether there have been similar incidents in the past.
Diff: 3
Topic: Tort Liability of Landlords and Tenants
Skill: Factual Application
94) John had been away at college getting his bachelor's degree for 12 years and recently returned to his hometown. Some friends of his parents had a carriage house above their garage that they sometimes rented out. When John graduated, this carriage house was vacant and the owner told John that he could stay there until he found another place that he wanted. The owner initially did not want John to pay anything, but John started paying $100 a week. John then sent a note at the beginning of August saying, "Here is $500 for the month of August. I know I hadn't planned to be here this long, but I hope this is acceptable." The owner cashed the check, but the topic was never discussed. John sent $500 at the beginning of September and October, but on October 15 the owner came to John with $100 and said, "Enough is enough. Here's some of the money you gave for October. You are lucky to get that back. You have an hour to get all your stuff out of here." John says he paid for October and is not leaving. He also said that he is entitled to at least a month's notice. Discuss the type of tenancy created, if any, and the rights of the parties in these circumstances.

Answer: This started out as a tenancy at will, which, at common law, can be terminated without any notice, thus the owner's statement terminated the tenancy. The tenant might be entitled to a refund of half the amount paid for October if the courts find an implied agreement for $500 as the amount of the rent. If John refuses to leave the premises, he will become a tenant at sufferance and become subject to a wrongful detainer action. On the other hand, a court might find an implied month-to-month tenancy, entitling John to a month's notice.

Diff: 2
Topic: Types of Tenancy
Skill: Factual Application

95) Melvin was a sophomore in college and had signed a 1-year lease from August 15, 2001, through August 14, 2002, for an apartment near campus. Melvin's fall semester was bleak and he was not able to return to school the following semester. Therefore he made an arrangement with a friend that the friend would move into the apartment and pay rent to Melvin and Melvin would make the payments to the landlord. The rent was $700 a month on the original lease, but Melvin said his friend could pay him $650 per month. This worked for January and February, but in the middle of February Melvin told his friend that he wanted the friend to just make the payments to the landlord. For March, Melvin would pay $550 and the friend could pay $150. The $550 represented the $100 difference for the remaining five-and-a-half months on the lease. Thereafter the friend would simply pay the full $700. Melvin would have no obligations under the lease. In June, the friend went to Hawaii for the summer and quit paying the landlord. The landlord has sued Melvin seeking recovery for amounts due under the lease. Melvin claims that the arrangement with the friend was a valid assignment and that therefore Melvin is not liable. Discuss this situation.

Answer: This clearly started out as a sublease. It might have been converted into an assignment. One question is whether Melvin's friend had acquired the right to receive any security deposit refund, or if that right remained with Melvin. Even with an assignment, Melvin remains responsible for the performance of the lease in the event that his friend fails to perform, as happened here. The landlord's acceptance of rent from the friend does not change that result.

Diff: 2
Topic: Transferring Rights to Leased Property
Skill: Factual Application
1) The McCarran-Ferguson Act provides that insurance is regulated by the states.

Answer: TRUE  
Diff: 1  
Topic: Insurance

2) Insurance companies are not exempt from the federal antitrust laws.

Answer: FALSE  
Diff: 1  
Topic: Insurance

3) An insurance contract is one where one party indemnifies another against loss from an unknown event.

Answer: TRUE  
Diff: 1  
Topic: Insurance

4) Insurance can be sold directly to the insured by the insurer.

Answer: TRUE  
Diff: 1  
Topic: Insurance

5) An insured that does not have an insurable interest in the property being insured is treated like a wager and it cannot be enforced.

Answer: TRUE  
Diff: 2  
Topic: Insurance

6) An insurance broker typically works for a single insurance company.

Answer: FALSE  
Diff: 1  
Topic: Insurance
7) An insurance agent is the agent of the insurance company.

Answer: TRUE
Diff: 1
Topic: Insurance

8) An insurance broker is the agent of the insurance company.

Answer: FALSE
Diff: 1
Topic: Insurance

9) State insurance laws generally provide that insurance must be sold through a broker or agent.

Answer: FALSE
Diff: 2
Topic: Insurance

10) Insurance acquired through an insurance agent becomes effective when the insured submits an application and pays the premium.

Answer: TRUE
Diff: 1
Topic: Insurance

11) It is against public policy for a life insurance policy to be made contingent on passing a physical exam.

Answer: FALSE
Diff: 1
Topic: Insurance

12) The insured owes a duty to defend against any suit brought against him or her that involves a claim within the coverage of the policy.

Answer: FALSE
Diff: 2
Topic: Insurance

13) In the case of a life insurance policy on the insured's own life, it is not necessary for the named beneficiary to have an insurable interest in the insured.

Answer: TRUE
Diff: 2
Topic: Insurance
14) The insurable interest in a piece of property must exist at the time of loss.

Answer: TRUE
Diff: 2
Topic: Insurance

15) An insurance deductible clause usually states that insurance proceeds are payable only after the insured has paid a specified amount of the damage or losses.

Answer: TRUE
Diff: 1
Topic: Insurance

16) Preexisting medical conditions are usually covered by many medical insurance policies.

Answer: FALSE
Diff: 1
Topic: Insurance

17) A coinsurance clause requires the insured to pay a percentage of an insured loss.

Answer: TRUE
Diff: 2
Topic: Insurance

18) If George represents that he will not store flammable products in an insured building, he is making a promissory warranty.

Answer: TRUE
Diff: 2
Topic: Insurance

19) Incontestability clauses are invalid as they are not fair to insurers.

Answer: FALSE
Diff: 3
Topic: Insurance

20) Subrogation typically applies to life insurance policies.

Answer: FALSE
Diff: 2
Topic: Insurance
21) Life insurance is really death insurance.

Answer: TRUE
Diff: 1
Topic: Life Insurance

22) In a life insurance policy, it is possible for the owner of the policy and the insured to be the same person.

Answer: TRUE
Diff: 1
Topic: Life Insurance

23) In a life insurance policy, the insured is the party who is to receive the insurance proceeds upon the death of the insured.

Answer: FALSE
Diff: 1
Topic: Life Insurance

24) The usual time period for the validity of a suicide clause is 10 years.

Answer: FALSE
Diff: 1
Topic: Life Insurance

25) Insurance companies need only refund policy premiums if an insured commits suicide before the date specified in the suicide clause of the life insurance policy.

Answer: TRUE
Diff: 1
Topic: Life Insurance

26) With disability insurance, the payments are generally made to the insured even though the insured does not document actual expenses.

Answer: TRUE
Diff: 2
Topic: Health and Disability Insurance

27) Most fire insurance policies are issued using the Delaware standard fire insurance policy form.

Answer: FALSE
Diff: 2
Topic: Fire and Homeowners Insurance
28) Coinsurance clauses are not common in fire insurance policies.

Answer: FALSE
Diff: 2
Topic: Fire and Homeowners Insurance

29) Due to rising insurance costs, most modern fire insurance policies do not provide replacement cost insurance.

Answer: FALSE
Diff: 2
Topic: Fire and Homeowners Insurance

30) A homeowners policy has the same coverages as a fire insurance policy except that it is written for a homeowner rather than a business.

Answer: FALSE
Diff: 2
Topic: Fire and Homeowners Insurance

31) A homeowners policy includes coverage for theft of the insured personal property, but not when the insured has the property away from the home.

Answer: FALSE
Diff: 1
Topic: Fire and Homeowners Insurance

32) Most insurance companies allow valuable items to be covered under an insured's homeowners policy thereby eliminating the need for any additional insurance.

Answer: FALSE
Diff: 2
Topic: Fire and Homeowners Insurance

33) The primary coverage of renters insurance is for the possessions of the insured.

Answer: TRUE
Diff: 1
Topic: Fire and Homeowners Insurance

34) Title insurance protects against defects in title such as liens or encumbrances that are not disclosed on the title insurance policy.

Answer: TRUE
Diff: 1
Topic: Fire and Homeowners Insurance
35) Mold is generally not covered under the majority of insurance policies.

Answer: FALSE
Diff: 2
Topic: Fire and Homeowners Insurance

36) In automobile insurance, comprehensive coverage refers to a policy that covers all types of losses related to the ownership and operation of an automobile.

Answer: FALSE
Diff: 2
Topic: Automobile Insurance

37) Under the collision coverage of an automobile insurance policy, loss to the insured automobile is covered even in an accident that is the fault of the insured.

Answer: TRUE
Diff: 2
Topic: Automobile Insurance

38) An omnibus clause under an automobile liability policy covers other drivers of the insured's automobile.

Answer: TRUE
Diff: 2
Topic: Automobile Insurance

39) Collision insurance pays for damages caused if an automobile owner's car is struck by another car.

Answer: TRUE
Diff: 1
Topic: Automobile Insurance

40) Business interruption insurance was designed to reimburse the insured whose business is severely destroyed or damaged during the time it takes to repair or reconstruct the damaged property.

Answer: TRUE
Diff: 1
Topic: Business Insurance

41) Workers compensation was designed to make payments to those workers who put more time in on the job.

Answer: FALSE
Diff: 1
Topic: Business Insurance
42) Smaller companies usually do not carry directors' and officers' liability insurance as it is too expensive.

Answer: TRUE
Diff: 2
Topic: Business Insurance

43) Because there are so many professionals in today's workforce, professional malpractice premiums are reasonably priced.

Answer: FALSE
Diff: 1
Topic: Business Insurance

44) Fidelity insurance is designed to protect an employer against his or her dishonest employees.

Answer: TRUE
Diff: 2
Topic: Business Insurance

45) Under the McCarran-Ferguson Act:
   A) insurance companies were exempted from federal antitrust laws
   B) insurance rates became subject to regulation at the federal level
   C) several large insurance companies were broken up into smaller companies
   D) banks were allowed to begin selling life insurance
   E) the whole life form of life insurance was authorized

Answer: A
Diff: 2
Topic: Insurance Industry
Skill: Legal Concepts

46) The insurance industry is regulated:
   A) by Congress under the commerce clause
   B) by the Central Insurance Regulatory Agency
   C) by state law pursuant to the McCarran-Ferguson Act
   D) by self-regulation
   E) by the Sherman Act

Answer: C
Diff: 2
Topic: Insurance Industry
Skill: Legal Concepts
47) Insurance policy premiums are set at a level to cover the following except:
   A) the expected losses
   B) a profit for the insurance company
   C) operating costs for the insurance company
   D) insurance industry support costs

   Answer: D
   Diff: 1
   Topic: The Insurance Contract
   Skill: Legal Concepts

48) When does an insurance contract usually become effective?
   A) Upon application and payment of the premium in agent transactions and upon acceptance of the application by the insurer in broker transactions.
   B) Upon application and payment of the premium in broker transactions and upon acceptance of the application by the insurer in agent transactions.
   C) Upon application and payment of the premium in both broker and agent transactions.
   D) Upon acceptance of the application by the insurer in both broker and agent transactions.

   Answer: A
   Diff: 2
   Topic: The Insurance Contract
   Skill: Legal Concepts

49) Modification of an existing insurance contract is usually accomplished by means of a(n):
   A) endorsement
   B) modifier
   C) rider
   D) A or B only
   E) A or C only

   Answer: E
   Diff: 1
   Topic: The Insurance Contract
   Skill: Legal Concepts

50) The requirement that an insured would suffer a loss in the absence of insurance if the insured property is damaged or destroyed is the requirement of:
   A) indemnification
   B) reinsurance
   C) insurable interest
   D) beneficiary interest
   E) coinsurance

   Answer: C
   Diff: 1
   Topic: The Insurance Contract
   Skill: Legal Concepts
51) An insurable interest can best be described as:
   A) the insured having paid the premiums of an insurance policy as called for in the policy
   B) the insurance covering an item that, if damaged or destroyed, would cause a loss for the
       party if it were damaged or destroyed in the absence of insurance
   C) the item in question being fully covered under a valid insurance policy
   D) the item in question being fully capable of identification at the time of a loss, even if it
       could not have been identified at the time that the insurance policy was taken out

   Answer: B
   Diff: 2
   Topic: The Insurance Contract
   Skill: Legal Concepts

52) When must an insurable interest exist for life insurance and property insurance, respectively?
   A) At the time of policy issuance, and at the time of loss.
   B) At the time of policy issuance, and at the time of payment of the premium.
   C) At the time of loss, and at the time of policy issuance.
   D) At the time of policy issuance for both life insurance and property insurance.
   E) At the time of loss for both life insurance and property insurance.

   Answer: A
   Diff: 2
   Topic: The Insurance Contract
   Skill: Legal Concepts

53) Which of the following is true about insurable interest regarding property insurance?
   A) Only one party can have an insurable interest in the same item at the same time.
   B) A party has an insurable interest in any item for which the party can establish a value.
   C) The insurable interest in the property must exist at the time there is a loss.
   D) The insurable interest in the property must exist at the time of the policy issuance.
   E) Both A and C.

   Answer: C
   Diff: 2
   Topic: The Insurance Contract
   Skill: Legal Concepts

54) What type of clause in an insurance policy states that the insurer will pay for a covered loss
    only to the extent that it exceeds a certain stated amount that the insured pays toward that loss?
   A) indemnity clause
   B) coinsurance clause
   C) endorsement clause
   D) deductible clause
   E) subrogation clause

   Answer: D
   Diff: 1
   Topic: The Insurance Contract
   Skill: Legal Concepts
55) Which of the following is not one of the parties to a standard life insurance contract?
   A) owner
   B) insurance company
   C) insurance broker
   D) insured
   E) beneficiary

Answer: C  
Diff: 2  
Topic: Life Insurance  
Skill: Legal Concepts

56) The type of life insurance that is "straight insurance" for a fixed period of time is:
   A) double indemnity life
   B) universal life
   C) whole life
   D) variable life
   E) term life

Answer: E  
Diff: 2  
Topic: Life Insurance  
Skill: Legal Concepts

57) The following types of life insurance have a cash surrender value except:
   A) term life
   B) universal life
   C) whole life
   D) straight life
   E) limited-payment life

Answer: A  
Diff: 2  
Topic: Life Insurance  
Skill: Legal Concepts

58) The type of life insurance in which the investment portion pays a variable interest rate is:
   A) double indemnity
   B) universal life
   C) whole life
   D) variable life
   E) term life

Answer: B  
Diff: 2  
Topic: Life Insurance  
Skill: Legal Concepts
59) Universal life insurance combines the features of:
   A) whole life and ordinary life
   B) limited-payment life and whole life
   C) ordinary life and straight life
   D) whole life and annuity life
   E) whole life and term life

   Answer: E  
   Diff: 2  
   Topic: Life Insurance  
   Skill: Legal Concepts

60) The basic difference between whole life insurance and universal life insurance is which of the following?
   A) Universal life includes health insurance and whole life does not.
   B) The universal life investment portion pays interest at a variable rate and whole life does not.
   C) Universal life is a single premium payment plan and whole life is not.
   D) There is no difference because they are two terms for the same type of policy.
   E) Universal life is usually purchased by corporations on its employees and whole life is usually purchased by individuals for family members.

   Answer: B  
   Diff: 2  
   Topic: Life Insurance  
   Skill: Legal Concepts

61) Which of the following is true about the parties to an insurance policy?
   A) The insured and the owner can be the same person.
   B) The owner and beneficiary can be the same person.
   C) The insurer and the insured can be the same person.
   D) The beneficiary cannot be changed during the period that the policy is in effect.
   E) Both A and B.

   Answer: E  
   Diff: 2  
   Topic: Life Insurance  
   Skill: Legal Concepts
62) What is the usual effect of a double indemnity clause?
   A) It provides that a single life insurance policy covers the lives of two people, typically a husband and wife.
   B) It provides that the standard premiums purchase twice the amount of insurance coverage as they usually do.
   C) It provides that the policy will pay twice the policy amount if death occurs within the first 10 years that the policy is in effect.
   D) It provides that the policy will pay twice the policy amount if death is caused by an accident.

Answer: D
Diff: 1
Topic: Life Insurance
Skill: Legal Concepts

63) Which of the following is not one of the common causes of death for which a life insurance policy will exclude coverage?
   A) suicide within a limited time after the policy becomes effective
   B) accident involving a private airplane
   C) incurable illness
   D) military action
   E) government execution

Answer: C
Diff: 1
Topic: Life Insurance
Skill: Legal Concepts

64) The standard form fire insurance policy that is required to be used in most states comes from which state?
   A) Nebraska
   B) Connecticut
   C) New York
   D) Delaware
   E) Illinois

Answer: C
Diff: 1
Topic: Fire and Homeowners Insurance
Skill: Legal Concepts
65) A coinsurance clause in a fire insurance policy provides which of the following?
   A) The insured must buy policies covering the insured property from at least two different companies.
   B) The insurer will contract with another company to share the risk for loss on the property.
   C) The insured must purchase insurance coverage for a minimum percentage of the property's value or will be required to bear a portion of any losses.
   D) The insurance policies are backed up by the insurer obtaining reinsurance.
   E) An independent government agency will cover any covered claims that the insurer is unable to pay due to bankruptcy, and other factors.

Answer: C
Diff: 2
Topic: Fire and Homeowners Insurance
Skill: Legal Concepts

66) A policy provision that requires an insured to carry a certain minimum level of insurance covering property in order to be able to recover the full policy amount is:
   A) a deductible clause
   B) a reinsurance clause
   C) an exclusion clause
   D) a coinsurance clause
   E) an indemnity clause

Answer: D
Diff: 1
Topic: Fire and Homeowners Insurance
Skill: Legal Concepts

67) In addition to the coverages provided in a policy of fire insurance, homeowners insurance provides coverage for:
   A) an annuity component
   B) private mortgage insurance
   C) flood insurance
   D) personal liability
   E) disability of the homeowner

Answer: D
Diff: 2
Topic: Fire and Homeowners Insurance
Skill: Legal Concepts
68) Which of the following is not covered under the typical homeowners insurance policy?
   A) Damage to the primary dwelling unit.
   B) Damage to appurtenant structures such as garages.
   C) Theft of personal property from the primary dwelling unit.
   D) Theft of personal property from the insured while the insured is traveling.
   E) All of these are covered under the typical homeowners insurance policy.

   Answer: E
   Diff: 2
   Topic: Fire and Homeowners Insurance
   Skill: Legal Concepts

69) What can an insured do under a homeowners policy to provide insurance coverage for specific valuable items, such as a rare and valuable painting?
   A) Nothing in particular; it will be covered within the overall policy limits, but that might leave less coverage for other items.
   B) Execute an appurtenant structure substitution agreement in which the coverage for the rare item will take the place of coverage for appurtenant structures.
   C) Add a personal effects floater to the policy covering the artwork.
   D) Add the standard artwork addendum to the policy.
   E) Obtain an independent appraisal and submit it to the insurer.

   Answer: C
   Diff: 1
   Topic: Fire and Homeowners Insurance
   Skill: Legal Concepts

70) The type of auto insurance coverage that pays for the damage caused by the insured to the car of the other driver in an accident is:
   A) collision
   B) comprehensive
   C) liability
   D) medical payments
   E) no fault

   Answer: C
   Diff: 2
   Topic: Automobile Insurance
   Skill: Legal Concepts
71) If a car insurance policy provides that it will pay the medical expenses of other drivers who are injured through the actions of the insured, the coverage is:
   A) collision
   B) comprehensive
   C) liability
   D) medical payments
   E) no fault

Answer: C  
Diff: 2 
Topic: Automobile Insurance 
Skill: Legal Concepts

72) Under an automobile insurance policy, what does comprehensive coverage protect against?
   A) All types of loss in connection with the ownership and operation of a vehicle.
   B) All types of losses caused by the insured to other parties.
   C) All types of damage to the covered vehicles of the insured.
   D) All types of damage to the covered vehicles of the insured except for damage caused by collision.
   E) Coverage for all losses in connection with the vehicle of the insured that are caused by other parties.

Answer: D  
Diff: 2 
Topic: Automobile Insurance 
Skill: Legal Concepts

73) Which of the following is true about no-fault auto insurance?
   A) It means that if there is no fault on the part of the insured, there will be no payment by the insured's insurer.
   B) A driver's insurer pays for the injuries to that driver regardless of who is at fault in the accident.
   C) No-fault insurance is broad, usually providing coverage for lost wages, pain and suffering, and punitive damages.
   D) No-fault insurance is lower cost coverage available only to good drivers who have never been at fault in an accident.

Answer: B  
Diff: 2 
Topic: Automobile Insurance 
Skill: Legal Concepts
74) Which of the following best describes an umbrella insurance policy?
   A) It is a policy that covers more than one type of risk.
   B) It is a policy that provides coverage beyond the dollar limits of the insured's other policies.
   C) It is a policy that covers damage only if it was caused by rain.
   D) It is a policy that covers risks to a business.
   E) It is a policy that combines life insurance and fire insurance protection.

Answer: B
Diff: 2
Topic: Other Types of Insurance
Skill: Legal Concepts

75) What does it mean for a group insurance plan to be a contributory plan?
   A) The employer pays the full premium cost.
   B) The employee pays the full premium cost.
   C) The employee pays either some or all of the premium cost.
   D) The employer is considered to make a charitable contribution in the amount of premiums paid on behalf of employees.

Answer: C
Diff: 2
Topic: Other Types of Insurance
Skill: Legal Concepts

76) What is the effect of an incontestability clause?
   A) The insured cannot file a claim more than a specified time following the insured event.
   B) The insurer cannot challenge the information in the application after a specified time.
   C) The insured is required to not challenge the statements made by its own insured.
   D) The state is prevented from challenging any claim payment decisions of the insurer.
   E) The insurer is prevented from canceling an insurance policy due to nonpayment.

Answer: B
Diff: 2
Topic: Other Types of Insurance
Skill: Legal Concepts

77) Two common types of warranties made in insurance contracts are:
   A) limited and full
   B) affirmative and promissory
   C) express and implied
   D) affirmative and negative
   E) implied and promissory

Answer: B
Diff: 2
Topic: Defenses of the Insurer
Skill: Legal Concepts
78) Bob is 25 years old and has a 40-year-old uncle who has recently entered his second adolescence. Bob is close to this uncle although the uncle does not provide Bob with any support. Within the past year, Bob's uncle has obtained a divorce, bought a large customized motorcycle, and begun smoking and drinking heavily. In addition, he has begun hanging out in bars known for periodic violence. Bob decides that taking out a life insurance policy on his uncle could be a good investment. In this situation:

A) Bob has an insurable interest in his uncle because of the close family relationship.
B) Bob has an insurable interest, but only if he is named in his uncle's will to receive assets from his uncle's estate.
C) Bob does not have an insurable interest because he took out the policy only after his uncle's lifestyle change.
D) Bob does not have an insurable interest because the relationship is too remote and he receives no support from the uncle.
E) Bob does not have an insurable interest because parents and children are the only persons who can have an insurable interest in the life of another person.

Answer: D  
Diff: 3  
Topic: Insurance  
Skill: Factual Application

79) Sandy signed a business liability insurance policy application and paid a premium to an insurance broker, both of which the broker sent to the insurance company in that day's mail. An hour later at Sandy's store, an employee negligently injured a customer. In this case:

A) The policy would not provide coverage because it was not yet in effect.
B) The policy would not provide coverage because Sandy's employee was negligent.
C) The policy would provide coverage because it had already gone into effect.
D) The policy would provide coverage on the basis of public policy.

Answer: A  
Diff: 3  
Topic: Insurance  
Skill: Factual Application

80) Henry purchases an insurance policy under which he pays annual premiums for his entire life, but ending at age 65. If he pays all the premiums then he is covered for his entire life, and can receive a fixed amount of cash monthly for the remainder of his life after age 65. What type of policy is this?

A) whole life
B) universal life
C) an annuity
D) term life
E) indemnity life

Answer: C  
Diff: 2  
Topic: Life Insurance  
Skill: Factual Application
81) Mary purchases automobile insurance including all types of coverage available. Mary is
driving home from work one afternoon when there is a severe thunderstorm threatening the town
in which she lives. She hears on the radio that this storm contains large hail. She considers going
directly home without making a planned stop at a building supply store so that she can put the
car in her garage, but decides to take a chance and stop at the store anyway. While she is in the
store, heavy hail falls and breaks out three of the windows in her car. Just as she is leaving, she
notices a couple of vandals who break out the remaining windows of her car and flee. Which
would be covered under the comprehensive portion of Mary's auto insurance policy?

A) Both the hail damage and the vandalism damage.

B) The vandalism damage, but not the hail damage, because she assumed the risk by
choosing to leave her car parked outside in the storm.

C) Damage from neither source would be covered because her actions choosing to park
outside in the storm was the proximate cause of both types of damage.

D) The damage from the hail storm, but not the vandalism because it was the willful act of
third parties who are responsible for the damage they caused.

E) The damage from the hail storm, but the vandalism damage only if the vandals are caught
and prosecuted.

Answer: A
Diff: 3
Topic: Automobile Insurance
Skill: Factual Application

82) Sam owns his own business. He has several different types of insurance policies to cover
various risks to his business. The policies have various coverage limits. Sam is considering
purchasing a policy that would add coverage in excess of all these individual policies up to $1
million. The type of policy that Sam is interested in adding is:

A) double indemnity

B) comprehensive

C) fidelity

D) umbrella

E) group

Answer: D
Diff: 2
Topic: Automobile Insurance
Skill: Factual Application
83) Fred has an automobile liability insurance policy of $100,000 and an umbrella policy with $1 million dollars in coverage. Fred is driving negligently and crashes into Barney's car. Barney suffers $500,000 in damages. How will the policies pay for the damages?

A) The $500,000 will be paid directly from the umbrella policy.
B) The first $100,000 will be paid from the automobile liability policy, and the remaining $400,000 will be paid from the umbrella policy.
C) Barney will receive $100,000 from the automobile liability policy, but nothing from the umbrella policy.
D) Barney will receive $50,000 from the automobile liability policy and $450,000 from the umbrella policy.

Answer: B
Diff: 2
Skill: Factual Application

84) When major natural disasters strike, there are some insurance companies that are not able to pay their claims because they have not purchased adequate reinsurance. How might this problem be minimized? Would disclosure requirements or reinsurance coverage requirements be better?

Answer: A difficulty is that large numbers of policyholders are simultaneously affected when an insurance company fails in this situation. Because most policyholders do not understand the concept of reinsurance, disclosures to policyholders might not accomplish much in this area. This is probably an area appropriate for state regulation.
Diff: 2
Skill: Ethics and Policy

85) What are the advantages and disadvantages of no-fault automobile insurance? What is the purpose of no-fault coverage? Should no-fault coverage be mandatory, optional, or not offered? Give reasons for your answer.

Answer: No-fault insurance reduces litigation costs, which theoretically saves money for the policyholder. It also should result in faster payment of claims. Opponents of no-fault say that it removes incentives to drive carefully and does not hold persons responsible for the consequences of their behavior.
Diff: 2
Skill: Ethics and Policy
86) Should an insurance company have a duty to defend the insured when the defense will cost more than it will cost to simply pay the claim? For example, should an auto insurance company have a duty to spend $10,000 to defend an insured when the claim is under $10,000? What ethical problems arise when the outcome would affect the insured's driving record, and therefore the rates that the insured would charge? What ethical problems can arise with this duty to defend when both drivers are covered by the same insurance company?

Answer: A conflict can arise here because the only cost to the insurer is the payment of the claim, whereas the insured might incorrectly be assumed to be partly at fault for an accident if the fault is not determined in a court of law. In fact, the insurer might stand to gain in the form of higher premiums collected if its insured is at fault. Where both drivers are covered by the same insurer, the insurer will pay the claim regardless of who is at fault, and thus has no incentive to determine fault.

Diff: 2
Skill: Ethics and Policy

87) Kirk was recently visited by a life insurance salesperson. The salesperson did an especially good job of selling, and Kirk decided to buy several policies. In addition to a policy on himself, Kirk purchased one policy each on the life of his wife, his mother, his son, his aunt, his uncle, and the old man who lives next door. Kirk has been married for 12 years. His mother is 62 years old and provides no support to Kirk. In fact, Kirk has very little contact with her. His aunt provides no support, but had provided support when Kirk was young and his parents had difficulty making ends meet. Kirk receives $10,000 each year as a gift from his uncle, but otherwise receives nothing from him. Kirk has known the old man next door for 11 years and often assists the old man when he needs help. For which of these policies does Kirk have an insurable interest?

Answer: Kirk has an insurable interest in close family members. This includes his wife, son, and mother, even though he does not have much contact with his mother. Kirk probably does not have an insurable interest in his aunt because she is not currently providing any support. Whether Kirk has an interest in his uncle would depend on if the gift each year is looked at as support. Kirk would not have an insurable interest in the next-door neighbor.

Diff: 3
Topic: Insurance
Skill: Factual Application
88) Mindy has decided to open a business that sells novelty exploding chocolates. Mindy has actually been in the candy business for many years, but recently learned of a way to encase high-pressure carbon dioxide into a special piece of sugar. The sugar piece will be surrounded by chocolate. As the hollow piece of sugar melts in someone's mouth, or if the person bites on the sugary center, the carbon dioxide will explode with surprising force. The force is not so great as to be painful most of the time, but it will certainly shock anyone who is not expecting it. Thus, Sandy expects that some customers will buy the candy for themselves, but many will buy it to offer to others as a practical joke. From the outside, the candy looks like any other candy. Sandy has formed a new corporation for this venture. Sandy has come to you for information on the types of insurance that she should consider purchasing for this business. What would you tell her?

Answer: Apart from the wisdom of this product, Sandy should investigate several types of insurance. Sandy should buy a fire insurance policy for her buildings and their contents. She should buy a general business liability policy, as well as a product liability policy, assuming she could find an insurer willing to insure this product. Sandy will probably be required to participate in her state's workers' compensation insurance program. Sandy should acquire business interruption insurance, and depending on the access that her employees have to cash or other such assets, possibly fidelity insurance. If not covered on other policies, she should acquire automobile insurance for any vehicles owned by the business. She should look into directors' and officers' insurance and key-person life insurance for key personnel. She might also want to look into group health insurance for her employees. Lastly, she should consider an umbrella policy.

Diff: 3
Topic: Other Types of Insurance
Skill: Factual Application

89) Steve has a car insurance policy that provides full coverage. Steve was involved in an accident recently that resulted in significant damage to his car, and he also received some bruises. Steve suspected he was partly at fault and decided not to report the accident to his insurance company. Steve made a small payment to the other driver involved, who did not have insurance. Steve also paid to have his own car repaired. Several months later, Steve receives a summons and has been sued by the other driver for $200,000. Steve also learns at about the same time that he has an internal injury that will require surgery to correct. Steve notifies his insurance company about the accident, the amounts he has spent in connection with it, and the lawsuit. Steve is afraid that his insurance company will cancel his insurance if it learns too much about the accident or learns about Steve's eyesight problem, which he did not mention on his application with the company four years ago. Thus, he has been avoiding the insurance company's phone calls and requests for information about the accident. However, Steve believes the company has an obligation to reimburse him and defend the suit. Discuss the legal issues involved.

Answer: Steve has breached his duties of notifying the insurer within a reasonable time following the accident and is violating his duty of cooperation. In addition, the insurance company could try to avoid liability to Steve based on the concealment of his eyesight problems in the application, although an incontestability clause may prevent this as it is 4 years later. The insurer's duty to pay and defend may survive these problems if Steve's breaches end and the earlier breaches did not increase the cost to the insurer.

Diff: 3
Topic: Other Types of Insurance
Skill: Factual Application
1) In order to be a certified public accountant, an accountant must have attained a minimum number of years of auditing experience.

Answer: TRUE  
Diff: 1  
Topic: Public Accounting

2) A person who is not certified as an accountant is referred to as a private accountant.

Answer: FALSE  
Diff: 1  
Topic: Public Accounting

3) For certified public accountants, audits must be conducted according to generally accepted auditing standards.

Answer: TRUE  
Diff: 1  
Topic: Accounting Standards

4) An audit may be defined as a verification of a company's financial books and records.

Answer: TRUE  
Diff: 1  
Topic: Accounting Standards

5) An accountant who performs an audit may follow other auditing standards than those in the GAAS.

Answer: FALSE  
Diff: 1  
Topic: Accounting Standards

6) The issuance by an auditor of something other than an unqualified opinion makes little difference to the overall company's financial position.

Answer: FALSE  
Diff: 1  
Topic: Auditor's Opinions
7) If an auditor is unable to draw a conclusion as to the accuracy of the company's financial records, the auditor may issue a disclaimer of opinion.

Answer: TRUE
Diff: 2
Topic: Auditor's Opinions

8) An accountant is liable for constructive fraud when the accountant acts with a reckless disregard for his actions.

Answer: TRUE
Diff: 1
Topic: Limited Liability Partnership (LLP)

9) Most public accounting firms are organized and operated as a limited liability partnership.

Answer: TRUE
Diff: 1
Topic: Limited Liability Partnership (LLP)

10) The drawback to being a partner in a limited liability partnership is that the partners are personally liable for the debts and obligations of the limited liability partnership.

Answer: FALSE
Diff: 1
Topic: Limited Liability Partnership (LLP)

11) A client may seek damages for the expenses he or she incurred in securing another accountant if the initial accountant he or she hired failed to perform under the terms of the parties' original agreement.

Answer: TRUE
Diff: 2
Topic: Liability of Accountants to Their Clients

12) Actual fraud happens when the accountant acts with "reckless disregard" for the truth or the consequence of his or her actions.

Answer: FALSE
Diff: 2
Topic: Liability of Accountants to Their Clients

13) An accountant's actions are his or her own and therefore are judged on a subjective basis.

Answer: FALSE
Diff: 1
Topic: Liability of Accountants to Their Clients
14) Accountant malpractice is based on an accountant's failure to meet uniform accounting standards.

Answer: TRUE
Diff: 1
Topic: Liability of Accountants to Their Clients

15) Generally, only the client of an accountant can bring a negligence claim against the accountant.

Answer: FALSE
Diff: 2
Topic: Liability of Accountants to Third Parties

16) The rules of liability of accountants to third parties are essentially the same in all states.
Answer: FALSE
Diff: 1
Topic: Liability of Accountants to Third Parties

17) In the *Ultramares* case involving negligence of a CPA firm, the firm was not found liable as it was not in a contractual relationship with the plaintiff.

Answer: TRUE
Diff: 2
Topic: Liability of Accountants to Third Parties

18) Under the *Ultramares* decision, an accountant is liable only to those with whom the accountant is in privity of contract or a privity-like relationship.

Answer: TRUE
Diff: 2
Topic: Liability of Accountants to Third Parties

19) The term privity refers to parties being in a contractual relationship with one another.

Answer: TRUE
Diff: 1
Topic: Liability of Accountants to Third Parties

20) The Restatement (Second) of Torts in part provides that accountants are liable to any member of a limited class of intended users for whose benefit the accountant has been employed to prepare the client's financial statements.

Answer: TRUE
Diff: 2
Topic: Liability of Accountants to Third Parties
21) In order for the foreseeability standard to apply, the accountant must know the identity of either the user or the intended class of users.

Answer: FALSE
Diff: 3
Topic: Liability of Accountants to Third Parties

22) Securities must be registered with the Securities Exchange Commission before they can be sold.

Answer: TRUE
Diff: 1
Topic: Liability of Accountants Under Securities Laws

23) Accountants are not liable for failing to find misstatements or omissions of facts in a registration statement.

Answer: FALSE
Diff: 2
Topic: Liability of Accountants Under Securities Laws

24) Section 10(b) of the Securities Exchange Act of 1934 applies exclusively to the purchase of any security.

Answer: FALSE
Diff: 1
Topic: Liability of Accountants Under Securities Laws

25) Section 18(a) of the Securities Exchange Act of 1934 imposes civil liability on any person who makes false or misleading statements in any application, report, or document filed with the SEC.

Answer: TRUE
Diff: 1
Topic: Liability of Accountants Under Securities Laws


Answer: FALSE
Diff: 1
Topic: Liability of Accountants Under Securities Laws
27) If a client commits an illegal clearly inconsequential act, the accountant need not report it to the client's management and audit committee.

Answer: TRUE
Diff: 2
Topic: Liability of Accountants Under Securities Laws

28) Under the Securities Act of 1933, accountants are liable only for willful misstatements in the financial statements.

Answer: TRUE
Diff: 2
Topic: Criminal Liability of Accountants

29) Under the federal securities laws, the Securities and Exchange Commission decides whether to bring criminal charges against an accountant.

Answer: FALSE
Diff: 2
Topic: Criminal Liability of Accountants

30) The Racketeer Influenced and Corrupt Organizations Act provides for both civil and criminal actions against accountants who violate its provisions.

Answer: TRUE
Diff: 1
Topic: Criminal Liability of Accountants

31) There is no accountant-client privilege under federal law.

Answer: TRUE
Diff: 1
Topic: Criminal Liability of Accountants

32) Accountants' working papers are protected from discovery in federal court cases.

Answer: FALSE
Diff: 2
Topic: Criminal Liability of Accountants

33) Accountants' working papers remain the property of the client.

Answer: FALSE
Diff: 2
Topic: Criminal Liability of Accountants
34) Breach of contract is a common basis for third parties to recover from accountants.

Answer: FALSE
Diff: 1
Topic: Other Common Law Doctrines That Impose Liability on Accountants to Third Parties

35) Generally, privity of contract is required for a party to recover from an accountant for matters relating to fraud.

Answer: FALSE
Diff: 2
Topic: Other Common Law Doctrines That Impose Liability on Accountants to Third Parties

36) Accountants can generally be held liable to more parties on a fraud theory than on a breach of contract theory.

Answer: TRUE
Diff: 2
Topic: Other Common Law Doctrines That Impose Liability on Accountants to Third Parties

37) Accountants are considered experts under the Securities Act of 1933 with respect to the financial statements that are included in a registration statement.

Answer: TRUE
Diff: 1
Topic: Statutory Liability of Accountants

38) Accountants can be held liable under Section 11 of the Securities Act of 1933.

Answer: TRUE
Diff: 1
Topic: Statutory Liability of Accountants

39) Under Section 11 of the Securities Act of 1933, an accountant cannot make use of the due diligence defense.

Answer: FALSE
Diff: 1
Topic: Statutory Liability of Accountants

40) An accountant can be liable for misstatements in financial statements under Section 11 of the Securities Act of 1933 only if the accountant actually made the misstatement.

Answer: FALSE
Diff: 2
Topic: Statutory Liability of Accountants
41) A plaintiff in an action under Section 11 of the Securities Act of 1933 must prove that she relied on the misstatement of an accountant in order to recover.

Answer: TRUE
Diff: 2
Topic: Statutory Liability of Accountants

42) The due diligence defense is a broad defense available to an accountant for a claim under rule 10b-5 of the Securities Exchange Act of 1934.

Answer: FALSE
Diff: 2
Topic: Statutory Liability of Accountants

43) Ordinary negligence of an accountant will result in liability under Rule 10b-5 of the Securities Exchange Act of 1934.

Answer: FALSE
Diff: 2
Topic: Statutory Liability of Accountants

44) Section 18(a) of the Securities Exchange Act of 1934 imposes liability on accountants making a false or misleading statement in any document filed with the Securities and Exchange Commission.

Answer: TRUE
Diff: 1
Topic: Statutory Liability of Accountants

45) Under the Securities Exchange Act of 1934, fraud or reckless conduct must be shown in order to impose liability on the accountant under either Section 10(b) or Section 18(a).

Answer: TRUE
Diff: 2
Topic: Statutory Liability of Accountants

46) Under the Securities Act of 1933, accountants are liable only for willful misstatements in the financial statements.

Answer: TRUE
Diff: 2
Topic: Criminal Liability of Accountants
47) A conviction for violation of Section 32(a) of the Securities and Exchange Act of 1934 can impose imprisonment for up to 10 years and a fine up to $1 million.

Answer: TRUE
Diff: 2
Topic: Criminal Liability of Accountants

48) Knowledge of the rule presented in Section 32(a) of the Securities and Exchange Act of 1934 has no impact on whether or not an individual becomes imprisoned.

Answer: FALSE
Diff: 2
Topic: Criminal Liability of Accountants

49) The 1976 Tax Reform Act imposes civil liability on accountants and others who prepare federal tax returns.

Answer: FALSE
Diff: 2
Topic: Criminal Liability Regarding Tax Preparation

50) Accountants may be named as defendants in lawsuits that claim violations of the RICO Act.

Answer: TRUE
Diff: 1
Topic: Criminal Liability Regarding Tax Preparation

51) In a few jurisdictions, an accountant may not be called as a witness against a client in a court action.

Answer: TRUE
Diff: 2
Topic: Accountant's Privilege and Work Papers

52) There is no accountant-client privilege under federal law.

Answer: TRUE
Diff: 1
Topic: Accountant's Privilege and Work Papers

53) Accountants' working papers are protected from discovery in federal court cases.

Answer: FALSE
Diff: 2
Topic: Accountant's Privilege and Work Papers
54) Accountants' working papers remain the property of the client.

Answer: FALSE
Diff: 2
Topic: Accountant's Privilege and Work Papers

55) Although an accountant's working papers are the property of the accountant, the accountant must transfer them upon request by the client.

Answer: TRUE
Diff: 1
Topic: Accountant's Privilege and Work Papers

56) Which of the following is not one of the requirements for an accountant to become a certified public accountant?
   A) educational requirements
   B) size of firm requirements
   C) passage of the CPA exam
   D) minimum period of audit experience

Answer: B
Diff: 1
Topic: Public Accounting
Skill: Legal Concepts

57) The guidelines that accountants must follow in preparing financial statements are the:
   A) generally accepted accounting principles
   B) Securities and Exchange Commission Accounting Guidelines
   C) generally accepted auditing standards
   D) Government Financial Statement Guidelines

Answer: A
Diff: 2
Topic: Accounting Standards
Skill: Legal Concepts

58) The guidelines that accountants must follow in conducting an audit are the:
   A) generally accepted accounting principles
   B) Securities and Exchange Commission Auditing Rules and Procedures
   C) the Department of Treasury Audit Processes
   D) generally accepted auditing standards

Answer: D
Diff: 2
Topic: Accounting Standards
Skill: Legal Concepts
59) The procedure that an accountant performs to determine whether the financial statements of a business are materially accurate is a(n):
   A) review
   B) audit
   C) compilation
   D) verification
   E) account sampling

   Answer: B
   Diff: 1
   Topic: Accounting Standards
   Skill: Legal Concepts

60) An accountant's failure to follow generally accepted auditing standards in conducting an audit generally amounts to:
   A) fraud
   B) negligence
   C) promissory estoppel
   D) reliance
   E) falsification

   Answer: B
   Diff: 1
   Topic: Accounting Standards
   Skill: Legal Concepts

61) If an auditor is unable to gather enough information to express an opinion about the financial statements, the auditor would issue a(n):
   A) unqualified opinion
   B) qualified opinion
   C) adverse opinion
   D) disclaimer of opinion

   Answer: D
   Diff: 2
   Topic: Accounting Standards
   Skill: Legal Concepts
62) If an auditor determines that the financial statements fairly present the financial results and position of the client, the auditor would issue a(n):
   A) unqualified opinion
   B) qualified opinion
   C) adverse opinion
   D) disclaimer of opinion

   Answer: A
   Diff: 2
   Topic: Accounting Standards
   Skill: Legal Concepts

63) If an auditor determines that the financial statements do not fairly present the financial results and position of the client, the auditor would issue a(n):
   A) unqualified opinion
   B) qualified opinion
   C) adverse opinion
   D) disclaimer of opinion

   Answer: C
   Diff: 2
   Topic: Accounting Standards
   Skill: Legal Concepts

64) If an auditor determines that the financial statements fairly present the financial results and position of the client except for one fairly minor, but material, item that is not properly presented, the auditor would issue a(n):
   A) unqualified opinion
   B) qualified opinion
   C) adverse opinion
   D) disclaimer of opinion

   Answer: B
   Diff: 2
   Topic: Accounting Standards
   Skill: Legal Concepts

65) Which of the following is not typically a common law basis of liability to the client of an accountant?
   A) fraud
   B) breach of contract
   C) negligence
   D) strict liability

   Answer: D
   Diff: 1
   Topic: Liability of Accountants to Their Clients
   Skill: Legal Concepts
66) The contractual arrangement of an accountant with the client is often referred to as a(n):
   A) matter
   B) engagement
   C) undertaking
   D) procedure
   E) project

Answer: B
Diff: 1
Topic: Liability of Accountants to Their Clients
Skill: Legal Concepts

67) When an accountant has conducted an audit with reckless disregard for the accuracy of the financial statements, the accountant has committed:
   A) privity of the contract
   B) constructive fraud
   C) actual fraud
   D) strict liability carelessness

Answer: B
Diff: 1
Topic: Liability of Accountants to Their Clients
Skill: Legal Concepts

68) Which of the following is true about the general standard of care owed by an accountant to the client?
   A) It varies considerably depending on the geographic region of the nation.
   B) It varies considerably depending on the sophistication of the accountant.
   C) It varies considerably depending on the sophistication of the client.
   D) Both A and B
   E) It is generally the same in all parts of the nation for similar circumstances.

Answer: E
Diff: 2
Topic: Liability of Accountants to Their Clients
Skill: Legal Concepts
69) When an accountant has not followed generally accepted auditing standards, which of the following is true?
   A) The accountant is negligent.
   B) The accountant is presumed to be negligent, but the accountant can possibly rebut that presumption.
   C) The accountant will be liable for any losses suffered by users of the financial statements.
   D) The accountant will lose his license to practice the profession of accountancy.

   Answer: B
   Diff: 2
   Topic: Liability of Accountants to Their Clients
   Skill: Legal Concepts

70) When an accountant has followed generally accepted auditing standards and generally accepted accounting principles, which of the following is true?
   A) The accountant is not negligent.
   B) The accountant could be negligent in some other respect.
   C) The accountant will not be liable for any losses suffered by users of the financial statements.
   D) The accountant will have uncovered any fraud or other problems with the financial statements.

   Answer: B
   Diff: 2
   Topic: Liability of Accountants to Their Clients
   Skill: Legal Concepts

71) How many general rules of liability are there for accountants' liability for negligence to third parties under state law?
   A) one
   B) two
   C) three
   D) four
   E) five

   Answer: C
   Diff: 1
   Topic: Liability of Accountants to Third Parties
   Skill: Legal Concepts
72) The state law rule of liability of accountants for negligence to third parties that is most favorable to the accountant is:
   
   A) the *Ultramares* doctrine  
   B) the Restatement (Second) of Torts standard  
   C) the strict liability standard  
   D) the foreseeability standard  

   Answer: A  
   Diff: 2  
   Topic: Liability of Accountants to Third Parties  
   Skill: Legal Concepts  

73) The state law rule of liability of accountants for negligence to third parties that is least favorable to the accountant is:  
   
   A) the *Ultramares* doctrine  
   B) the Restatement (Second) of Torts standard  
   C) the strict liability standard  
   D) the foreseeability standard  

   Answer: B  
   Diff: 2  
   Topic: Liability of Accountants to Third Parties  
   Skill: Legal Concepts  

74) Under the *Ultramares* doctrine, an accountant is liable to which third parties?  
   
   A) Only parties in privity with the accountant.  
   B) Only parties in privity with the accountant or parties in a privity-like relationship with the accountant.  
   C) All parties in a limited class whose identities are known by the accountant.  
   D) All parties in a limited class whether or not the accountant knows the identity of the party.  
   E) All foreseeable users of the financial statements.  

   Answer: B  
   Diff: 2  
   Topic: Liability of Accountants to Third Parties  
   Skill: Legal Concepts
75) Under the Restatement (Second) of Torts standard, an accountant is liable to which third parties for negligence?
   A) Only parties in privity with the accountant.
   B) Only parties in privity with the accountant or parties in a privity-like relationship with the accountant.
   C) All parties in a limited class whose identities are known by the accountant.
   D) All parties in a limited class whether or not the accountant knows the identity of the party.
   E) All foreseeable users of the financial statements.

   Answer: D
   Diff: 2
   Topic: Liability of Accountants to Third Parties
   Skill: Legal Concepts

76) An accountant is liable for negligence only to third parties with whom the accountant is in privity or in a privity-like relationship under which standard of liability?
   A) the Ultramares doctrine
   B) the Restatement (Second) of Torts standard
   C) the strict liability standard
   D) the foreseeability standard
   E) the auditing liability standard

   Answer: A
   Diff: 2
   Topic: Liability of Accountants to Third Parties
   Skill: Legal Concepts

77) An accountant is liable for negligence only to those parties in a limited class of intended users under which standard of accountant liability to third parties?
   A) the Ultramares doctrine
   B) the Restatement (Second) of Torts standard
   C) the strict liability standard
   D) the foreseeability standard
   E) the auditing liability standard

   Answer: A
   Diff: 2
   Topic: Liability of Accountants to Third Parties
   Skill: Legal Concepts
78) On which of the following theories under common law can an accountant be held liable to parties with whom the accountant is not in privity?
   A) breach of contract
   B) fraud
   C) breach of contract or fraud
   D) neither breach of contract nor fraud

Answer: B  
Diff: 2  
Topic: Other Common Law Doctrines That Impose Liability on Accountants to Third Parties  
Skill: Legal Concepts

79) Under the rules of Section 10A of the Securities Exchange Act of 1994, if an auditor detects an illegal act having a material effect on the financial accounts, to whom must the accountant first report the finding?
   A) the client's management and audit committee
   B) the client's board of directors
   C) the Securities and Exchange Commission
   D) the client's shareholders

Answer: A  
Diff: 2  
Topic: Other Common Law Doctrines That Impose Liability on Accountants to Third Parties  
Skill: Legal Concepts

80) Section 11(a) of the Securities Act of 1933 imposes civil liability on accountants for:
   A) making misstatements or omissions in a registration statement
   B) failing to find misstatements or omissions in a registration statement
   C) Both A and B
   D) Neither A nor B

Answer: C  
Diff: 2  
Topic: Statutory Liability of Accountants  
Skill: Legal Concepts

81) The Private Securities Reform Act of 1995 made what change affecting the liability of professionals in connection with securities?
   A) Changed the duty of care for accountants from a local standard to a uniform national standard.
   B) Made class action lawsuits by plaintiffs easier to file.
   C) Replaced the rule for liability of defendants from joint and several liability to proportionate liability.
   D) Made accountants liable for misstatements resulting from constructive fraud.

Answer: D  
Diff: 2  
Topic: Statutory Liability of Accountants  
Skill: Legal Concepts
82) An accountant is liable for unintentional negligent misstatements in financial statements under which of the following?
   A) Section 11 of the Securities Act of 1933
   B) Section 10(b) of the Securities Exchange Act of 1934
   C) Both A and B
   D) Neither A nor B

Answer: A
Diff: 2
Topic: Statutory Liability of Accountants
Skill: Legal Concepts

83) The due diligence defense is applicable to actions filed under:
   A) Section 11 of the Securities Act of 1933
   B) Section 10(b) of the Securities Exchange Act of 1934
   C) Both A and B
   D) Neither A nor B

Answer: A
Diff: 2
Topic: Statutory Liability of Accountants
Skill: Legal Concepts

84) Which of the following is correct about the process for investigating violations of the securities laws?
   A) The Securities and Exchange Commission investigates violations and decides whether to prosecute.
   B) The Department of Justice investigates violations and decides whether to prosecute.
   C) The Securities and Exchange Commission investigates violations and makes a recommendation to the Department of Justice, which then decides whether to prosecute.
   D) The Securities and Exchange Commission investigates violations and makes a recommendation to the Department of Justice, which is then obligated to follow the recommendation of the Securities and Exchange Commission.

Answer: C
Diff: 3
Topic: Criminal Liability of Accountants
Skill: Legal Concepts
85) Which of the following is true about the accountant-client privilege?
   A) It applies in federal courts and all state courts.
   B) It applies in all state courts, but not in federal court.
   C) It applies in federal court and some state courts.
   D) It applies in some state courts, but not in federal court.
   E) It applies in federal court, but no state courts.

Answer: D
Diff: 2
Topic: Criminal Liability of Accountants
Skill: Legal Concepts

86) Which of the following is true about accountant's work papers?
   A) Although prepared by the accountant in many cases, they are the property of the client.
   B) They are the property of the accountant, but the accountant has certain duties toward the
      client with respect to the work papers.
   C) They are immune from discovery in federal court.
   D) The accountant is required to keep copies of them for 5 years.

Answer: B
Diff: 2
Topic: Criminal Liability of Accountants
Skill: Legal Concepts

87) Smiley, a CPA, was performing the audit at a client when he noticed that the client did not
properly account for certain miscellaneous revenues. These revenues were a small portion of
overall revenues, but were nonetheless material to the overall financial statements. What type of
opinion should Smiley render on the financial statements?
   A) unqualified opinion
   B) qualified opinion
   C) adverse opinion
   D) disclaimer of opinion

Answer: B
Diff: 2
Topic: Accounting Standards
Skill: Factual Application
88) Elizabeth is an accountant in a small town in a rural western state. Elizabeth has performed an audit for a large agricultural cooperative in her town. The accountant who previously performed the audit died in the past year, and her working papers could not be found, so Elizabeth had a difficult time with the audit. There were some problems with the audit and the financial statements such that the local bank is not willing to renew the cooperative's line of credit. If the cooperative sues Elizabeth, what is most likely true about the duty of care imposed on Elizabeth?

A) Elizabeth will be held to a duty of care based on an accountant practicing in a small rural town.
B) Elizabeth will be held to a lower standard of care because of the lack of access to the prior year's work papers.
C) Elizabeth will be held to the same general standard of care as accountants anywhere in the nation.
D) Elizabeth committed constructive fraud by proceeding with the audit without having the working papers from the prior year.

Answer: C
Diff: 2
Topic: Liability of Accountants to Their Clients
Skill: Factual Application

89) Anne, a Certified Public Accountant, was hired by a retail hardware store to perform an audit on the store's financial statements. In the agreement for this engagement was a clause stating that the audited financial statements would be used "to obtain further inventory financing from Second National Bank or another local bank." Anne completed the audit and issued an unqualified opinion. The client obtained the financing from Heartland National Bank, another local bank. Unfortunately, Anne had been negligent in conducting the audit, and the inventory had been greatly overstated. As a result, there was inadequate collateral for Heartland's loan, and when the hardware store went bankrupt a few months later, Heartland suffered a loss. Under which of the rules for an accountant's liability to third parties could Heartland recover from Anne?

A) the foreseeability standard
B) the foreseeability standard and the Restatement (Second) of Torts
C) the Ultramares doctrine
D) the Ultramares doctrine and the foreseeability standard
E) the Ultramares doctrine, the Restatement (Second) of Torts, and the foreseeability standard

Answer: B
Diff: 2
Topic: Liability of Accountants to Third Parties
Skill: Factual Application
90) Gretchen, a Certified Public Accountant, was hired by a retail hardware store to perform an audit on the store's financial statements. In the agreement for this engagement was a clause stating that the audited financial statements would be used "to renew the inventory financing line of credit from Third National Bank." Gretchen completed the audit and issued an unqualified opinion. The client obtained the financing from Third National Bank. Unfortunately, Gretchen had been negligent in conducting the audit, and the inventory had been greatly overstated. As a result, there was inadequate collateral for the loan, and when the hardware store went bankrupt a few months later, Third National Bank suffered a loss. Under which of the rules for an accountant's liability to third parties could Third National Bank recover from Gretchen?

A) the foreseeability standard  
B) the foreseeability standard and the Restatement (Second) of Torts  
C) the Ultramares doctrine  
D) the Ultramares doctrine and the foreseeability standard  
E) the Ultramares doctrine, the Restatement (Second) of Torts, and the foreseeability standard

Answer: E  
Diff: 2  
Topic: Liability of Accountants to Third Parties  
Skill: Factual Application

91) Anne, a Certified Public Accountant, was hired by a retail hardware store to perform an audit on the store's financial statements. The agreement for this engagement stated that the audited financial statements would be used "to obtain further inventory financing from Second National Bank or another local bank." Anne completed the audit and issued an unqualified opinion. The client then used the audited financial statements to encourage Henry to invest in the hardware store as a new partner. Unfortunately, Anne had been negligent in conducting the audit, and the inventory had been greatly overstated. As a result, the hardware store soon went bankrupt. Under which of the rules for accountant liability to third parties could Henry recover from Anne?

A) the foreseeability standard  
B) the foreseeability standard and the Restatement (Second) of Torts  
C) the Ultramares doctrine  
D) the Ultramares doctrine and the foreseeability standard  
E) the Ultramares doctrine, the Restatement (Second) of Torts, and the foreseeability standard

Answer: A  
Diff: 2  
Topic: Liability of Accountants to Third Parties  
Skill: Factual Application
92) Patricia, a Certified Public Accountant, was hired to audit the financial statements of a large Internet retailer that was planning a new issuance of stock. The client had made several public offerings of stock in recent years and was required to meet the reporting requirements of the Securities Exchange Act of 1934. In performing her audit, Patricia was negligent. Although she was unaware of the fact, the financial statements greatly overstated accounts receivable because the client had recorded numerous fictitious sales. The audited financial statements were included in the registration statement for the new public offering and in the reports filed under the Securities Act of 1934. Patricia faces statutory liability under:

A) Section 11 of the Securities Act of 1933
B) Section 10(b) of the Securities Exchange Act of 1934
C) Both A and B
D) Neither A nor B

Answer: A
Diff: 2
Topic: Statutory Liability of Accountants
Skill: Factual Application

93) Diana, a Certified Public Accountant, was hired to audit the financial statements of a large Internet retailer that was planning a new issuance of stock. The client had made several public offerings of stock in recent years and was required to meet the reporting requirements of the Securities Exchange Act of 1934. In performing her audit, Diana discovered that large portions of accounts receivable resulted from fictitious sales. The client told Diana that the company would go bankrupt and that she would then be unable to collect her fee if the fictitious accounts receivable were eliminated or were mentioned in the auditor's report. Diana did not adjust or mention the problems with the accounts receivable. The audited financial statements were included in the registration statement for the new public offering and in the reports filed under the Securities Act of 1934. Diana faces statutory liability under:

A) Section 11 of the Securities Act of 1933
B) Section 10(b) of the Securities Exchange Act of 1934
C) Both A and B
D) Neither A nor B

Answer: C
Diff: 2
Topic: Statutory Liability of Accountants
Skill: Factual Application
94) Jake is a CPA who worked on the audit of Dream Drive Motors, Inc. Although the client's financial statements fairly presented its financial results and position, certain client personnel had been engaged in illegal activities aimed at defrauding the federal government. Can Jake be called to testify about any matters that he learned in the course of his audit of Dream Drive?

A) yes, in all circumstances  
B) yes, in federal court, but not in any state courts  
C) yes, in federal court, and in some state courts  
D) in some state courts, but not in federal courts  
E) in all state courts, but not in federal courts

Answer: C  
Diff: 2  
Topic: Criminal Liability of Accountants  
Skill: Factual Application

95) Ray hires Robert, an accountant, to prepare financial statements to be presented to prospective investors. In the future, will Robert potentially be liable if one of the investors brings a claim against him for negligently preparing the documents?

A) Robert would be liable under both the Ultramares doctrine and the Restatement standard.  
B) Robert would be liable under the Ultramares doctrine, but not the Restatement standard.  
C) Robert would not be liable under the Ultramares doctrine, but would be liable under the Restatement standard.  
D) Robert would not be liable under the Ultramares doctrine, nor the Restatement standard.

Answer: C  
Diff: 2  
Skill: Factual Application

96) What is the ethical dilemma that an accountant often faces in the course of an audit engagement?

Answer: The accountant is investigating the financial statements of the client to express an unbiased opinion on them, yet the accountant must keep the client happy because it is the client who pays the bills. This can create a conflict of interest.  
Diff: 2  
Skill: Ethics and Policy

97) Is it fair that a nationwide standard of care generally applies to the duty of care of accountants? Is it fair to hold the small town practitioner to the same standard as a large CPA firm in a large city?

Answer: Because of the training and education of accountants and because of the ability to research accounting principles, the small town practitioner is presumed to be able to acquire any specialized knowledge needed for a new client or situation. With today's research capabilities, imposing a national standard is probably reasonable.  
Diff: 2  
Skill: Ethics and Policy
98) Why is third party liability such an issue for accountants but not for most other professionals?

Answer: Unlike the case for most professionals, the services of an accountant are intended to benefit third parties directly. Thus, if the audit is improperly performed, these third parties can suffer a loss.

Diff: 2
Skill: Ethics and Policy

99) Johnson and Peterson Company, CPAs, have been hired to perform a specialized audit of Elmville National Bank. The report that Fran prepares will be presented to Acme Bonding Insurance Company for its review prior to issuing an insurance policy to Elmville Bank to cover embezzlement losses caused by the bank's employees. Fran's firm completes the audit and prepares a report that indicates that there are no significant problems. Unfortunately, Fran negligently omitted certain procedures and failed to notice that Elmville had weak internal controls. These weak controls meant that an employee could easily embezzle large amounts of money from the bank. The bank showed the report to Acme Bonding and Acme renewed the insurance policy. Elmville also used the report to encourage Billy to make a large investment in the bank. Soon thereafter, Elmville Bank failed after one of its employees embezzled large amounts of cash and then disappeared. Discuss the liability of Johnson and Peterson Company to Acme and to Billy under each of the three rules for accountant liability to third parties.

Answer: Fran could be held liable to Acme under all three rules. By identifying Acme and the purpose for which it was using the report, a privity-like relationship was created, resulting in liability under Ultramares. Fran would also be liable under the broader rules of the Restatement (Second) of Torts and under the foreseeability standard. As for Billy, Fran would be liable only under the foreseeability standard. Billy was not a member of the limited class for which the report would be used, nor was there privity or a privity-like relationship.

Diff: 3
Topic: Negligence Liability of Accountants to Third Parties
Skill: Factual Application

100) Ted is a CPA in a large city who audited the financial statements of a firm that sold specialized computer equipment around the world. This was a complex audit, and Ted prepared numerous working papers in connection with the audit. Ted also had numerous conversations with client personnel in his efforts to understand the complex transactions and accounts. Ted's client has recently become the subject of an investigation for numerous violations of law. Charges will soon be filed at both the state and federal level. Can Fred be called to testify, and can Fred's work papers be subject to a subpoena?

Answer: In the federal courts there is no accountant-client privilege, thus Ted could be called to testify. Some states do recognize the privilege, and in those states Ted could not be called to testify. In the federal case the work papers are subject to discovery. Some states provide work product immunity for an accountant's work papers, and in those states they would be protected from discovery.

Diff: 2
Topic: Criminal Liability of Accountants and Other Professionals
Skill: Factual Application
1) Wills transfer property upon a person’s death.

Answer: TRUE
Diff: 1
Topic: Will

2) In general, a will must be in writing to be effective.

Answer: TRUE
Diff: 1
Topic: Will

3) Dying intestate means dying without a will.

Answer: TRUE
Diff: 1
Topic: Will

4) An attestation clause is an assertion by the person making the will that it is valid.

Answer: FALSE
Diff: 1
Topic: Will

5) The party who makes a will is called the beneficiary.

Answer: FALSE
Diff: 1
Topic: Will

6) A signature can be made with an "x" or initials and still be effective.

Answer: TRUE
Diff: 1
Topic: Will

7) The legal age for executing a will is set by state statute.

Answer: TRUE
Diff: 1
Topic: Will
8) In most states more than one witness is required, and the witnesses are required to witness each other's signatures.

Answer: TRUE
Diff: 2
Topic: Will

9) A codicil is the common name for a document that changes the terms of a will.

Answer: TRUE
Diff: 1
Topic: Will

10) A codicil must be executed with the same formalities as a will.

Answer: TRUE
Diff: 1
Topic: Will

11) Once a valid will has been executed, permission of the court is required to revoke it.

Answer: FALSE
Diff: 1
Topic: Will

12) A divorce operates as a revocation of any provisions in a will that give property to the former spouse.

Answer: TRUE
Diff: 1
Topic: Will

13) The existence of a later will does not automatically revoke all earlier wills by operation of law.

Answer: TRUE
Diff: 2
Topic: Will

14) An attestation clause refers to the court's approval of will into probate.

Answer: FALSE
Diff: 1
Topic: Will
15) A joint will refers to two or more testators executing the same instrument as their will.

Answer: TRUE
Diff: 1
Topic: Will

16) Mutual wills may be unilaterally revoked after one of the parties dies.

Answer: FALSE
Diff: 2
Topic: Will

17) A nuncupative will is an oral will.

Answer: TRUE
Diff: 2
Topic: Will

18) A holographic will is a will in the handwriting of the testator and signed by the testator.

Answer: TRUE
Diff: 1
Topic: Will

19) A nuncupative will and dying declarations both represent oral wills, usually made during the testator's final illness.

Answer: TRUE
Diff: 1
Topic: Will

20) The Uniform Simultaneous Death Act provides that each deceased person's property is distributed as though he or she died.

Answer: FALSE
Diff: 2
Topic: Will

21) Undue influence is easy to prove by direct influence.

Answer: FALSE
Diff: 1
Topic: Will
22) Testators are being allowed to videotape their wills to accompany their handwritten wills.

Answer: TRUE
Diff: 2
Topic: Will

23) Probate is the administration and settlement of an individual's estate.

Answer: TRUE
Diff: 1
Topic: Will

24) A bequest is a gift of personal property in a will.

Answer: TRUE
Diff: 1
Topic: Testamentary Gifts

25) A devise is any gift of property other than cash made in a will.

Answer: FALSE
Diff: 2
Topic: Testamentary Gifts

26) A general gift is one that is a specifically identified piece of property.

Answer: FALSE
Diff: 1
Topic: Testamentary Gifts

27) A bequest of $5,000 in a will is a general gift.

Answer: TRUE
Diff: 1
Topic: Testamentary Gifts

28) A person renounces a gift made in a will when the person does not want to accept the gift.
Answer: TRUE
Diff: 1
Topic: Testamentary Gifts

29) Ademption means that if a specific bequest is not owned by the testator at the testator's death, then the beneficiary receives nothing.

Answer: TRUE
Diff: 2
Topic: Testamentary Gifts
30) Under the doctrine of abatement, residuary gifts are abated first.

Answer:  TRUE
Diff:  2
Topic: Testamentary Gifts

31) In a *per stirpes* distribution, a person in a higher generation receives twice the share of one in the next lower generation.

Answer:  FALSE
Diff:  2
Topic: Testamentary Gifts

32) When a testator leaves her property to her descendants per capita, all living descendants receive an equal share regardless of the generation they are in.

Answer:  TRUE
Diff:  2
Topic: Testamentary Gifts

33) Abatement refers to the order in which bequests are paid based on the sufficiency of the estate to distribute the property.

Answer:  TRUE
Diff:  2
Topic: Testamentary Gifts

34) Intestate succession refers to the fact that the diseased person's property escheats to the state first and if the state does not want it, then it is distributed to the heirs of the deceased.

Answer:  FALSE
Diff:  1
Topic: Intestate Succession

35) The majority rule regarding in-laws is that they do not inherit under intestacy statutes.

Answer:  TRUE
Diff:  1
Topic: Intestate Succession

36) People who do not want their lives prolonged indefinitely by artificially means should sign a living will.

Answer:  TRUE
Diff:  1
Topic: Living Will and Health Care Proxy
37) One factor in determining whether a testator was subject to undue influence is if the testator made an unnatural distribution of property.

Answer: TRUE
Diff: 1
Topic: Trust

38) An heir is someone who receives property under an intestacy statute.

Answer: TRUE
Diff: 1
Topic: Trust

39) The settlor is the person who transfers property in order to form a trust.

Answer: TRUE
Diff: 1
Topic: Trust

40) With a trust, all aspects of title to the trust property are transferred to the trustee.

Answer: TRUE
Diff: 1
Topic: Trust

41) A trust can be created during a trustor's lifetime but become effective upon the trustor's death.

Answer: TRUE
Diff: 1
Topic: Trust

42) A constructive trust can be implied to prevent fraud or unjust enrichment.

Answer: TRUE
Diff: 1
Topic: Trust

43) In a spendthrift trust, the beneficiaries are limited in their access to trust corpus.

Answer: TRUE
Diff: 1
Topic: Trust
44) All trusts are revocable.
Answer: FALSE
Diff: 1
Topic: Trust

45) A trust corpus is the property that is held in trust.
Answer: TRUE
Diff: 1
Topic: Trust

46) A remainder beneficiary is one that receives the trust’s corpus upon inception of the trust.
Answer: FALSE
Diff: 2
Topic: Trust

47) An inter vivos trust refers to a trust that is created after the settler dies.
Answer: FALSE
Diff: 2
Topic: Trust

48) A constructive trust is based on an equitable one that helps to avoid unjust enrichment and injustice.
Answer: TRUE
Diff: 2
Topic: Trust

49) A resulting trust is not valid because it is not in writing.
Answer: FALSE
Diff: 2
Topic: Trust

50) A totten trust is created for the benefit of society.
Answer: FALSE
Diff: 1
Topic: Trust

51) The majority of trusts are revocable.
Answer: FALSE
Diff: 1
Topic: Trust
52) A grantor's trust is the same thing as a living trust.
Answer:  TRUE
Diff:  2
Topic:  Living Trusts

53) One reason for having a living trust is to avoid probate.
Answer:  TRUE
Diff:  1
Topic:  Living Trusts

54) One of the benefits to having a living trust is that it helps to reduce estate taxes.
Answer:  FALSE
Diff:  2
Topic:  Living Trusts

55) It is not necessary to fund a living trust as it is self-supportive.
Answer:  FALSE
Diff:  1
Topic:  Living Trusts

56) A living trust is irrevocable.
Answer:  FALSE
Diff:  1
Topic:  Living Trusts

57) A pour-over will is public and also subject to probate.
Answer:  TRUE
Diff:  2
Topic:  Living Trusts

58) What is required to make a will under a statute of wills?
   A) intent, property to will, and at least one witness
   B) signature of testator, testamentary capacity, and intent
   C) signature of testator, intent, and signature of two witnesses
   D) signature of testator, testamentary capacity, a writing, and, in most states, two or three
      attesting witnesses
   E) signature of testator, testamentary capacity, and either a writing or three witnesses for
      nonwritten wills

Answer:  D
Diff:  2
Topic:  Will
Skill:  Legal Concepts
59) Which of the following is **not** generally needed in a will?
   A) a writing
   B) signature of the testator
   C) naming of the executor
   D) signature of the witnesses

Answer: C
Diff: 1
Topic: Will
Skill: Legal Concepts

60) The party who executes a will is called the:
   A) executor
   B) administrator
   C) settlor
   D) declaror
   E) testator

Answer: E
Diff: 1
Topic: Will
Skill: Legal Concepts

61) Which of the following is generally true about witnesses to wills?
   A) In most states one witness is sufficient.
   B) Witnesses must be residents of the same state as the testator.
   C) Multiple witnesses must sign in the presence of one another.
   D) Witnesses must know of the contents of the will.
   E) Witnesses must be relatives who know the testator well.

Answer: C
Diff: 2
Topic: Will
Skill: Legal Concepts

62) Which of the following is true about witnesses who attest to a will?
   A) These witnesses must be close family members.
   B) They need not be family members, but must have known the testator a reasonable length of time.
   C) If they are beneficiaries under the will, most states either ignore the dispositions to them or invalidate the entire will.
   D) The witnesses must witness the writing of the will and the testator's signing of the will.
   E) The witnesses cannot be witnesses for wills of more than one person within the same family.

Answer: C
Diff: 3
Topic: Will
Skill: Legal Concepts
63) Which of the following best describes a codicil?
   A) It is an instrument that revokes a will.
   B) It is a modification to a will that does not need all the formalities of a will so long as the required formalities were followed in the original will.
   C) It is the instrument that names the testator.
   D) It is a modification to a will that must follow all the formalities of a will.
   E) It is an order of a probate court to distribute property of the testator.

Answer: D
Diff: 2
Topic: Will
Skill: Legal Concepts

64) A document executed with the formalities of a will in order to modify an existing will is called a(n):
   A) rider
   B) ademption
   C) nuncupative addendum
   D) endorsement
   E) codicil

Answer: E
Diff: 1
Topic: Will
Skill: Legal Concepts

65) Which of the following does not revoke a will, either in whole or in part?
   A) a properly executed subsequent will
   B) divorce or annulment
   C) a child born after the will is executed
   D) action by the testator destroying the will

Answer: C
Diff: 2
Topic: Will
Skill: Legal Concepts
66) What happens when someone dies with two valid wills, neither of which has been revoked?
   A) The earlier will is always followed.
   B) The later will is always followed.
   C) The survivor decides which will more accurately reflects the testator's wishes and that will is followed.
   D) Both wills are followed, but where inconsistent, the later one controls.
   E) Neither will is followed because the testator lacked capacity by having two wills outstanding.

Answer: D
Diff: 2
Topic: Will
Skill: Legal Concepts

67) What is the legal effect of a testator executing a second will when the testator already has an earlier existing valid will?
   A) The second will is invalid unless the first will has been expressly revoked.
   B) The second will automatically revokes the first will.
   C) The presence of two wills invalidates both of them until one is revoked.
   D) The probate court will determine which of the two wills more accurately represents the desires of the decedent.
   E) The two wills are read together to the extent possible, but where inconsistent, the later will controls.

Answer: E
Diff: 2
Topic: Will
Skill: Legal Concepts

68) A will that is made entirely in the testator's own handwriting is what kind of will?
   A) nuncupative
   B) invalid
   C) holographic
   D) reciprocal
   E) self-proving

Answer: C
Diff: 1
Topic: Will
Skill: Legal Concepts
69) A will that is made orally in front of witnesses during the testator's final illness is what kind of will?
   A) nuncupative
   B) invalid
   C) holographic
   D) reciprocal
   E) self-proving

Answer: A
Diff: 1
Topic: Will
Skill: Legal Concepts

70) Receiving one-fourth of what is left in the estate after specific items are given to named individuals in a will is a(n):
   A) specific gift
   B) intestate gift
   C) residuary gift
   D) quarter gift
   E) lapsed gift

Answer: C
Diff: 1
Topic: Testamentary Gifts
Skill: Legal Concepts

71) A gift of personal property made in a will is known as a:
   A) devise
   B) legacy
   C) corpus
   D) bequest
   E) Both B and D

Answer: E
Diff: 1
Topic: Testamentary Gifts
Skill: Legal Concepts

72) A gift of real property made in a will is known as a:
   A) devise
   B) legacy
   C) corpus
   D) bequest
   E) Both A and D

Answer: A
Diff: 1
Topic: Testamentary Gifts
Skill: Legal Concepts
73) A gift of a fixed amount of money from an estate that does not specify from where the money is to come is what kind of gift?
   A) lapsed
   B) per stirpes
   C) general
   D) ambiguous
   E) specific

Answer: C
Diff: 1
Topic: Testamentary Gifts
Skill: Legal Concepts

74) A gift of a particular piece of artwork from an estate is what kind of gift?
   A) specific
   B) per stirpes
   C) general
   D) deliberate
   E) ademptive

Answer: A
Diff: 1
Topic: Testamentary Gifts
Skill: Legal Concepts

75) When someone has been left a specific item that is no longer owned by the testator at the testator's death, the beneficiary receives nothing under the doctrine of:
   A) ademption
   B) abatement
   C) intestacy
   D) per stirpes distribution

Answer: A
Diff: 2
Topic: Testamentary Gifts
Skill: Legal Concepts
76) Which of the following best describes the doctrine of ademption?
   A) When there are not enough assets to satisfy all the gifts in the will, the residual gifts will be the last to be paid.
   B) When assets are distributed to lineal descendants, equal shares are given to all descendants regardless of which generation they are in.
   C) If a decedent dies without owning the property that was the subject of a specific gift in the will, the beneficiary will receive nothing for it.
   D) When there are not enough assets in the estate to satisfy all general gifts, they are all satisfied on a pro-rata basis.

Answer: C
Diff: 3
Topic: Testamentary Gifts
Skill: Legal Concepts

77) When assets are left to a beneficiary who has died before the testator, and that beneficiary's share is given to the descendants of that deceased beneficiary, what type of distribution is this?
   A) per stirpes
   B) contingent
   C) per capita
   D) intestate
   E) per abatement

Answer: A
Diff: 1
Topic: Intestate Succession
Skill: Legal Concepts

78) When a residuary gift is given to all of the testator's descendants such that each is to receive an equal share regardless of what generation they are in, what type of distribution is this?
   A) per stirpes
   B) contingent
   C) per capita
   D) intestate
   E) per abatement

Answer: C
Diff: 1
Topic: Intestate Succession
Skill: Legal Concepts
79) Which of the following is not a characteristic of reciprocal wills?
   A) They are separate wills where the testators leave property to each other.
   B) The leaving of property to each other is conditioned on the beneficiary disposing further of the property only in accordance with the terms of the reciprocal wills.
   C) They can be executed only by husband and wife.
   D) They cannot be revoked after one of the parties dies.

   Answer: C
   Diff: 2
   Topic: Intestate Succession
   Skill: Legal Concepts

80) Which laws address the passage of property to heirs when someone dies without a will?
   A) ademption
   B) collateral
   C) probate
   D) intestacy
   E) estray

   Answer: D
   Diff: 1
   Topic: Intestate Succession
   Skill: Legal Concepts

81) Under the Uniform Simultaneous Death Act, when two persons who would inherit property from each other die together in such a way that it is impossible to determine who died first, the property of each is distributed:
   A) as if he or she had died first
   B) as if he or she had died after the other person
   C) as if the older person had died first
   D) as if the other person had not been left anything in the will
   E) as if each had half the combined assets of both parties

   Answer: B
   Diff: 2
   Topic: Intestate Succession
   Skill: Legal Concepts
82) Which of the following is **not** one of the factors that courts will commonly look at in determining whether a will was executed under undue influence?
   A) There was an opportunity to exert undue influence.
   B) The testator had a large number of living relatives.
   C) The will contains an unnatural disposition of the testator's property.
   D) The bequests constitute a change from an earlier will.
   E) The testator was highly susceptible to undue influence.

Answer: B
Diff: 2
Topic: Intestate Succession
Skill: Legal Concepts

83) The legal process of proving that the will is valid, collecting assets, paying off debts, and distributing the estate assets is:
   A) distribution
   B) intestate succession
   C) probate
   D) authentication
   E) testation

Answer: C
Diff: 1
Topic: Intestate Succession
Skill: Legal Concepts

84) What is the difference between an administrator and an executor?
   A) Administrators administer trusts and executors administer wills.
   B) Administrators distribute real property and executors distribute personal property.
   C) Executors are used where the decedent has surviving children under age 18 and administrators are used where the decedent has no surviving children under age 18.
   D) Administrators are appointed by the court and executors are named in the will.
   E) Administrators are used for per capita distributions and executors are used for *per stirpes* distributions.

Answer: D
Diff: 2
Topic: Intestate Succession
Skill: Legal Concepts
85) The party who initially places property into a trust is known as the:
   A) testator
   B) trustee
   C) corpus
   D) settlor
   E) administrator

Answer: D
Diff: 1
Topic: Trust
Skill: Legal Concepts

86) The person who receives the trust corpus after the termination of the trust is the:
   A) legatee
   B) remainderman
   C) residual recipient
   D) terminator
   E) life beneficiary

Answer: B
Diff: 1
Topic: Trust
Skill: Legal Concepts

87) A trust created by the terms of a will is a:
   A) testamentary trust
   B) inter vivos trust
   C) probate trust
   D) constructive trust

Answer: A
Diff: 1
Topic: Trust
Skill: Legal Concepts

88) An inter vivos trust is what kind of trust?
   A) Any trust where the settlor determined the terms of the trust while the settlor was living.
   B) Any trust where beneficiaries receive benefits only while living.
   C) Any trust that lasts beyond the death of the settlor.
   D) Any trust in which all beneficiaries are already living when it is created.
   E) Any trust that first takes effect while the settlor is living.

Answer: E
Diff: 3
Topic: Trust
Skill: Legal Concepts
89) A trust where the beneficiary and the beneficiary's creditors do not have legal access to the trust corpus is what kind of trust?
   A) judgment proof
   B) restricted
   C) spendthrift
   D) totten

Answer: C
Diff: 1
Topic: Trust
Skill: Legal Concepts

90) Joe wrote a will in 1994 when he was age 65. The only two provisions are that his older son will receive his 1984 Cadillac and that the remainder of his estate be divided one-third to his older son and two-thirds to his younger son. When Joe is 72 he quits driving and sells his car. Joe dies 10 years after executing the will without changing it. How will Joe's estate be divided?
   A) The older son will get one-third and the younger son will get two-thirds of the estate.
   B) The older son will receive an amount equal to the value of the Cadillac in 1994; the remainder will go one-third to the older son and two-thirds to the younger son.
   C) The older son will receive an amount equal to the value of a 1984 Cadillac at the time of Joe's death, the remainder will go one-third to the older son and two-thirds to the younger son.
   D) If the proceeds from the sale of the Cadillac can be separately traced, the older son will receive these, and the remainder will go one-third to the older son and two-thirds to the younger son; if the proceeds cannot be separately traced, the entire estate will go one-third to the older son and two-thirds to the younger son.

Answer: A
Diff: 3
Topic: Testamentary Gifts
Skill: Factual Application

91) Jan has two daughters, Ann and Betty. Each of these daughters has two sons. While all of these persons are living, Jan writes a will leaving her entire estate to her "lineal descendants, per stirpes." After Jan writes this will, the older daughter, Ann, dies. Jan dies next. If the value of Jan's estate is $120,000, how much does Ann's older son receive?
   A) $20,000
   B) $24,000
   C) $30,000
   D) $36,000
   E) $40,000

Answer: C
Diff: 3
Topic: Intestate Succession
Skill: Factual Application
92) Jan has two daughters, Ann and Betty. Each of these daughters has two sons. While all of these persons are living, Jan writes a will leaving her entire estate to her "lineal descendants, per capita." After Jan writes this will, the older daughter, Ann, dies. Jan dies next. If the value of Jan's estate is $120,000, how much does Ann’s older son receive?

A) $20,000  
B) $24,000  
C) $30,000  
D) $36,000  
E) $40,000

Answer: B
Diff: 3
Topic: Intestate Succession
Skill: Factual Application

93) Frank is Mary's uncle. Frank sets up a trust for Mary by depositing $20,000 in the trust department at Last National Bank. In this situation:

A) Frank is the settlor, Mary is the beneficiary, and Last National is the trustee  
B) Frank is the trustee, Mary is the beneficiary, and Last National is the settlor  
C) Frank is the settlor, Mary is the legatee, and Last National is the trustee  
D) Frank is the administrator, Mary is the trust corpus, and Last National is the executor  
E) Frank is the settlor, Mary is the heir, and Last National is the administrator

Answer: A
Diff: 2
Topic: Trust
Skill: Factual Application

94) Ralph and Alice live in a state that has adopted the Simultaneous Death Act. The couple has created wills leaving their property to each other. They have no children. They are both tragically killed in an airplane crash. What happens to their property?

A) All property goes to the husband's family.  
B) All property goes to the wife's family.  
C) The wife's property goes to the husband's family; the husband's property goes to the wife's family.  
D) The wife's property goes to her family; the husband's property goes to his family.

Answer: D
Diff: 2
Skill: Factual Application

95) To what extent should courts enforce wills where the intent of the testator is to be vindictive or otherwise punish descendants and other relatives when there is no justifiable reason?

Answer: One view of a will is that it is simply a distribution of assets that the testator could have made while living. Because living persons are free to give away their assets to whomever they desire for whatever reason, probate courts should probably allow the same.
Diff: 2
Skill: Ethics and Policy
96) Is it better for the elderly to tell their children how they have left property in their will, or is it better to wait until after death for this information to be disclosed?

Answer: This depends on the individual family situation, with neither approach being better in all situations. In some cases, knowing this in advance provides certainty and might allow for planning, but it can also lead to dissatisfaction, jealousy, and attempts to encourage the decedent to change the will.

Diff: 2
Skill: Ethics and Policy

97) In 2000, Pam writes a will leaving her 1995 BMW to her oldest daughter, Ann. In 2002, she writes another will leaving the 1995 BMW to her youngest son, Frank. In 2004, she trades the BMW in on a Porsche. Shortly thereafter she writes a codicil that states in part, "This codicil is amending my will in which I left my 1995 BMW to my daughter Ann. I am now changing that to read that I am leaving my 2004 Porsche to Ann." Assuming that both wills and the codicil met all the required formalities, who gets the Porsche when Pam dies in 2008? Explain your reasoning.

Answer: The codicil and first will are read as one, and is the only will which mentions the Porsche, so Ann would get it. The gift of the BMW to Frank in the second will fails by ademption.

Diff: 2
Topic: Testamentary Gifts
Skill: Factual Application

98) Sandy has three children. Her oldest child has three children and her second has two. Her youngest child has no children. In addition, Sandy's fourth child died 2 years ago leaving behind a husband and one young child of theirs. If Sandy's will leaves all her property "to her lineal descendants," indicate the portions that each of her survivors would receive under both per stirpes and per capita distribution if Sandy were to die before there are any additional deaths among the above.

Answer: Under per capita, there are nine living descendants (three children and six grandchildren) each of whom would receive one-ninth. Under per stirpes, each living child would receive one-fourth, and the child of Sandy's deceased youngest child would receive one-fourth.

Diff: 3
Topic: Intestate Succession
Skill: Factual Application
99) Barb and Marv are an elderly husband and wife with three grown children, each of whom has children. Eight years ago Barb and Marv went to their lawyer and executed wills, with each executing a separate will. The oldest son recently spent a week at his parents house with Barb while Marv was on a fishing trip. The oldest son returned to his home after Marv returned from the trip. The next week, his parents were driving late at night on a rural road and ran into a tree. When the car was found several hours later, they were both dead. Marv's will left everything to Barb, and Barb's will, executed the prior week, left all to her oldest son. Discuss this situation.

Answer: Under the simultaneous death statute, each will be presumed to be the latter to die. There are questions whether the son had exerted undue influence in getting Barb to change her will.
Diff: 2
Topic: Special Issues Concerning Wills
Skill: Factual Application

100) Mary is the beneficiary of a spendthrift trust that her grandmother set up when Mary was 12 years old. Mary is now 25 years old. Mary has overused her credit cards and is in default on several. Under terms of the trust, Mary receives $500 per month of income, but any remaining income remains in the trust. Mary wants to force the trustee to pay her all the income plus some of the trust corpus each month. Also, one creditor wants to attach the trust corpus and income. Discuss.

Answer: Mary cannot control the distributions from a spendthrift trust. The creditor can attach only the income that is distributed out of the trust to Mary.
Diff: 3
Topic: Trust
Skill: Factual Application
1) At common law, the courts recognized an action for breach of a promise to marry.

Answer: TRUE
Diff: 1
Topic: Premarriage Issues

2) The modern rule with respect to broken marriages and who gets to keep an engagement ring is the fault rule.

Answer: FALSE
Diff: 2
Topic: Premarriage Issues

3) Under common law, if an engagement was broken, the bride had to return the ring to avoid litigation.

Answer: FALSE
Diff: 2
Topic: Premarriage Issues

4) Emancipated minors may get married despite their age.

Answer: TRUE
Diff: 1
Topic: Marriage

5) Individuals under a certain age cannot be married.

Answer: TRUE
Diff: 1
Topic: Marriage

6) All states require a marriage license as well as a marriage ceremony in order to be married.

Answer: FALSE
Diff: 2
Topic: Marriage
7) Financial support during a marriage includes providing for things such as food, shelter, clothing, and medical care.

Answer: TRUE
Diff: 1
Topic: Marriage

8) Contracts to provide sex violate public policy.

Answer: TRUE
Diff: 1
Topic: Marriage

9) Cohabitation is sufficient to establish a common law marriage.

Answer: FALSE
Diff: 2
Topic: Marriage

10) When a valid common law marriage exists, a court decree of divorce must be obtained to end the common law marriage.

Answer: TRUE
Diff: 3
Topic: Marriage

11) All states have now recognized same-sex marriages.

Answer: FALSE
Diff: 1
Topic: Marriage

12) Parents have a right to select schools for their children as well as the religion they will practice.

Answer: TRUE
Diff: 1
Topic: Parents and Children

13) Parents may be legally responsible for a child beyond 18 years of age if the child has a disability.

Answer: TRUE
Diff: 2
Topic: Parents and Children
14) Paternity actions are often brought to determine the identity of the mother of the child.

Answer: FALSE
Diff: 1
Topic: Parents and Children

15) A father's registry is used for negligent fathers so that the district attorney's office may prosecute them for their actions.

Answer: FALSE
Diff: 2
Topic: Parents and Children

16) Parents are liable for their children's actions if the parents were negligent in causing the child's act.

Answer: TRUE
Diff: 2
Topic: Parents and Children

17) Modern law allows the identity of biological parents to be revealed to adopted children.

Answer: TRUE
Diff: 1
Topic: Parents and Children

18) An independent adoption usually utilizes an agency to make the adoption official.

Answer: FALSE
Diff: 1
Topic: Parents and Children

19) The court must approve an agency adoption, but need not approve an independent adoption before the adoption becomes legal.

Answer: FALSE
Diff: 2
Topic: Parents and Children

20) An annulment is a confirmation of a couple's love for one another.

Answer: FALSE
Diff: 1
Topic: Marriage Termination
21) A marriage may be annulled based on bigamy.

Answer:  TRUE  
Diff:  1  
Topic:  Marriage Termination

22) Children born of an annulled marriage are considered to be illegitimate.

Answer:  FALSE  
Diff:  2  
Topic:  Marriage Termination

23) No-fault divorce is the traditional way of justifying a requested divorce.

Answer:  FALSE  
Diff:  2  
Topic:  Marriage Termination

24) Most states require a waiting period of at least 6 months between the filing of a divorce petition and the granting of a divorce.

Answer:  TRUE  
Diff:  2  
Topic:  Marriage Termination

25) A *pro se* divorce refers to the fact that the parties are representing themselves in the divorce proceeding.

Answer:  TRUE  
Diff:  1  
Topic:  Marriage Termination

26) Only 10 percent of divorce cases are settled between the parties prior to trial.

Answer:  FALSE  
Diff:  2  
Topic:  Marriage Termination

27) Mediators in divorce proceedings are helpful in that they are empowered to make decisions regarding settlement of the issues.

Answer:  FALSE  
Diff:  1  
Topic:  Marriage Termination
28) Separate property loses its status by virtue of the marriage itself.

Answer: FALSE
Diff: 2
Topic: Division of Assets

29) The health of an individual is a factor that the court will consider when determining the fair distribution of property.

Answer: TRUE
Diff: 1
Topic: Division of Assets

30) All property acquired during the marriage using income earned during the marriage is considered community property.

Answer: TRUE
Diff: 1
Topic: Division of Assets

31) Debts that are incurred during the marriage for necessities are the joint responsibility of each spouse.

Answer: TRUE
Diff: 1
Topic: Division of Assets

32) Rehabilitation alimony refers to financial support for a limited time during which the individual can obtain the necessary education or job skills needed to go into the job force.

Answer: TRUE
Diff: 2
Topic: Spousal Support, Child Support, and Child Custody

33) There is no such thing as lifetime alimony.

Answer: FALSE
Diff: 1
Topic: Spousal Support, Child Support, and Child Custody

34) The duty to pay child support usually continues until the child reaches the age of majority.

Answer: TRUE
Diff: 1
Topic: Spousal Support, Child Support, and Child Custody
35) Child support is based on the percentage of affection a parent can give to the child.

Answer: TRUE  
Diff: 2  
Topic: Spousal Support, Child Support, and Child Custody

36) The Family Support Act was enacted to prevent noncustodial parents from failing to pay required support payments.

Answer: TRUE  
Diff: 1  
Topic: Spousal Support, Child Support, and Child Custody

37) Spousal support is the most litigated issue of a divorcing couple.

Answer: FALSE  
Diff: 2  
Topic: Spousal Support, Child Support, and Child Custody

38) The awarding of custody to a custodial parent is permanent.

Answer: FALSE  
Diff: 1  
Topic: Spousal Support, Child Support, and Child Custody

39) The modern rule with regard to broken engagements is:
   A) the objective rule  
   B) the no-fault rule  
   C) the honeymoon rule  
   D) the engagement rule  
   E) None of these are correct.

Answer: A  
Diff: 1  
Topic: Premarriage Issues  
Skill: Legal Concepts
40) An antenuptial agreement refers to:
   A) signed agreements before marriage that specify how property will be distributed upon termination of the marriage
   B) an agreement regarding rare property
   C) an agreement between the parties during the marriage specifying how property will be distributed upon the death or termination of the marriage
   D) an agreement between a married couple and the court confirming property distribution
   E) None of these are correct.

   Answer:  C
   Diff: 2
   Topic:  Premarriage Issues
   Skill:  Legal Concepts

41) Emancipation may best be described as:
   A) a counseling technique to keep families together
   B) a means of legal separation of one spouse from the other spouse in a marriage
   C) a union between two individuals of the same sex
   D) a means to demonstrate to the court that he or she is not supported by his or her parents and that he or she provides for himself or herself

   Answer:  D
   Diff: 2
   Topic:  Marriage
   Skill:  Legal Concepts

42) Which of the following may be allowed to marry one another?
   A) a brother and his half-sister
   B) a person who is already married to someone else
   C) cousins
   D) a father and his daughter
   E) a mother and her son

   Answer:  C
   Diff: 2
   Topic:  Marriage
   Skill:  Legal Concepts
43) In order to prove the existence of a common law marriage, which of the following needs to be proven?
   A) The parties are eligible to marry.
   B) The parties voluntarily intend to be husband and wife.
   C) The parties must live together.
   D) The parties hold themselves out as husband and wife.
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Marriage
Skill: Legal Concepts

44) Parents are obligated to provide which of the following for their underage children?
   A) medical care
   B) food
   C) shelter
   D) All of these are correct.

Answer: D
Diff: 1
Topic: Parents and Children
Skill: Legal Concepts

45) Which of the following is not true with regard to paternity?
   A) The law presumes that the husband of a wife who bears a child is the legal father.
   B) A male can be proven to be or not to be the father of a child through DNA.
   C) A husband who believes he is not the father can bring a lawsuit to prove otherwise.
   D) The government cannot bring a paternity lawsuit.

Answer: D
Diff: 2
Topic: Parents and Children
Skill: Legal Concepts

46) An adoption by agency occurs when:
   A) there is a private arrangement between the biological and adoptive agency
   B) a lawyer handling the adoption is involved
   C) the adoptive parents have DNA tests conducted on themselves
   D) a person adopts a child from a social service organization of the state

Answer: D
Diff: 2
Topic: Parents and Children
Skill: Legal Concepts
47) Which of the following applies to the court's approval of an adoption?
   A) The court will consider the home environment of the adoptive parents.
   B) The decision of the court will be based on the best interest of the parents.
   C) The adoptive couple is subject to a probation period once the court approves the adoption.
   D) A, B, and C.
   E) A and C only.

Answer: E
Diff: 2
Topic: Parents and Children
Skill: Legal Concepts

48) Which of the following are grounds for an annulment?
   A) The marriage was never consummated.
   B) A party was intoxicated at the time of the marriage.
   C) One of the parties was a minor and did not have parental consent for the marriage.
   D) One of the parties was mentally incapacitated at the time of the marriage.
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Marriage Termination
Skill: Legal Concepts

49) Which of the following best describes the modern rule regarding divorce?
   A) An individual must prove the other person was at fault for causing a major problem with continuing the marriage.
   B) An individual must prove the other person was insane.
   C) A mere citing of irreconcilable differences is enough to obtain a divorce.
   D) An individual must prove the other person physically abused him or her.
   E) An individual must prove the other person abandoned him or her.

Answer: C
Diff: 2
Topic: Marriage Termination
Skill: Legal Concepts

50) What percentage of divorce cases are settled between the parties prior to trial?
   A) 10 percent
   B) 35 percent
   C) 90 percent
   D) 100 percent

Answer: C
Diff: 2
Topic: Marriage Termination
Skill: Legal Concepts
51) Which of the following is considered separate property when dividing marital belongings?
   A) inheritances received during the marriage
   B) separate property where the title has been changed to include the other spouse
   C) joint gifts received during the marriage
   D) property owned by a spouse after the marriage

Answer: A
Diff: 2
Topic: Division of Assets
Skill: Legal Concepts

52) What factors may a court consider when following the rule of equitable distribution?
   A) length of the marriage
   B) health of the individuals
   C) standard of living during the marriage
   D) occupation of each spouse
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Division of Assets
Skill: Legal Concepts

53) Which of the following is not true regarding the division of debts?
   A) The type of debt is looked at when determining how the debt is to be divided.
   B) The court cannot distribute the debts equally between the spouses.
   C) Spouses are jointly liable for taxes incurred during their marriage.
   D) Most states hold that a spouse is liable for his or her own premarital debts.

Answer: B
Diff: 1
Topic: Division of Marital Assets
Skill: Legal Concepts

54) Which of the following statements is true regarding spousal support?
   A) Spousal support is also known as alimony.
   B) Alimony is usually awarded for a limited period of time.
   C) Alimony typically has been awarded to the female.
   D) Spousal support payments can be modified.
   E) All of these are correct.

Answer: E
Diff: 2
Topic: Spousal Support, Child Support, and Child Custody
Skill: Legal Concepts
55) What is considered when a court awards child support?
   A) the net income of the parents
   B) the net income of the children
   C) any special medical or other needs of the children
   D) A, B, and C
   E) A and C only

Answer: E
Diff: 2
Topic: Spousal Support, Child Support, and Child Custody
Skill: Legal Concepts

56) The term "custody" as it applies to children in a divorce proceeding means:
   A) who has legal responsibility for raising the children
   B) confinement of a child to his or her home
   C) temporary visitation rights
   D) None of these are correct.

Answer: A
Diff: 2
Topic: Spousal Support, Child Support, and Child Custody
Skill: Legal Concepts

57) Eddie promised Edna that he would marry her, but at the last minute backed out. If in a jurisdiction that follows the common law, what would Edna's remedy be?
   A) She would not have any grounds for bring a lawsuit.
   B) Edna won't be responsible for Eddie's debts.
   C) Edna would be able to bring a cause of action based on a breach of contract.
   D) Edna may bring a cause of action based on specific performance.

Answer: C
Diff: 2
Topic: Premarriage
Skill: Factual Application

58) Jack gave Samantha a beautiful heart-shaped engagement ring that contained a two-carat diamond and three one-carat rubies. Samantha called off the wedding one week before the set date, as she found out that Jack was seeing another woman. Under the fault rule, what will happen with Samantha's engagement ring?
   A) Samantha will get to keep the ring.
   B) Samantha must sell the ring and split the proceeds with Jack.
   C) Samantha must give the ring back even though she broke off the engagement.
   D) Neither party will get to keep the ring.

Answer: C
Diff: 2
Topic: Premarriage
Skill: Factual Application
59) Bruno, a well-known Bolivian movie star, is engaged to be married to Millie, a receptionist at a car dealership in her town. Bruno wants to protect the assets he has worked so hard to get. As such, he has a prenuptial agreement prepared and signed by Millie. Which of the following will prevent the court from enforcing the prenuptial agreement?
   A) The agreement was entered into at the last moment right before the marriage.
   B) Each party made a full disclosure of his or her assets and liabilities.
   C) The terms of the agreement were fair and conscionable.
   D) Each party was represented by an attorney.
   E) There were no threats by either party to enter into the agreement.

Answer: A
Diff: 2
Topic: Premarriage
Skill: Factual Application

60) Harvey and Ann are cousins who are 14 and 15 years old respectively. They have been in one another's classes since the fifth grade. Harvey now wants to marry Ann. Which of the following would apply?
   A) All states allow a 14 or 15 year old to get married.
   B) Some states allow brothers and sisters to marry one another.
   C) Some states allow cousins to marry cousins.
   D) Some states allow one party to marry someone else while being married.

Answer: C
Diff: 1
Topic: Marriage
Skill: Factual Application

61) Edgar and Mary have been married for 27 years. Lately Mary has noticed that Edgar does not want to pay what she considers necessary. Mary seeks your advice regarding any financial support she may be able to receive from Edgar. Which of the following statements best describes what she may be able to receive?
   A) Edgar must provide her with sex.
   B) Edgar must provide her with clothing.
   C) Edgar must provide for her medical care.
   D) Edgar must provide her with shelter.
   E) B, C, and D

Answer: E
Diff: 1
Topic: Marriage
Skill: Factual Application
62) Bobby, a 17 year-old half-blind musician, has been playing in a band for 4 years and is now starting to get contracts to play his music at local dinner clubs. He tells his mom and dad that he wants to live on his own. If Bobby is declared emancipated, what responsibilities do his parents have, if any?

A) No responsibilities, as Bobby would be emancipated.
B) They would still be responsible for home schooling him.
C) They would still be legally responsible beyond the age of majority, since he is blind.
D) They would be obligated to provide food, shelter, and clothing.

Answer: C
Diff: 2
Topic: Parents and Children
Skill: Factual Application

63) Barbara and Joe want to get married in the Catholic church, but Joe has been divorced. The church is refusing to allow the couple to exchange their vows in the church. Which of the following should the couple consider so that they can be married at the church?

A) They should go to another Catholic church and not mention Joe's divorce.
B) They should get the marriage legally annulled.
C) They should ask the church for forgiveness.
D) They should get the marriage legally annulled as well as annulled by the church if required.

Answer: D
Diff: 2
Topic: Marriage Termination
Skill: Factual Application

64) Janine and Harvey were a happily married couple, until Harvey decided he wanted some time to figure out who he was and what he wanted to do. The time came to divide up the couple's assets as they were divorcing. Janine had been given a Model T Ford by her great aunt Hilda while the couple were married. Janine had registered the car and title in both her and Harvey's name. As a matter of fact, because the car was a stick shift and Janine did not know how to drive a stick shift, Harvey drove it most of the time. Who will be the party who gets to keep the car?

A) Harvey will get to keep the car because he used it more than Janine.
B) Janine will get to keep the car because it was a gift.
C) The car will be considered a marital asset as Harvey's name was placed on the title as a joint owner.
D) The court will order that the car be held in trust to satisfy creditors bills.

Answer: C
Diff: 2
Topic: Division of Assets
Skill: Factual Application
65) Tony and Roseanne, a married couple, both had full-time jobs working for a construction firm. Tony had a gambling problem and needed more money to satisfy his habit. As such, he moonlighted by getting a job at a local bar as a bartender. Because he got paid cash for his second job, Roseanne never knew about it. The couple decided to go their separate ways. When it came time to divide the couple's assets, one of Roseanne's friends informed her of Tony's second job. Roseanne now wants part of the savings that Tony put away from his second job. Will she be able to get half of Tony's savings?
   A) No, because Tony got paid cash from his second job.
   B) No, because Tony's second job money was his separate property.
   C) Yes, because the money he earned from his second job was acquired during the couple's marriage.
   D) None of these are correct.

Answer: C
Diff: 1
Topic: Division of Assets
Skill: Factual Application

66) Tony and Roseanne, a married couple, both had full-time jobs working for a construction firm. Tony had a gambling problem and needed more money to satisfy his habit. As such, he moonlighted by getting a job at a local bar as a bartender. Suppose Tony used the cash from his second job to buy a boat for the couple to use on weekend outings at the lake. Further, suppose that the couple began to have problems which resulted in a divorce. Roseanne now wants Tony to sell the boat and give her half of the proceeds from selling it. Tony now claims that the boat is his separate property as his side job paid for it. What will be the most likely outcome?
   A) Tony will get to keep the boat as it is his separate property.
   B) Tony must give the boat to Roseanne to do with what she wants as he didn't tell her about the second job.
   C) Tony and Roseanne must come to an agreement about what part of the boat will be Roseanne's.
   D) The boat is considered marital property because it was acquired during the marriage using income earned during the marriage regardless if Tony told Roseanne about his second job or not.

Answer: D
Diff: 2
Topic: Division of Assets
Skill: Factual Application
67) Tony and Roseanne, a married couple, both had full-time jobs working for a construction firm. Tony had a gambling problem and needed more money to satisfy his habit. As such, he moonlighted by getting a job at a local bar as a bartender. Tony used the cash from his second job to buy a boat for the couple to use on weekend outings at the lake. The couple began to have problems which resulted in a divorce. Suppose the bank who financed the boat is getting angry because all payments for the boat have stopped. Further, the court ordered that both Tony and Roseanne are liable for the payments on the boat. If Tony makes payments on the boat, and Roseanne fails to pay her half, what can Tony do about it?

A) Tony may continue to pay the boat payment and then recover the amount paid on the boat from Roseanne.
B) Tony will be the full new owner of the boat as he will have made all of the remaining payments on it.
C) Roseanne will get to keep the boat, as Tony never told her he had a second job before buying the boat.
D) The creditor will be able to repossess the boat, as Roseanne did not uphold her end of the bargain.

Answer: A
Diff: 2
Topic: Division of Assets
Skill: Factual Application

68) Carl and Julia were wed for 38 years when he decided that he wanted to find a younger woman with which to share his life. Julia was a housewife through their married life and tended exclusively to Carl's every need. She had very little opportunity to obtain job skills and enter into the workplace as the couple lived in the town of Joy, which had a population of 23. Based on the facts, what type of alimony would Julia be entitled to?

A) temporary alimony
B) rehabilitation alimony
C) intermediate alimony
D) permanent alimony

Answer: D
Diff: 2
Topic: Spousal Support, Child Support, and Child Custody
Skill: Factual Application
69) Andrew and Jessica were married for 7 years when Jessica decided that Andrew was not the man she thought she had married. The couple had a 5-year-old boy, Sam who, has muscular dystrophy and has at times had to be home schooled. Jessica is a writer and does the majority of her work at home. Andrew and Sam are a very close father and son team, however Andrew, an engineer, is often taken out of town for company business. Each parent wants custody of Sam. What are the factors a judge might look at when deciding the couple's custody dispute?

A) The ability of each parent to provide for a stable environment for Sam.
B) The ability of each parent to provide for the special needs of Sam.
C) The desire of both Andrew and Jessica to provide for the needs of Sam.
D) The ability of both Andrew and Jessica to provide for Sam's educational needs.
E) All of these are correct.

Answer: E
Diff: 1
Topic: Spousal Support, Child Support, and Child Custody
Skill: Factual Application

70) John and Jennifer are engaged to be married. Shortly before the wedding, John gets cold feet and calls the whole thing off. What happens to the ring?

A) Jennifer gets to keep the ring under both the fault rule and objective rule.
B) Jennifer must return the ring under the fault rule, but would get to keep the ring under the objective rule.
C) Jennifer gets to keep the ring under the fault rule, but must return the rule under the objective rule.
D) Jennifer must return the ring under both the fault rule and the objective rule.

Answer: C
Diff: 1
Skill: Factual Application

71) Why are prenuptial agreements important in some relationships?

Answer: Prenuptial agreements are important to protect the assets of an individual, especially in cases where the individual has built or acquired a sizeable sum of cash or various assets, such as real estate or stocks. The prenuptial agreement serves as protection to the spouse who has the most valuable assets. Further, the person having the prenuptial agreement can then enter into a marriage knowing the other individual did not marry for money, or other assets.

Diff: 2
Skill: Ethics and Policy
72) Discuss the ethical issues involved if a woman keeps an engagement ring once a couple has called their engagement off.

Answer: The ethical behavior of a woman who keeps an engagement ring after her intended spouse and she have broken off the engagement is dependent upon the jurisdiction in which they live. If the couple lives in a jurisdiction that applies the fault rule, it will depend upon who broke the engagement off. If the would-be groom broke off the engagement, the prospective bride would be allowed to keep the engagement ring. However, if the prospective bride broke off the engagement, she would be required to return the engagement ring to the prospective groom. If the couple however is in a jurisdiction that does not use the fault rule but instead uses the objective rule in deciding this type of issue, the prospective bride must return the engagement ring regardless of who broke off the engagement. The rationale behind the use of this rule is to attempt to avoid litigation.

Diff: 2
Skill: Ethics and Policy

73) Diana and William have lived together on and off for about 17 years. Both refer to one another as each other's spouse. Diana now wants to obtain a divorce claiming that she has rights in this relationship. William's main defense is that the couple was not married and she is therefore not entitled to anything. Applying the applicable law, how will the court decide this issue of marriage?

Answer: If in a jurisdiction that recognizes a form of marriage called a common law marriage, both Diana and William will have certain rights. However, it must first be established that the couple in fact does have a common law marriage. The facts are indicative of the parties' eligibility for marriage because they have lived together on and off for about 17 years. Further, because both parties refer to one another as each other's spouse, this would seem to indicate that the parties voluntarily intended to be husband and wife. There is no issue concerning their holding themselves out as husband and wife as the facts clearly state that the parties are doing that. The fact that they have lived together on and off for the 17 years should not be an issue, because the court will look at whether or not they intended to have a common law marriage, which from the fact is clear that they did based on one another's referral to each other as the spouse of the other. If Diana wants a divorce, she will need to get a court decree of divorce to end the couple's common law marriage.

Diff: 2
Topic: Marriage
Skill: Factual Application
David and Lisa were married for 9 years, during which time they had only one child named Chloe. Chloe, at the time of the couple's divorce, was 6 years old. Since Chloe was used to having only the best of everything, including a butler and a private attendant to help select which clothes she would wear for any given day, she had a lifestyle atypical of most children her age. Lisa wants David to pay the largest amount of child support allowed by law. What are some of the factors that the court will consider in determining the amount of child support to be paid?

Answer: In determining how much child support David will have to pay, the court will look at the fact that Chloe is an only child, the standard of living in which Chloe has become accustomed to, the net income of her parents, and any other needs, albeit special or otherwise that Chloe may have. Additionally, if David and Lisa are in a state that has adopted a formula for computing the amount of child support, the court may apply it based on a percentage of the noncustodial parent's income. Upon making a decision to require that David pay child support, David's duty to pay child support will probably continue until Chloe reaches the age of majority, graduates from high school, or emancipates herself by voluntarily chooses to live on her own.

Diff: 2
Topic: Marriage
Skill: Factual Application
1) At the international level, there is one single international world court responsible for enforcing and interpreting international law, and there is a world executive branch to enforce international laws.

Answer: FALSE
Diff: 2
Topic: The United States and Foreign Affairs

2) In the Constitution, the power over international affairs is primarily, though not exclusively, vested in the states.

Answer: FALSE
Diff: 1
Topic: The United States and Foreign Affairs

3) The Commerce Clause grants Congress the power to regulate commerce with foreign nations.

Answer: FALSE
Diff: 1
Topic: The United States and Foreign Affairs

4) If state law conflicts with a treaty, then the state law is void.

Answer: TRUE
Diff: 1
Topic: The United States and Foreign Affairs

5) A Massachusetts statute banning the state from doing business with companies who also did business with the nation of Myanmar was found to violate the Foreign Commerce Clause.

Answer: TRUE
Diff: 1
Topic: The United States and Foreign Affairs

6) The Statute of the International Court of Justice identifies the four sources of international law that courts are required to turn to in resolving international law disputes.

Answer: FALSE
Diff: 2
Topic: Sources of International Law
7) Treaties address such issues as human rights and foreign aid.

Answer: TRUE
Diff: 2
Topic: Sources of International Law

8) The World Intellectual Property Organization is a special agency of the United Nations that can enforce, but not develop, treaties and conventions affecting intellectual property rights.

Answer: FALSE
Diff: 2
Topic: Sources of International Law

9) Customs are sometimes codified into treaties.

Answer: TRUE
Diff: 1
Topic: Sources of International Law

10) In an international dispute, a general principle of law would be applied in settling the dispute only if the principle is part of the law of both nations involved in the dispute.

Answer: TRUE
Diff: 2
Topic: Sources of International Law

11) The doctrine of stare decisis binds international courts in their decisions.

Answer: FALSE
Diff: 2
Topic: Sources of International Law

12) The rule of comity is a rule of law guiding most international law court decisions.

Answer: FALSE
Diff: 2
Topic: Sources of International Law

13) The General Assembly of the United Nations is made up of all member nations.

Answer: TRUE
Diff: 1
Topic: The United Nations
14) The Security Council is responsible for maintaining international peace.

Answer: TRUE
Diff: 1
Topic: The United Nations

15) A nation involved in a dispute before the International Court of Justice may not have a judge from that nation on the panel of judges hearing the dispute.

Answer: FALSE
Diff: 2
Topic: The United Nations

16) A class action lawsuit filed against Swiss banks by survivors of the Holocaust of World War II resulted in a decision by the International Court of Justice to return certain assets to survivors of victims.

Answer: FALSE
Diff: 2
Topic: The United Nations

17) A nation that is a party to a dispute before the International Court of Justice may appoint one on an ad hoc basis for that case.

Answer: TRUE
Diff: 2
Topic: The United Nations

18) Any nonmember countries can be part of the European Union simply by attending the Council of Ministers meeting.

Answer: FALSE
Diff: 2
Topic: Regional International Organizations

19) The North American Free Trade Agreement was formed in 1992 with only three nations.

Answer: TRUE
Diff: 1
Topic: Regional International Organizations

20) The North American Free Trade Agreement forbids a country from placing tariffs if an import surge from one of the other nations hurts its economy or workers.

Answer: FALSE
Diff: 2
Topic: Regional International Organizations
21) Unfortunately, Mexico only has a small trade agreement with a few Central American countries.

Answer: FALSE  
Diff: 2  
Topic: Regional International Organizations

22) As members of the Association of South East Asian Nations, Japan and China have significant input into the economic community.

Answer: FALSE  
Diff: 2  
Topic: Regional International Organizations

23) Regional courts are unique in that they have provisions in place to be able to enforce their judgments.

Answer: FALSE  
Diff: 2  
Topic: Regional International Organizations

24) The World Trade Organization was established by the United Nations in 1995.

Answer: FALSE  
Diff: 2  
Topic: The World Trade Organization

25) The World Trade Organization is also known as the "Supreme Court of Trade."

Answer: TRUE  
Diff: 2  
Topic: The World Trade Organization

26) One criticism of the World Trade Organization is that it does not have an appellate process for its decisions.

Answer: FALSE  
Diff: 2  
Topic: The World Trade Organization

27) The World Trade Organization recently ordered that certain United States income tax laws be changed because they amounted to impermissible favorable tax subsidies.

Answer: TRUE  
Diff: 2  
Topic: The World Trade Organization
28) Most international law disputes are heard by national courts of individual nations.

Answer: TRUE
Diff: 2
Topic: National Courts Decide International Disputes

29) International disputes are usually brought in the national court of the plaintiff’s home country unless there is an agreement to the contrary.

Answer: TRUE
Diff: 2
Topic: National Courts Decide International Disputes

30) The act of state doctrine is flexible, in that one country may question the validity of an act committed by another country within that other country’s own borders.

Answer: FALSE
Diff: 3
Topic: National Courts Decide International Disputes

31) Foreign countries are not immune from lawsuits in the U.S. courts if the action is based on commercial activity carried on in the United States.

Answer: TRUE
Diff: 2
Topic: National Courts Decide International Disputes

32) Many nations have signed an international convention that provides for the enforcement of international arbitration awards.

Answer: TRUE
Diff: 1
Topic: National Courts Decide International Disputes

33) Arbitrators have the power to enforce the awards they render.

Answer: FALSE
Diff: 1
Topic: National Courts Decide International Disputes
34) Which of the following are characteristics of international law?
   A) no single legislative body
   B) no single court to settle disputes
   C) no single body to enforce court decisions
   D) all of these are correct
   E) A and C only

Answer: D
Diff: 2
Topic: The United States and Foreign Affairs
Skill: Legal Concepts

35) Which of the following is not true regarding international law?
   A) Enforcement is a problem because there is no "executive branch" to enforce it.
   B) The United Nations is the body that has the power to enforce most court decisions involving international law disputes.
   C) International law comes from multiple sources.
   D) There is no single court system for dealing with all international disputes.

Answer: B
Diff: 2
Topic: The United States and Foreign Affairs
Skill: Legal Concepts

36) What are the primary sources in the U.S. Constitution of the federal government's power over international affairs?
   A) the Commerce Clause and the Treaty Clause
   B) the Commerce Clause and the Privileges and Immunities Clause
   C) the Treaty Clause and the Police Power Clause
   D) the Treaty Clause and the War Powers Clause
   E) the Privileges and Immunities Clause and the Supremacy Clause

Answer: A
Diff: 2
Topic: The United States and Foreign Affairs
Skill: Legal Concepts
37) Which of the following is correct about the states’ powers regarding foreign affairs?

A) The states have no power over foreign affairs because the U.S. Constitution grants that power exclusively to the federal government.
B) The states can pass laws and enter into treaties with foreign nations so long as they do not unduly burden foreign commerce.
C) The states can pass laws affecting foreign commerce and enter into treaties with foreign nations so long as they first obtain the consent of the Senate.
D) The states can pass laws so long as they do not unduly burden foreign commerce, but the states have no authority to enter into treaties with foreign nations.
E) Because of the sharing of powers between the federal government and the states, states have powers over foreign affairs equal to the powers of the federal government.

Answer: D
Diff: 3
Topic: The United States and Foreign Affairs
Skill: Legal Concepts

38) What was the holding of the U.S. Supreme Court in its 2000 decision regarding a Massachusetts law affecting firms doing business with the nation of Myanmar (formerly Burma)?

A) The state of Massachusetts was prohibited from conducting business with firms based in Myanmar.
B) The Massachusetts law prohibiting the state government from purchasing goods or services from firms doing business with Myanmar violated the Supremacy Clause.
C) Massachusetts was acting properly within its power in limiting sales only within Massachusetts of firms conducting business with Myanmar.
D) The state of Massachusetts was ordered to not discriminate against firms from Myanmar.

Answer: B
Diff: 3
Topic: The United States and Foreign Affairs
Skill: Legal Concepts

39) Which of the following is not one of the general sources of international law?

A) a treaty between countries
B) a convention among countries
C) custom
D) United Nations resolutions
E) judicial teachings

Answer: D
Diff: 1
Topic: Sources of International Law
Skill: Legal Concepts
40) Which of the following lists, in descending priority, of sources considered by most courts in settling questions of international law?
   A) treaties, customs, conventions, general principles of law
   B) treaties, customs, general principles of law, judicial decisions and teachings
   C) conventions, comity, customs, general principles of law
   D) conventions, treaties, comity, customs
   E) treaties, customs, conventions, comity

   Answer: B
   Diff: 2
   Topic: Sources of International Law
   Skill: Legal Concepts

41) An agreement sponsored by an international organization that is signed and ratified by two or more nations is called a:
   A) treaty
   B) convention
   C) custom
   D) charter
   E) statute

   Answer: B
   Diff: 1
   Topic: Sources of International Law
   Skill: Legal Concepts

42) Under international law, what is the difference between a treaty and a convention?
   A) A treaty is an agreement, and a convention is typically the meeting at which the treaty was drafted.
   B) The two terms have the same meaning, thus there is no difference between them.
   C) A treaty is an agreement negotiated directly by the signatory nations, whereas a convention is first drafted by a sponsoring international organization, after which, nations can decided whether to be bound by it.
   D) Conventions usually have only a few signatory nations whereas treaties usually have many.

   Answer: C
   Diff: 2
   Topic: Sources of International Law
   Skill: Legal Concepts
43) What two conventions did the World Intellectual Property Organization issue in the late 1990s?
   A) the Internet Treaty and the Web Page Convention
   B) the Copyright Treaty and the Software Protection Treaty
   C) the Music Reproduction Treaty and the Authors’ Rights Treaty
   D) the Domain Name Registration Treaty and the Internet Trade Name Convention
   E) the Copyright Treaty and the Phonogram Treaty

Answer: E
Diff: 2  
Topic: Sources of International Law  
Skill: Legal Concepts

44) Which of the following is true about general principles of law as a source of international law?
   A) The "general principles" refer to principles that both common law legal systems and civil law legal systems share.
   B) The "general principles" in a given dispute can include legal principles from any nation with a developed legal system.
   C) The "general principles" must be part of the law of each nation that is a party to the dispute.
   D) The "general principles" must be agreed to by the disputing parties before the principles can be used as a basis to settle the dispute.
   E) The "general principles" must come from constitutions or statutes.

Answer: C
Diff: 3  
Topic: Sources of International Law  
Skill: Legal Concepts

45) What is comity under international law?
   A) The system of rules for determining which nation has jurisdiction over a matter.
   B) The requirement that a nation's laws, if applicable outside that nation's borders, apply in the same manner within its borders as outside its borders.
   C) The enforcement mechanism for the decisions of international tribunals.
   D) The system of reaching a compromise law to apply to a dispute when the relevant laws of the disputing nations differ.
   E) Voluntary courtesies that nations use in choosing not to apply their own laws to a dispute.

Answer: E
Diff: 2  
Topic: Sources of International Law  
Skill: Legal Concepts
46) The following are governing bodies of the United Nations except:
   A) the Secretariat
   B) the General Assembly
   C) the World Trade Organization
   D) the Security Council

Answer: C
Diff: 1
Topic: The United Nations
Skill: Legal Concepts

47) Which of the following is not true about the United Nations?
   A) It was founded in 1918 at the end of World War I.
   B) Most nations of the world are members.
   C) There are only five permanent members of the Security Council.
   D) It contains a number of autonomous agencies that deal with specialized problems.
   E) Its headquarters are in New York City.

Answer: A
Diff: 2
Topic: The United Nations
Skill: Legal Concepts

48) The body of the United Nations that includes permanent members from only five nations is the:
   A) Security Council
   B) Secretariat
   C) General Assembly
   D) World Senate
   E) International Monetary Fund

Answer: A
Diff: 2
Topic: The United Nations
Skill: Legal Concepts

49) Which of the following is not a permanent member of the Security Council of the United Nations?
   A) China
   B) France
   C) Germany
   D) United Kingdom
   E) Russia

Answer: C
Diff: 1
Topic: The United Nations
Skill: Legal Concepts
50) Which of the following is not an agency of the United Nations?
   A) United Nations Educational, Scientific, and Cultural Organization
   B) International Monetary Fund
   C) International Organization for Trade Equalization
   D) International Fund for Agricultural Development
   E) United Nations International Children's Emergency Fund

   Answer: C

51) Which of the following is true about the International Court of Justice?
   A) It is the appellate court for decisions of the World Court.
   B) It can hear cases involving governments, businesses, or individuals of nations that are members of the United Nations.
   C) No nation can have more than one judge among the 15 sitting judges.
   D) A nation that is a party to a dispute may appoint one judge on an ad hoc basis for the particular case.

   Answer: D

52) What was the outcome of the litigation against a number of Swiss banks over their handling of assets that had belonged to victims of the Holocaust in Germany?
   A) The principle of comity required that the matter be left for Swiss courts to decide.
   B) A trial was held in which the victims won the right to recovery of assets held by the Swiss banks.
   C) The plaintiffs' claims were barred by the statute of limitations.
   D) A settlement was reached prior to trial providing for a substantial settlement fund.
   E) The World Court ruled that United States courts did not have jurisdiction to hear the case.

   Answer: D
53) Which of the following is not true about the European Union?
   A) A common currency has been introduced.
   B) The Union has established the EU Commission and delegated certain powers to it.
   C) A majority vote is needed to admit a new member.
   D) The gross economic output of EU nations is greater than that of the United States.
   E) The Union was created in 1957.

Answer: C
Diff: 2
Topic: Regional International Organizations
Skill: Legal Concepts

54) Which of the following is true about the European Union?
   A) Member nations have not given up any sovereignty to the EU.
   B) Customs tariffs have been eliminated between member nations and nonmember nations.
   C) An EU central bank has been established.
   D) The EU includes a couple of nations from Northern Africa with European ties.
   E) Its primary purpose is military defense.

Answer: C
Diff: 2
Topic: Regional International Organizations
Skill: Legal Concepts

55) The European Court of Justice:
   A) hears only commercial disputes involving at least one member nation
   B) is responsible for enforcing its own judgments
   C) has developed its own body of common law
   D) follows the common law of the nation that filed the complaint
   E) includes one judge from each member nation

Answer: E
Diff: 2
Topic: Regional International Organizations
Skill: Legal Concepts

56) The purpose of the European Court of First Instance is:
   A) to relieve some of the European Court's caseload
   B) to decide cases in new and emerging areas of the law such as Internet technology
   C) to be the first court for all cases before they are heard by the European Court of Justice
   D) to enforce decisions of the European Court of Justice
   E) to serve as the first court for European disputes before being heard in the World Court

Answer: A
Diff: 1
Topic: Regional International Organizations
Skill: Legal Concepts
57) Negotiators from which nations signed the North American Free Trade Agreement in 1992?
   A) the United States and Canada
   B) the United States and Mexico
   C) the United States, Canada, and Mexico
   D) the United States, Mexico, and Panama
   E) the United States, Canada, Mexico, Guatemala, and Panama

Answer: C
Diff: 1
Topic: Regional International Organizations
Skill: Legal Concepts

58) Which of the following was not a provision of NAFTA at the time of its signing?
   A) An immediate 50 percent reduction of Mexican tariffs on vehicles.
   B) An immediate elimination of trade restrictions on textiles and apparel.
   C) A 15-year period to phase out tariffs on import-sensitive American industries.
   D) A nation's ability to reimpose tariffs where a surge of imports hurts its economy or workers.
   E) Increased protection for intellectual property rights.

Answer: B
Diff: 3
Topic: Regional International Organizations
Skill: Legal Concepts

59) ASEAN was formed by which nations in 1967?
   A) Thailand, Japan, Indonesia, Singapore, and the Philippines
   B) Thailand, Indonesia, the Philippines, Malaysia, and China
   C) Indonesia, Malaysia, the Philippines, Singapore, and Thailand
   D) Japan, China, Singapore, Malaysia and Vietnam
   E) Thailand, Malaysia, Indonesia, Japan, and South Korea

Answer: C
Diff: 2
Topic: Regional International Organizations
Skill: Legal Concepts

60) Which of the following is not a member of the Association of South East Asian Nations?
   A) Japan
   B) Vietnam
   C) Singapore
   D) Indonesia
   E) Cambodia

Answer: A
Diff: 1
Topic: Regional International Organizations
Skill: Legal Concepts
61) The MERCOSUR Common Market consists of nations from which Continent?
   A) Africa  
   B) Europe  
   C) South America  
   D) Asia  
   E) North America

Answer: C  
Diff: 1  
Topic: Regional International Organizations  
Skill: Legal Concepts

62) Which of the following is not one of the economic communities of the Americas?
   A) the Central American Common Market  
   B) the South American Free Trade Organization  
   C) the MERCOSUR Common Market  
   D) the Caribbean Community  
   E) the Andean Common Market

Answer: B  
Diff: 2  
Topic: Regional International Organizations  
Skill: Legal Concepts

63) What did 55 African nations sign in 1991?
   A) The Treaty Establishing the African Economic Community  
   B) The Treaty Establishing Mutual Defense of the African Continent  
   C) Sub-Saharan Economic Free Trade Zone Agreement  
   D) Resolution for the Unity of South Africa  
   E) The African Economic Leadership Organization

Answer: A  
Diff: 2  
Topic: Regional International Organizations  
Skill: Legal Concepts

64) The World Trade Organization was created by:
   A) the United Nations  
   B) the North American Free Trade Agreement  
   C) the International Monetary Fund  
   D) Negotiations on the General Agreement on Tariffs and Trade  
   E) the European Union

Answer: D  
Diff: 2  
Topic: The World Trade Organization  
Skill: Legal Concepts
65) Which of the following is **not** one of the provisions agreed to by China in order to open its markets as part of the 1999 bilateral trade treaty between China and the United States?

A) Allowing foreign ownership of up to 50 percent of Chinese telephone companies.
B) Allowing up to 20 United States films into China each year.
C) Allowing foreign firms to sell directly to Chinese consumers.
D) Allowing foreign majority interest ownership of Chinese Internet businesses.
E) Allowing foreign auto manufacturers to sell and finance sales to Chinese customers.

Answer: D
Diff: 3
Topic: The World Trade Organization
Skill: Legal Concepts

66) Which of the following is correct about the World Trade Organization (WTO)?

A) The WTO was created in the 1940s.
B) The WTO adopted a judicial-based dispute resolution system to replace the politically oriented system in place previously.
C) Only a few nations have a representative on the WTO dispute settlement body.
D) Parties to a dispute have a veto power over any decision reached by the WTO.
E) China has not been admitted to the WTO.

Answer: B
Diff: 3
Topic: The World Trade Organization
Skill: Legal Concepts

67) Today, most international trade disputes are settled by:

A) the General Agreement on Tariffs and Trade
B) the Security Council of the United Nations
C) the American Arbitration Association
D) the World Trade Organization
E) the International Court of Justice

Answer: D
Diff: 2
Topic: The World Trade Organization
Skill: Legal Concepts
68) What can a nation do if it disagrees with a decision made by the dispute settlement body of the World Trade Organization?
   A) appeal to the World Court
   B) nothing, as these decisions are final
   C) appeal to that nation's own national court system
   D) appeal to the appellate body within the WTO
   E) This situation would not arise because of the veto power held by the parties to a dispute being resolved by the WTO.

Answer: D  
Diff: 2  
Topic: The World Trade Organization  
Skill: Legal Concepts

69) What was the outcome when the World Trade Organization (WTO) heard a dispute involving United States tax law provisions that provided certain tax breaks to U.S. corporations when they processed paperwork for transactions through certain nations in the Caribbean region?
   A) The WTO could not hear the case because it involved a United States tax matter rather than a trade issue.
   B) The WTO heard the case and ruled in favor of the United States because this was an internal tax matter.
   C) The WTO heard the case and ruled against the United States holding that the tax provision was actually an illegal trade subsidy.
   D) The WTO heard the case and ruled against the United States, but the decision was overturned upon its appeal to the World Court.
   E) The WTO could have heard the case, but chose to invoke the doctrine of comity and thus did not actually hear it.

Answer: C  
Diff: 2  
Topic: The World Trade Organization  
Skill: Legal Concepts

70) What is the purpose of a choice of forum clause in an international contract?
   A) to give the parties a choice of nations in which to bring a lawsuit under the contract
   B) to determine in advance where any lawsuits under the contract will be brought
   C) to determine who will choose the location of any lawsuit which is brought under the contract
   D) to determine which nation's law will apply in settling disputes that arise under the contract

Answer: B  
Diff: 2  
Topic: National Courts Decide International Disputes  
Skill: Legal Concepts
71) The courts of one nation cannot question the actions undertaken by another nation within the other nation's borders under the:
   A) act of state doctrine
   B) sovereign immunity doctrine
   C) extradition doctrine
   D) expropriation doctrine
   E) comity doctrine

Answer: A
Diff: 1
Topic: National Courts Decide International Disputes
Skill: Legal Concepts

72) In which of the following circumstances would a foreign government not be subject to suit in a U.S. court according to the Federal Sovereign Immunities Act?
   A) If the foreign government has explicitly waived immunity.
   B) If the foreign government has impliedly waived immunity.
   C) If the action is based on a tort committed by the foreign government.
   D) If the action is based on commercial activity by the foreign government.
   E) B and C only.

Answer: C
Diff: 3
Topic: National Courts Decide International Disputes
Skill: Legal Concepts

73) Under which of the following processes is the party whose property is taken compensated?
   A) expropriation only
   B) confiscation only
   C) both expropriation and confiscation
   D) neither expropriation nor confiscation

Answer: A
Diff: 1
Topic: National Courts Decide International Disputes
Skill: Legal Concepts
74) Under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards:
   A) Businesses in signatory nations are required to submit international contract disputes to arbitration.
   B) Arbitration awards are recognized only if they were granted by an organization approved by the United Nations.
   C) Property of the loser that is located in a signatory nation can be attached in order to enforce an arbitration award.
   D) Arbitration awards granted in foreign nations will be valid only if separately recognized in the nation of the losing party.

Answer: C
Diff: 3
Topic: National Courts Decide International Disputes
Skill: Legal Concepts

75) Jewish law is a complex legal system based on ideology and theology of:
   A) the Torah
   B) the Koran
   C) the Smitris
   D) the Veda

Answer: A
Diff: 2
Topic: National Courts Decide International Disputes
Skill: Legal Concepts

76) The Islamic law system is derived from:
   A) the Koran
   B) the Sunnah
   C) reasonings by Islamic scholars
   D) All of these are correct.

Answer: D
Diff: 2
Topic: National Courts Decide International Disputes
Skill: Legal Concepts
77) Mabel, a citizen of England, and Pierre, a citizen of France, have been doing business for many years. Pierre now wants to sue Mabel. Which of the following is true?
   A) Pierre can sue Mabel in the World Court because the dispute is commercial.
   B) Pierre cannot sue Mabel in the World Court because the dispute is commercial.
   C) Pierre cannot sue Mabel in the International Court of Justice under any circumstances.
   D) Pierre can sue Mabel in the International Court of Justice only if Mabel consents.

Answer: C
Diff: 3
Topic: The United Nations and Foreign Affairs
Skill: Factual Application

78) An Austrian auto component manufacturer supplies parts to a German automaker under contract. The contract contains a choice of law clause stating that German law applies to any disputes arising under the contract. In a dispute involving the contract, the Austrian supplier could sue:
   A) In either the International Court of Justice or the European Court of Justice.
   B) In neither the International Court of Justice nor the European Court of Justice.
   C) In the International Court of Justice, but not the European Court of Justice.
   D) In the European Court of Justice, but not the International Court of Justice.

Answer: B
Diff: 3
Topic: Regional International Organizations
Skill: Factual Application

79) Janet and Henry were married in Bulgaria when they were each 14 years old. The marriage is valid in Bulgaria. They have now moved to the United States, and there is some question whether their marriage is valid in the United States. Which of the following doctrines would prevent a United States court from questioning the validity of their marriage?
   A) sovereign immunity
   B) comity
   C) act of state
   D) Diplomatic Immunity
   E) a United Nations Convention

Answer: C
Diff: 2
Topic: National Courts Decide International Disputes
Skill: Factual Application
80) A farmer's cooperative in North Dakota entered into a contract to sell wheat to the government of Thailand. If a dispute arises under the contract, the farmers' cooperative can:
   A) Sue in a United States court because neither the act of state doctrine nor sovereign immunity would apply.
   B) Not sue in a United States court because of the act of state doctrine.
   C) Not sue in a United States court because of sovereign immunity.
   D) Not sue in a United States court because of comity.

Answer: A
Diff: 3
Topic: National Courts Decide International Disputes
Skill: Factual Application

81) A Japanese computer maker entered into a contract with a United States disk-drive manufacturer. The contract contains an arbitration clause that all disputes would be arbitrated by the American Arbitration Association. A dispute under the contract was arbitrated resulting in the American disk-drive maker being ordered to pay $50,000 to the Japanese computer manufacturer. Which of the following is true?
   A) The disk-drive maker can appeal the decision to the International Court of Justice.
   B) The disk-drive maker is not obligated to pay the judgment because arbitration awards are not binding.
   C) The disk-drive maker has the option to provide $50,000 worth of disk drives in place of the cash payment.
   D) The Japanese company can get a United States court to attach the property of the disk-drive maker if it does not pay the award of $50,000.

Answer: D
Diff: 3
Topic: National Courts Decide International Disputes
Skill: Factual Application

82) A treaty between the United States and Canada is known as a:
   A) unilateral treaty
   B) bilateral treaty
   C) multi-lateral treaty
   D) convention

Answer: B
Diff: 3
Skill: Factual Application
83) Large protests have appeared at many recent meetings of the World Trade Organization. What are some of the claims made by the protesters? Do you agree with these claims? How do such protests affect the future and effectiveness of the World Trade Organization?

Answer: Some have claimed that the World Trade Organization principles are damaging to the environment because the lack of trade barriers allows companies in nations with strict environmental laws to move production to nations with weak environmental laws. Other claims are based on labor abuses. A more general claim is that by giving up sovereignty to the WTO, nations become limited in their ability to pass certain laws, especially ones providing worker protections. Nations' willingness to abide by decisions of the WTO might be affected by such protests.
Diff: 2
Skill: Ethics and Policy

84) Arbitration clauses appear in many international contracts specifying that arbitration be used for the settlement of disputes. A number of international organizations exist that arbitrate disputes arising under these contracts. What special characteristics of international contracts might make arbitration even more advantageous than in the case of domestic contracts? Compare mediation and arbitration as means of settling international contract disputes.

Answer: Arbitration avoids the question of which nation's courts should hear a dispute. In many cases, the arbitrator will be far more neutral than the courts of either nation. Arbitration can avoid many of the problems of working in a court system that is unfamiliar to one of the parties. Mediation is often less desirable in the international contract setting because of the active involvement (often including face-to-face meetings) of the parties that is usually necessary in mediation.
Diff: 2
Skill: Ethics and Policy

85) Under the European Union Directive on Data Protection, broad protections are provided for consumers relative to information collected on them by businesses. What are some of these protections? Should similar protections be available in the United States? What are some of the difficulties if each nation has its own rules on the collection and dissemination of information on customers?

Answer: Among the protections, companies must show customers their consumer profile upon request, and companies cannot use the information for cross-marketing without the consent of the customer. When the information is originally gathered, the company must explain the reason that it is being gathered. With different rules and regulations, companies need to classify their customers by nation, and then would have many different rules on the allowable means of gathering information and uses that it could make of that information. When the gathering of information is done over the Internet, determining a person's nation of citizenship can be difficult.
Diff: 2
Skill: Ethics and Policy
86) Magnum Enterprises has operated a subsidiary in a South American nation for several years. Over the course of this period, the subsidiary has acquired substantial property, including land and a couple of factories. In addition, it has acquired considerable equipment. Two months ago, the government of this nation took over all the assets of the subsidiary. The government paid the subsidiary the fair value for its land, but paid only a fraction of the value of the buildings. No money was paid for any equipment or other personal property taken. Discuss Magnum’s legal situation and its possible recourse in this situation.

Answer: The nationalization of Magnum's property is called expropriation where, for the land, it received fair value, and confiscation where, for the other assets, it received less than fair value. Magnum has little recourse, except possibly through diplomatic intervention. Magnum could possibly recover under any political risk insurance policies that it carries.
Diff: 2
Topic: National Courts Decide International Disputes
Skill: Factual Application

87) The government of Germany enters into a multiyear contract with a French farmers' cooperative for the purchase of a quantity of wine. This cooperative is a quasi-governmental agency. After purchasing a substantial quantity of the wine, the British government concludes that the French government has subsidized the cooperative contrary to regulations of the European Union and contrary to other international trade agreements. The farmers' cooperative disagrees and wants to compel the German government to pay for all wine that it has already received. Discuss the cooperative's options in this case.

Answer: There are public law issues in connection with the claimed trade violations and contract law issues in connection with this specific contract. The trade issue could possibly be addressed by the World Trade Organization. Because the parties are both members of the European Union, the European Court of Justice and the Court of First Instance might be available. Because this dispute involves a commercial activity, the sovereign immunity doctrine might not apply to an action brought in the national courts of either nation.
Diff: 3
Topic: National Courts Decide International Disputes
Skill: Factual Application