Select the **best** answer. You may use one 3x5 card of notes, handwritten, front and back, and no other materials. All answers must be placed on the Trans-Optic® answer sheet using a number two pencil. (For True/False questions, True=a, and False=b.) The test includes several fact patterns upon which questions that immediately follow are based.

**Fact pattern #1**
Fred and Addie own neighboring hog farms. Fred has been in business for 15 years. Addie started raising hogs six months ago. Both have about 3500 sows and both store waste in lagoons. Both border a river. Fred's farm is downstream from Addie's. One day Fred noticed that the level of waste in Addie's lagoon was very close to running over. Fred called Addie to let him know that there was a problem. Addie replied, "Mind your own business - if I run it over the top it is no concern of yours!" and hung up the phone. That night, after a short rain, the dam on the river side of Addie's lagoon broke, allowing several million gallons of raw hog waste to flow into the river. Fred, who had used water from the river for his hog operation, has had to truck in water since the break. The stench of the hog waste combined with that of fish killed by the spill is so overpowering that Fred and his family have been forced to leave their home and live in a motel. Upon seeing the spill, Fred ordered his lawyer to immediately file a lawsuit against Addie.

1. What is Addie's best defense against an action on a nuisance theory?
   a. Fred did not engage in pre-litigation mediation
   b. Fred does not own the river
   c. Addie's farm has been in business for more than one year
   d. Fred is also a hog farmer
   e. None of the above

2. What is Addie's best defense against an action on a trespass theory?
   a. Fred did not engage in pre-litigation mediation
   b. Fred does not own the river
   c. Addie's farm has been in business for more than one year
   d. Fred is also a hog farmer
   e. None of the above

3. If Fred can get the case to trial, remedies are likely to include:
   a. abatement
   b. actual damages
   c. punitive damages
   d. actual and punitive damages
   e. abatement and actual and punitive damages

4. Fred's suit based upon a nuisance theory will likely be based upon which category of tort?
   a. strict liability
   b. intentional tort
   c. negligent tort
   d. negative tort
   e. none of the above

5. Assume that Addie had also been in the hog business for 15 years. What is Addie's best defense against an action on a nuisance theory?
   a. Fred did not engage in pre-litigation mediation
   b. Fred does not own the river
   c. Addie's farm has been in business for more than one year
   d. Fred is also a hog farmer
   e. None of the above
Fact pattern #2
Alice lives in dire poverty on a farm of 25 acres. She holds it as a life estate, which was granted to her by her late husband, Argon. At the same time that Argon granted the life estate to her, he granted the remainder interest in the property to their two sons, John and James. While hunting squirrels to stave off starvation, Alice fired into the ground and inadvertently discovered oil. Alice has signed a lease with a major oil company to extract the oil, and plans to move to Beverly Hills. John, who has a successful medical practice, and, James, a well-known attorney, have filed suit to prevent Alice and the oil company from extracting oil from the property.

6. Who wins the lawsuit?
   a. Alice
   b. Argon
   c. John alone
   d. James alone
   e. John and James together

7. True or False  John and James hold a reversion.

End of questions based upon Fact pattern #2

8. True or False  A holder of a life estate who changes the use of the property commits waste.

9. True or False  Making a counteroffer revokes the original offer.

10. True or False  Survivorship property may pass by will.

11. True or False  The owner of a vested future interest in real property can sell that interest.

12. True or False  The owner of a vested future interest in real property can use that interest.

13. True or False  The owner of a vested future interest in real property has no right to possess the property.

14. True or False  Property owned as tenants in common carries a right of survivorship.

15. True or False  Property owned as joint tenants in North Carolina carries a right of survivorship.

16. Which is not a duty of a life tenant?
   a. make repairs
   b. pay taxes
   c. avoid waste
   d. make improvements
   e. none of the above

17. True or False  Any group of people may hold property as tenants by the entireties.

18. True or False  A creditor of both spouses may execute against property held as tenants by the entireties.

19. True or False  Trust property does not benefit the trustee.

20. Which rule requires those contracts for the sale of real estate to be in writing?
   a. statute of frauds
   b. parol evidence rule
   c. integration clause
   d. Sam's rule
   e. none of the above
21. In which type of state does the owner of livestock have the duty to prevent the livestock from straying across the property of another?
   a. fence in
   b. fence out
   c. fence away
   d. fence anyway
   e. none of the above

22. True or False Elle went to the shoe store and told the clerk that she wanted to purchase running shoes. The clerk sold her a pair of high-heeled dress shoes. The store violated its warranty of merchantability.

23. True or False The effect of "as is" language in a contract is to disclaim all warranties and insulate the seller from liability for fraud.

24. True or False Negligence an issue when one property owner damages the undeveloped property of another by undermining it.

25. An owner of a life estate who discovers oil and pumps it commits:
   a. adultery
   b. bigamy
   c. waste
   d. improvement
   e. none of the above

26. True or False Only real property may be survivorship property.

27. Which is not an element of a valid contract.
   a. consideration
   b. offer
   c. acceptance
   d. proper subject matter
   e. writing

28. Name the rule that requires certain contracts to be in writing.
   a. parol evidence rule
   b. statute of frauds
   c. rule against perpetuities
   d. Elmo's theorem
   e. none of the above

29. Olle and Anne, husband and wife, own Pleasant Acres as tenants in common. Olle died with a will leaving his share of Pleasant Acres to his friend, Dan. Who gets Olle's share of the property:
   a. Anne continues to own a one-half undivided interest
   b. Anne owns it all
   c. Dan owns a one-half undivided interest
   d. Dan owns it all
   e. None of the above

30. Olle and Anne, husband and wife, own Pleasant Acres as joint tenants in North Carolina. Olle died with a will leaving his share of Pleasant Acres to his friend, Dan. Who gets the property:
   a. Anne continues to own a one-half undivided interest
   b. Anne owns it all
   c. Dan owns a one-half undivided interest
   d. Dan owns it all
   e. None of the above
31. Olle and Anne, husband and wife, own Pleasant Acres as tenants by the entireties. Olle died with a will leaving his share of Pleasant Acres to his friend, Dan. Who gets the property:
   a. Anne continues to own a one-half undivided interest
   b. Anne owns it all
   c. Dan owns a one-half undivided interest
   d. Dan owns it all
   e. None of the above

32. True or False. Olle and Anne own their mobile home in North Carolina as tenants by the entireties. Anne ran up huge gambling debts by playing video poker in South Carolina. Anne’s creditor obtained a judgment (assume its validity in NC) and now seeks to execute upon it by having the mobile home sold. The creditor may have the mobile home sold and keep the entire proceeds up to the amount of the debt plus reasonable sales expenses.

33. True or False. Assume the same facts as # 32. The creditor may have the mobile home sold and keep no more than one-half the proceeds.

34. True or False. Same facts as # 32, except that Anne obtained a loan with which she paid off her gambling debts. So that she could obtain the loan, Olle cosigned. The creditor may have the mobile home sold and keep the entire proceeds up to the amount of the debt plus reasonable sales expenses.

35. A disadvantage of a program of lifetime giving is:
   a. reduction in the value of the estate at death
   b. reduced estate tax
   c. move future appreciation out of the estate
   d. donee takes donor’s basis
   e. none of the above

36. Gifts that are includable in the gross taxable estate include:
   a. within 3 years of death
   b. incomplete gifts
   c. gifts of disproportionate interests
   d. remainder interests in real estate with retained life estate
   e. all of the above

37. True or False. For gifts made in the year 2002, a federal gift tax return is required if the total gift in one year to a particular individual exceeds $11,000.

38. True or False. For gifts made in the year 2002, a N.C. state gift tax return is not required if the total gift in one year to a particular individual is less than $11,000.

39. For which gift must a federal gift tax return be filed:
   a. $30,000 for tuition paid directly to Duke University
   b. $1,000,000 paid directly to Duke Hospital for medical care
   c. $30,000 for tuition at Duke University, paid to the student
   d. $10,000 paid directly to one's child
   e. none of the above

40. The statute of limitations for the federal gift tax is:
   a. 3 years if the error in valuation is not more than 25% of the value reported
   b. 6 years if the error in valuation is more than 25% of the value reported
   c. no limitation if the gift is not reported on the gift tax return
   d. no limitation if no gift tax return is filed
   e. all of the above
41. True or False. One may give an unlimited amount of money or property to one's spouse without paying gift tax.

42. True or False. The person who makes a gift pays the gift tax and the person who receives the gift pays income tax on the gift.

43. True or False. The valuation of shares in a closely held business may be discounted in value in an estate because the owner did not own a majority of the shares.

44. True or False. The valuation of shares in a closely held business may be discounted in value in an estate because the shares are subject to a buy-back provision or some other restriction on marketability.

45. True or False. Some estates, the principle asset of which are shares in a closely held business, may elect to pay the estate tax in installments over 15 years.

46. Special use valuation may be used to the fair market value of assets in a farm business or other closely held business if:
   a. those assets represent a small portion of the total estate
   b. the estate plans to sell those assets
   c. the qualifying heirs plan to continue to use those assets in the business
   d. the qualifying heirs plan to change the use of those assets
   e. none of the above

47. True or False. A testamentary trust may be used to double the amount of money that may be sheltered from federal estate tax.

48. True or False. The N.C. estate tax does not increase the overall amount of estate tax due.

49. True or False. When N.C. repealed its state inheritance tax, it did not repeal its state gift tax.

50. True or False. The federal gift and estate taxes remain unified with increases in the unified credit for the estate taxes increasing at the same time and in the same amount as those for the gift tax.

51. True or False. The federal estate tax is repealed for individuals who die in the year 2010.

52. True or False. Before enactment of the 2001 Tax Act the top, effective estate and gift tax rate was 60%.

53. The top estate tax rate in 2010 is scheduled to be:
   a. 60%
   b. 50%
   c. 45%
   d. 35%
   e. 0%

54. True or False. Poor estate planning may result in the payment of 100s of thousands of dollars of estate tax that would not have to be paid with good planning.

55. True or False. A health care power of attorney gives another person the authority to make health care decisions for your after you are either physically or mentally unable to do so.

56. True or False. Medical care providers are not required by law to honor a living will.

57. True or False. Letters of instruction, provided to a close relative or friend, that include instructions for the disposal of your body, are a good idea, even though not legally operative, because your will may not be read until after your funeral.
58. True or False. A trustee typically benefits from trust property since the trustee hold equitable title to the property.

59. Who holds the legal title to trust property?
   a. grantor
   b. grantee
   c. trustee
   d. beneficiary
   e. the trustee and the beneficiary jointly

60. Which type of trust may be revoked?
   a. testamentary trust
   b. unified credit testamentary trust
   c. living trust
   d. dynasty trust
   e. all of the above

61. Living trusts provide:
   a. a will substitute
   b. financial management for the grantor's benefit
   c. privacy in life and in probate
   d. avoidance of probate taxes on the trust assets
   e. all of the above

62. True or False. The assets in a living trust do not pass through probate.

63. Disadvantages of trusts include:
   a. flexibility
   b. expense
   c. tax savings
   d. control
   e. protection for special needs children

64. True or False. Trusts pay income tax on retained income at a rate of 39.6% (the top personal rate) on income in excess of an amount less than $10,000.

65. True or False. Estate planning is strictly for old people.

66. True or False. Life insurance proceeds are part of the federal taxable estate if the policy was owned by the decedent.

67. True or False. Life insurance proceeds do not become part of the probate estate unless the decedent's estate was the beneficiary of the policy.

68. True or False. Before the property of an intestate is forfeit to the state, every effort will be made to find relatives within the eight degree that are entitled to the property.

69. True or False. Students at NC State benefit from the property of people who died intestate without relatives within the 6th degree.

70. Cash is needed at the settlement of an estate to pay:
   a. final medical bills
   b. funeral expenses
   c. court costs
   d. the decedent's creditors
   e. all of the above
71. All are remedies for breach of a real estate sales contract except:
   a. specific performance
   b. rescission and restitution
   c. damages
   d. self help
   e. none of the above

72. How may property be transferred at death?
   a. By will.
   b. By intestate succession.
   c. By right of survivorship.
   d. Life insurance designation of beneficiary
   e. All of the above.

73. A document that permits one person to manage the financial affairs of another after that other is
    disabled is called:
    a. a health care power of attorney
    b. a will
    c. a living will
    d. a durable power of attorney
    e. a living trust

74. True or False. All leases of real property are subject to the statute of frauds.

75. A document that allows another person to make medical decisions for him after he is no longer able to
    do so:
    a. a health care power of attorney
    b. a will
    c. a living will
    d. a durable power of attorney
    e. a living trust

76. A document that expresses a desire not to have extraordinary means used to prolong life:
    a. a health care power of attorney
    b. a will
    c. a living will
    d. a durable power of attorney
    e. a living trust

77. A document that becomes legally operative at death (if determined valid in probate) for the purpose of
    transferring assets of the decedent to other persons designated in that document:
    a. a health care power of attorney
    b. a will
    c. a living will
    d. a durable power of attorney
    e. a living trust

78. True or False. An owner of a dangerous dog is liable in negligence for damage that it causes.
79. Al orally agreed to custom manufacture a research peanut harvester for Jeff. Because its design is non standard there are no other potential purchasers. Upon completion, Al delivered it to Jeff, who refused delivery. May Al enforce the contract?
   a. No, enforcement is barred by the statute of frauds
   b. No, enforcement is barred by the parol evidence rule
   c. Yes, under an exception to the statute of frauds
   d. Yes, the contract is not subject to the statute of frauds
   e. None of the above

80. Al orally agreed to have his bull breed Jeff's cows in return for one of the heifer calves. Jeff's cows were successfully bred and gave birth. After the calves were weaned, Al demanded one of them under the terms of their contract. Jeff refused. May Al enforce the contract?
   a. No, enforcement is barred by the statute of frauds
   b. No, enforcement is barred by the parol evidence rule
   c. Yes, under an exception to the statute of frauds
   d. Yes, the contract is not subject to the statute of frauds
   e. None of the above