Circle the letter designating the correct answer to each of the following questions. Read all of the alternatives before choosing and marking your answer. Pick the best answer when you find more than one to be possible. Your score is based on your total number of correct answers. No points will be awarded for incorrect answers, but likewise they will not be penalized.

Your multiple choice questions are open-book, open-notes, and open-reality questions. You may bring into the examination room, and consult during this part of the exam if you wish, any written, printed, or photocopied material.

(On the final exam, you will have an opportunity to challenge multiple choice questions. All question challenges will be reviewed before a final answer key is determined, and some questions may be accorded multiple correct answers based on the question challenges.)

1. In the X/Y (formal) framing of a question of law, X is supplied by:
   a. The language of some legal rule.
   b. A dictionary.
   c. Some description of the facts.
   d. Ordinary language.
   e. Some description of the consequences of a holding.

2. The Copyright Clause of the Constitution, Art. I §8 cl. 8, provides: “Congress shall have power . . . to promote the progress of science [Y1] . . . by securing for limited times [Y2] to authors . . . the exclusive right to their . . . writings.” Congress has enacted the Copyright Act of 2013, which provides that authors shall have the exclusive right to their writings for two hundred years. Challengers have brought suit, arguing that Congress lacked the power to enact the Copyright Act of 2013 because two hundred years is not a “limited time” within the meaning of the Copyright Clause. Which of the following is correct?
   a. Y1 supplies a reason for a court to carry out a line of purposive interpretation when construing Y2.
   b. Y1 is vague.
   c. Y2 is vague and ambiguous.
   d. Y1 supplies a reason for a court to analyze the question of law within an economic normative framework.
   e. All of the above.
3. Which of the following is the least accurate comparison or contrast between legal reasoning in common law and statutory interpretation cases?

   a. In both kinds of cases, issues sometimes can be framed in the X/Y (formal) way.
   b. In both kinds of cases, Y-categories sometimes are applied in light of their best justifications (the principle or policy that makes the rule with Y the best it can be).
   c. Judges often make more open use of normative reasoning when analyzing and deciding issues in common law cases than they do when analyzing and deciding issues in statutory interpretation cases.
   d. In both kinds of cases, holdings in decided cases can supply new Y-categories that apply as precedent to subsequent cases.
   e. The legislature has the authority to prospectively overrule holdings in common law cases, but does not have authority to prospectively overrule holdings in statutory interpretation cases.

4. At T1, Derek, who is poor and sick, owns a book that he would be willing to sell for $2; and Amartya, who is wealthy and owns thousands of books, would be willing to pay $3 for the book. At T2, an omniscient, omnipotent tyrant transfers the book from Derek to Amartya without compensating Derek. Professor Dworkin adduces this scenario in support of his argument that wealth maximization (maximizing the social surplus) is not a real value. Which of the following is the least plausible?

   a. The scenario builds a strong case against utilitarianism (utility-maximization) as a worthy value.
   b. The scenario drives a wedge between utilitarianism (utility-maximization), which would oppose the uncompensated transfer, and wealth maximization (maximizing the social surplus), which might support it.
   c. From an economic standpoint, the transfer increases the social surplus because it places a good into the hands of the party that values it more as measured by willingness to pay and willingness to accept, and the surplus so created is not outweighed by transaction costs.
   d. The transfer at T2 is Kaldor-Hicks efficient but not Pareto-superior.
   e. While Dworkin intends the scenario as a critique of the economic analysis of law, the scenario misses the mark because economic analysis is more interested in the choice of rules than in the appraisal of individual actions, and the scenario is largely unrelated to the kinds of market-creating and market-supporting rules that the economic analysis of law typically endorses.
5. Which of the following best states a proposition on which both our formalist conscience and our natural law imagination agree?
   a. If judges adhere to the logical structure of the legal syllogism, they will reach the correct legal conclusion.
   b. Textualism is the sole valid method of statutory interpretation.
   c. There are no hard cases.
   d. In most cases, the range of moral or policy considerations that should be taken into account in adjudication is narrower than the range of moral or policy considerations that a legislature could or should take into account when drafting or debating a bill.
   e. Moral reasoning and policy analysis never play any legitimate part in legal reasoning.

6. The Justices’ opinions and decisions in Smith v. United States (the case in which defendant traded his MAC-10 gun for drugs) supply strong evidence for which conclusion:
   a. Conservative judges vote for conservative social policies and liberal judges vote for liberal social policies.
   b. Courts usually confine statutory Y-categories to their standard instances.
   c. When a legislature’s particular intentions conflict with its general intentions, a court will usually be governed by the legislature’s particular intentions.
   d. In their written opinions in statutory interpretation cases, judges typically specify and weigh all of the social consequences that are likely to follow from any decision, and all social policies pertinent to the assessment of those consequences.
   e. None of the above.

7. Which of the following is not a position taken by Justice Scalia, in his dissent in Smith v. United States (our first main case, on sentence enhancement)?
   a. Thought experiments may supply strong evidence of the ordinary meaning of statutory words or phrases.
   b. The meaning of a statutory word or phrase is limited to those applications that the legislature actually foresaw and particularly intended when it enacted the statute.
   c. Under the rule of lenity, ambiguities in criminal statute should be resolved in favor of the defendant.
   d. Because they are likely to be acontextual, dictionary definitions of statutory words or phrases may not supply strong evidence of those words’ or phrases’ ordinary meaning in the context of the statute.
   e. When interpreting a statute, a court should give nontechnical words or phrases their ordinary meaning.
8. At T1, the Supreme Court decided Smith v. United States (the case in which defendant traded his MAC-10 gun for drugs). At T2, Mr. Watson traded illegal drugs for a firearm, was convicted in the trial court of a drug trafficking crime, and received a sentence enhancement under the same statute applied in Smith. At T3, the Supreme Court has agreed to decide whether Watson’s conduct counts as “using a firearm” within the meaning of the sentence-enhancement statute. You represent Watson, and you are preparing for oral argument before the Supreme Court. In your argument, you plan to:

a. Argue that the holding in Smith, when applied to the facts of the current case, does not require that Watson’s sentence enhancement be affirmed.

b. Urge the Court to assign more weight to the general intent behind the sentence-enhancement statute than to the ordinary meaning of “uses a firearm.”

c. Argue that in ordinary language, one who pays $1.00 for a cup of coffee has “used” the dollar in the course of the transaction, but has not “used” the coffee.

d. Argue that unless the government can adduce historical evidence that Congress had a particular intention, when it enacted the statute, to enhance the sentence of a defendant who trades illegal drugs for a firearm, the question of law must be decided in favor of Watson.

e. (a) and (c).

9. Suppose donors of engagement rings use insurance rather than litigation as a device for reducing the risk of loss. That is, suppose donors of engagement rings take out a policy that insures them against the risk that the marriage will not happen and that the donee won’t return the ring. (This would be similar to travel insurance – the prospective traveler takes out an insurance policy that reimburses the cost of a cruise if the traveler cancels due to verifiable medical problems.). Which of the following is least plausible?

a. The insurance contract gives rise to a moral hazard problem.

b. The availability of such insurance policies creates an adverse selection problem.

c. There is a potential problem of asymmetrical information, if the donor knows that he or she has taken out the engagement ring insurance policy but the donee does not know.

d. The agreement between donor (insured) and insurer is Pareto superior, because there are no negative externalities to offset against the mutual gain through trade that the insured and insurer experience. (In other words, the deal makes donor/insured and insurer better off, and it either makes the donee better off or no worse off.)

e. A donor who takes out such a policy of engagement ring insurance is reducing the effectiveness of the engagement ring gift as a commitment device (a device binding the donor to his or her proposal of marriage).
10. Luticia has filed suit against the Antonios, owner of Los Paisanos, under §250, which gives nearby residents a private cause of action for an injunction against owners of a building “marked with graffiti.” (Six residents are close enough to Los Paisanos to be able to sue the Antonios under §250). The trial judge has ordered a settlement conference between the Antonios and Luticia. Which of the following is least plausible?

a. Coasian bargaining between the Antonios and Luticia is difficult because it is unclear which party has the legal entitlement (the parties plausibly disagree about whether the mural is “graffiti” within the meaning of §250.)

b. Even if the Antonios could make Luticia an offer she would accept in exchange for dropping her §250 suit, the Antonios might not make that offer because transaction costs and hold-out problems might make it difficult for the Antonios to reach similar agreements with all six neighbors.

c. Luticia and the Antonios will bargain to the efficient outcome, so it does not matter whether the law assigns to the Antonios a right to have the mural or assigns to Luticia a right that the Antonios take down the mural.

d. Bargaining between Luticia and the Antonios at the settlement conference is unlikely to reach the efficient outcome, because many shoppers and community members who experience both positive and negative externalities from the mural are not present at the settlement conference, and transaction costs stand in the way of side-deals between all of them and the two parties at the conference.

e. Some of the values at stake in the question of whether the Antonios can have the mural on the wall of Los Paisanos, such as the value of equal membership in a multicultural community, cannot be adequately expressed or measured in terms of willingness to pay and willingness to accept.