

NEW YORK STATE  
BOARD OF LAW EXAMINERS

SAMPLE QUESTIONS FOR THE NEW YORK LAW EXAMINATION

Updated September 2023

The following questions are examples of the types of questions that will be asked on the New York Law Examination. These sample questions include at least one question in each of the subjects that are included in that test. The New York Course Materials may be accessed at: <http://www.nybarexam.org/Content/NewYorkCourseMaterials.pdf>

Sample Questions for the New York Law Examination  
Copyright © 2023 New York State Board of Law  
Examiners <http://www.nybarexam.org>

All rights reserved. These materials may be downloaded and printed, in whole or in part, without alteration, for noncommercial use only but no part may otherwise be reproduced in any form or by any means, electronic or mechanical, including photocopying, recording or by any informational storage system without express written permission from the New York State Board of Law Examiners. These materials may not be distributed, downloaded, modified, reused, reproduced, reposted, retransmitted, disseminated, sold, published, broadcast or circulated or otherwise used or shared in any manner for commercial use without express written permission from the New York State Board of Law Examiners. Any modification of the content, or any portion thereof, or use of the content for any unpermitted and/or commercial use constitutes an infringement of the New York State Board of Law Examiners' copyrights and other proprietary rights. Noncommercial use means use of these materials in a manner that is not intended for commercial advantage or private monetary compensation. Commercial use means use of these materials in any manner that is intended for commercial advantage or monetary compensation. This includes private tutoring or commercial bar test-prep courses or settings.

## ADMINISTRATIVE LAW

A statute expressly authorizes the hearing officers for a particular administrative agency to issue subpoenas at the request of any party to the hearing. A witness who has received a subpoena issued by the hearing officer wants to challenge the subpoena on the ground that it seeks only material that is clearly irrelevant. The proper procedure for the witness to follow in order to challenge the subpoena is to:

- a) Immediately move in supreme court to quash the subpoena.
- b) Refuse to comply with the subpoena and defend any subsequent proceeding to enforce it.
- c) First request the hearing officer to withdraw the subpoena and, if unsuccessful, the witness may move in supreme court to quash the subpoena.
- d) Request the hearing officer to withdraw the subpoena and, if unsuccessful, the witness has no further remedy because the statute authorizes the issuance of the subpoena.

Answer: (c)

## BUSINESS RELATIONSHIPS

A person served as director of both Corporation A and Corporation B. This director was present at a meeting of the board of directors of Corporation A when it approved a contract between Corporation A and Corporation B, and his presence and affirmative vote were necessary to establish a quorum of the board and approve the contract. The contract was fair and reasonable to Corporation A at the time it was approved. Is the contract voidable by Corporation A?

- a) Yes, if the common directorship was not known to the board of Corporation A.
- b) Yes, because the director's presence and affirmative vote were necessary to establish a quorum of the board and approve the contract.
- c) No, because common directorship cannot be a valid ground to void any contract approved by a board of directors.
- d) No, because the contract was otherwise fair and reasonable to Corporation A at the time it was approved.

Answer: (d)

## CIVIL PRACTICE AND PROCEDURE

Is a trial court in the First Judicial Department required to follow a decision of the Appellate Division of the Third Judicial Department?

- a) No, unless the Court of Appeals has affirmed that decision.
- b) No, because decisions of intermediate appellate courts outside of the Judicial Department of a trial court are not binding on that trial court.
- c) Yes, unless the Court of Appeals has pronounced a contrary ruling, regardless of whether or not the First Judicial Department has ruled on the issue.
- d) Yes, unless either the Court of Appeals or the Appellate Division in the First Judicial Department has pronounced a contrary ruling.

Answer: (d)

## CIVIL PRACTICE AND PROCEDURE

Which one of the following types of service is only available if service by personal delivery cannot be made with due diligence?

- a) Deliver-and-mail service.
- b) Affix-and-mail service.
- c) Service on an individual's agent designated for service of process.
- d) Service on the Secretary of State as a designated agent.

Answer: (b)

## CIVIL PRACTICE AND PROCEDURE

The sole defendant in a civil action was served with the plaintiff's summons and complaint last week, and he has since served his answer. May the plaintiff now add a second defendant to the action as of right?

- a) Yes, but the plaintiff must add the party within 20 days from when the defendant was served.
- b) Yes, but the plaintiff must add the party before the defendant's period for serving his answer would expire.
- c) Yes, and the plaintiff has until 20 days after the defendant served his answer to add the party.
- d) No, the plaintiff cannot add a new party to the action without leave of court or a stipulation of all parties.

Answer: (c)

## CIVIL PRACTICE AND PROCEDURE

A defendant served with the complaint in a civil action made a pre-answer motion to dismiss the complaint on the ground that it failed to state a cause of action, but the motion was denied. In the defendant's answer any of the following defenses may be raised except:

- a) Res judicata.
- b) The statute of limitations.
- c) Lack of subject matter jurisdiction.
- d) Lack of personal jurisdiction.

Answer: (d)

## CIVIL PRACTICE AND PROCEDURE

In an action seeking damages for personal injury predicated solely on a cause of action for negligence, without leave of court, interrogatories:

- a) May always be served on any party.
- b) May not be served on a party if either a bill of particulars has been demanded, or a deposition has been conducted, of the same party.
- c) May be served on a party if a bill of particulars has been demanded of the same party, but not if a deposition has been conducted of the same party.
- d) May be served on a party if a deposition has been conducted of the same party, but not if a bill of particulars has been demanded of the same party.

Answer: (b)

## CONFLICT OF LAWS

### I

New York and State X law differ as to the obligation of a property owner to provide properly erected scaffolding for workers engaged in construction on the property. A worker who resides in State X was injured in State X in a fall from a scaffold while constructing a building on property owned by a New York resident. If the construction worker brings an action against the property owner in New York, what law governs the property owner's liability for failure to provide safe scaffolding?

- a) New York law, because the property owner is a resident of New York.
- b) New York law, because the action is pending here.
- c) State X law, because the construction worker is a resident of State X.
- d) State X law, because the accident happened there.

Answer: (d)

## CONTRACTS

Which one of the following contractual provisions is enforceable?

- a) A provision on a ticket to an amusement park exempting the owner from liability for negligence.
- b) A provision in a commercial construction contract exempting the contractor from liability for negligence.
- c) A provision in a commercial lease exempting the landlord from liability for negligence.
- d) A provision in a residential mortgage providing for an interest rate of 15%.

Answer: (d)

## CRIMINAL LAW & PROCEDURE

Two brothers were fleeing from the scene of a bank robbery they committed, when one of the brothers accidentally killed the other. May the surviving brother be convicted of felony murder?

- a) No, because the brother who was killed was a participant in the robbery.
- b) No, because the robbery was completed before the brother's death.
- c) No, because the killing was accidental.
- d) Yes, because the death occurred during flight from the commission of a statutorily specified felony.

Answer: (a)

## CRIMINAL LAW AND PROCEDURE

Shortly after a victim was robbed, she identified the defendant in a photographic array that was not unduly suggestive. At a trial of the defendant for robbery, may the victim testify regarding her prior identification of the defendant by photograph?

- a) No, because testimony regarding a pre-trial photographic identification is never admissible.
- b) No, unless there is an independent source for the victim's pre-trial photographic identification of the defendant.
- c) Yes, if the photographic identification was conducted pursuant to a blind procedure.
- d) Yes, regardless of the procedure pursuant to which the photographic identification was conducted.

Answer: (c)

## EVIDENCE

An accomplice to a crime received a favorable plea deal requiring him to testify against the defendant. At a subsequent trial of the defendant, the accomplice's testimony:

- a) Is inadmissible because the favorable plea deal makes the testimony inherently unreliable.
- b) Is sufficient by itself to convict the defendant if it establishes each element of the crime beyond a reasonable doubt.
- c) Must be corroborated with some other evidence tending to connect the defendant with the commission of the crime.
- d) Must be corroborated with some other evidence independent of the accomplice's testimony establishing that the defendant committed the crime.

Answer: (c)

## MATRIMONIAL AND FAMILY LAW

Twenty years ago, a husband and wife entered into a valid marriage in State X and remained married and living in State X until three years ago, when the husband moved to New York where he has continuously since resided. If the husband commences an action for divorce in New York today, does the court have jurisdiction over the marital res?

- a) No, because the parties were not married in New York.
- b) No, because the parties never resided together in New York.
- c) Yes, because the husband has continuously resided in New York for three years.
- d) Yes, because the husband is a current resident of New York, regardless of the length of his residency.

Answer: (c)

## MATRIMONIAL AND FAMILY LAW

In awarding child support, the court:

- a) May supplement the child support obligation calculated by reference to the statutory percentages set forth in the Child Support Standards Act with the cost of certain child care expenses.
- b) Is bound by an agreement between the parties that deviates from the Child Support Standards Act, provided the agreement is made knowingly, no matter what the terms of the parties' agreement.
- c) May consider marital fault in determining the allocation of the child support obligation.
- d) Must apply the statutory percentage set forth in the Child Support Standards Act to the payor's income, based upon the number of children of the marriage, without regard to the combined parental income.

Answer: (a)

## PROFESSIONAL RESPONSIBILITY

An advertisement by a lawyer compares the lawyer's services with the services of other lawyers, uses a paid endorsement by an actor that is disclosed as such, contains statements reasonably likely to create an expectation about results, is labeled "attorney advertising," and contains the disclaimer that "Prior results do not guarantee a similar outcome." Assuming the advertisement is truthful, not deceptive or misleading, and can be factually supported, under the Rules of Professional Conduct the advertisement is:

- a) Permissible as is.
- b) Permissible except for the use of a paid endorsement by an actor.
- c) Permissible except for the comparison of the lawyer's services with the services of other lawyers.
- d) Permissible except for the statements reasonably likely to create an expectation about results.

Answer: (a)

## REAL PROPERTY

A grantor owning a large tract of land decided to divide it into several parcels. The recorded deed conveying Parcel A contained a restriction prohibiting commercial use of the parcel. The grantor included the same restriction in a recorded deed conveying Parcel B, an adjoining lot. A subsequent deed conveying Parcel C made no reference to the restriction contained in those previously recorded deeds. If the owner of Parcel C uses his parcel for commercial purposes, may the owners of Parcels A and B enforce the restrictive covenant against the owner of Parcel C?

- a) No, because the restriction was not contained in the direct chain of title to Parcel C.
- b) Yes, because the deeds conveying Parcels A and B were recorded prior to the deed conveying Parcel C.
- c) Yes, because Parcels A and B are adjoining lots in the same tract as Parcel C.
- d) Yes, because Parcels A, B, and C were conveyed by a common grantor.

Answer: (a)

## TORTS AND TORT DAMAGES

In a personal injury action resulting from a slip and fall on ice, defendant A was found 60% liable and defendant B was found 40% liable for injuries suffered by plaintiff. The maximum percentage of her damages the plaintiff may recover from defendant B is:

- a) 100% of her economic damages and 40% of her non-economic damages.
- b) 40% of her economic damages and 100% of her non-economic damages.
- c) 100% of both her economic and non-economic damages.
- d) 40% of both her economic and non-economic damages.

Answer: (a)

## TORTS AND TORT DAMAGES

A passenger in a vehicle was injured in a two-car accident caused by the negligence of the driver of the other vehicle. If the injured passenger seeks to recover her medical expenses, she must look to the insurance policy covering which one of the vehicles involved in the accident?

- a) Whichever vehicle she chooses to sue for her damages.
- b) The vehicle she was riding in as a passenger, even though the accident was caused by the negligence of the driver of the other vehicle.
- c) The other vehicle, because the accident was caused by the negligence of the driver of that vehicle.
- d) Both vehicles, because under the no-fault insurance law liability is shared by the affected insurance carriers.

Answer: (b)

## TRUSTS, WILLS AND ESTATES

A decedent died intestate last year leaving a net estate of \$150,000. He was survived by his wife, his son, and one grandchild, the child of his predeceased daughter. The decedent's estate should be distributed:

- a) Entirely to the wife.
- b) \$75,000 to the wife and \$75,000 to the son.
- c) \$50,000 each to the wife, son and grandchild.
- d) \$100,000 to the wife, \$25,000 to each of the son and grandchild.

Answer: (d)

## TRUSTS WILLS AND ESTATES

A grantor has created an irrevocable trust providing for the income to be paid to his adult son for life and the remainder payable to his adult grandson. If the grantor suffers serious business setbacks, may the grantor properly revoke the trust?

- a) Yes, if the trustee provides written consent.
- b) Yes, if his son provides written consent, but his grandson's consent is not required.
- c) No, because the trust is irrevocable by its terms, unless both his son and grandson provide written consent.
- d) No, because the trust is irrevocable by its terms and thus cannot be revoked no matter who might consent.

Answer: (c)