

- B. Amendment of Pleadings
- C. Multiple Parties and Claims
 - 1. Joinder of claims
 - 2. Joinder of parties
 - 3. Class actions
- D. Discovery
 - 1. Initial disclosures
 - 2. Devices
 - 3. Scope of discovery
 - 4. E-Discovery
 - 5. Privileges
 - 6. Inadvertent disclosure
 - 7. Sanctions
- E. Rule 11
- F. Pretrial Conferences and Orders
- G. Disposition without Trial
 - 1. Voluntary dismissal
 - 2. Involuntary dismissal
 - 3. Summary judgment
 - 4. Default judgment
 - 5. Preliminary injunctions, permanent injunctions, and temporary restraining orders

VIII. Motions – 22%

- A. Pretrial Motions
 - 1. Motion for judgment on the pleadings
 - 2. Motion for more definite statement
 - 3. Motion to strike
 - 4. Motions to dismiss
 - 5. Summary judgment motion
- B. Trial and Post-Trial Motions
 - 1. Motion for Judgment as a Matter of Law
 - 2. Renewed Motion for Judgment as a Matter of Law
 - 3. Motion for relief from judgment or order
 - 4. Motion for new trial
 - 5. Remittitur/additur

IX. Trial – 9%

- A. Right to Jury Trial
- B. Demand for Jury Trial
- C. Jury Selection
- D. Jury Instructions

X. Judgments and Verdicts – 9%

- A. Types of Jury Verdicts
- B. Judicial Findings and Conclusions
- C. Issue and Claim Preclusion
- D. Defaults
- E. Dismissals

XI. Appeal and Review – 9%

- A. Interlocutory Review
 - 1. Final judgment rule
- B. Finality of Judgment
- C. Scope of Review

- D. Tenth Amendment and the Scope of State Authority
 - 1. Tenth Amendment
 - 2. Dormant Commerce Clause
 - 3. State taxation

IV. Individual Rights – 50%

- A. State Action Requirement
- B. Due Process Clause
 - 1. Incorporation of Bill of Rights through the Fourteenth Amendment
 - 2. Substantive due process
 - a. Fundamental rights
 - 3. Procedural due process
- C. Equal Protection Clause
 - 1. Fundamental rights
 - 2. Establishing discrimination
 - 3. Strict scrutiny (suspect) classifications
 - 4. Intermediate scrutiny (*quasi*-suspect) classifications
 - 5. Rational basis review classifications
- D. Privileges and Immunities of Citizens
 - 1. Privileges or Immunities Clause of the Fourteenth Amendment
 - 2. Privileges and Immunities Clause of Article IV, Section 2
- E. First Amendment Protections
 - 1. Freedom of religion
 - a. Prohibition against the establishment of religion
 - b. Free exercise of religion
 - 2. Freedom of speech and expression
 - a. Content-based / content-neutral
 - b. Public forum / non-public forum
 - c. Time, place, and manner regulation
 - d. Vagueness / overbreadth
 - e. Prior restraint
 - f. Symbolic expression
 - g. Political speech
 - h. Compelled / coerced speech
 - i. Regulation of commercial speech
 - j. Regulation of unprotected speech
 - (1) Obscenity
 - (2) Incitement to illegal activity
 - (3) Fighting words
 - (4) Defamation
 - (5) Fraud and perjury
 - (6) Speech integral to criminal conduct (“true threats”)
 - k. Regulation of speech by public employees
 - l. Regulation of sexual speech
 - m. Regulation of public schools and student speech
 - 3. Freedom of the press
 - 4. Freedom of association
 - a. Public employment
- F. Other Protections
 - 1. Bills of attainder
 - 2. *Ex post facto* laws
 - 3. Contracts Clause
 - 4. Eminent domain—Takings Clause

IV. Gap-Fillers, Interpretation, and the Parol Evidence Rule – 6%

- A. Gap-Fillers
- B. Interpretation
- C. Parol Evidence Rule

V. Performance, Breach, and Excuse – 25%

- A. Conditions
 - 1. Covenants
 - 2. Conditions
- B. Modifications
- C. Performance
- D. Breach
 - 1. Material v. Minor
 - 2. Perfect Tender Rule
 - 3. Anticipatory repudiation
- E. Discharge of Contracts
- F. Excuse of Condition/Discharge of Duty
 - 1. Impossibility
 - 2. Impracticability
 - 3. Frustration of purpose
 - 4. Waiver
 - 5. Estoppel
 - 6. Discharge by subsequent agreement
 - 7. Accord and satisfaction
 - 8. Novation

VI. Remedies – 13%

- A. Damages
 - 1. Expectation damages
 - 2. Reliance damages
 - 3. Consequential damages
 - 4. Incidental damages
 - 5. Liquidated damages
 - 6. Nominal damages
 - 7. Duty to mitigate
- B. Legal Restitution
 - 1. Legal Restitution
 - 2. Replevin
- C. Equitable Remedies
 - 1. Equitable Restitution
 - a. Resulting Trust
 - b. Constructive Trust
 - c. Equitable Lien
 - 2. Rescission
 - 3. Reformation
 - 4. Specific performance
 - 5. Injunctions
 - a. Temporary Restraining Order
 - b. Preliminary
 - c. Permanent

VII. Nonparties to Contract – 13%

- A. Third-Party Beneficiary Contracts
- B. Assignment of Rights
- C. Delegation of Duties

II. Fifth and Sixth Amendments—Statements, Confessions, and Identifications – 9%

- A. Statements and Confessions
 - 1. Voluntary statements
 - 2. Waiver
- B. Identifications
- C. Right to Confrontation
- D. Double Jeopardy
 - 1. Attachment
 - 2. Underlying Offense
 - 3. Separate Sovereignities Doctrine
 - 4. Retrial after Attachment
 - 5. Effect on Sentencing

III. Sixth Amendment—Other Rights of the Accused – 8%

- A. Right to Jury Trial
- B. Right to Speedy Trial
- C. Right to Public Trial
- D. Right to Counsel
- E. Right to Fair Trial
- F. Rights during Discovery

IV. Exclusionary Rule – 8%

V. Post-Trial Rights – 8%

- A. Eighth Amendment
- B. Rights during Sentencing
- C. Appeal
- D. Writ of *Habeas Corpus*

VI. Other Considerations – 8%

- A. *Ex Post Facto* Crimes
- B. Retroactivity of Later Decisions
- C. Fourteenth Amendment Identifications
- D. Competency

3. Exceptions allowing character evidence
 - a. Mercy rule
 - b. Character in issue
 - c. Accused character trait of sexual offenses
4. Specific acts for noncharacter purposes
5. Cross-examination and rebuttal of character witnesses
- E. Habit or custom practice
- F. Similar occurrences and contracts
- G. Authentication and Identification
- H. Expert Testimony
 1. Acceptable testimony
 2. Qualification of experts
 3. Basis of expert testimony
 4. Opinion on ultimate issue
 5. Disclosure of underlying facts or data

III. Privileges and Public Policy Exclusions – 9%

- A. Sources and Scope of Privileges and Policy Exclusions
- B. Particular Privileges
 1. Spousal Privileges
 2. Marital Communications Privilege
 3. Physician-patient
 4. Psychotherapist-patient
 5. Attorney-client
 - a. Work-product doctrine
 6. Clergy and penitent
- C. Public Policy Exclusions
 1. Subsequent remedial measures
 2. Settlement negotiations and offers of compromise
 3. Plea negotiations and withdrawn plea offers
 4. Liability insurance
 5. Payment of medical expenses

IV. Hearsay – 25%

- A. In General
 1. Hearsay rule
 2. Conduct as hearsay
 3. Multiple hearsay
 4. Unavailability of declarant as necessary or unnecessary for specific exceptions
- B. Hearsay Exemptions
 1. Prior statement of witness
 - a. Prior sworn inconsistent statement
 - b. Prior consistent statement
 - c. Prior identification
 2. Statement by opposing party
 - a. Adoptive statements
 - b. Authorized statements
 - c. Vicarious statements
 - d. Co-conspirator's statements
 3. Statements used for non-hearsay purposes
 - a. Effect on listener
 - b. Evidence of declarant's or victim's state of mind
 - c. Legally operative facts and verbal acts
 - d. Statements showing declarant's knowledge
 - e. Statements showing absence of mistake or showing *mens rea*

- C. Hearsay Exceptions
 - 1. Requiring unavailability of declarant
 - a. Former testimony
 - b. Statement against interest
 - c. Dying declaration
 - d. Statement of personal or family history
 - e. Forfeiture by wrongdoing
 - 2. Not requiring unavailability of declarant
 - a. Business records
 - b. Present sense impression
 - c. Excited utterance
 - d. Statements of mental, emotional, or physical condition
 - e. Statement made for medical diagnosis or treatment
 - f. Past recollection recorded
 - g. Public records and reports
 - h. Learned treatises
 - i. Ancient documents
 - j. Commercial lists or similar compilations
 - k. Prior judgments
 - l. Residual exception
 - m. Rule of completeness
- D. Confrontation Clause

- V. Contents of Writings, Recordings, and Photographs – 9%**
 - A. Requirement of the Original
 - 1. Best evidence rule
 - B. Duplicates
 - C. Missing or lost documents
 - D. Summaries

- E. Equitable Servitudes / Restrictive Covenants
 - 1. Implied from common scheme
 - 2. Running with the land
 - 3. Equitable defenses
 - 4. Termination
- F. Fixtures
 - 1. Definition
 - 2. Ownership
 - 3. Removal
- G. Zoning
 - 1. Nonconforming use
 - 2. Variances and special exceptions
- H. Takings
 - 1. Actual Takings
 - 2. Regulatory
- I. Support Rights
 - 1. Lateral
 - 2. Subjacent

III. Real Property Contracts – 20%

- A. Land-Sale Contracts
 - 1. Creation
 - 2. Essential terms
 - 3. Time for performance
- B. Options and Rights of First Refusal
- C. Marketable Title
- D. Risk of Loss and Equitable Conversion

IV. Titles, Deeds, and Conveyancing – 20%

- A. Adverse Possession
 - 1. Requirements
 - 2. Mistaken boundaries
 - 3. Title acquired
- B. Conveyance by Deed
 - 1. Requirements for valid deed
 - 2. Statute of Frauds
 - 3. Delivery and acceptance
 - 4. Types of deeds
 - a. Quitclaim Deed
 - b. Warranty Deed
 - 5. Covenants of title
 - a. Present Covenants
 - b. Future Covenants
 - 6. Estoppel by deed
 - 7. After-acquired title
 - 8. Forged instruments
- C. Conveyance by Operation of Law and Will
- D. Recording Acts
 - 1. Common law rule
 - 2. Types of statutes
 - a. Notice
 - b. Race-notice
 - c. Race
 - 3. *Bona fide* purchaser

4. Types of notice
 - a. Actual notice
 - b. Inquiry notice
 - c. Constructive / record notice
5. Indexes
6. Priorities

V. Mortgages and Security Devices – 20%

- A. Types of Security Interests
 1. Mortgage
 2. Purchase-money mortgage
 3. Future-advance mortgage
 4. Installment land-sale contract
 5. Equitable mortgage
 6. Deed of trust
 7. Liens
- B. Mortgage Theories
 1. Lien theory
 2. Title theory
 3. Intermediate theory
- C. Pre-Foreclosure Rights and Obligations
 1. Duty to pay principal and interest
 2. Enforcement of Contract Provisions
 3. Possession and title
- D. Transfers of Interest
 1. Transfers by mortgagor
 2. Transfers by mortgagee
- E. Discharge of the Mortgage
 1. Payment, including prepayment
 2. Deed in lieu of foreclosure
- F. Foreclosure
 1. Procedure
 2. Right to Redemption
 - a. Equitable right
 - b. Statutory right
 3. Parties and priorities
 - a. Senior interests
 - b. Junior interests
 - c. Modification and its effect on priority
 - d. Notice and participation requirements
 4. Proceeds
 - a. Deficiency and surplus
 - b. Order of distribution
 - c. Deficiency judgment

III. Products Liability – 8%

- A. Strict Products Liability
- B. Negligence Theory
- C. Warranty Theory
 - 1. Express warranties
 - 2. Implied warranties
- D. Defenses

IV. Strict Liability – 8%

- A. Abnormally Dangerous Activities
- B. Possession of Animals
- C. Defenses

V. Other Torts – 8%

- A. Nuisance
 - 1. Public
 - 2. Private
- B. Misrepresentation
- C. Economic Torts
 - 1. Interference with contractual relations
 - 2. Interference with prospective advantage
 - 3. Injurious falsehood (trade libel)
- D. Defamation, Privacy, and Reputation Torts
 - 1. Defamation
 - a. Defenses
 - 2. Invasion of privacy
 - 3. Malicious prosecution
 - 4. Abuse of process
 - 5. Wrongful institution of civil proceedings

VI. Other Considerations – 8%

- A. Vicarious Liability for Acts of Others
 - 1. Independent contractor and nondelegable duties
- B. Joint Tortfeasors
 - 1. Joint and several liability
 - 2. Satisfaction and release
 - 3. Contribution and indemnity
 - 4. Apportionment of damages
- C. Wrongful Death and Survival Actions
- D. Loss of Consortium

(C) Incorrect. An original writing, recording, or photograph is required in order to prove its content unless the Federal Rules of Evidence or a federal statute provides otherwise. (Fed. R. Evid. 1002.) This best evidence rule applies not only to documents, but to recordings (including audio and video recordings) and photographs as well. However, a duplicate is admissible to the same extent as the original unless a genuine question is raised about the original's authenticity or circumstances make it unfair to admit the duplicate. (Fed. R. Evid. 1003.) Here, an unaltered duplicate of the original videotape was offered by the prosecution. The security guard offered no evidence challenging the authenticity of the original videotape or suggest that unfairness would result if the copy was admitted. Therefore, the digital copy is admissible, and the objection should be overruled.

(D) Incorrect. An original writing, recording, or photograph is required in order to prove its content unless the Federal Rules of Evidence or a federal statute provides otherwise. (Fed. R. Evid. 1002.) This best evidence rule applies not only to documents, but to recordings (including audio and video recordings) and photographs as well. However, there is no general rule that requires a party produce the best evidence available to prove a fact. Therefore, the answer choice misstates of the best evidence rule.

Explanation: Question 15

The correct answer is: (C) The court should grant the motion, because the action was filed in state court in State Y.

As a general rule, a case that was originally brought in state court may be removed to federal court if the plaintiff could have originally brought the case in federal court. (28 U.S.C. § 1441.) The defendant in such a situation has a right to remove (or shift) that case from state court to federal court. However, a defendant who is a citizen of the state in which the case was filed may not seek removal if the basis for removal is diversity. (28 U.S.C. § 1441(b).) This is also known as the home-state defendant rule. Here, the case could have been originally filed in federal court under diversity jurisdiction. The driver is a State X citizen, and the foreign citizen is domiciled in State Y. For diversity purposes, if a foreign citizen is admitted to permanent residence in the United States (i.e., that person has a green card), they are considered a citizen of the state in which they are domiciled. Consequently, there is complete diversity between the State X driver and the State Y foreign citizen. In addition, the State X driver has alleged damages in excess of \$75,000, meeting the amount-in-controversy requirement for diversity jurisdiction. However, the home-state defendant rule under Section 1441(b) applies, because the foreign citizen is domiciled in State Y, the state in which the lawsuit was filed. Therefore, the removal to federal court was improper. The motion for remand should be granted and the case remanded to state court in State Y.

(A) Incorrect. This answer choice is incorrect because it fails to take into account an exception to when removal is proper. As a general rule, a case that was originally brought in state court may be removed to federal court if the plaintiff could have

originally brought the case in federal court. (28 U.S.C. § 1441.) The defendant in such a situation has a right to remove (or shift) that case from state court to federal court. Here, it is true that the case could have been originally filed in federal court under diversity jurisdiction. The driver is a State X citizen, and the foreign citizen is domiciled in State Y. For diversity purposes, if a foreign citizen is admitted to permanent residence in the United States, they are a citizen of the state in which they are domiciled. Consequently, there is indeed complete diversity between the State X driver and the State Y foreign citizen. However, a defendant who is a citizen of the state in which the case was filed may not seek removal if the basis for removal is diversity. (28 U.S.C. § 1441(b).) This is also known as the home-state defendant rule. Because the foreign citizen is domiciled in State Y, the state in which the lawsuit was filed, the home-state defendant rule will apply, even though complete diversity exists between the parties. As such, the initial removal was improper, and the motion for remand should be granted and the case remanded back to state court in State Y.

(B) Incorrect. This answer choice is incorrect because it fails to take into account an exception to when removal is proper. As a general rule, a case that was originally brought in state court may be removed to federal court if the plaintiff could have originally brought the case in federal court. (28 U.S.C. § 1441.) The defendant in such a situation has a right to remove (or shift) that case from state court to federal court. Here, it is true that the case could have been originally filed in federal court under diversity jurisdiction. The State X driver is alleging \$80,000 in damages, which is enough to satisfy the amount-in-controversy requirement for diversity jurisdiction. However, a defendant who is a citizen of the state in which the case was filed may not seek removal if the basis for removal is diversity. (28 U.S.C. § 1441(b).) This is also known as the home-state defendant rule. Because the foreign citizen is domiciled in State Y, the state in which the lawsuit was filed, the home-state defendant rule will apply, even though the amount-in-controversy requirement is met for diversity jurisdiction. As such, the initial removal was improper, and the motion for remand should be granted and the case remanded back to state court in State Y.

(D) Incorrect. For diversity purposes, if a foreign citizen is admitted to permanent residence in the United States (i.e., that person has a green card), they are considered a citizen of the state in which they are domiciled. There is no rule that bars a permanent resident from being a party to a lawsuit filed in federal court. Therefore, the foreign citizen is a proper party to the lawsuit here, and this answer choice provides an incorrect statement of law.

Explanation: Question 16

The correct answer is: (C) There is jurisdiction to hear both the claim against the cashier and the counterclaim against the bookkeeper.

Supplemental jurisdiction is needed when a federal district court does not have federal-question or diversity jurisdiction over an additional claim. Supplemental jurisdiction is

available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy. Supplemental jurisdiction includes claims that involve the joinder, impleader, or intervention of additional parties. (28 U.S.C. § 1367(a).) Here, the claim by the bookkeeper against the cashier and the counterclaim by the cashier against the bookkeeper are not based on any federal question, so there is no federal-question jurisdiction over the claims. Likewise, the bookkeeper and the cashier are both from State B, so there is no diversity jurisdiction over their claims. Supplemental jurisdiction is needed. The claims are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (See *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover the direct claim by the bookkeeper against the cashier, and the same is true for the counterclaim by the cashier against the bookkeeper. Both the claims will be heard under supplemental jurisdiction.

(A) Incorrect. Supplemental jurisdiction is needed when a federal district court does not have federal question jurisdiction or diversity jurisdiction over an additional claim. Supplemental jurisdiction is available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy. (28 U.S.C. § 1367(a).) Here, the claim against the cashier and the counterclaim against the bookkeeper are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (See *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover both the direct claim by the bookkeeper against the cashier, regardless of diversity or amount in controversy, and the same is true for the counterclaim by the cashier against the bookkeeper.

(B) Incorrect. Supplemental jurisdiction is needed when a federal district court does not have federal question jurisdiction or diversity jurisdiction over an additional claim. Supplemental jurisdiction is available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same case or controversy. (28 U.S.C. § 1367(a).) Here, the claim against the cashier and the counterclaim against the bookkeeper are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (See *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover both the direct claim by the bookkeeper against the cashier, regardless of diversity or amount in controversy, and the same is true for the counterclaim by the cashier against the bookkeeper.

(D) Incorrect. Supplemental jurisdiction is needed when a federal district court does not have federal question jurisdiction or diversity jurisdiction over an additional claim. Supplemental jurisdiction is available in civil actions over claims that are so related to claims in the action within the court's original jurisdiction that they form part of the same

case or controversy. (28 U.S.C. § 1367(a).) Here, the claim against the cashier and the counterclaim against the bookkeeper are both part of the same case or controversy. They share a "common nucleus of operative facts," because all the damages arose from the same chain-reaction car crash. (See *United Mine Workers of America v. Gibbs*, 383 U.S. 715 (1966).) Consequently, supplemental jurisdiction will cover both the direct claim by the bookkeeper against the cashier, regardless of diversity or amount in controversy, and the same is true for the counterclaim by the cashier against the bookkeeper.

Explanation: Question 17

The correct answer is: (C) Grant the motion, because the corporation had an affirmative obligation to designate an appropriate employee to appear at the deposition.

Depositions of corporations are permitted. When a corporation is deposed, the corporation must designate an appropriate person to testify on its behalf, and that person must testify about information known or reasonably available to the organization. (Fed. R. Civ. P. 30(b)(6).) The corporation is under an obligation to make an investigation, including review of readily available records, to identify an appropriate witness for Rule 30(b)(6) purposes. (See *Resolution Tr. Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).) If that witness is not knowledgeable about relevant facts, and the corporation has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all. Here, the corporation did not make a meaningful effort to acquit its duty to designate an appropriate witness. Therefore, sanctions should be imposed.

(A) Incorrect. This answer choice is the opposite of the correct rule. When an organization is deposed, the Federal Rules of Civil Procedure specify that the organization must designate an appropriate person to testify on its behalf. (Fed. R. Civ. P. 30(b)(6).) Because this answer improperly places that burden on the employee, it is incorrect.

(B) Incorrect. A deposed corporation must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. (Fed. R. Civ. P. 30(b)(6).) The corporation is under an obligation to make an investigation, including review of readily available records, to identify an appropriate witness for Rule 30(b)(6) purposes. (See *Resolution Tr. Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).) If that witness is not knowledgeable about relevant facts, and the corporation has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all. Therefore, sanctions are appropriate immediately, and a motion to compel disclosure is not required. (See *id.*)

(D) Incorrect. Although the employee will incur additional expense, that is not, by itself, the reason to impose sanctions. Instead, the reason is because the corporation's witness was not knowledgeable about the matters involved in the deposition. The corporation is under an obligation to make an investigation, including review of readily available records, to identify an appropriate witness for Rule 30(b)(6) purposes. (See Fed. R. Civ. P. 30(b)(6); *Resolution Tr. Corp. v. S. Union Co.*, 985 F.2d 196, 197 (5th Cir. 1993).) If that witness is not knowledgeable about relevant facts, and the corporation has failed to designate an available, knowledgeable, and readily identifiable witness, then the appearance is, for all practical purposes, no appearance at all. Here, the corporation did not make a meaningful effort to acquit its duty to designate an appropriate witness. Therefore, sanctions should be imposed.

Explanation: Question 18

The correct answer is: (B) The law student is liable to the landlord, and the nurse is liable to the law student.

A landlord can hold another party liable for unpaid rent through either privity of contract or privity of estate. A lessor and the lessee come into privity of contract when they execute the lease. At that time, the lessee gains the right to possess the property (the estate), so the lessor and the lessee also come into privity of estate. When the lessee subleases the property to a sublessee, the sublessee does not enter into privity of contract with the lessor because the sublessee is contracting with the lessee (the current tenant), not the landlord. Likewise, the sublessee is not in privity of estate with the landlord, because the sublessee has not gained all of the rights that belong to the lessee (as they would in the case of an assignment). Thus, only the lessee remains in privity of contract and privity of estate with the lessor, and, for any breach of the lease, the lessor can only sue the lessee. However, the lessee can sue the sublessee for breach of contract, because the lessee and the sublessee are in privity of contract with each other. Here, the law student only subleased to the nurse; there was not an assignment of the lease. This means that the law student remained liable for the entire amount of the rent to be paid on the three-year lease, regardless of who was living there, or even if no one was living there. The law student will owe the unpaid rent to the landlord under the three-year lease, but the law student will be able to recover the unpaid rent from the nurse under the sublease agreement.

(A) Incorrect. This answer choice comes to an incorrect conclusion as to liability. A novation occurs when a contract, such as a lease, is amended to change the parties. Here, the landlord was aware of the sublease and did not object to it, but the landlord also did not insist on amending the lease to change the parties and name the nurse as the new lessee. This means that the law student remains liable to the landlord as an original contracting party to the lease agreement. However, the nurse will also be liable to the law student for the unpaid rent under the sublease agreement. Thus, this answer choice is incorrect, because the law student remains liable to the landlord for the unpaid rent and the nurse remains liable to the law student for the same.

(C) Incorrect. This answer choice is incorrect because the nurse is only in privity of contract and privity of estate with the law student, so the nurse's liability runs only to the law student. This is because the nurse only subleased the apartment from the law student, taking less than all of the law student's rights and interests in the existing lease. The law student, meanwhile, remains in privity of contract (under the three-year lease) and privity of estate (because the law student retains the right to completely possess the apartment) with the landlord. Thus, the law student owes any unpaid rent to the landlord. The nurse owes nothing to the landlord, but does owe the unpaid rent to the law student under their sublease.

(D) Incorrect. This answer choice is incorrect because the nurse is only in privity of contract and privity of estate with the law student, so the nurse's liability runs only to the law student. This is because the nurse only subleased the apartment from the law student, taking less than all of the law student's rights and interests in the existing lease. The law student, meanwhile, remains in privity of contract (under the three-year lease) and privity of estate (because the law student retains the right to completely possess the apartment) with the landlord. Thus, the law student owes any unpaid rent to the landlord. The nurse owes nothing to the landlord, but does owe the unpaid rent to the law student under their sublease.

Explanation: Question 19

The correct answer is: (D) Yes, because an equitable servitude covers all the lots.

An equitable servitude creates benefits and burdens that run with the land, but it does so without meeting all of the requirements for covenants that run with the land, including privity. The written intent to create an equitable servitude is often shown via a common scheme of development in a subdivision. If a sufficient number of lots in the subdivision are burdened by the same covenant, a court may find that a common scheme binds all of the lots in the subdivision, including those that do not have the restriction written into the deed. The following factors may show a common scheme: (1) a large percentage of lots expressly burdened; (2) oral representations to buyers; (3) statements in written advertisements, sales brochures, or maps given to buyers; or (4) recorded plat maps or declarations. Here, a common scheme exists in the subdivision, and it was established in the recorded plat. The recorded plat shows that the subdivision was intended for one-story mobile or manufactured homes without garages or other large outbuildings. In addition, more than half of the deeds in the subdivision contain express restrictions against garages and large outbuildings. Consequently, an equitable servitude will likely be found to exist in the neighborhood. The buyer's deed did not contain the restriction, but she will still be bound by the equitable servitude that exists for the entire neighborhood. Therefore, she will not be able to build a garage, and the neighbors will prevail.

(A) Incorrect. This answer choice attempts to place a requirement of privity on an equitable servitude, but equitable servitudes do not require either horizontal privity or

vertical privity in order for them to be enforced. An equitable servitude can be enforced by any purchaser who is benefitted by the servitude. The factors in a subdivision that may show the existence of an equitable servitude through a common scheme that expresses a written intention for the restrictions to run with the land include: (1) a large percentage of lots expressly burdened; (2) oral representations to buyers; (3) statements in written advertisements, sales brochures, or maps given to buyers; or (4) recorded plat maps or declarations. Here, the original subdivider recorded the plat that contained the restriction on garages. The original subdivider was likely also responsible for the large number of deeds that contain the express restriction on garages. However, it is not necessary for the original subdivider to be part of the sales transaction with the buyer in order for the buyer to be bound by the prohibition on garages. This is so because the buyer will be bound by the equitable servitude that covers the entire neighborhood, even without being in horizontal privity with the original subdivider or in vertical privity with their assignees. The equitable servitude can be enforced by any neighbor who is benefitted by the servitude. Thus, the neighbors will prevail without the need for the original subdivider.

(B) Incorrect. This answer is incorrect because, if an equitable servitude can be established, it will bind all of the lots covered by it, even the lots having deeds that do not contain the servitude's express provisions. Here, an equitable servitude is established by the common scheme that was used in creating the subdivision. The plat and the majority of the deeds show that the common scheme is to prohibit garages and other large outbuildings. The buyer will be bound by the servitude that covers that entire neighborhood, even though her own deed does not have the restriction written into it.

(C) Incorrect. This answer choice is incorrect because a covenant running with the land requires horizontal and vertical privity, which are absent under these facts but not necessary for the creation of an equitable servitude. A covenant running with the land requires: (1) a writing sufficient to satisfy the Statute of Frauds; (2) intent for the benefit/burden to run with the land; (3) horizontal privity between the original covenantor and covenantee, plus vertical privity between those parties and their successors in interest; (4) a benefit/burden that touches and concerns the land; and (5) notice. An equitable servitude often exists where a covenant does not, because equitable servitudes do not require privity in order to be enforceable. Here, the servitude is established through a common scheme for the subdivision, which was done through writings (the plat and the deeds) that expressed the appropriate intent, and which gave notice to all future parties of the restriction that would both benefit and burden the lot owners. Privity appears to be missing, and it is possible that the original subdivider sold an entire block of lots to a third party without the necessary restrictions. However, privity is not needed for an equitable servitude. Thus, here, the neighbors will prevail after establishing the equitable servitude, not a covenant that runs with the land.

Explanation: Question 20

The correct answer is: (C) Yes, because each piece of real estate is unique.

Specific performance is an extraordinary equitable remedy in contract law, because money damages are generally assumed to adequately compensate the aggrieved party. However, specific performance may be available where legal (monetary) damages are inadequate. This is generally considered the case in situations involving either real property or unique or custom goods. Each parcel of real estate is treated as unique under the law, because no two parcels can be the same. (See, e.g., *Payne v. Clark*, 187 A.2d 769 (Pa. 1963).) Thus, if the seller breaches the contract, the buyer may enforce the contract in equity to compel specific performance. Here, the chemical plant would be unique because it involves the sale of the land. As such, monetary damages may not be sufficient compensation, and specific performance can be granted for the seller's breach.

(A) Incorrect. Each parcel of real estate is treated as unique under the law, because no two parcels can be the same. (See, e.g., *Payne v. Clark*, 187 A.2d 769 (Pa. 1963).) Here, the chemical plant would be unique because it involves the sale of land. Thus, the buyer does not have to prove that that he could not find a comparable chemical plant elsewhere.

(B) Incorrect. This answer choice misstates the law. In a situation where a contract for the purchase of real property has been breached by the seller, the available remedies for the buyer are: (1) expectation damages, plus foreseeable consequential damages and reliance damages; (2) rescission, including the return of the down payment money; or (3) specific performance. Here, the buyer is interested in obtaining specific performance.

(D) Incorrect. This answer choice misapplies equity and specific performance. Where a contract for the purchase of real property has been breached by the seller, the available remedies for the buyer are: (1) expectation damages, plus foreseeable consequential damages and reliance damages; (2) rescission, including the return of the down payment money; or (3) specific performance. Specific performance is an equitable remedy. Consequently, it is the buyer, as the aggrieved party, who must come to a court of equity with "clean hands," not the seller, who is the breaching party. Here, the buyer has acted in good faith, and he would approach a court of equity with "clean hands." He was ready, willing, and able to close at the agreed-upon price on the agreed-upon date. Thus, he is entitled to any of the available remedies, whether in law or in equity. The seller's improper rationale will not change the options available to the buyer, who could still seek specific performance.

(D) Incorrect. This answer misstates the nature of the shopper's claim. His claim sounds in strict liability, not negligence. Strict products liability applies to defendants who engage in the business of selling a defective product. (Restatement (Second) of Torts § 402A.) In such a claim, the negligence of the store is irrelevant. Therefore, the failure of the store to safeguard the premises is irrelevant to the shopper's strict liability claim.

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