Question 5 - Contracts - Conditions

The question was:

A contractor painted an owner's house under a contract which called for payment of $2,000. The owner, contending in good faith that the porch had not been painted properly, refused to pay anything.

On June 15, the contractor mailed a letter to the owner stating, "I am in serious need of money. Please send the $2,000 to me before July 1." On June 18, the owner replied, "I will settle for $1,800 provided you agree to repaint the porch." The contractor did not reply to this letter.

Thereafter the owner mailed a check for $1,800 marked "Payment in full on the painting contract as per letter dated June 18." The contractor received the check on June 30. Because he was badly in need of money, the contractor cashed the check without objection and spent the proceeds but has refused to repaint the porch.

The owner's refusal to pay anything to the contractor when he finished painting was a

A: partial breach of contract only if the contractor had properly or substantially painted the porch.
B: partial breach of contract whether or not the contractor had properly or substantially painted the porch.
C: total breach of contract only if the contractor had properly or substantially painted the porch.
D: total breach of contract whether or not the contractor had properly or substantially painted the porch.

The explanation for the answer is:

Answer C is correct. Under the doctrine of constructive conditions, a contractor's material breach of contract may justify the owner from withholding performance. However, if the contractor has substantially performed on the contract, the owner is still obligated to perform. Therefore, the owner's refusal to pay any of the amount due under the contract would be a total breach. A and B are incorrect because the owner's refusal to pay would not be a partial breach. D is incorrect because if the contractor had not substantially performed, the owner would be justified in withholding performance.

Question 6 - Contracts - Consideration

The question was:

A contractor had painted an owner's house, according to specifications, under a contract which called for payment of $2,000. The owner, contending in good faith that the porch had not been painted properly, refused to pay anything.

On June 15, the contractor mailed a letter to the owner stating, "I am in serious need of money. Please send the $2,000 to me before July 1." On June 18, the owner replied, "I will settle for $1,800 provided you agree to repaint the porch." The contractor did not reply to this letter.

Thereafter the owner mailed a check for $1,800 marked "Payment in full on the painting contract as per letter dated June 18." The contractor received the check on June 30. Because he was badly in need of money, the contractor cashed the check without objection and spent the proceeds but has refused to repaint the porch.

After cashing the check the contractor sued the owner for $200.00. The contractor probably will

A: succeed, because he can prove that he had painted the porch according to specifications.
B: succeed, because he cashed the check under economic duress.
C: not succeed, because he cashed the check without objection.
D: not succeed, because he is entitled to recover only the reasonable value of his services.

The explanation for the answer is:

Answer C is correct. A promise to settle a claim may be consideration to support a return promise so long as there is a good faith dispute over the validity of the claim. The owner's June 18th letter, together with his check for $1,800 with the notation "payment in full" is an offer of accord and satisfaction. The contractor accepted this offer when he retained and cashed the check without objection. In doing so, he waived his right to the remaining $200 from the original contract.

A is incorrect because even if the contractor can establish that he painted the porch according to contract specifications, the owner's good faith belief that the contractor had not painted the porch properly is sufficient consideration for his offer of settlement. B is incorrect because although the contractor is in need of money, he has a reasonable alternative - he can refuse to make an accord and instead file a lawsuit for payment pursuant to the terms of the original agreement. D is incorrect because expectation damages, not reliance damages, are the standard measure of recovery in breach of contract claims.

Question 7 - Contracts - Consideration

The question was:

A contractor had painted an owner's house under a contract which called for payment of $2,000. The owner, contending in good faith that the porch had not been painted properly, refused to pay anything.

On June 15, the contractor mailed a letter to the owner stating, "I am in serious need of money. Please send the $2,000 to me before July 1." On June 18, the owner replied, "I will settle for $1,800 provided you agree to repaint the porch." The contractor did not reply to this letter.

Thereafter the owner mailed a check for $1,800 marked "Payment in full on the painting contract as per letter dated June 18." The contractor received the check on June 30. Because he was badly in need of money, the contractor cashed the check without objection and spent the proceeds but has refused to repaint the porch.

In an action by the owner against the contractor for any provable damages the owner sustained because the porch was not repainted, he probably will

A: succeed, because by cashing the check the contractor impliedly promised to repaint the porch.
B: succeed, because the contractor accepted the owner's offer by not replying to the letter of June 18.
C: not succeed, because the owner's letter of June 18 was a counter-offer which the contractor never accepted.
D: not succeed, because there is no consideration to support the contractor's promise, if any.

The explanation for the answer is:

Answer A is correct. A promise to settle a claim may be consideration to support a return promise so long as there is a good faith dispute over the validity of the claim. The owner's June 18 letter, read in conjunction with the $1,800 check marked "payment in full," is an offer of accord and satisfaction which was accepted when the contractor cashed the check. The contractor's implicit promise to repaint the porch was supported by consideration - the owner's promise to settle the claim for $1,800. When the contractor cashed the check marked "Payment in full as per letter dated June 18," he implicitly accepted the accord (the offer to settle for $1,800 in exchange for the promise to repaint).

D is incorrect because the owner's promise to settle was sufficient consideration to support the contractor's promise. C is incorrect because the contractor cashing the check manifested assent to the settlement terms. B is incorrect because normally mere inaction will not be construed as an acceptance.

Question 24 - Contracts - Conditions

The question was:

An agent engaged an inexperienced actress to do a small role in a new Broadway play for a period of six months at a salary of $200 a week. The actress turned down another role in order to accept this engagement. On the third day of the run, the actress was hospitalized with influenza and a replacement was hired to do the part. A week later, the actress recovered, but the agent refused to accept her services for the remainder of the contract period. The actress then brought an action against the agent for breach of contract.

Which of the following is the actress's best legal theory?

A: Her acting contract with the agent was legally severable into weekly units.
B: Her performance of the literal terms of the contract was physically impossible.
C: Her reliance on the engagement with the agent by declining another acting role created an estoppel against the agent.
D: Her failure to perform for one week was not a material failure so as to discharge the agent's duty to perform.

The explanation for the answer is:

Answer D is correct. Under the doctrine of constructive conditions, a party's material breach of an obligation, if uncured, may discharge the other party's obligation under the contract. Therefore, the agent's obligation may only be discharged if the actress's inability to perform for one week is found to be a material breach. Whether the breach will be found to be material will depend on a number of factors, including the prospect that the actress may cure the breach, whether damages are available to compensate the agent for the harm suffered and the degree to which the actress's failure to perform substantially deprived the agent of his expected benefit under the contract. If the actress is found *not* to have materially breached, then the agent's failure to accept her services for the remainder of the engagement would in turn be found to be a material breach.

D offers the best legal theory because none of the other answers offers the actress a basis for arguing breach. A is incorrect because, even if the contract were severable, it is not relevant to whether the agent's remaining obligation to engage the actress may be discharged. B is incorrect because, although impossibility of performance could provide a basis for excuse for the actress, it would not support the actress's argument that the agent breached the contract. C is incorrect because the issue presented is not whether the agent owed a duty to the actress on the basis of reliance or otherwise (he clearly did, based on the agreement between them), but rather whether the agent breached that duty.

Question 25 - Contracts - Conditions

The question was:

An agent engaged an inexperienced actress to do a small role in a new Broadway play for a period of six months at a salary of $200 a week. The actress turned down another role in order to accept this engagement. On the third day of the run, the actress was hospitalized with influenza and a replacement was hired to do the part. A week later, the actress recovered, but the agent refused to accept her services for the remainder of the contract period. The actress then brought an action against the agent for breach of contract.

Which of the following, if true, would adversely affect the actress' rights in her action against the agent?

A: The agent could only find one replacement, who demanded a contract for a minimum of six months if she was to perform at all.
B: The replacement, by general acclaim, was much better in the role than the original actress had been.
C: The agent had offered the original actress a position as the replacement's understudy at a salary of $100 a week, which the original actress declined.
D: The agent had offered the actress a secretarial position at a salary of $300 a week, which the actress declined.

The explanation for the answer is:

Answer A is correct. Under the doctrine of constructive conditions, a party's material breach of an obligation, if uncured, may have the effect of discharging the other party's obligation under the contract. Therefore, the agent's obligation may only be discharged if the actress's inability to perform for one week is found to be a material breach. Whether the breach will be found to be material will depend on a number of factors, including the prospect that the actress will cure the breach, whether damages are available to compensate the agent for the harm suffered and the degree to which the actress's failure to perform substantially deprived the agent of his expected benefit under the contract. The fact that the agent could only find a replacement who demanded a six-month contract speaks to the extent of the loss to the agent due to the actress's absence, and suggests that he was justified in withholding his own performance.

B is incorrect because the fact that the replacement may have been a better actress suggests that any breach by the original actress was partial, because the agent was easily made whole during the actress's absence. C and D are incorrect because the agent's offer of substitute employment is not relevant to whether the agent was justified in withholding the position that he promised to give the actress - he would only be so justified if the actress materially breached the contract.

Question 35 - Contracts - Parol Evidence and Interpretation

The question was:

On March 1, a seller orally agreed to sell his land, Homestead, to a buyer for $46,000 to be paid on March 31. The buyer orally agreed to pay $25,000 of the purchase price to a creditor of the seller in satisfaction of a debt which the seller said he had promised to pay the creditor.

On March 10, the buyer dictated the agreement to his secretary but omitted all reference to the payment of the $25,000 to the creditor. In typing the agreement, the secretary mistakenly typed in $45,000 rather than $46,000 as the purchase price. Neither the buyer nor the seller carefully read the writing before signing it on March 15. Neither noticed the error in price and neither raised any question concerning omission of the payment to the creditor.

Which of the following would be most important in deciding an action by the creditor against the buyer for $25,000?

A: Whether the buyer-seller agreement was completely integrated.
B: Whether the buyer was negligent in not having carefully read the written agreement.
C: Whether the seller was negligent in not having carefully read the written agreement.
D: Whether the creditor was a party to the contract.

The explanation for the answer is:

Answer A is correct. The parol evidence rule bars extrinsic evidence of a prior agreement where the prior agreement contradicts the terms of a final written agreement or where the prior agreement purports to add to a completely integrated agreement (*i.e.*, one that is intended by the parties to be both the final and exclusive manifestation of the parties' understanding). The buyer and the seller entered into a final written agreement that was silent with respect to the verbal promise that the creditor seeks to enforce (the buyer's promise to repay the seller's debt). Because the writing was silent with respect to this, the creditor seeks to supplement, rather than contradict, the writing with extrinsic evidence of the promise. Therefore, whether the promise will be admissible hinges on whether the writing was a complete integration.

B and C are incorrect because the parol evidence rule may apply to exclude evidence of the promise regardless of whether the parties were negligent in reading the final writing. D is incorrect because even if the creditor was not a party to the contract, the creditor may be able to recover as an intended third-party beneficiary.

Question 36 - Contracts - Third-Party Rights

The question was:

On March 1, a seller orally agreed to sell his land, Homestead, to a buyer for $46,000 to be paid on March 31. The buyer orally agreed to pay $25,000 of the purchase price to a creditor of the seller in satisfaction of a debt which the seller said he had promised to pay the creditor.

On March 10, the buyer dictated the agreement to his secretary but omitted all reference to the payment of the $25,000 to the creditor. In typing the agreement, the secretary mistakenly typed $45,000 rather than $46,000 as the purchase price. Neither the buyer nor the seller carefully read the writing before signing it on March 15. Neither noticed the error in price and neither raised any question concerning omission of the payment to the creditor.

In an action by the creditor against the buyer for $25,000, which of the following, if proved, would best serve the buyer as a defense?

A: There was no consideration to support the seller's antecedent promise to pay the creditor the $25,000.
B: On March 5, before the creditor was aware of the oral agreement between the seller and the buyer, the seller agreed with the buyer not to pay any part of the purchase price to the creditor.
C: Whatever action the creditor may have had against the buyer was barred by the statute of limitations prior to March 1.
D: Before he instituted his action against the buyer, the creditor had not notified either the buyer or seller that he had accepted the buyer-seller arrangement for paying the creditor.

The explanation for the answer is:

Answer B is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise. The promisor and promisee retain the power to modify or discharge a duty owed to an intended beneficiary until the beneficiary's rights vest. The beneficiary's rights will vest if he manifests assent to or materially changes his position in justifiable reliance on the promise before receiving notice of the discharge. Since the promise at issue is the buyer's promise to pay $25,000 "to the creditor," the creditor is an intended beneficiary because the performance flows directly to him. However, if the buyer and seller later agree not to pay any of the purchase price to the creditor before the creditor was aware of the contract, that agreement would be effective in discharging the creditor's rights as an intended beneficiary because those rights would not have vested.

A is incorrect because what matters is whether the buyer's promise is supported by consideration (which it was); it is irrelevant whether the seller's promise to the creditor was so supported. C is incorrect because the creditor's rights as an intended beneficiary is based on an agreement that was only effective on March 1. The statute of limitations does not run on a third-party claim simply because the contract is completed. D is incorrect because bringing suit to enforce the promise causes the rights to vest; no other notification is necessary.

Question 37 - Contracts - Parol Evidence and Interpretation

The question was:

On March 1, a seller orally agreed to sell his land, Homestead, to the buyer for $46,000 to be paid on March 31. The buyer orally agreed to pay $25,000 of the purchase price to a creditor of the seller in satisfaction of a debt which the seller said he had promised to pay the creditor.

On March 10, the buyer dictated the agreement to his secretary but omitted all reference to the payment of the $25,000 to the creditor. In typing the agreement, the secretary mistakenly typed $45,000 rather than $46,000 as the purchase price. Neither the buyer nor the seller carefully read the writing before signing it on March 15. Neither noticed the error in price and neither raised any question concerning omission of the payment to the creditor.

If the buyer refused to pay more than $45,000 for Homestead, in an action by the seller against the buyer for an additional $1,000, it would be to the seller's advantage to try to prove that

A: the writing was intended only as a sham.
B: the writing was only a partial integration.
C: there was a mistake in integration.
D: there was a misunderstanding between the seller and the buyer concerning the purchase price.

The explanation for the answer is:

Answer C is correct. The parol evidence rule bars the introduction of evidence of an agreement made prior to the adoption of a final writing if the prior agreement relates to matters within the scope of that writing. However, where a clerical error has been made in reducing an agreement to writing, a party may bring an action in equitable reformation to have the writing reformed to correct the error or to include an omitted provision. The parol evidence rule does not bar the introduction of evidence to show the mistake that provides the basis for reformation. Therefore, if the buyer and the seller verbally agreed that the buyer would pay $46,000 in exchange for Homestead but the writing stated $45,000 due to an error in transcription, the seller may seek to have the writing reformed on grounds of mistake.

A is incorrect because the extrinsic evidence does not support the suggestion that the writing is a sham. B is incorrect because evidence that the actual agreed price for Homestead was $46,000 contradicts the writing, and therefore extrinsic evidence would likely be excluded regardless of whether the agreement was only partially integrated. D is incorrect because a proving a misunderstanding about the purchase price would not provide a defense to enforcing the agreement as written.

Question 60 - Contracts - Consideration

The question was:

While negligently driving his father's uninsured automobile, the 25-year-old son crashed into an automobile driven by a woman. Both the son and the woman were injured. The father, erroneously believing that he was liable because he owned the automobile, said to the woman: "I will see to it that you are reimbursed for any losses you incur as a result of the accident." The father also called a physician and told him to take care of the woman and that he would pay the bill.

The son, having no assets, died as a result of his injuries. One of the son's creditors wrote to the father stating that his son owed him a clothing bill of $200 and that he was going to file a claim against the son's estate. The father replied: "If you don't file a claim against my son's estate, I will pay what he owed you."

In an action by the woman against the father for wages lost while she was incapacitated as a result of the accident, which of the following would be the father's best defense?

A: Lack of consideration
B: Mistake of fact as to basic assumption
C: Statute of Frauds
D: Indefiniteness of the father's promise

The explanation for the answer is:

Answer A is correct. Generally, valuable consideration on both sides of the bargain is required for an enforceable contract. Here, the woman has given no consideration for the father's promise that the woman will be reimbursed. Furthermore, there is no evidence that the woman detrimentally relied on the promise so the man will not be estopped from not performing. Since there was no consideration, and promissory estoppel is not applicable, the father's promise will not be enforceable due to lack of consideration.

B is incorrect because if the father's mistake of fact was unilateral, then the mistake will not prevent the formation of a contract. If the mistake of fact was mutual, the contract will still be enforceable as the father bore the risk that his assumption about his liability was incorrect. C is incorrect because the father's promise does not fall under the Statute of Frauds; it is not a suretyship agreement because the father believed he was vicariously liable. D is incorrect because a promise is sufficiently definite if it provides a basis for determining breach and for giving a remedy. Thus, the father's promise to pay for "any losses…as a result of the accident" is sufficiently definite.

Question 61 - Contracts - Consideration

The question was:

While negligently driving his father's uninsured automobile, the 25-year-old son crashed into an automobile driven by a woman. Both the son and the woman were injured. The father, erroneously believing that he was liable because he owned the automobile, said to the woman: "I will see to it that you are reimbursed for any losses you incur as a result of the accident." The father also called a physician and told him to take care of the woman and that he would pay the bill.

The son, having no assets, died as a result of his injuries.

Which of the following provides most significant information in determining whether or not there was bargained-for consideration to support the father's promise to the physician?

A: The physician had not begun treating the woman before the father called him.
B: The father had a contract with the woman.
C: The father had a contract with the woman and the physician had not begun treating the woman before the father called him.
D: None of the above answers provide information relevant to whether there was bargained-for consideration for the father's promise to the physician.

The explanation for the answer is:

Answer C is correct. If an action was already performed before the promise was made, it will not qualify as consideration because it was not "bargained-for." Therefore, if the father's promise to pay the physician was made after the physician began treating the woman, then the physician's treatment of the woman will not constitute consideration.

When a preexisting duty was owed to a third party, courts may hold that a new promise to do the same action is not sufficient as consideration. If the father had a contract with the woman to pay for all losses, then he had a preexisting duty to pay the doctor. Therefore, the father's subsequent promise to the doctor to pay the bill may not constitute consideration as he was already obligated to pay under his contract with the woman. Thus, the father's promise to pay was not bargained-for in exchange for the physician's promise to treat the woman. Since both the timing of the father's call and the existence of a contract between the woman and the father are significant in determining whether there was bargained-for consideration to support the father's promise to pay the physician, C is correct while A, B, and D are incorrect.

Question 62 - Contracts - Third-Party Rights

The question was:

While negligently driving his father's uninsured automobile, the 25-year-old son crashed into an automobile driven by a woman. Both the son and the woman were injured. The father, erroneously believing that he was liable because he owned the automobile, said to the woman: "I will see to it that you are reimbursed for any losses you incur as a result of the accident." The father also called a physician and told him to take care of the woman and that he would pay the bill.

The son, having no assets, died as a result of his injuries. One of the son's creditors wrote to the father stating that the son owed him a clothing bill of $200 and that he was going to file a claim against the son's estate. The father: "If you don't file a claim against my son's estate, I will pay what he owed you."

If the physician discontinued treating the woman before she had fully recovered and the woman brought an action against the physician for breach of contract, which of the following arguments, if any, by the physician would probably be effective in defense?

A: The woman furnished no consideration, either express or implied.
B: The physician's contract was with the father and not with the woman.
C: Whatever contract the physician may have had with the woman was discharged by novation on account of the agreement with the father.
D: None of the above

The explanation for the answer is:

Answer D is correct. Answer A is not an effective defense because there was bargained-for consideration provided by another party. It is immaterial that the consideration was provided by the father instead of the beneficiary (the woman). Thus, answer A is incorrect.

Answer B is not an effective defense because although the woman was not a party to the contract between the father and the physician, she is an intended third-party beneficiary. The woman can enforce the contract because her rights as an intended third-party beneficiary vested when she went to the physician for treatment. Thus, answer B is incorrect.

Answer C is not an effective defense because a novation is an express agreement by all parties to substitute a new party for an original party to the contract. Here, the woman is not being substituted for the father, she is merely an intended third-party beneficiary. Thus, answer C is incorrect. Because answers A, B, and C are incorrect, answer D is correct.

Question 63 - Contracts - Consideration

The question was:

While negligently driving his father's uninsured automobile, the 25-year-old son crashed into an automobile driven by the woman. Both the son and the woman were injured. The father erroneously believing that he was liable because he owned the automobile, said to the woman: "I will see to it that you are reimbursed for any losses you incur as a result of the accident." The father also called a physician and told him to take care of the woman and that he would pay the bill.

The son, having no assets, died as a result of his injuries. One of the son's creditors wrote to the father stating that the son owed him a clothing bill of $200 and that he was going to file a claim against the son's estate. The father replied: "If you don't file a claim against my son's estate, I will pay what he owed you."

If the creditor did not file action against the son's estate, would the creditor succeed in an action against the father for $200?

A: Yes, because the creditor had detrimentally relied on the father's promise.
B: Yes, because the father's promise was supported by a bargained-for exchange.
C: No, because the creditor's claim against the son's estate was worthless.
D: No, because the father at most had only a moral obligation to pay the son's debts.

The explanation for the answer is:

Answer B is correct. The father sought the creditor's forbearance in exchange for the father's promise to pay the creditor. It makes no difference that the creditor's consideration benefited a third party instead of the father.

A is not the best answer because promissory estoppel based on detrimental reliance is only relevant when there is not an enforceable contract. Since there is an enforceable contract between the father and the creditor, detrimental reliance will not be the basis for the success of the creditor's action. C is incorrect because if the creditor believed in good faith that his claim against the son's estate was valid, then the forbearance of his legal right to sue is adequate consideration. D is incorrect because the father's payment is not based on his moral obligation. Instead, the father's promise to the pay the creditor was made in exchange for the creditor's promise not to exercise his legal right to bring suit against the son's estate.

Question 64 - Contracts - Consideration

The question was:

While negligently driving his father's uninsured automobile, the 25-year-old son crashed into an automobile driven by the woman. Both the son and the woman were injured. The father, erroneously believing that he was liable because he owned the automobile, said to the woman: "I will see to it that you are reimbursed for any losses you incur as a result of the accident." The father also called a physician and told him to take care of the woman and that he would pay the bill.

The son, having no assets, died as a result of his injuries. One of the son's creditors wrote to the father stating that the son owed him a clothing bill of $200 and that he was going to file a claim against the son's estate. The father replied: "If you don't file a claim against my son's estate, I will pay what he owed you."

The father honestly believed that he did not owe the creditor anything and at first refused to pay anything to the creditor. If the creditor, honestly believing that the father owed him $200, then accepts $150 from the father in settlement of the claim, will the creditor succeed in an action against the father for the remaining $50?

A: Yes, because the son's debt of $200 was liquidated and undisputed.
B: Yes, because the creditor honestly believed that he had a legal right against the father for the full $200.
C: No, because the father honestly believed that the creditor did not have a legal right against him for the $200.
D: No, because the father was not contractually obligated to pay the creditor $200 in the first place.

The explanation for the answer is:

Answer C is correct. The creditor will not succeed against the father because the original contract has been discharged through accord and satisfaction. Partial payment of an original debt will satisfy as an accord and satisfaction if there is a bona fide dispute about the validity of the claim. Here, the father honestly did not believe that he owed the creditor. Therefore, the creditor's acceptance of $150 from the father "in settlement of the claim" is a valid accord and satisfaction, resulting in the discharge of the original contract. Thus, the creditor is not entitled to the remaining $50.

A is incorrect because the fact that the son's debt to the creditor was undisputed does not prevent the father's use of accord and satisfaction if the father believes in good faith that he does not owe the creditor. B is incorrect because the creditor's honest belief will not prevent the discharge of the original debt by accord and satisfaction if the creditor accepts the payment without reservation. D is incorrect because if the creditor believed in good faith that his claim against the son's estate was valid, then the creditor's forbearance of his legal right to sue was adequate consideration for the father's promise to pay $200.

Question 72 - Contracts - Parol Evidence and Interpretation

The question was:

On March 1, a computer programming company orally agreed with a department store to write a set of programs for the department store's computer and to coordinate the programs with the department store's billing methods. A subsequent memo, signed by both parties, provided in its entirety:

The department store will pay the computer programming company $20,000 in two equal installments within one month of completion if the computer programming company is successful in shortening by one-half the processing time for the financial transactions now handled on the department store's Zenon 747 computer; the computer programming company to complete by July 1. This agreement may be amended only by a signed writing. On June 6, the computer programming company demanded $10,000, saying the job was one-half done. After the department store denied liability, the parties orally agreed that the department store should deposit $20,000 in escrow, pending completion to the satisfaction of the department store's computer systems manager.

On July 5, the computer programming company completed the programs. Tests showed that the computer programs cut processing time by only 47 percent. The department store's computer systems manager refused in good faith to certify satisfactory completion. The department store requested the escrow agent to return the $20,000 and asserted that nothing was owed to the computer programming company even though the department store continued to use the programs.

If the computer programming company in fact had half-completed the job on June 6, would it then have been entitled to $10,000?

A: Yes, because June 6 was within one month of completion
B: Yes, because the computer programming company had done one-half the job.
C: No, because of a constructive condition precedent requiring at least substantial completion of the work before the department store would have a duty to pay.
D: No, because "within one month of completion" would, in these circumstances, be interpreted to mean "within one month after completion."

The explanation for the answer is:

Answer D is correct. The rules of contract construction dictate that the courts will construe words according to their ordinary meaning unless it is clear that they were meant to be used in a technical sense. While "within one month of completion" could be technically interpreted to refer to the month before the completion, there is no indication that these words were meant to be used in the technical sense. Therefore, the phrase will be given its ordinary meaning, that the payment will be received within one month after completion of the project.

Answers A and B are incorrect because both improperly rely on a technical reading of the contract language. Answer C is incorrect. Courts will read a constructive condition precedent regarding timing into the contract when one performance will take a period of time to complete while the other can be completed in an instant. In such a case, the court will make the completion of the longer performance a constructive condition precedent to the execution of the shorter performance. However, in this contract the timing of the department store's payment is subject to an express condition, and since that condition does not violate the interest of fairness, the court will not read a constructive condition regarding timing into the contract.

Question 79 - Contracts - Consideration

The question was:

An assistant professor was hired by a college to teach mathematics and he is now in his third consecutive one-year contract. Under state law he cannot acquire tenure until after five consecutive annual contracts. In his third year, the assistant professor was notified that he was not being rehired for the following year. Applicable state law and college rules did not require either a statement of reasons or a hearing, and in fact neither was offered to the assistant professor.

Which of the following, if established, sets forth the strongest argument the assistant professor could make to compel the college to furnish him a statement of reasons for the failure to rehire him and an opportunity for a hearing?

A: There is no evidence that tenured teachers are any more qualified than he is.
B: He leased a home in reliance on an oral promise of reemployment by the college president.
C: He was the only teacher at the college whose contract was not renewed that year.
D: In the expectation of remaining at the college, he had just moved his elderly parents to the town in which college is located.

The explanation for the answer is:

Answer B is correct. If the assistant professor leased a home in response to an oral promise of reemployment by the college president, this establishes detrimental reliance on the part of the assistant professor and would provide a substitute for consideration. Since the president should have expected to induce action with his promise, a statement of reasons and a hearing may be necessary to determine a just remedy. See First Restatement of Contracts section 90.

A is incorrect because the experience of a tenured professor is irrelevant. C is incorrect because he had no contractual rights to renewal and no contractual rights to a hearing or statement of reasons. D is incorrect because the assistant professor's subjective expectation of renewal would not be sufficient to compel the college to furnish him a statement of reasons or a hearing.

Question 83 - Contracts - Defenses to Enforceability

The question was:

An elderly widower lived alone on a small farm which he owned. Except for the farm, including the house and its furnishings, the widower owned substantially no property. Under proper management, the farm was capable of producing an adequate family income, but the widower was unable to do farm work or even to provide for his own personal needs. The widower entered into an oral contract with his nephew by which the widower agreed to convey the farm to his nephew if the nephew moved into the house with the widower, operated the farm, and took care of the widower for the rest of his life. The oral contract was silent as to when the land was to be conveyed. The nephew, who lived about fifty miles away where he was operating a small business of his own, terminated his business and moved in with the widower. With the assistance of his wife, the nephew gave the widower excellent care until the widower died intestate about five years after the date of the contract.

In his final years the widower was confined to his bed and required much personal service of an intimate and arduous sort. The widower was survived by his only son who was also the widower's sole heir. The son resided in a distant city and gave his father no attention in his father's final years. The son showed up for the widower's funeral and demanded that the nephew vacate the farm immediately. Upon the nephew's refusal to do so, the son brought an appropriate action for possession. The nephew answered by way of a counterclaim to establish the nephew's right to possession and title to the farm.

If the court's decision is in favor of the nephew, it will be because

A: the land is located in a state where the Statute of Frauds will not be applied if there has been such part performance as will result in an irreparable hardship if the contract is not performed.
B: the land is located in a state where the Statute of Frauds will not be applied if there has been such part performance that is by its very nature unequivocally referable to the contract.
C: the son is precluded by the "clean hands" doctrine from enforcing his claim against the nephew.
D: the blood relationship of uncle-nephew is sufficient to remove the necessity for any writing to satisfy the Statute of Frauds.

The explanation for the answer is:

Answer A is correct. Part performance standing alone does not make a contract that is within the Statute of Frauds enforceable. Those jurisdictions adopting the approach in Restatement section 129 allow specific enforcement of a promise to convey land if the party seeking enforcement "in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can only be avoided by specific enforcement." The nephew's reliance and hardship are demonstrated by the following facts: The nephew terminated his business and moved fifty miles to care for the widower and fully performed by continuing to care for the widower for five years, the final years of which required "intimate and arduous care."

B is incorrect because although the nephew moved onto the property with the widower, the nephew did not take sole possession and make improvements or other such acts as would unequivocally refer to the contract for the transfer of title to the land. C is incorrect because the son did not engage in inequitable conduct in a transaction with the nephew. The "clean hands doctrine" applies only if inequitable conduct relates to the transaction for which he seeks relief - the oral agreement between the nephew and the widower. D is incorrect because a blood relationship does not remove a transaction from the Statute of Frauds and, in fact, may require stronger evidence that the transaction was a contract.

Question 98 - Contracts - Formation of Contracts

The question was:

During 2006 a series of arsons, one of which damaged a huge store, occurred in a city. In early 2007 the city's City Council adopted this resolution:

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here. The foregoing was telecast by the city's sole television station once daily for one week. Subsequently, the store, by a written memorandum to a private detective, proposed to pay the detective $200 "for each day's work you actually perform in investigating our fire." Thereafter in August, 2007, the City Council by resolution repealed its reward offer and caused this resolution to be broadcast once daily for a week over two local radio stations, the local television station having meanwhile ceased operations. In September, 2007, an employee of the store voluntarily confessed to the detective to having committed all of the 2006 arsons. The store's president thereupon paid the detective at the proposed daily rate for his investigation and suggested that the detective also claim the city's reward, of which the detective had been previously unaware. The detective immediately made the claim. In December, 2007, as a result of the detective's investigation, the store's employee was convicted of burning the store. The city, which has no immunity to suit, has since refused to pay the detective anything, although he swears that he never heard of the city's repealer before claiming its reward.

In which of the following ways could the city reward offer be effectively accepted?

A: Only by an offeree's return promise to make a reasonable effort to bring about the arrest and conviction of an arsonist within the scope of the offer.
B: Only by an offeree's making the arrest and assisting in the successful conviction of an arsonist within the scope of the offer.
C: By an offeree's supplying information leading to arrest and conviction of an arsonist within the scope of the offer.
D: By an offeree's communication of assent through the same medium (television) used by the city in making its offer.

The explanation for the answer is:

Answer C is correct. The resolution is an offer of a reward made to the general public. A reasonable interpretation of its words and the circumstances surrounding its broadcast on television indicate that it is inviting anyone to provide the information necessary to arrest and convict.

A is incorrect because the language of the reward and the nature of a reward indicate that performance is invited and not promissory acceptance. B is incorrect because it is not reasonable to interpret the words of the reward as requiring actual arrest and participation in the prosecution of an individual when the offer of reward receives such widespread broadcast to the general public. D is incorrect because in order for an offer to require a particular mode of acceptance, it must be clearly stated in the offer. If the offer is silent as to mode of acceptance, a test of reasonableness applies. It would not be reasonable to require such an unorthodox and unavailable mode of acceptance. In this case, a reasonable interpretation of the offer is to require performance, not a promissory acceptance.

Question 99 - Contracts - Formation of Contracts

The question was:

During 2006 a series of arsons, one of which damaged a huge store, occurred in a city. In early 2007 the city's City Council adopted this resolution:

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here. The foregoing was telecast by the city's sole television station once daily for one week. Subsequently, the store, by a written memorandum to a private detective, proposed to pay the detective $200 "for each day's work you actually perform in investigating our fire." Thereafter in August, 2007, the City Council by resolution repealed its reward offer and caused this resolution to be broadcast once daily for a week over two local radio stations, the local television station having meanwhile ceased operations. In September, 2007, an employee of the store voluntarily confessed to the detective to having committed all of the 2006 arsons. The store's president thereupon paid the detective at the proposed daily rate for his investigation and suggested that the detective also claim the city's reward, of which the detective had been previously unaware. The detective immediately made the claim. In December, 2007, as a result of the detective's investigation, the store's employee was convicted of burning the store. The city, which has no immunity to suit, has since refused to pay the detective anything, although he swears that he never heard of the city's repealer before claiming its reward.

With respect to duration, the city's reward offer was terminable

A: by lapse of time, on December 31 of the year in which it was made.
B: not by lapse of time, but only by effective revocation.
C: not by revocation, but only by lapse of a reasonable time.
D: either by lapse of a reasonable time or earlier by effective revocation.

The explanation for the answer is:

Answer D is correct. Revocation of general offers made to the public must be given publicity equal to that given to the offer and no better means of notification should be reasonably available. If the offer is not revoked, as with ordinary offers, a general offer will lapse after a reasonable time. A is incorrect because the offer was also revocable and there are no facts to support that December 31st was a reasonable time as to lapse. B is incorrect because the rules of lapse also apply to general offers made to the public. C is incorrect because general offers may be revoked so long as the revocation is given publicity equal to that given the offer and no better means of notification of revocation is reasonably available.

Question 101 - Contracts - Formation of Contracts

The question was:

During 2006 a series of arsons, one of which damaged a huge store, occurred in a city. In early 2007 the city's City Council adopted this resolution:

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here. The foregoing was telecast by the city's sole television station once daily for one week. Subsequently, the store, by a written memorandum to a private detective, proposed to pay the detective $200 "for each day's work you actually perform in investigating our fire." Thereafter in August, 2007, the City Council by resolution repealed its reward offer and caused this resolution to be broadcast once daily for a week over two local radio stations, the local television station having meanwhile ceased operations. In September, 2007, an employee of the store voluntarily confessed to the detective to having committed all of the 2006 arsons. The store's president thereupon paid the detective at the proposed daily rate for his investigation and suggested that the detective also claim the city's reward, of which the detective had been previously unaware. The detective immediately made the claim. In December, 2007, as a result of the detective's investigation, the store's employee was convicted of burning the store. The city, which has no immunity to suit, has since refused to pay the detective anything, although he swears that he never heard of the city's repealer before claiming its reward.

Which of the following best characterizes the relationship between the store and the detective?

A: A unilateral offer of employment by the store which became irrevocable for a reasonable number of days after the detective commenced his investigation of the store's arson.
B: An employment for compensation subject to a condition precedent that the detective succeeds in his investigation.
C: A series of daily bilateral contracts, the store exchanging an express promise to pay the daily rate for the detective's implied promise to pursue his investigation with reasonable diligence.
D: A series of daily unilateral contracts, the store exchanging an express promise to pay the daily rate for the detective's daily activity of investigating the store's arson.

The explanation for the answer is:

Answer D is correct. The written memorandum called for the detective to "perform" by "investigating the fire." Thus, it was unilateral, and it specified a daily rate of pay for "each day's work."

A is incorrect because an option contract at law is created when the offeree begins performance in response to a unilateral offer, which makes the offer irrevocable to allow the offeree a reasonable opportunity to complete performance. Given the language "for each day's work you actually perform," a reasonable opportunity would not extend beyond a single day. B is incorrect because the language does not expressly require that the detective successfully investigate before the duty to pay will arise, but instead states that the detective will be paid for each day's investigation. C is incorrect because the language of the offer calls for performance, not a promise, and every contract, whether unilateral or bilateral, imposes upon parties a duty of good faith and fair dealing in its performance and its enforcement.

Question 152 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

On March 1, a mechanic agreed to repair an owner's machine for $5,000, to be paid on completion of the work. On March 15, before the work was completed, the mechanic sent a letter to the owner with a copy to the mechanic's creditor, telling the owner to pay $5,000 to the creditor. The mechanic then completed the work.

Which of the following, if true, would best serve the owner as a defense in an action brought against him by the creditor for $5,000?

A: The creditor was incapable of performing the mechanic's work.
B: The mechanic had not performed his work in a workmanlike manner.
C: On March 1, the mechanic had promised the owner that he would not assign the contract.
D: The creditor was not the intended beneficiary of the mechanic-owner contract.

The explanation for the answer is:

Answer B is correct. The mechanic was not entitled to payment unless he satisfied his contractual duties, and every contract for work or services contains an implied duty to perform in good faith or in a workmanlike manner. A is incorrect because the mechanic was not delegating his duties to the creditor under the contract; he was assigning his right to payment. C is incorrect because contract rights are freely assignable unless assignment is specifically precluded by the agreement, and the contract is silent as to assignment. D is incorrect because an assignee can recover from an obligor. If there was a valid assignment of payment to the creditor from the mechanic, and the mechanic performed, then the creditor can sue the owner for payment.

Question 153 - Contracts - Conditions

The question was:

A manufacturer of computers pays its salespeople a salary of $1,000 per month and a commission of 5 percent on billings actually rendered for machines that they sell. The manufacturer's sales people are employed at will under written agreements which provide that in order to receive a commission, the salesperson must be in the employment of the manufacturer when the bill is sent to the customer.

In 2006, a salesperson for the manufacturer worked for eight months to get an order from a large corporation for a $750,000 computer. He consulted extensively with the corporation's top executives and worked with its operating personnel to develop detailed specifications for the new equipment. He also promised the corporation, with the manufacturer's knowledge and approval, to assist the corporation for six months after installation in making the equipment work.

On January 1, 2007, the corporation signed an order, and on March 1, the computer was installed. On March 15, the manufacturer fired the salesperson on the stated ground that he had failed to meet his 2005 and 2006 sales quotas. The salesperson thought that the manufacturer was correct in this statement. A coworker was thereupon assigned to service the large corporation's account. On March 31, manufacturer billed the corporation for the computer.

Assume that the manufacturer's termination of the salesperson's employment was not wrongful. If the salesperson, after demand and refusal, sues the manufacturer for the corporation sale commission, which of the following is the most likely to result?

A: The salesperson will win, because he had procured the sale of the computer.
B: The salesperson will win, because he had promised the corporation that he would assist in making the equipment work.
C: The manufacturer will win, because the coworker is entitled to the commission on a *quantum meruit* basis.
D: The manufacturer will win, because the salesperson was not employed as the manufacturer's salesperson when the company was billed for the computer.

The explanation for the answer is:

Answer D is correct. An express contractual condition to recovery of the commission requires that a sales person be employed by the manufacturer when the bill is sent to the customer. A is incorrect because although the salesperson had procured the sale, his written employment agreement required that he also be employed by the manufacturer when the bill was sent to the customer. B is incorrect because the salesperson's oral promise to a third party cannot modify an express condition in his contract with his employer. C is also incorrect because although the coworker will be entitled to the sale commission, the express written contract with the manufacturer would be the basis of payment, not an equitable theory.

Question 154 - Contracts - Remedies

The question was:

A manufacturer of computers pays its salespeople a salary of $1,000 per month and a commission of 5 percent on billings actually rendered for machines that they sell. The manufacturer's sales people are employed at will under written agreements which provide that in order to receive a commission, the salesperson must be in the employment of the manufacturer when the bill is sent to the customer.

In 2006, a salesperson for the manufacturer worked for eight months to get an order from a large corporation for a $750,000 computer. He consulted extensively with the corporation's top executives and worked with its operating personnel to develop detailed specifications for the new equipment. He also promised the corporation, with the manufacturer's knowledge and approval, to assist the corporation for six months after installation in making the equipment work.

On January 1, 2007, the corporation signed an order, and on March 1, the computer was installed. On March 15, the manufacturer fired the salesperson on the stated ground that he had failed to meet his 2005 and 2006 sales quotas. The salesperson thought that the manufacturer was correct in this statement. A coworker was thereupon assigned to service the corporation account. On March 31, the manufacturer billed the corporation for the computer.

Assume that the manufacturer's termination of the salesperson's employment was not wrongful. If the salesperson sues the manufacturer for the reasonable value of his services, which of the following is the most likely result?

A: The salesperson will win, because the manufacturer benefited as a result of the salesperson's services.
B: The salesperson will win, because the manufacturer made an implied-in-fact promise to pay a reasonable commission for services that result in sales.
C: The salesperson will lose, because there is an express contractual provision pre-empting the subject of compensation for his services.
D: The salesperson will lose, because he cannot perform his agreement to assist the customer for six months.

The explanation for the answer is:

Answer C is correct. The express terms of the contract control the salesperson's right to recovery and his reasonable expectations. A is incorrect because the salesperson was being paid a monthly salary for his services. When the salesperson conferred a benefit to the manufacturer, he had no reasonable expectation of the sale commission unless he met the express terms of his agreement. B is incorrect because the manufacturer's express contract with the salesperson is inconsistent with an implied agreement to pay a reasonable commission, and the express language controls. D is incorrect because the salesperson's right to the commission is not dependent upon servicing the contract; rather, it is dependent upon his employment status on the date that the customer is billed.

Question 165 - Contracts - Third-Party Rights

The question was:

A new business enterprise about to commence the manufacture of clothing, entered into a written agreement to purchase all of its monthly requirements of a certain elasticized fabric for a period of three years from a fabric company at a specified unit price, and agreed upon delivery and payment terms. The agreement also provided:
1. The parties covenant not to assign this contract.

2. Payments coming due hereunder for the first two months shall be made directly by the new business enterprise to the creditor of the fabric company. The fabric company promptly made an "assignment of the contract" to a finance company as security for a $100,000 loan. The new enterprise subsequently ordered, took delivery of, and paid the fabric company the agreed price ($5,000) for the new enterprise's requirement of the fabric for the first month of its operation.

Assume that the assignment from the fabric company to the finance company was effective, and that the creditor did not become aware of the original agreement between the new business enterprise and the fabric company until after the fabric company's acceptance of the $5,000 payment from the new business enterprise. Which of the following is correct?

A: The creditor was an incidental beneficiary of the new business enterprise-fabric company agreement.
B: The creditor has a prior right to the new business enterprise's $5,000 payment as against either the fabric company or the finance company.
C: The creditor was an incidental beneficiary of the new business enterprise-fabric company agreement and has a prior right to the new business enterprise's $5,000 payment as against either the fabric company or the finance company.
D: The creditor was not an incidental beneficiary of the new business enterprise-fabric company agreement and does not have a prior right to the new business enterprise's $5,000 payment as against either the fabric company or the finance company.

The explanation for the answer is:

Answer D is correct. The creditor was not an incidental beneficiary of the new business enterprise-fabric company agreement because an incidental beneficiary is one who fortuitously and incidentally anticipates a benefit resulting from a transaction between others. Pursuant to the express language of the agreement, payments were to be made directly to the creditor for two months, rendering payment not fortuitous, but deliberately contemplated by the agreement. The creditor does not have a prior right to the new business enterprise's $5,000 payment as against either the fabric company or the finance company because although the creditor is an intended creditor beneficiary of the fabric company, it had no knowledge of its rights under the contract. Without knowledge, there could be no justifiable reliance or assent, so the right to payment under the contract had not vested. Therefore, D is correct, while A, B, and C are incorrect.

Question 166 - Contracts - Consideration

The question was:

A new business enterprise about to commence the manufacture of clothing entered into a written agreement to purchase all of its monthly requirements of a certain elasticized fabric for a period of three years from a fabric company at a specified unit price and agreed delivery and payment terms. The agreement also provided:
1. The parties covenant not to assign this contract.

2. Payments coming due hereunder for the first two months shall be made directly by the new business enterprise to the creditor of the fabric company. The fabric company promptly made an "assignment of the contract" to a finance company as security for a $100,000 loan. The new enterprise subsequently ordered, took delivery of, and paid the fabric company the agreed price ($5,000) for the new enterprise's requirement of the fabric for the first month of its operation.

Two weeks after making the $5,000 payment to the fabric company, the new business enterprise, by written notice to the fabric company, terminated the agreement for purchase of the elasticized fabric because market conditions had in fact forced the new business enterprise out of the clothing manufacture business. In an immediate suit by the finance company against the new business enterprise for total breach, which of the following would be useful in the new business enterprise's defense?

A: The fabric company's rights under its agreement with the new business enterprise were personal and therefore nonassignable.
B: The fabric company's "assignment of the contract" to the finance company to secure a loan would normally be interpreted as a delegation of the fabric company's duties under the contract as well as an assignment of its rights; and its duties, owed to the new business enterprise, were personal and therefore non-delegable.
C: The original contract between the new business enterprise and the fabric company was unenforceable by either party for want of legally sufficient consideration for the fabric company's promise to supply the new business enterprise's requirements of the elasticized fabric.
D: the new business enterprise ceased in good faith to have any further requirements for elasticized fabric.

The explanation for the answer is:

Answer D is correct. A party's obligations under a requirements contract subject to the UCC are measured by good faith. A shut-down by a requirements buyer due to lack of orders or market conditions meets the good faith standard.

A is incorrect because unless there are circumstances suggesting otherwise, a clause prohibiting the assignment of the "contract" will be construed as barring only the delegation of the assignor's duties. See UCC §2-210. Therefore, the clause would not affect the assignment of payment made by the fabric company to the finance company. Furthermore, a party's contractual right is only personal where the nature of the contract is such that the assignment would impair the other party's reasonable expectations or would offend public policy. Assignment of a right to payment of money is not the assignment of a personal right.

B is incorrect because the "assignment of the contract" was expressly made to a creditor of the fabric company. Rights are assigned and duties are delegated. The use of "assignment" language, and the fact that the assignment was made to a creditor, reasonably indicates that the fabric company did not delegate its duties under the contract. C is incorrect because consideration exists in the form of a legal detriment to the new business enterprise as the enterprise has parted with the legal right to buy elasticized fabric from another source.

Question 167 - Contracts - Discharge of Contractual Duties

The question was:

A landowner owned a vacant lot known as Richacre. The landowner entered into a written contract with a builder to build a house of stated specifications on Richacre and to sell the house and lot to the builder. The contract provided for an "inside date" of April 1, 2007 and an "outside date" of May 1, 2007, for completion of the house and delivery of a deed. Neither party tendered performance on the dates stated. On May 3, 2007, the builder notified the landowner in writing of the builder's election to cancel the contract because of the landowner's failure to deliver title by May 1. On May 12, the landowner notified the builder that some unanticipated construction difficulties had been encountered but that the landowner was entitled to a reasonable time to complete. The notification also included a promise that the landowner would be ready to perform by May 29 and that he was setting that date as an adjourned closing date. The landowner obtained a certificate of occupancy and appropriate documents of title, and he tendered performance on May 29. The builder refused. The landowner brought an action to recover damages for breach of contract. The decision in the case will most likely be determined by whether

A: The landowner acted with due diligence in completing the house.
B: The builder can prove actual "undue hardship" caused by the delay.
C: the expressions "inside date" and "outside date" are construed to make time of the essence.
D: there is a showing of good faith in the builder's efforts to terminate the contract.

The explanation for the answer is:

Answer C is correct. If this language is construed as making time of the essence, it becomes an express condition to the builder's obligation to pay. The landowner's failure to meet this condition would discharge the builder's duty to perform.

A is incorrect because acting with due diligence will not excuse the failure to perform on time if the nature of the contract makes timely performance essential. B is incorrect because proving the delay created an undue hardship on the buyer would not be a factor in determining if the failure of the landowner to provide timely performance was a material breach of the contract. D is incorrect because the builder's right to terminate is dependent upon whether the breach was material. The existence of good faith in the builder's efforts to terminate are irrelevant as there is no evidence that the builder attempted to frustrate timely completion.

Question 180 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A painter, who has been in the painting business for ten years and has a fine reputation, contracts to paint a farmer's barn. The farmer's barn is a standard red barn with a loft. The contract has no provision regarding assignment.

If the painter assigns the contract to a contractor, who has comparable experience and reputation, which of the following statements is correct?

A: The painter is in breach of contract.
B: The farmer may refuse to accept performance by the contractor.
C: The farmer is required to accept performance by the contractor.
D: There is a novation.

The explanation for the answer is:

Answer C is correct. Unless the contract provides otherwise, a contractual duty may be delegated to another unless the other party to the contract has a substantial interest in having the original obligor perform. Typically the other party will have a substantial interest where the contract is a personal services contract involving aesthetic taste and judgment. Although the painter-farmer contract is one for personal services (painting), the item to be painted is a standard barn and the work will be done by a painter of comparable experience and reputation. Therefore, the painter's delegation of the duty was not a breach, even if it was done without the consent of the farmer, and if the farmer refuses performance by the contractor, he will be in breach of contract. A and B are thus incorrect. D is incorrect because the mere delegation of a duty, does not create a novation; a novation would require an express agreement by all parties to substitute the contractor for the painter.

Question 181 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A painter, who has been in the painting business for ten years and has a fine reputation, contracts to paint the farmer's barn. The farmer's barn is a standard red barn with a loft. The contract has no provision regarding assignment.

If the painter assigns the contract to a contractor and thereafter the contractor does not meet the contract specifications in painting the farmer's barn, the farmer

A: has a cause of action against the painter for damages.
B: has a cause of action only against the contractor for damages.
C: has a cause of action against the painter for damages only after he has first exhausted his remedies against the contractor.
D: does not have a cause of action against the painter for damages, because he waived his rights against the painter by permitting the contractor to perform the work.

The explanation for the answer is:

Answer A is correct. Unless the other party to the contract (the farmer) agrees otherwise (*e.g.*, by executing a novation substituting the new obligor and releasing the original obligor of its duty), delegation of a contractual duty does not discharge the obligation of the delegating obligor (the painter). Therefore, where the duty to paint the farmer's barn has been delegated and the delegatee (the contractor) breaches the duty by failing to meet contract specifications, the farmer may enforce the contract against the original obligor (the painter).

B and D are incorrect because, although the farmer may also enforce the obligation against the contractor (since the farmer is the intended beneficiary of the agreement that delegated the duty), delegation does not discharge the painter of his obligation to the farmer. C is incorrect because the farmer has a right to enforce the obligation against either party.

Question 186 - Contracts - Remedies

The question was:

A buyer purchased 100 bolts of standard blue wool, No. 1 quality, from a seller. The sales contract provided that the buyer would make payment prior to inspection. The 100 bolts were shipped, and the buyer paid the seller. Upon inspection, however, the buyer discovered that the wool was No. 2 quality. The buyer thereupon tendered back the wool to the seller and demanded return of his payment. The seller refused on the ground that there is no difference between No. 1 quality wool and No. 2 quality wool.

Which of the following statements regarding the contract provision for preinspection payment is correct?

A: It constitutes an acceptance of the goods.
B: It constitutes a waiver of the buyer's remedy of private sale in the case of nonconforming goods.
C: It does not impair a buyer's right of inspection or his remedies.
D: It is invalid.

The explanation for the answer is:

Answer C is correct. Pursuant to UCC 2-512(2), if the contract requires payment before inspection, payment does not constitute acceptance or impair a buyer's right to inspect or any of the buyer's remedies. For this reason both A and B are incorrect. D is incorrect because such payment provisions are valid pursuant to UCC 2-512(1).

Question 187 - Contracts - Remedies

The question was:

A buyer purchased 100 bolts of standard blue wool, No. 1 quality, from a seller. The sales contract provided that the buyer would make payment prior to inspection. The 100 bolts were shipped, and the buyer paid the seller. Upon inspection, however, the buyer discovered that the wool was No. 2 quality. The buyer thereupon tendered back the wool to the seller and demanded return of his payment. The seller refused on the ground that there is no difference between No. 1 quality wool and No. 2 quality wool.

What is the buyer's remedy because the wool was nonconforming?

A: Specific performance
B: Damages measured by the difference between the value of the goods delivered and the value of conforming goods
C: Damages measured by the price paid plus the difference between the contract price and the cost of buying substitute goods
D: None, since he waived his remedies by agreeing to pay before inspection

The explanation for the answer is:

Answer C is correct because a buyer is entitled to reject nonconforming goods and to obtain damages pursuant to UCC 2-712(2), which is calculated as the difference between the cost of cover for substitute goods and the contract price. A is incorrect because there are no facts to support a conclusion that blue wool No. 1 quality is unique or that there are other proper circumstances pursuant to UCC 2-716(1), such as an inability to cover. B is incorrect. The difference between the value of the goods delivered and the value of conforming goods is the appropriate remedy under UCC 2-714 for accepted goods and the buyer tendered back the goods. D is also incorrect because payment prior to inspection does not constitute an acceptance or a waiver of any contract remedies under UCC 2-512(2).

Question 188 - Contracts - Remedies

The question was:

A buyer purchased 100 bolts of standard blue wool, No. 1 quality, from a seller. The sales contract provided that the buyer would make payment prior to inspection. The 100 bolts were shipped, and the buyer paid the seller. Upon inspection, however, the buyer discovered that the wool was No. 2 quality. The buyer thereupon tendered back the wool to the seller and demanded return of his payment. The seller refused on the ground that there is no difference between No. 1 quality wool and No. 2 quality wool.

Can the buyer resell the wool?

A: Yes, in a private sale.
B: Yes, in a private sale but only after giving the seller reasonable notice of his intention to resell.
C: yes, but only at a public sale.
D: No.

The explanation for the answer is:

Answer B is correct. Pursuant to UCC 2-711(3) and 2-706(3), the buyer had a security interest in the goods and had a right to resell. Thus, D is incorrect. A is incorrect because the buyer's right to resell at a private sale exists only if the seller is given reasonable notice. C is incorrect because the sale may be either public or private - UCC 2-706(2).

Question 199 - Contracts - Formation of Contracts

The question was:

Two salesmen, who lived in different suburbs twenty miles apart, were golfing acquaintances at the Interurban Country Club. Both were traveling salesmen--one for a pharmaceutical company and the other for a widget manufacturer. The pharmaceutical salesman wrote the widget salesman by United States mail on Friday, October 8:

I need a motorcycle for transportation to the country club and will buy your Sujocki for $1,200 upon your bringing it to my home address above [stated in the letterhead] on or before noon, November 12 next. This offer is not subject to countermand.

Sincerely,

[signed] the pharmaceutical salesman

The widget salesman replied by mail the following day:

I accept your offer, and promise to deliver the bike as you specified.

Sincerely,

[signed] the widget salesman

This letter, although properly addressed, was misdirected by the postal service and not received by the pharmaceutical salesman until November 10. The pharmaceutical salesman had bought another Sujocki bike from a different friend for $1,050 a few hours before.

The friend saw the widget salesman at the Interurban Country Club on November 11 and said: "I sold my Sujocki to the pharmaceutical salesman yesterday for $1,050. Would you consider selling me yours for $950?" The widget salesman replied: "I'll let you know in a few days."

On November 12, the widget salesman took his Sujocki to the pharmaceutical salesman's residence; he arrived at 11:15 a.m. The pharmaceutical salesman was asleep and did not answer the ringing doorbell until 12:15 p.m. The pharmaceutical salesman then rejected the widget salesman's bike on the ground that he had already bought someone else's bike.

In the pharmaceutical salesman's letter of October 8, what was the legal effect of the language: "This offer is not subject to countermand"?

A: Under the Uniform Commercial Code the offer was irrevocable until noon, November 12.
B: Such language prevented an effective acceptance by the widget salesman prior to noon, November 12.
C: At common law, such language created a binding option in the widget salesman's favor.
D: Such language did not affect the offeror's power of revocation of the offer.

The explanation for the answer is:

Answer D is correct. No consideration was paid for the option, and the pharmaceutical salesman is not a merchant, so the UCC's firm offer rule does not apply. Therefore, the language has no effect and the offer remained freely revocable.

A is incorrect because UCC 2-205 limits the firm offer rule to merchants. Because the pharmaceutical salesman does not deal in motorcycles or otherwise hold himself out by occupation as having knowledge or skill specific to the goods involved in the transaction, he will not be considered a merchant under the UCC. See (UCC 2-104).

B is incorrect because the language, "This offer is not subject to countermand," relates to the pharmaceutical

Question 199 - Contracts - Formation of Contracts

salesman's power as the offeror to revoke, not to the widget salesman's power of acceptance. C is incorrect because for an option promise to be enforceable at common law it must be supported by consideration.

Question 200 - Contracts - Formation of Contracts

The question was:

Two salesmen, who lived in different suburbs twenty miles apart, were golfing acquaintances at the Interurban Country Club. Both were traveling salesmen--one for a pharmaceutical company and the other for a widget manufacturer. The pharmaceutical salesman wrote the widget salesman by United States mail on Friday, October 8:

I need a motorcycle for transportation to the country club and will buy your Sujocki for $1,200 upon your bringing it to my home address above [stated in the letterhead] on or before noon, November 12 next. This offer is not subject to countermand.

Sincerely,

[signed] the pharmaceutical salesman

The widget salesman replied by mail the following day:

I accept your offer, and promise to deliver the bike as you specified.

Sincerely,

[signed] the widget salesman

This letter, although properly addressed, was misdirected by the postal service and not received by the pharmaceutical salesman until November 10. The pharmaceutical salesman had bought another Sujocki bike from a different friend for $1,050 a few hours before.

The friend saw the widget salesman at the Interurban Country Club on November 11 and said: "I sold my Sujocki to the pharmaceutical salesman yesterday for $1,050. Would you consider selling me yours for $950?" The widget salesman replied: "I'll let you know in a few days."

On November 12, the widget salesman took his Sujocki to the pharmaceutical salesman's residence; he arrived at 11:15 a.m. The pharmaceutical salesman was asleep and did not answer the ringing doorbell until 12:15 p.m. The pharmaceutical salesman then rejected the widget salesman's bike on the ground that he had already bought someone else's bike.

In a lawsuit by the widget salesman against the pharmaceutical salesman for breach of contract, what would the court probably decide regarding the widget salesman's letter of October 9?

A: The letter bound both parties to a unilateral contract as soon as the widget salesman mailed it.
B: Mailing of the letter by the widget salesman did not, of itself, prevent a subsequent, effective revocation by the pharmaceutical salesman of his offer.
C: The letter bound both parties to a bilateral contract, but only when received by the pharmaceutical salesman on November 10.
D: Regardless of whether the pharmaceutical salesman's offer had proposed a unilateral or a bilateral contract, the letter was an effective acceptance upon receipt, if not upon dispatch.

The explanation for the answer is:

Answer B is correct. The widget salesman's letter was not an appropriate method of acceptance because the pharmaceutical salesman's letter offer requested performance; thus, the mail box rule would not apply to make the acceptance effective upon dispatch, and the pharmaceutical salesman's offer remained freely revocable. A is incorrect because the letter could not be reasonably construed as the beginning of performance. C is incorrect because the offer called for a unilateral acceptance. D is also incorrect because the offer did not invite the widget salesman to choose between acceptance by promise and acceptance by performance.

Question 220 - Contracts - Formation of Contracts

The question was:

On May 1 a lot owner telegraphed a buyer, "Will sell you any or all of the lots in Grover subdivision at $5,000 each. Details will follow in letter." The letter contained all the necessary details concerning terms of payment, insurance, mortgages, etc., and provided, "This offer remains open until June 1."

On May 2, after he had received the telegram but before he had received the letter, the buyer telegraphed the owner, "Accept your offer with respect to lot 101." Both parties knew that there were fifty lots in the Grover subdivision and that they were numbered 101 through 150.

Assume that on May 5 the owner telephoned the buyer to explain that he had sold lots 102 through 150 to someone else on May 4 and that the buyer thereafter telegraphed the owner, "Will take the rest of the lots." Assume further that there is no controlling statute. In an action by the buyer against the owner for breach of contract, the buyer probably will

A: succeed, because the owner had promised him that the offer would remain open until June 1.
B: succeed, because the owner's attempted revocation was by telephone.
C: not succeed, because the buyer's power of acceptance was terminated by the owner's sale of the lots to another party.
D: not succeed, because the buyer's power of acceptance was terminated by an effective revocation.

The explanation for the answer is:

Answer D is correct. The owner's telephone call on May 5 informing the buyer that the remaining lots had been sold was a manifestation of the owner's intention not to enter into a contract with the buyer for the remaining lots and thus a revocation of his May 1 offer.

A is incorrect because there was no consideration to support an option to keep the offer open for a definite time. B is incorrect because the owner's telephone call to the buyer on May 5 served as actual notification of the revocation. C is incorrect because the sale to someone else would constitute indirect notice of revocation only if buyer also received reliable information of the sale; in this case, however, the owner's telephone call on May 5 was the only notice of revocation that the buyer received.

Question 221 - Contracts - Formation of Contracts

The question was:

On May 1 a lot owner telegraphed a buyer, "Will sell you any or all of the lots in Grover subdivision at $5,000 each. Details will follow in letter." The letter contained all the necessary details concerning terms of payment, insurance, mortgages, etc., and provided, "This offer remains open until June 1."

On May 2, after he had received the telegram but before he had received the letter, the buyer telegraphed the owner, "Accept your offer with respect to lot 101." Both parties knew that there were fifty lots in the Grover subdivision and that they were numbered 101 through 150.

Assume that on May 6 the buyer telegraphed the owner, "Will take the rest of the lots," and that on May 8 the owner discovered that he did not have good title to the remaining lots. Which of the following would provide the best legal support to the owner's contention that he was not liable for breach of contract as to the remaining forty-nine lots?

A: Impossibility of performance
B: Unilateral mistake as to basic assumption
C: Termination of the offer by the buyer's having first contracted to buy lot 101
D: Excuse by failure of an implied condition precedent.

The explanation for the answer is:

Answer C is correct. When the buyer accepted the owner's offer to buy lot 101 on May 2, he implicitly rejected the offer to purchase the remaining lots, and his rejection terminated his power of acceptance as to the remaining lots. A is incorrect because at the time the contract was made on May 2, the owner either had reason to know that he did not have good title to the remaining lots or he was at fault in not knowing, and thus his performance would not be excused as impossible or impracticable. B is incorrect because both parties were mistaken as to the owner's interest in the property. D is incorrect because, although the law does imply a condition into the agreement that the owner convey marketable title, the owner's failure to do so allows the buyer to elect to either rescind or to take title with the defect and to pay the full purchase price.

Question 242 - Contracts - Third-Party Rights

The question was:

A victim, injured by a driver in an auto accident, employed an attorney to represent him in the matter. The victim was chronically insolvent and expressed doubt whether he could promptly get necessary medical treatment. Accordingly, the attorney wrote into their contract his promise to the victim "to pay from any settlement with the driver compensation to any physician who provides professional services for the victim's injuries." The contract also provided that the attorney's duties were "non-assignable." The attorney immediately filed suit against the driver. The victim then sought and received medical treatment, reasonably valued at $1,000, from the doctor, but failed to inform the doctor of the attorney's promise.

After receiving a bill from the doctor for $1,000, the victim immediately wrote the doctor explaining that he was unable to pay and enclosing a copy of his contract with the attorney.

The victim then asked the attorney about payment of this bill, but the attorney requested a release from their employment contract, stating that he would like to refer the victim's claim to a colleague and that the colleague was willing to represent the victim in the pending lawsuit. The victim wrote a letter to the attorney releasing him from their contract and agreeing to the colleague's representation. A copy of this letter was sent to the doctor. The colleague subsequently promised the attorney to represent the victim and soon negotiated a settlement of the victim's claim against the driver which netted $1,000, all of which was paid by the victim to creditors other than the doctor. The victim remains insolvent.

In an action by the doctor against the attorney upon the attorney's employment contract with the victim, if the attorney attempted to use the victim's release as a defense, the doctor is likely to argue that

A: the release was ineffective, because the doctor had impliedly assented to the victim-attorney contract.
B: the release was ineffective, because the victim would thereby be unjustly enriched.
C: there was no consideration for the victim's release of the attorney.
D: the attorney's contract duties were too personal to be effectively delegated to the colleague.

The explanation for the answer is:

Answer A is correct. The promisor and promisee retain the power to modify or discharge a duty owed to an intended beneficiary until the beneficiary's rights vest. Rights vest when the beneficiary: (1) manifests assent to the promise, (2) sues to enforce the promise, or (3) materially changes position in reliance on the promise. Here, the doctor was an intended beneficiary of the agreement between the victim and the attorney. Although the doctor received notice of the promise before the victim and the attorney executed the release, he never expressly assented to the promise. However, the doctor can argue that by not pursuing the victim and waiting to collect from the attorney, the doctor impliedly assented to the contract and that assent made the release ineffective.

B is incorrect because unjust enrichment is not relevant to the question of whether the attorney was released, and would only be relevant in a quasi-contract action against the victim. C is incorrect because the colleague's promise to represent the victim supplied sufficient consideration to support the promise to release the attorney. D is incorrect because the question of whether the attorney's duties may be freely delegated is irrelevant since the victim assented to the delegation.

Question 250 - Contracts - Defenses to Enforceability

The question was:

On March 1, a landowner and builder orally agreed that the builder would erect a boathouse on the landowner's lot and dig a channel from the boathouse, across a neighbor's lot, to a lake. The neighbor had already orally agreed with the landowner to permit the digging of the channel across the neighbor's lot. The builder agreed to begin work on the boathouse on March 15, and to complete all the work before June 1. The total price of $10,000 was to be paid by the landowner in three installments: $2,500 on March 15; $2,500 when the boathouse was completed; $5,000 when the builder finished the digging of the channel.

Assume that the landowner tendered the $2,500 on March 15, and that the builder refused to accept it or to perform. In an action by the landowner against the builder for breach of contract, which of the following can the builder successfully use as a defense?

A: The neighbor-landowner agreement permitting the digging of the channel across the neighbor's lot was not in writing.
B: The landowner-builder agreement was not in writing.
C: The landowner-builder agreement was not in writing and the neighbor-landowner agreement permitting the digging of the channel across the neighbor's lot was not in writing.
D: The builder does not have a defense.

The explanation for the answer is:

Answer D is correct. Under the Statute of Frauds, a promise to sell an interest in land must meet the writing and signing requirements of the statute to be enforceable. Although the land contract provision of the statute has been broadly construed to include rights of way, the neighbor-landowner agreement does not fall within the land contract provision because the neighbor's promise ("permitting the digging") was a gratuitous conveyance and not a contract for sale. Similarly, a promise that cannot be performed within a year of its making falls within the one-year provision of the statute. Because the landowner-builder agreement was made on March 1 and the performance is to be completed by June 1, this agreement falls outside the one-year provision since it can be performed within a year of its making. Because neither agreement falls within the statute of frauds, the fact that the agreements were not in writing is not a valid defense. Therefore, A, B and C are incorrect.

Question 251 - Contracts - Remedies

The question was:

On March 2, a landowner and a builder orally agreed that the builder would erect a boathouse on the landowner's lot and dig a channel from the boathouse, across a neighbor's lot, to a lake. The neighbor had already orally agreed with the landowner to permit the digging of the channel across the neighbor's lot. The builder agreed to begin work on the boathouse on March 15, and to complete all the work before June 1. The total price of $10,000 was to be paid by the landowner in three installments: $2,500 on March 15; $2,500 when the boathouse was completed; $5,000 when the builder finished the digging of the channel.

Assume that the landowner paid the $2,500 on March 15 and that the builder completed the boathouse according to specifications, but that the landowner then refused to pay the second installment and repudiated the contract. Assume further that the absence of a writing is not raised as a defense. Which of the following is correct?

A: The builder has a cause of action against the landowner and his damages will be $2,500.
B: The builder can refuse to dig the channel and not be liable for breach of contract.
C: The builder can refuse to dig the channel, not be liable for breach of contract, and have a cause of action against the landowner for which his damages will be $2,500.
D: The builder can refuse to dig the channel but he will liable for breach of contract.

The explanation for the answer is:

Answer B is correct. Under the doctrine of anticipatory repudiation, an unequivocal statement of unwillingness or inability to perform a future contractual obligation, if material, may be treated as a total breach of that obligation. Once a repudiation occurs, the non-repudiating party is discharged from any further performance under the contract and may immediately recover damages for total breach. When a contractor is injured due to an owner's total breach of a construction contract, the contractor generally can recover his expected profit on the entire contract along with any labor and material expenses incurred up until the time that he learned of the owner's breach, minus any progress payments made by the owner. Although the landowner repudiated the agreement just after the second $2,500 progress payment became due, the builder would be entitled to obtain as damages not only the progress payment but also his expected profit on the entire contract. Because these damages would exceed $2,500, answers A and C are incorrect. The builder is also entitled to withhold his remaining performance under the contract and will not be considered in breach. Therefore, answer D is incorrect, making B the correct answer.

Question 264 - Contracts - Remedies

The question was:

A father had made a legally binding promise to furnish his son and his son's fiancée a house on their wedding day, planned for June 10, 2002. Pursuant to that promise, the father telephoned his old contractor-friend on May 1, 2001, and made the following oral agreement--each making full and accurate written notes thereof:

The contractor was to cut 30 trees into fireplace logs from a specified portion of a certain one-acre plot owned by the father, and the father was to pay therefore $20 per tree. The contractor agreed further to build a house on the plot conforming to the specifications of Plan OP5 published by Builders, Inc. for a construction price of $18,000. The father agreed to make payments of $2,000 on the first of every month for nine months beginning August 1, 2001, upon monthly presentation of a certificate by Builders, Inc. that the specifications of Plan OP5 were being met.

The contractor delivered the cut logs to the father in July 2001, when he also began building the house. The father made three $2,000 payments for the work done in July, August, and September 2001, without requiring a certificate. The contractor worked through October, but no work was done from November 1, 2001, to the end of February 2002, because of bad weather, and the father made no payments during that period. The contractor did not object. On March 1, 2002, the contractor demanded payment of $2,000; but the father refused on the grounds that no construction work had been done for four months and Builders had issued no certificate. The contractor thereupon abandoned work and repudiated the agreement.

Assuming that the contractor committed a total breach on March 1, 2002, and assuming further that he was aware when the agreement was made of the purpose for which the father wanted the completed house, which of the following, if true, would best support the father's claim for consequential damages on account of delay beyond June 10, 2002, in getting the house finished?

A: The son and his bride, married on June 10, 2002, would have to pay storage charges on their wedding gifts and new furniture until the house could be completed.
B: The son's fiancée jilted the son on June 10, 2002, and ran off with another man who had a new house.
C: The father was put to additional expense in providing his son and the son's bride, married on June 10, 2002, with temporary housing.
D: On June 10, 2002, the father paid a $5,000 judgment obtained against him in a suit filed March 15, 2002, by an adjoining landowner on account of the father's negligent excavation, including blasting, in an attempt to finish the house himself after the contractor's repudiation.

The explanation for the answer is:

Answer C is correct. In addition to direct expectation recovery, the father would be entitled to damages for consequential loss because the contractor knew of the special circumstances for which the house was being built and the deadline giving rise to these damages for delay.

A is incorrect because the father's promise was to furnish the son and the son's wife a home on their wedding day. His consequential damages would be limited to further losses to him, which were dependent upon the contract. His legally binding agreement with the son and the son's fiancé would give rise to direct liability for their damages, but not his agreement with the contractor. B is incorrect because this incident is not a consequence of or caused by the contractor's breach or reasonably foreseeable as a result of the contractor's breach. D is incorrect because the father's negligent attempt at mitigation to prevent consequential loss is not compensable because the father did not act reasonably in choosing self-help as substitute performance.

Question 265 - Contracts - Conditions

The question was:

A father had made a legally binding promise to furnish his son and the son's fiancé a house on their wedding day, planned for June 10, 2002. Pursuant to that promise, the father telephoned his old contractor-friend on May 1, 2001, and made the following oral agreement--each making full and accurate written notes thereof:

The contractor was to cut 30 trees into fireplace logs from a specified portion of a certain one-acre plot owned by the father, and the father was to pay therefore $20 per tree. The contractor agreed further to build a house on the plot conforming to the specifications of Plan OP5 published by Builders, Inc. for a construction price of $18,000. The father agreed to make payments of $2,000 on the first of every month for nine months beginning August 1, 2001, upon monthly presentation of a certificate by Builders, Inc. that the specifications of Plan OP5 were being met.

The contractor delivered the cut logs to the father in July 2001, when he also began building the house. The father made three $2,000 payments for the work done in July, August, and September 2001, without requiring a certificate. The contractor worked through October, but no work was done from November 1, 2001, to the end of February 2002, because of bad weather, and the father made no payments during that period. The contractor did not object. On March 1, 2002, the contractor demanded payment of $2,000, but the father refused on the grounds that no construction work had been done for four months and Builders had issued no certificate. The contractor thereupon abandoned work and repudiated the agreement.

The contractor failed to object to the father's failure to make payments on November 1, December 1, January 1, and February 1. Additionally, the father's made payments in August through October without requiring a certificate from Builders. What was the probable legal effect of these action?

A: Estoppel-type waiver as to both the contractor's failure to object and the father's payments without requiring a certificate.
B: Waiver of delay in payment as to the contractor's failure to object and revocable waiver as to the father's payments without requiring a certificate.
C: Mutual rescission of the contract.
D: Discharge of the father's duty to make the four payments as to the contractor's failure to object and estoppel-type waiver as to the father's payments with requiring a certificate.

The explanation for the answer is:

Answer B is correct. The condition in the contract fixing the time for payment was not a material part of the agreed exchange and therefore was subject to repeated waiver when the contractor failed to object as each of the four months passed without payment. By doing so, the contractor voluntarily abandoned this contractual condition for these months. The condition requiring a monthly certification prior to payment was waived by the father each time he made monthly payments without requiring certification. However, the father would be permitted to revoke the waiver and reinstate the certification condition as to future payments if he allowed the contractor reasonable time to obtain the certificates and if the contractor had not detrimentally relied upon the waiver.

A is incorrect because neither the contractor nor the father, by failing to assert the condition, caused the other to detrimentally rely on the fact that the condition would not be asserted. As to the contractor's failure to demand monthly payment, he had done no work during these months due to bad weather, and this would not indicate that he would not demand payment when he once again began working. As to the father's waiver of certificate each month, the father retained the ultimate right to inspect before taking possession; thus, the contractor could not have detrimentally relied upon the failure to issue certificates.

C is incorrect because the contractor and the father did not make an agreement to rescind; this would be necessary given the fact that their waivers of condition resulted in the contract remaining enforceable.

D is incorrect because the contractor did not manifest an intent to discharge the father's duty to pay when he failed to insist on monthly payments during a time in which he could not perform.

Question 288 - Contracts - Conditions

The question was:

A building owner and a purchaser made a written contract pursuant to which the building owner promised to convey a specified apartment house to the purchaser in return for the purchaser's promise (1) to convey a 100-acre farm to the building owner, and (2) to pay the building owner $1,000 in cash six months after the exchange of the apartment house and the farm. The contract contained the following provision: "It is understood and agreed that the purchaser's obligation to pay the $1,000 six months after the exchange of the apartment house and the farm shall be voided if the building owner has not, within three months after the aforesaid exchange, removed the existing shed in the parking area in the rear of the said apartment house."

The building owner's removal of the shed from the parking area of the apartment house is

A: a condition subsequent in form but precedent in substance to the purchaser's duty to pay the $1,000.
B: a condition precedent in form but subsequent in substance to the purchaser's duty to pay the $1,000.
C: a condition subsequent to the purchaser's duty to pay the $1,000.
D: not a condition, either precedent or subsequent, to the purchaser's duty to pay the $1,000.

The explanation for the answer is:

A is the correct answer. This question deals with the difference between conditions precedent, conditions concurrent, and conditions subsequent. A condition precedent is one that must occur before an absolute duty of immediate performance arises in the other party. Conditions concurrent are conditions the can occur together with both parties bound to perform at the same time. A condition subsequent is one which cuts off an existing duty of performance when it occurs. Here, the obligation to remove the shed will give rise to the purchaser's duty to pay the $1,000. Therefore, it functions as a condition precedent to that duty. However, the condition is worded so the failure to remove the shed by the three month deadline will extinguish the purchaser's obligation to pay the $1,000, making it a condition subsequent in form. Thus, A is the appropriate response and B, C and D are incorrect.

Question 291 - Contracts - Consideration

The question was:

A lender contended that a borrower owed him $6,000. The borrower denied that he owed the lender anything. Tired of the dispute, the borrower eventually signed a promissory note by which he promised to pay the lender $5,000 in settlement of their dispute.

In an action by the lender against the borrower on the promissory note, which of the following, if true, would afford the borrower the best defense?

A: Although the lender honestly believed that $6,000 was owed by the borrower, the borrower knew that it was not owed.
B: Although the lender knew that the debt was not owed, the borrower honestly was in doubt whether it was owed.
C: The original claim was based on an oral agreement, which the Statute of Frauds required to be in writing.
D: The original claim was an action on a contract, which was barred by the applicable Statute of Limitations.

The explanation for the answer is:

Answer B is correct. Unilateral modifications of contractual obligations lack consideration under the preexisting duty rule and therefore may be unenforceable. However, a promise to surrender a legal claim is sufficient consideration to support a return promise even if the claim turns out to be invalid, so long as the person surrendering the claim has a good faith belief in its validity. Because the borrower may argue that the unilateral modification of the debt is unenforceable due to the preexisting duty rule, the lender may argue that his promise to settle the claim provided sufficient consideration. The lender's argument will not succeed, however, if the lender knew that the claim was not valid.

A is incorrect because, since it is the lender's promise to settle that must furnish the necessary consideration, it is his good faith belief in the claim's validity that is relevant. C and D are incorrect because the issue is not the actual validity of the claim, but whether the lender genuinely believed in its validity.

Question 299 - Contracts - Formation of Contracts

The question was:

A professor said to the president of a secretarial service, "Since you folks have done good typing work for me in the past, I promise to bring you the manuscript for my new book."

"When?" asked the president.

"First chapter next Monday," replied the professor.

"Wouldn't that be nice," said the president.

The following Monday the professor, foregoing the services of another secretarial service, brought chapter one to the secretarial service's office but the president refused to take it, saying that they were all booked up for three weeks.

Which of the following facts or inferences would be most helpful in an action by the professor against the secretarial service?

A: "When" and "Wouldn't that be nice" implied a promise to type the manuscript.
B: The professor relied on the president's statement by bringing the manuscript to her service's office.
C: The secretarial service had done good work for the professor in the past.
D: The professor had foregone the services of another secretarial service.

The explanation for the answer is:

Answer A is correct. An implied-in-fact contract is an enforceable contract based on a tacit, rather than an express, promise. An implied-in-fact promise may be inferred from parties' conduct or from their statements when interpreted in the context of broader circumstances. Although the president did not expressly promise that she would type the professor's manuscript on the following Monday in exchange for payment, such an exchange may fairly be implied from the broader context of her responses to the professor's statements.

B and D are incorrect because in order for the professor to enforce the president's promise on a detrimental reliance theory, he would need to show that his change in position in reliance on the president's promise was such a detriment that enforcement of the promise would be necessary to avoid injustice. C is incorrect because the fact that the secretarial service did good work for the professor in the past does not in itself imply a promise to do such work in the future.

Question 310 - Contracts - Formation of Contracts

The question was:

On November 1, the following notice was posted in a privately-operated law school:

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1. A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in a student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn. The student's paper was submitted through the Dean's office on April 15. On May 1, it was announced that the student had won the National Obscenity Law Competition and the prize of $1,000. The law faculty refused to pay anything.

Assuming that the faculty's notice of November 1 was posted on a bulletin board or other conspicuous place commonly viewed by all persons in the law school, such notice constituted a

A: preliminary invitation to deal, analogous to newspaper advertisements for the sale of goods by merchants.
B: contractual offer, creating a power of acceptance.
C: preliminary invitation, because no offeree was named therein.
D: promise to make a conditional, future gift of money.

The explanation for the answer is:

Answer B is correct. An offer is a manifestation of willingness to enter a bargain, which is made in such a way that the offeree is justified in thinking that her assent will conclude a bargain. Advertisements or announcements directed to the public at large typically are construed as invitations to deal and not as offers, in part out of concern that an open-ended offer to the public would expose the offeror to excessive liability. This rationale will not apply, however, if the language in the announcement is qualified with limiting language such as "first come first served." Because the faculty's $500 offer was limited to the winner of the competition, the public posting of the faculty's notice may reasonably be construed to be an offer.

A and C are incorrect because, as explained above, an advertisement or announcement may be construed as an offer where the language of the offer is sufficiently definite. D is incorrect because the offer is not merely gratuitous but seeks the return performance of competing in and winning the writing competition.

Question 311 - Contracts - Formation of Contracts

The question was:

On November 1, the following notice was posted in a privately-operated law school:

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1. A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in the student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn. The student's paper was submitted through the Dean's office on April 15. On May 1, it was announced that the student had won the National Obscenity Law Competition and the prize of $500. The law faculty refused to pay anything.

As to the student, was the offer effectively revoked?

A: Yes, by the faculty's second notice.
B: No, because it became irrevocable after a reasonable time had elapsed.
C: No, because of the student's reliance, prior to April 1, on the offer.
D: No, because the student was aware of the April 1 posting.

The explanation for the answer is:

Answer C is correct. Where an offer is for a unilateral contract (an offer that seeks only performance and does not seek a return promise) and the offeree begins the invited performance, the offeror may not revoke the promise. This rule is intended to protect the substantial reliance of the offeree that results when accepting an offer for a unilateral contract by performance over a period of time. Because the faculty's offer of $500 sought only performance (winning the competition) and did not seek a commitment to perform, it was an offer for a unilateral contract. Once the student commenced performance, the faculty was not free to revoke the offer, so its attempted revocation on April 1 was ineffective.

Therefore A is incorrect. B is incorrect because the offer became irrevocable only when the student commenced the requested performance. D is incorrect because the offer became irrevocable once the student commenced performance, which occurred before April 1.

Question 312 - Contracts - Formation of Contracts

The question was:

On November 1, the following notice was posted in a privately-operated law school:

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1. A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in the student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn. The student's paper was submitted through the Dean's office on April 15. On May 1, it was announced that the student had won the National Obscenity Law Competition and the prize of $1,000. The law faculty refused to pay anything.

The offer proposed a

A: unilateral contract only.
B: bilateral contract only.
C: unilateral contract or bilateral contract at the offeree's option.
D: unilateral contract which ripened into a bilateral contract, binding on both parties, as soon as the student intensified his effort in response to the offer.

The explanation for the answer is:

Answer A is correct. An offer for a unilateral contract is one that seeks only performance and does not seek a return promise as the means of acceptance. Under the modern view, most contracts are considered bilateral, with two exceptions. A traditional unilateral contract occurs where: (1) the offeror clearly indicates that completion of performance is the only manner of acceptance, or (2) the offer is made to the public, such as a reward or contest offer. Here, the offer to the law student population constitutes an offer to the public, and is the type of offer which clearly contemplates acceptance by performance. It would be unreasonable to consider a promise a valid acceptance in the context of a contest. B, C, and D are incorrect because each suggests that an offer to the public could reasonably be construed as an offer for a bilateral contract.

Question 313 - Contracts - Formation of Contracts

The question was:

On November 1, the following notice was posted in a privately-operated law school:

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1. A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in the student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn. The student's paper was submitted through the Dean's office on April 15. On May 1, it was announced that the student had won the National Obscenity Law Competition and the prize of $1,000. The law faculty refused to pay anything.

The promise of the faculty on November 1 was

A: enforceable on principles of promissory estoppel.
B: enforceable by the student's personal representative even if the student had been killed in an accident on April 16.
C: not enforceable on policy grounds because it produced a noncommercial agreement between a student and his teachers, analogous to intramural family agreement and informal social commitments.
D: not enforceable, because the student, after entering the National Competition in October, was already under a duty to perform to the best of his ability.

The explanation for the answer is:

Answer B is correct. An offer seeking only a performance and not a return promise is an offer for a unilateral contract. Such an offer is accepted once the requested performance has been completed and notice of acceptance has been given to the offeror. Once the offeree under a unilateral contract begins the invited performance, the offeror may not revoke the promise; however, the offeror's obligation is conditioned upon the offeree completing performance in accordance with the offer's terms. Even if the student were killed on April 16, the student's representative would still be entitled to enforce the faculty's promise because the requested performance (completion of the winning research paper) was completed and because the faculty's attempt to revoke the offer on April 1 was ineffective.

A is incorrect because, although promissory estoppel may operate to enforce a promise made prior to the conclusion of a contract, the better argument is that the student was successful in accepting the faculty's offer. C is incorrect because the mere fact that a contract was concluded in a family or informal social setting does not render it unenforceable on policy grounds. D is incorrect because the preexisting duty rule does not apply where the duty is owed to a third party; therefore the student gave sufficient consideration to support the promise.

Question 317 - Contracts - Conditions

The question was:

A photographer and a customer entered a contract in writing on November 1, the essential part of which read as follows: "[the photographer] to supply [the customer] with 200 personalized Christmas cards on or before December 15, 2000, bearing a photograph of [the customer] and his family, and [the customer] to pay $100 thirty days thereafter. Photograph to be taken by [the photographer] at [the customer]'s house. Cards guaranteed to be fully satisfactory and on time." Because the customer suddenly became ill, the photographer was unable to take the necessary photograph of the customer and his family until the first week of December. The final week's delay was caused by the photographer's not being notified promptly by the the customer of his recovery. Before taking the photograph of the customer and his family, the photographer advised the customer that he was likely to be delayed a day or two beyond December 15 in making delivery because of the time required to process the photograph and cards. The customer told the photographer to take the photograph anyway. The cards were finally delivered by the photographer to the customer on December 17, the photographer having diligently worked on them in the interim. Although the cards pleased the rest of the family, the customer refused to accept them because, as he said squinting at one of the cards at arm's length without bothering to put on his reading glasses, "The photograph makes me look too old. Besides, the cards weren't delivered on time."

In an action by the photographer against the customer, which of the following would be the customer's best defense?

A: The cards, objectively viewed, were not satisfactory.
B: The cards, subjectively viewed, were not satisfactory.
C: The cards were not delivered on time.
D: The customer's illness excused him from further obligation under the contract.

The explanation for the answer is:

Answer B is correct. When a party's obligation under a contract is subject to a satisfaction condition, generally the party may not avoid liability simply by expressing dissatisfaction with the performance - the dissatisfaction must be expressed either reasonably or in good faith, depending on the nature of the obligation. Where the performance at issue involves aesthetic taste and judgment (such as an obligation to take a family portrait or holiday photo), the party whose obligation to pay is subject to the condition may only express dissatisfaction honestly, or in good faith. Therefore, so long as the customer subjectively thought that the photograph was unsatisfactory, he is discharged of his obligation to pay, even if a reasonable person would have been satisfied with the work.

A is incorrect because the customer's dissatisfaction with the work need not be objectively reasonable. C is incorrect because the delay in delivery was excused by the customer's illness. D is incorrect, because the customer's illness had the effect of excusing the delay but not of completely discharging the parties' remaining obligations under the contract.

Question 319 - Contracts - Impracticability and Frustration of Purpose

The question was:

A photographer and a customer entered a contract in writing on November 1, the essential part of which read as follows: "[the photographer] to supply the customer with 200 personalized Christmas cards on or before December 15, bearing a photograph of [the customer] and his family, and [the customer] to pay $100 thirty days thereafter. Photograph to be taken by [the photographer] at [the customer]'s house. Cards guaranteed to be fully satisfactory and on time." Because the customer suddenly became ill, the photographer was unable to take the necessary photograph of the customer and his family until the first week of December. The final week's delay was caused by the photographer's not being notified promptly by the customer of his recovery. Before taking the photograph of the customer and his family, the photographer advised the customer that he was likely to be delayed a day or two beyond December 15 in making delivery because of the time required to process the photograph and cards. The customer told the photographer to take the photograph anyway. The cards were finally delivered by the photographer to the customer on December 17, the photographer having diligently worked on them in the interim. Although the cards pleased the rest of the family, the customer refused to accept them because, as he said squinting at one of the cards at arm's length without bothering to put on his reading glasses, "The photograph makes me look too old. Besides, the cards weren't delivered on time."

Which of the following statements regarding the legal effect of the customer's illness is *LEAST* accurate?

A: The customer's illness and the related development excused the photographer from his obligations to deliver the cards on or before December 15.
B: Prompt notice by the customer to the photographer of the customer's recovery from illness was an implied condition of the photographer's duty under the circumstances.
C: The photographer was under a duty of immediate performance of his promise to deliver the cards, as of December 15, by reason of the express language of the contract and despite the illness of the customer and the related developments.
D: The customer's conduct after his illness constituted a waiver of the necessity of the photographer's performing on or before December 15.

The explanation for the answer is:

Answer C is correct. Where the existence of a particular person is necessary for the performance of a duty, his incapacity, if sufficient to make performance impracticable, may operate to excuse performance of the contract. If the delay resulting from the impracticability is not material, it may operate to suspend but not discharge the parties' remaining obligations under the contract. Since the contract between the customer and the photographer required the photographer to take a photograph of "[the customer] and his family," the customer's availability was necessary for the performance of the photographer's duty and therefore his illness excused the photographer's delay in completing the cards by the December 15 due date. Since the photographer had no way of knowing of the customer's recovery, his obligation to resume performance was conditioned upon receiving notice of it. Although the customer might have taken the position that the delay beyond December was material, thereby justifying the discharge of any further obligation, his conduct (informing the photographer to "take the photograph anyway") amounted to a waiver of the December 15 deadline. Answer C is the least accurate statement since, as explained above, the customer's illness provided a basis for excuse of the delay.

Question 333 - Contracts - Consideration

The question was:

A man saved the life of his friend's wife who thereafter changed her will to leave the man $1,000. However, upon the wife's death she had no property except an undivided interest in real estate held in tenancy by the entirety of the husband. The property had been purchased by the husband from an inheritance.

After the wife died, the husband signed and delivered to the man the following instrument: "In consideration of [the man]'s saving my wife's life and his agreement to bring no claims against my estate based on her will, I hereby promise to pay [the man] $1,000."

Upon the husband's death, the man filed a claim for $1,000. The husband's executor contested the claim on the ground that the instrument was not supported by sufficient consideration.

In most states, would the man's saving of the wife's life be regarded as sufficient consideration for the husband's promise?

A: Yes, because the husband was thereby morally obligated to the man.
B: Yes, because the husband was thereby materially benefited.
C: No, because the husband had not asked the man to save her.
D: No, because the value of the man's act was too uncertain.

The explanation for the answer is:

Answer C is correct. In order to be enforceable, a promise must be supported by bargained-for consideration. Consideration is bargained for if it is sought by the promisor and given by the promisee in exchange for the promise. Although the husband's promise states that it is given "in consideration of the man's saving" the wife's life, in fact it is not sufficient consideration to support the husband's promise. The husband did not make the promise to pay $1,000 in exchange for the man's act, nor did the man save the wife's life in exchange for the husband's promise.

A and B are incorrect because neither moral obligation nor material benefit alone is a sufficient basis for finding consideration. D is incorrect because the respective values of consideration exchanged is not relevant to whether consideration is sufficient; what matters is whether the consideration was bargained for.

Question 334 - Contracts - Consideration

The question was:

A man saved the life of his friend's wife who thereafter changed her will to leave the man $1,000. However, upon the wife's death she had no property except an undivided interest in real estate held in tenancy by the entirety of the husband. The property had been purchased by the husband from an inheritance.

After the wife died, the husband signed and delivered to the man the following instrument: "In consideration of [the man]'s saving my wife's life and his agreement to bring no claims against my estate based on her will, I hereby promise to pay [the man] $1,000."

Upon the husband's death, the man filed a claim for $1,000. The husband's executor contested the claim on the ground that the instrument was not supported by sufficient consideration.

With respect to the recital that the man had agreed not to file a claim against the husband's estate, what additional fact would most strengthen the man's claim?

A: The man's agreement was made in a writing he signed.
B: The man reasonably believed he had a valid claim when the instrument was signed.
C: The wife had contributed to accumulation of the real property.
D: The man paid the husband $1 when he received the instrument.

The explanation for the answer is:

Answer B is correct. A promise to surrender a legal claim is sufficient consideration to support a return promise even if the claim turns out to be invalid, so long as the person surrendering the claim has a good faith belief in its validity. As long as the man genuinely believed that he had a valid claim against the husband, his promise to relinquish such claim provides sufficient consideration to support the husband's promise to pay the man $1,000.

A is incorrect because a writing would not excuse an absence of consideration. C is incorrect because the tenancy in the entirety would preclude her devise to the man. D is incorrect because some courts will find that the payment of nominal consideration in exchange for a promise is a "mere pretense" of a bargain and is not enforceable.

Question 349 - Contracts - Impracticability and Frustration of Purpose

The question was:

On January 15, a carpenter agreed to repair a homeowner's house according to certain specifications and to have the work completed by April 1. On March 1, the homeowner's property was inundated by flood waters which did not abate until March 15. The homeowner could not get the house in a condition which would permit the carpenter to begin the repairs until March 31. On that date the carpenter notified the homeowner that he would not repair the house.

Which one of the following facts, if it was the only one true and known to both parties on January 15, would best serve the carpenter as the basis for a defense in an action brought against him by the homeowner for breach of contract?

A: The carpenter's busy schedule permitted him to work on the homeowner's house only during the month of March.
B: Any delay in making the repairs would not seriously affect the homeowner's use of the property.
C: The cost of making repairs was increasing at the rate of 3 percent a month.
D: The area around the homeowner's property was frequently flooded during the month of March.

The explanation for the answer is:

Answer A is correct. A party's performance under a contract may be excused on grounds of supervening impracticability where the performance is made impracticable without his fault due to the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made. If the delay resulting from the impracticability is not material, it may operate to suspend but not discharge the parties' remaining obligations under the contract. Since the flood was an act of God that related to a basic assumption of the agreement to repair the homeowner's house, it operated to excuse any resulting delay in completing the requested work. Whether or not the delay was sufficiently severe to discharge the parties' remaining obligations under the contract depends on whether circumstances have so changed that performance will become materially more burdensome than the agreed-upon performance. The carpenter's busy schedule after March suggests that continued performance after the delay would be materially burdensome and thus his obligation should be completely discharged.

B and D are incorrect because neither fact is relevant to whether the carpenter is justified in refusing to continue performance as of March 31. C is incorrect because this factor alone would not make continued performance by the carpenter materially more burdensome.

Question 350 - Contracts - Formation of Contracts

The question was:

In a telephone call on March 1, an unemployed retired man said to a purchaser, "I will sell my automobile for $3,000 cash. I will hold this offer open through March 14." On March 12, the man called the purchaser and told her that he had sold the automobile to a friend. The man in fact had not sold the automobile to anyone. On March 14, the purchaser learned that the man still owned the automobile and on that date called the man and said, "I'm coming over to your place with $3,000." The man replied, "Don't bother, I won't deliver the automobile to you under any circumstances." The purchaser protested, but made no further attempt to pay for or take delivery of the automobile.

In an action by the purchaser against the man for breach of contract, the purchaser probably will

A: succeed, because the man had assured her that the offer would remain open through March 14.
B: succeed, because the man had not in fact sold the automobile to the friend.
C: not succeed, because the purchaser had not tendered the $3,000 to the man on or before March 14.
D: not succeed, because on March 12 the man had told the purchaser that he had sold the automobile to the friend.

The explanation for the answer is:

Answer D is correct. Unless an option contract is created, the offeror retains the power to revoke an offer at any time prior to acceptance. In order to create an option, the offeror must manifest an intent not to revoke the offer during the time stated, and the option promise must be supported by consideration. The promise that the man made to the purchaser on March 1 was not an option promise because it was not supported by consideration. Furthermore, the offer is not preserved by the UCC's firm offer rule because the man was not a merchant and the offer was not a signed writing. Therefore, the man's March 12 statement that the car had been sold was effective as a revocation, even though untrue, because it manifested the man's intention not to enter into the contract, and the revocation was made prior to the purchaser's attempted acceptance.

A is incorrect because the man's assurance that the offer would remain open is not sufficient to limit his right to revoke. B is incorrect because what matters for the revocation to be effective is that it must manifest an intent not to enter into the contract. C is incorrect because this offer was for a bilateral contract, which could have been accepted by the purchaser's promise to pay. Actual payment by March 14th was not a condition of the contract.

Question 371 - Contracts - Remedies

The question was:

In a written contract a seller agreed to deliver to a buyer 500 described chairs at $20 each F.O.B. seller's place of business. The contract provided that "neither party will assign this contract without the written consent of the other." The seller placed the chairs on board a carrier on January 30. On February 1 the seller said in a signed writing, "I hereby assign to my friend all my rights under the seller-buyer contract." The seller did not request and did not get the buyer's consent to this transaction. On February 2 the chairs while in transit were destroyed in a derailment of the carrier's railroad car.

In an action by the friend against the buyer, the friend probably will recover

A: $10,000, the contract price.
B: the difference between the contract price and the market value of the chairs.
C: nothing, because the chairs had not been delivered.
D: nothing, because the seller-buyer contract forbade an assignment.

The explanation for the answer is:

Answer A is correct. Although the contract required consent for assignment and the buyer has the right to damages for breach of this prohibition, the assignment of payment rights to the friend is effective. Assignment of contractual rights, such as the right to be paid, are effective even if the contract prohibits it, unless the clause makes assignments "void" or the assignee had notice, neither of which is present here. Thus, D is incorrect. B is incorrect because the chairs were destroyed and their market value would be zero; thus, the expectation interest is the contract price. C is incorrect because, under the UCC, the risk of loss passed to the buyer when the goods were delivered by the seller to the carrier.

Question 376 - Contracts - Formation of Contracts

The question was:

After several days of negotiations, an office building owner wrote to a plumber: "Will pay you $3,000 if you will install new plumbing in my office building according to the specifications I have sent you. I must have your reply by March 30." The plumber replied by a letter that the owner received on March 15: "Will not do it for less than $3,500." On March 20, the plumber wrote to the owner: "Have changed my mind. I will do the work for $3,000. Unless I hear from you to the contrary, I will begin work on April 5." The owner received this letter on March 22 but did not reply to it. The plumber, without the owner's knowledge, began the work on April 5.

Which of the following best characterizes the legal relationship between the owner and the plumber as of April 5?

A: A contract was formed on March 20 when the plumber posted his letter.
B: A contract was formed on March 22 when the owner received the plumber's letter.
C: A contract was formed on April 5 when the plumber began work.
D: There was no contract between the parties as of April 5.

The explanation for the answer is:

Answer D is correct. The plumber's rejection of the owner's offer on the 15th ended that negotiation, and the letter sent on the 20th was a new, separate, and distinct offer. There was no contract because silence could only operate as an acceptance in this case if the owner wished or intended to be bound by his silence. The plumber bears the risk of uncertainty in phrasing his offer in this manner; the purpose underlying this rule of law is to protect the offeree from imposition. Thus, the owner's silence will operate as acceptance only if he intends for his silence to manifest acceptance. Because he is unaware of the plumber's performance, there are no facts to support his intent to accept the offer made by the plumber on March 20.

A and B are incorrect because the plumber's March 20 letter containing a different price term operated as a counter offer, which required acceptance by the owner to create an enforceable contract. C is incorrect because the plumber made a counter offer which only the owner could accept.

Question 377 - Contracts - Conditions

The question was:

On January 15, in a signed writing, an artist agreed to remodel a building owner's building according to certain specifications, and the owner to pay the agreed price of $5,000 to the artist's niece as a birthday present. The niece did not learn of the agreement until her birthday on May 5.

Before they signed the writing, the artist and the owner had orally agreed that their "written agreement will be null and void unless the owner is able to obtain a $5,000 loan from the bank before January 31."

The owner was unable to obtain the loan, and, on January 31, phoned the artist and told him, "Don't begin the work. The deal is off." In an action for breach of contract brought against the owner by the proper party, will the owner be successful in asserting as a defense his inability to obtain a loan?

A: Yes, because obtaining a loan was a condition precedent to the existence of an enforceable contract.
B: Yes, because the agreement about obtaining a loan is a modification of a construction contract and is not required to be in writing.
C: No. because the agreement about obtaining a loan contradicts the express and implied terms of the writing.
D: No, because the owner is estopped to deny the validity of the written agreement.

The explanation for the answer is:

Answer A is correct. Although the agreement is oral, it can be admitted to clarify the written agreement. The language of this oral agreement is an express condition precedent to enforcement and express conditions are strictly construed.

B is incorrect. Because the oral agreement was made before the written agreement was signed, it technically was not a modification. If, however, it were construed as such, then although modifications of land contracts are not exempt from the writing requirement, the written agreement may satisfy the Statute of Frauds for the oral agreement here. C is incorrect because the written agreement is silent as to the effect of not obtaining the loan or the date upon which performance was to begin. There is also nothing implied into the agreement that would contradict the oral condition. D is also incorrect because the artist had not begun performance prior to the January 31 notice that the loan had not been obtained, and there are no other facts to support detrimental reliance upon the written agreement by the artist. Thus, there is no estoppel.

Question 378 - Contracts - Third-Party Rights

The question was:

On January 15, in a signed writing, an artist agreed to remodel a building owner's building according to certain specifications, and the owner to pay the agreed price of $5,000 to the artist's niece as a birthday present. The niece did not learn of the agreement until her birthday on May 5.

Before they signed the writing, the artist and the owner had orally agreed that their "written agreement will be null and void unless the owner is able to obtain a $5,000 loan from the bank before January 31."

The owner obtained the loan, the artist completed the remodeling on May 1, and on May 3, at the artist's request, the owner paid the $5,000 to the artist. If the niece learns of the owner's payment to the artist on May 5 at the same time she learns of the written artist-owner contract, will she succeed in action against the owner for $5,000?

A: Yes, because she is an intended beneficiary of the written artist-owner contract.
B: Yes, because the written artist-owner contract operated as an assignment to the niece, and the artist thereby lost whatever rights he may have had to the $5,000.
C: No, because the niece had not furnished any consideration to support the owner's promise to pay $5,000 to her.
D: No, because on May 3, the artist and the owner effectively modified their written contract, thereby depriving the niece of whatever right she may have had under that contract.

The explanation for the answer is:

Answer D is correct. Prior to the modification, the niece had no knowledge and thus no reliance on her status as a third-party beneficiary under the contract. As such, her rights had not vested. For these reasons A is incorrect. B is incorrect because payment to the niece was set forth in the original agreement as a gift. An assignment, on the other hand, involves the transfer of rights under an existing contract. C is also incorrect because an intended beneficiary, even if gratuitous, need not supply consideration in order to enforce a right to recovery. All that is necessary is that the right vest.

Question 386 - Contracts - Defenses to Enforceability

The question was:

When a woman's 21-year-old daughter finished college, the woman handed her a signed memorandum stating that if she would go to law school for three academic years, she would pay her tuition, room, and board and would "give her a $1,000 bonus" for each "A" she got in law school. The daughter's uncle, who was present on this occasion, read the memorandum and thereupon said to the daughter, "and if she doesn't pay your expenses, I will." The woman paid her tuition, room, and board for her first year but died just before the end of that year. Subsequently, the daughter learned that she had received two "A's" in the second semester. The executor of the woman's estate has refused to pay her anything for the two "A's" and has told her that the estate will no longer pay her tuition, room, and board in law school.

In an action by the daughter against the uncle on account of the executor's repudiation of the woman's promise to pay future tuition, room, and board, which of the following would be the uncle's strongest defense?

A: The parties did not manifestly intend a contract.
B: The woman's death terminated the agreement.
C: The agreement was oral.
D: The agreement was divisible.

The explanation for the answer is:

Answer C is correct. Under the Statute of Frauds, promises made to answer for the debt of another generally fall within the suretyship clause of the statute and therefore must meet the writing and signing requirements of the statute. The uncle's promise to the daughter falls within the suretyship provision of the statute, since it is a promise by the uncle to the daughter to answer for the debt of the woman. Because the promise was oral, it did not meet the writing and signing requirements of the statute and therefore is not enforceable.

A is incorrect because the parties' statements do manifest an intent to contract. B is incorrect because, although the woman's death cut off the daughter's power to accept the woman's offer, it does not affect the enforceability of the uncle's promise. D is incorrect because divisibility is not relevant to the enforceability of the uncle's promise.

Question 394 - Contracts - Conditions

The question was:

On March 31, a seller and a buyer entered into a written agreement in which the seller agreed to fabricate and sell to the buyer 10,000 specially designed brake linings for a new type of power brake manufactured by the buyer. The contract provided that the buyer would pay half of the purchase price on May 15 in order to give the seller funds to "tool up" for the work; that the seller would deliver 5,000 brake linings on May 31; that the buyer would pay the balance of the purchase price on June 15; and that the seller would deliver the balance of the brake linings on June 30.

On May 10, the seller notified the buyer that it was doubtful whether the seller could perform because of problems encountered in modifying its production machines to produce the brake linings. On May 15, however, the seller assured the buyer that the production difficulties had been overcome, and the buyer paid the seller the first 50 percent installment of the purchase price. The seller did not deliver the first 5,000 brake linings on May 31, or at any time thereafter; and on June 10, the seller notified that it would not perform the contract.

Which of the following correctly states the buyer's rights and obligations immediately after receipt of the seller's notice on May 10?

A: The buyer can treat the notice as an anticipatory repudiation, and has cause of action on May 10 for breach of the entire contract.
B: The buyer can treat the notice as an anticipatory repudiation, and can sue to enjoin an actual breach by the seller on May 31.
C: The buyer has no cause of action for breach of contract, but can suspend its performance and demand assurances that the seller will perform.
D: The buyer has no cause of action for breach of contract, and must pay the installment of the purchase price due on May 15 to preserve its rights under the contract.

The explanation for the answer is:

Answer C is correct. Under the UCC, repudiation of a contractual obligation may be treated as a total breach of that obligation. In order to amount to repudiation, however, the statement must be unequivocal; a statement that merely expresses doubt over a party's ability or willingness to perform is not sufficient. When reasonable grounds for insecurity arise with respect to the other party's performance, the other may make a written demand for adequate assurances of performance and suspend return performance if commercially reasonable. Failure to respond to a justified demand for assurances is a repudiation of the contract. At the time of the buyer's receipt of the seller's notice on May 10, the seller had not repudiated the contract, as the notice only expressed doubt over whether performance was possible. The notice did, however, provide reasonable grounds for the buyer to demand adequate assurances of performance and to suspend its return performance.

A and B are incorrect because the May 10 notice was not an unequivocal expression of unwillingness or inability to perform. D is incorrect because the May 10 notice gave the buyer reasonable grounds for insecurity, and therefore the buyer would be justified in suspending the May 15 payment until such assurances are given.

Question 395 - Contracts - Conditions

The question was:

On March 31, a seller and a buyer entered into a written agreement in which the seller agreed to fabricate and sell to the buyer 10,000 specially designed brake linings for a new type of power brake manufactured by the buyer. The contract provided that the buyer would pay half of the purchase price on May 15 in order to give the seller funds to "tool up" for the work; that the seller would deliver 5,000 brake linings on May 31; that the buyer would pay the balance of the purchase price on June 15; and that the seller would deliver the balance of the brake linings on June 30.

On May 10, the seller notified the buyer that it was doubtful whether the seller could perform because of problems encountered in modifying its production machines to produce the brake linings. On May 15, however, the seller assured the buyer that the production difficulties had been overcome, and the buyer paid the seller the first 50 percent installment of the purchase price. The seller did not deliver the first 5,000 brake linings on May 31, or at any time thereafter; and on June 10, the seller notified that it would not perform the contract.

Which of the following is *NOT* a correct statement of the parties' legal status immediately after the seller's notice on June 10?

A: The buyer has a cause of action for total breach of contract because of the seller's repudiation, but that cause of action will be lost if the seller retracts its repudiation before the buyer changes its position or manifests to the seller that the buyer considers the repudiation final.
B: The buyer can bring suit to rescind the contract even if it elects to await the seller's performance for a commercially reasonable time.
C: The buyer can await performance by the seller for a commercially reasonable time, but if the buyer awaits performance beyond that period, it cannot recover any resulting damages that it reasonably could have avoided.
D: The buyer has a cause of action for breach of contract that it can successfully assert only after it has given the seller a commercially reasonable time to perform.

The explanation for the answer is:

Answer D is correct. Under the UCC, when either party repudiates a contract for the sale of goods with respect to a performance whose loss will substantially affect the value of the contract, the non-repudiating party may await performance for a commercially reasonable time or immediately resort to remedies for breach of contract. The non-repudiating party, however, may not recover damages that he might have mitigated with reasonable effort. The repudiating party is still free to retract its repudiation unless the non-repudiating party has relied on it or otherwise indicated that he considers the repudiation final. The seller's June 10 statement that it would not perform the contract, when read in light of its earlier communications and failure to make a delivery when due, amounts to a repudiation that gives the buyer the right to bring immediate action for breach. Therefore, D is the correct answer choice because the buyer does not need to give the seller a commercially reasonable time to perform. A, B, and C are incorrect as each of the statements are accurate.

Question 401 - Contracts - Parol Evidence and Interpretation

The question was:

A corporation, through its president, requested from a financing company a short-term loan of $100,000. On April 1, the corporation's president and the financing company's loan officer agreed orally that the financing company would make the loan on the following terms: (1) The loan would be repaid in full on or before the following July 1 and would carry interest at an annual rate of 15 percent (a lawful rate under the applicable usury law), and (2) the corporation's president would personally guarantee repayment. The loan was approved and made on April 5. The only document evidencing the loan was a memorandum, written and supplied by the financing company and signed by the president for the corporation, that read in its entirety: "April 5

In consideration of a loan advanced on this date, the corporation hereby promises to pay the financing company, $100,000 on September 1.

The corporation

By /s/ the president" The corporation did not repay the loan on or before July 1, although it had sufficient funds to do so. On July 10, the financing company sued the corporation as principal debtor and the corporation's president individually as guarantor for $100,000, plus 15 percent interest from April 5.

At the trial, can the financing company prove the corporation's oral commitment to repay the loan on or before July 1?

A: Yes, because the oral agreement was supported by an independent consideration.
B: Yes, because the evidence of the parties' negotiations is relevant to their contractual intent concerning maturity of the debt.
C: No, because such evidence is barred by the preexisting duty rule.
D: No, because such evidence contradicts the writing and is barred by the parol evidence rule.

The explanation for the answer is:

Answer D is correct. The parol evidence rule bars extrinsic evidence of a prior agreement either where the prior agreement contradicts the terms of a final written agreement or where the prior agreement purports to add to a completely integrated agreement (*i.e.*, one that is intended by the parties to be both the final and exclusive manifestation of the parties' understanding). The oral commitment that the financing company seeks to introduce (that the loan would be repaid "on or before July 1") contradicts the final writing executed between the parties (stating that the corporation promises to repay the loan "on September 1"). Therefore, it is barred by the parol evidence rule.

A is incorrect because the collateral agreement exception to the parol evidence rule would not apply where the extrinsic evidence is in direct conflict with the writing. B is incorrect because evidence of the parties' negotiations is precisely the type of evidence that the parol evidence rule excludes. C is incorrect because the promise is inadmissible under the parol evidence rule regardless of whether it was supported by consideration.

Question 402 - Contracts - Defenses to Enforceability

The question was:

A corporation, through its president, requested from a financing company a short-term loan of $100,000. On April 1, the corporation's president and the financing company's loan officer agreed orally that the financing company would make the loan on the following terms: (1) The loan would be repaid in full on or before the following July 1 and would carry interest at an annual rate of 15 percent (a lawful rate under the applicable usury law), and (2) the corporation's president would personally guarantee repayment. The loan was approved and made on April 5. The only document evidencing the loan was a memorandum, written and supplied by the financing company and signed by the president of the corporation, that read in its entirety: "April 5

In consideration of a loan advanced on this date, the corporation hereby promises to pay the financing company, $100,000 on September 1.

The corporation

By /s/ the president" The corporation did not repay the loan on or before July 1, although it had sufficient funds to do so. On July 10, the financing company sued the corporation as principal debtor and the corporation's president individually as guarantor for $100,000, plus 15 percent interest from April 5.

At the trial, can the financing company prove the president's oral promise to guarantee the loan?

A: Yes, because the president signed the memorandum.
B: Yes, because, as president of the debtor company, the president is a third-party beneficiary of the loan.
C: No, because there was no separate consideration for the president's promise.
D: No, because such proof is barred by the statute of frauds.

The explanation for the answer is:

Answer D is correct. The Statute of Frauds requires that agreements to act as a surety or to guarantee the debt of another, when there has not been a novation, are within the statute and require a writing.

A is incorrect because the written memorandum does not mention the president's oral promise to guarantee the corporation's debt. B is incorrect because the contract was not made to benefit the president or create enforcement rights in him. C is incorrect because the president's personal guarantee may have been necessary to obtain the loan, and because the two agreements were made simultaneously, separate consideration may not be required.

Question 410 - Contracts - Remedies

The question was:

A landowner owned Broadacres in fee simple. For a consideration of $5,000, the landowner gave his neighbor a written option to purchase Broadacres for $300,000. The option was assignable. For a consideration of $10,000, the neighbor subsequently gave an option to his friend to purchase Broadacres for $325,000. The friend exercised his option.

The neighbor thereupon exercised his option. The neighbor paid the agreed price of $300,000 and took title to Broadacres by deed from the landowner. Thereafter, the friend refused to consummate his purchase.

The neighbor brought an appropriate action against the friend for specific performance, or, if that should be denied, then for damages. The friend counterclaimed for return of the $10,000. In this action the court will

A: grant money damages only to the neighbor.
B: grant specific performance to the neighbor.
C: grant the neighbor only the right to retain the $10,000.
D: require the neighbor to refund the $10,000 to the friend.

The explanation for the answer is:

Answer B is correct. An option promise is a promise not to revoke an offer to enter into a contract, and it requires separate consideration to be enforceable. When a party exercises an option, that party in effect accepts the offer and binds himself to the contract. The friend paid the neighbor $10,000 in exchange for the neighbor's promise not to revoke his offer to sell. When the friend exercised the option, he became obligated to purchase Broadacres for $325,000, and his failure to consummate his purchase entitled the neighbor to pursue remedies for breach of contract. Specific performance generally will be awarded for breach of contract where an award of monetary damages would be inadequate or impracticable. Contracts involving the sale of land historically have been regarded as unique, and therefore equitable relief traditionally has been allowed, even where the breaching party is the buyer. Because the obligation that the neighbor seeks to enforce is the friend's obligation to purchase Broadacres (a contract to purchase land), specific performance will be awarded.

A is incorrect because the contract involves the sale of land, and therefore the neighbor will be awarded specific performance. C is incorrect because the neighbor not only is entitled to retain the option price, but he is also entitled to a remedy for the friend's breach. D is incorrect because the friend paid the $10,000 in exchange for the option. Even if the friend failed to exercise the option, he cannot seek return of the purchase price once the option has been given to him.

Question 420 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A written contract was entered into between a financier-investor and a winery. The contract provided that the financier-investor would invest $1,000,000 in the winery for its capital expansion and, in return, that the winery, from grapes grown in its famous vineyards, would produce and market at least 500,000 bottles of wine each year for five years under a label with the financier's name on it.

The contract included provisions that the parties would share equally the profits and losses from the venture and that, if feasible, the wine would be distributed by the winery only through a wholesale distributor of fine wines. Neither the financier-investor nor the winery had previously dealt with this wholesale distributor. The wholesale distributor learned of the contract two days later from reading a trade newspaper. In reliance thereon, he immediately hired an additional sales executive and contracted for enlargement of his wine storage and display facility.

A bank lent the financier-investor $200,000 and the financier-investor executed a written instrument providing that the bank "is entitled to collect the debt from my share of the profits, if any, under the the winery-investor contract." The bank gave prompt notice of this transaction to the winery.

If the winery thereafter refused to account for any profits to the bank, and the bank sues the winery for the financier-investor's share of profits then realized, the winery's strongest argument in defense is that

A: the investor-winery contract did not expressly authorize an assignment of rights.
B: the financier-investor and the winery are partners, not simply debtor and creditor.
C: the bank is not an assignee of the financier-investor's rights under the investor-winery contract.
D: the bank is not an intended third-party beneficiary of the investor-winery contract.

The explanation for the answer is:

Answer C is correct. The language of the financier-investor's promise may not be sufficient to assign its rights of payment from its contract with the winery. The language simply says the bank can collect to satisfy the financier-investor's debt to the bank "from my share of the profits." A is incorrect because contract rights are freely assignable. B is incorrect because if the agreement between the financier-investor and the winery were found to be a partnership agreement, partnership interests are assignable. D is incorrect because the bank need not qualify as a beneficiary under the first contract to acquire the financier-investor's right to profits under that agreement.

Question 421 - Contracts - Remedies

The question was:

A written contract was entered into between a financier-investor and a winery. The contract provided that the financier-investor would invest $1,000,000 in the winery for its capital expansion and, in return, that the winery, from grapes grown in its famous vineyards, would produce and market at least 500,000 bottles of wine each year for five years under a label with the financier's name on it.

The contract included provisions that the parties would share equally the profits and losses from the venture and that, if feasible, the wine would be distributed by the winery only through a wholesale distributor of fine wines. Neither the financier-investor nor the winery had previously dealt with this wholesale distributor. The wholesale distributor learned of the contract two days later from reading a trade newspaper. In reliance thereon, he immediately hired an additional sales executive and contracted for enlargement of his wine storage and display facility.

Soon after making its contract with the the financier-investor, the winery, without the the financier-investor's knowledge or assent, sold its vineyards but not its winery to a large agricultural corporation. Under the terms of this sale, the agricultural corporation agreed to sell to the winery all grapes grown on the land for five years. The agricultural corporation's employees have no experience in winegrape production, and the agricultural corporation has no reputation in the wine industry as a grape producer or otherwise. The investor-winery contract was silent on the matter of the winery selling any or all of its business assets.

If the financier-investor seeks an appropriate judicial remedy against the winery for entering into the winery-agricultural corporation transaction, is the financier-investor likely to prevail?

A: Yes, because the winery-agricultural corporation transaction created a significant risk of diminishing the profits in which the financier-investor would share under his contract with the winery.
B: Yes, because the investor-winery contract did not contain a provision authorizing a delegation of the winery's duties.
C: No, because the winery remains in a position to perform under the investor-winery contract.
D: No, because the winery, as a corporation, must necessarily perform its contracts by delegating duties to individuals.

The explanation for the answer is:

Answer A is correct. The financier-investor relied upon the fact that the winery was famous for its vineyards when the financier-investor entered into the five-year agreement with the winery. The winery was thus not free to delegate its duty of grape production to an inexperienced buyer, because this act of delegation would impair the financier-investor's reasonable expectations under the agreement.

B is incorrect because delegation is permitted unless a contract specifically prohibits delegation, or the nature of the contract is such that the transfer would impair the other party's reasonable expectations. C is incorrect because the winery's performance will now be directly based upon the agricultural corporation's output, and given the agricultural corporation's lack of experience with winegrape production, the winery has created a significant risk regarding performance. D is incorrect because although corporations require individuals to perform duties, when they do so, they are not delegating contractual duties. The individual is acting on behalf of the corporation. The winery was experienced in the field, as were its employees. When the winery subsequently entered into an agreement with the agricultural corporation, it delegated its duty of grape production to an inexperienced buyer.

Question 431 - Contracts - Formation of Contracts

The question was:

On June 1, a manufacturer of men's neckties received the following order from a retailer: "Ship 500 two-inch ties, assorted stripes, your catalogue No. V34. Delivery by July 1."

On June 1, the manufacturer shipped 500 three-inch ties that arrived at the retailer's place of business on June 3. The retailer immediately telegraphed the manufacturer: "Reject your shipment. Order was for two-inch ties." The retailer, however, did not ship the ties back to the manufacturer. The manufacturer replied by telegram: "Will deliver proper ties before July 1." The retailer received this telegram on June 4, but did not reply to it.

On June 30, the manufacturer tendered 500 two-inch ties in assorted stripes, designated in his catalogue as item No. V34, but the retailer refused to accept them.

Did the retailer properly reject the ties delivered on June 3?

A: Yes, because the ties were nonconforming goods.
B: Yes, because the manufacturer did not notify the retailer that the ties were shipped as an accommodation to the retailer.
C: No, because the manufacturer could accept the retailer's offer by prompt shipment of either conforming or nonconforming goods.
D: No, because the retailer waived his right to reject the ties by not returning them promptly to the manufacturer.

The explanation for the answer is:

Answer A is correct. The retailer satisfied its duty to promptly notify the manufacturer that the goods were rejected as nonconforming.

B and C are incorrect because pursuant to UCC 2-206, a seller accepts whether it ships conforming or nonconforming goods. If the seller's shipment, however, is accompanied by notice that the goods are nonconforming and are offered as an accommodation, the seller has not accepted but has made a counter offer, which the retailer could have accepted or rejected. The manufacturer's shipment without notice constituted an attempted acceptance and simultaneously a breach of contract. The retailer was entitled to perfect tender of the goods under UCC 2-601 and was free to reject goods that failed "in any respect to conform to the contract."

D is incorrect because the retailer did not waive his rights upon rejection and retention of the goods. He was under a duty to notify the seller and to hold the goods "with reasonable care at the seller's disposition for a time sufficient to permit the seller to remove them." UCC 2-602(2)(b).

Question 432 - Contracts - Remedies

The question was:

On June 1, a manufacturer of men's neckties received the following order from a retailer: "Ship 500 two-inch ties, assorted stripes, your catalogue No. V34. Delivery by July 1."

On June 1, the manufacturer shipped 500 three-inch ties that arrived at the retailer's place of business on June 3. The retailer immediately telegraphed the manufacturer: "Reject your shipment. Order was for two-inch ties." The retailer, however, did not ship the ties back to the manufacturer. The manufacturer replied by telegram: "Will deliver proper ties before July 1." The retailer received this telegram on June 4, but did not reply to it.

On June 30, the manufacturer tendered 500 two-inch ties in assorted stripes, designated in his catalogue as item No. V34, but the retailer refused to accept them.

Did the retailer properly reject the ties tendered on June 30?

A: Yes, because the manufacturer's shipping the three-inch ties on June 1 was a present breach of contract.
B: Yes, because the manufacturer's shipping the three-inch ties on June 1 was an anticipatory repudiation.
C: No, because the manufacturer cured the June 1 defective delivery by his tender of conforming goods on June 30.
D: No, because a contract for sale of goods can be modified without consideration.

The explanation for the answer is:

Answer C is correct. When the retailer rejected the ties, the agreed time for performance (July 1) had not expired. Thus, the manufacturer, who had performed in good faith and who notified the retailer of an intent to cure by shipping conforming ties, could do so as long as the conforming delivery was made within the agreed time. UCC 2-508(1). A is incorrect because although the shipment on June 1 was a breach of contract, the manufacturer preserved the right to cure before July 1. B is incorrect because anticipatory repudiation consists of an indication by the seller through words or conduct that to contract would not be completed. Here, the manufacturer did the opposite and assured the retailer that the proper ties would be delivered before July 1. D is incorrect because the contract was not modified; 500 two-inch ties were delivered by July 1.

Question 442 - Contracts - Third-Party Rights

The question was:

A wealthy widow, wishing to make a substantial and potentially enduring gift to her beloved adult stepson, established with a bank a passbook savings account by an initial deposit of $10,000.

The passbook was issued solely in the stepson's name, but the widow retained possession of it, and the stepson was not then informed of the savings account. Subsequently, the widow became disgusted with the stepson's behavior and decided to give the same savings account solely to her beloved adult daughter. As permitted by the rules of the bank, the widow effected this change by agreement with the bank. This time she left possession of the passbook with the bank. Shortly thereafter, the stepson learned of the original savings account in his name and the subsequent switch to the widow's daughter's name.

If the stepson now sues the bank for $10,000 plus accrued interest, will the action succeed?

A: Yes, because the stepson was a third-party intended beneficiary of the original widow-bank deposit agreement.
B: Yes, because the stepson was a constructive assignee of the widow's claim, as depositor, to the savings account.
C: No, because the stepson never obtained possession of the passbook.
D: No, because the stepson's right, if any, to the funds on deposit was effectively abrogated by the second widow-bank deposit agreement.

The explanation for the answer is:

Answer D is correct. To the extent that the stepson was a third-party beneficiary of the deposit agreement, his rights were abrogated before they vested because he neither knew about nor relied upon the existence of the deposit account prior to abrogation. For this reason A is incorrect. B is incorrect because the widow did not assign her rights under another agreement to her stepson when she established the first deposit agreement. C is incorrect because the stepson's possession of the passbook was not necessary for the right to vest. His possession would constitute performance of the duty to him under the contract after the right had vested.

Question 443 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A wealthy widow, wishing to make a substantial and potentially enduring gift to her beloved adult stepson, established with a bank a passbook savings account by an initial deposit of $10,000.

The passbook was issued by the bank to the widow solely in her own name. That same day, disinterested witnesses being present, she handed the passbook to her stepson and said, "As a token of my love and affection for you, I give you this $10,000 savings account." Shortly thereafter, she changed her mind and wrote her stepson, "I hereby revoke my gift to you of the $10,000 savings account with the bank. Please return my passbook immediately," and signed her name. The stepson received the letter but ignored it, and the widow died unexpectedly a few days later.

In litigation between the stepson and the widow's estate, which of the following is a correct statement of the parties' rights with respect to the money on deposit with the bank?

A: The estate prevails, because the widow's gift to the stepson was revocable and was terminated by her death.
B: The estate prevails, because the widow's gift to the stepson was revocable and was terminated by her express revocation.
C: The stepson prevails, because he took the widow's claim to the savings account by a gratuitous but effective and irrevocable assignment from the widow.
D: The stepson prevails, because his failure to reject the gift, even if the assignment was revocable, created an estoppel against the widow and her estate.

The explanation for the answer is:

Answer C is correct. The widow orally manifested her intent to gratuitously assign her rights in the passbook savings account directly to her stepson. The stepson's acceptance is implied by his silence. A and B are incorrect because only promises to make future gifts are revocable. Completed gifts are not revocable, and this gift was effective immediately upon valid delivery of the passbook because a passbook is representative of the money in the account. D is incorrect because an estoppel is not created where there is a completed inter-vivos gift.

Question 446 - Contracts - Defenses to Enforceability

The question was:

A buyer purchased a used car from a used car dealer. Knowing them to be false, the dealer made the following statements to the buyer prior to the sale:

This car has never been involved in an accident.

This car gets 25 miles to the gallon on the open highway.

This is as smooth-riding a car as you can get.

If the buyer asserts a claim against the dealer based on deceit, which of the false statements made by the dealer would support the buyer's claim?

A: Only the statement that the car has never been involved in an accident.
B: Only the statement that the car gets 25 miles to the gallon on the open highway.
C: The statements that the car has never been involved in an accident and gets 25 miles to the gallon on the open highway.
D: The statements that the car gets 25 miles to the gallon on the open highway and is as smooth-riding a car as you can get.

The explanation for the answer is:

Answer C is correct. The dealer's statements, that the car has never been involved in an accident and that the car gets 25 miles to the gallon on the open highway, both involve false representations of fact about the car. The dealer knew these representations of fact to be false, but still made them with the intent to induce the buyer to enter into the contract even though they would cause injury to the buyer. Finally, the false statements were made by someone with superior knowledge about the car and related to its value and ascertainable facts about the car. For these reasons, A and B are incorrect. D is incorrect because the dealer's statement that the car is as smooth-riding a car as you can get is either an opinion that is open to question or, more likely, a statement of "puffery" upon which the buyer should not have relied.

Question 459 - Contracts - Remedies

The question was:

On October 1, a toy store entered into a written contract with a toy factory for the purchase at $20 per unit of 1,000 mechanical dogs to be specially manufactured by the factory according to the store's specifications. The factory promised to deliver all of the dogs "not later than November 15, for the Yule shopping season," and the store promised to pay the full $20,000 price upon delivery. In order to obtain operating funds, the factory as borrower entered into a written loan agreement on October 5 with a finance company. In relevant part, this agreement recited, "[the factory] hereby transfers and assigns to [the finance company] its [the factory's] October 1 mechanical dog contract with the store, as security for a 50-day loan of $15,000, the advance and receipt of which are hereby acknowledged by [the factory]. . ." No copy of this agreement, or statement relating to it, was filed in an office of public record.

On October 15, the factory notified the store, "We regret to advise that our master shaft burned out last night because our night supervisor let the lubricant level get too low. We have just fired the supervisor, but the shaft cannot be repaired or replaced until about January 1. We can guarantee delivery of your order, however, not later than January 20." The store rejected this proposal as unacceptable and immediately contracted with the only other available manufacturer to obtain the 1,000 dogs at $30 per unit by November 15.

On November 1, the store sues the factory for damages and alleges the above facts, except those relating to the factory-finance loan agreement. Upon the factory's motion to dismiss the complaint, the court should

A: sustain the motion, because the factory on October 15 stated its willingness, and gave assurance of its ability, to perform the contract in January.
B: sustain the motion, because the store's lawsuit is premature in any case until after November 15.
C: deny the motion, because the store's complaint alleges an actionable tort by the factory.
D: deny the motion, because the store's complaint alleges an actionable breach of contract by the factory.

The explanation for the answer is:

Answer D is correct. Because the contract specified that the goods were to be delivered "not later than November 15, for the Yule shopping season," time was of the essence and was an express condition requiring strict compliance by the factory. The factory's failure to meet this condition gave the store the right to terminate their contract and to claim damages for the factory's breach.

A is incorrect because performance by January 20 could not cure the breach given the fact that the factory knew the toys were necessary for the holiday season, which would have ended by January 20. B is incorrect because the factory's October 15 letter constituted an anticipatory repudiation - advance notice of its intent to breach when the time for performance arrived - or breach in advance of the date for performance. Although it appears that the the factory employee was negligent, the store has a valid breach of contract claim against the factory.

Question 464 - Contracts - Defenses to Enforceability

The question was:

In March, when a teenager was 17, an electronics dealer delivered to the teenager a television set. At that time the teenager agreed in writing to pay $400 for the set on July 1 when he would reach his eighteenth birthday. Eighteen is the applicable statutory age of majority, and on that date the teenager was to receive the proceeds of a trust. On July 1, when the reasonable value of the television set was $250, the teenager sent the dealer a signed letter stating, "I'll only pay you $300; that is all the set is worth."

In an action against the teenager for money damages on July 2, what is the maximum amount that the dealer will be entitled to recover?

A: Nothing
B: $250, the reasonable value of the set
C: $300, the amount the teenager promised to pay in his letter of July 1
D: $400, the original sale price

The explanation for the answer is:

Answer C is correct. Because the promises were exchanged when the teenager was a minor, he had voidable rights under the contract. His July 1 letter was written upon his eighteenth birthday, and because agreements cannot be partially disaffirmed, this letter amounted to a disaffirmance of the prior agreement. Thus, the only amount the dealer can receive is the amount now offered by the teenager.

A is incorrect because although the teenager was entitled to disaffirm the contract upon reaching majority, he was also entitled to ratify his earlier agreement, which he did by agreeing to pay a reduced amount. B is incorrect because the teenager had the right to disaffirm the contract and to obtain rescission by returning the consideration (the television set) and if he did this, he would not incur any additional obligation. He would not be obligated to pay its reasonable value. D is incorrect, because the teenager acquired only voidable duties under the original contract.

Question 478 - Contracts - Formation of Contracts

The question was:

The inventor of the LBVC, a laser-beam vegetable chopper, ran a television ad that described the chopper and said, "The LBVC is yours for only $49.99 if you send your check or money order to Box 007, Greenville. Not available in stores." The owner of a retail specialty shop, wrote the inventor, "What's your best, firm price for two dozen LBVC's." The inventor sent a written reply that said in its entirety, "We quote you for prompt acceptance $39.99 per unit for 24 LBVC's." The owner of the retail specialty shop subsequently mailed a check to the inventor in the appropriate amount, with a memo enclosed saying, "I accept your offer for 24 LBVC's."

A contract would arise from these communications only if

A: both parties were merchants.
B: the inventor had at least 24 LBVC's in stock when the owner of the retail specialty shop's check and memo were received.
C: the owner of the retail specialty shop's check and memo were mailed within three months after his receipt of the inventor's letter.
D: the owner of the retail specialty shop's check and memo were mailed within a reasonable time after his receipt of the inventor's letters.

The explanation for the answer is:

Answer D is correct. The inventor's letter to the owner of the retail specialty shop, when taken in conjunction with the surrounding circumstances - the television advertisement - constituted an offer to the owner, which the owner could accept by complying with the television advertisement's method of acceptance. Since no duration was stated in either the advertisement or the letter to the owner, the offer would lapse after a reasonable time under the circumstances.

Choice A is incorrect because merchant status does not govern all transactions involving the sale of goods and is not necessary under the UCC for the owner to accept an offer for the sale of goods. Merchant status is only relevant in limited instances under the UCC, such as firm offers and the Statute of Frauds. Choice B is incorrect because the inventor's letter to the owner offered to provide 24 LBVC's. Choice C is incorrect because a reasonable period governs an offeree's power of acceptance. The three-month limitation for firm offers under the UCC does not apply because the offer gave no assurance that it would be held open and in fact used language indicating the contrary - "for prompt acceptance."

Question 479 - Contracts - Formation of Contracts

The question was:

The inventor of the LBVC, a laser-beam vegetable chopper, ran a television ad that described the chopper and said, "The LBVC is yours for only $49.99 if you send your check or money order to Box 007, Greenville. Not available in stores." The owner of a retail specialty shop, wrote the inventor, "What's your best, firm price for two dozen LBVC's." The inventor sent a written reply that said in its entirety, "We quote you for prompt acceptance $39.99 per unit for 24 LBVC's." The owner of the retail specialty shop subsequently mailed a check to the inventor in the appropriate amount, with a memo enclosed saying, "I accept your offer for 24 LBVC's."

The inventor shipped 24 LBVC's to the owner of the retail specialty shop after receiving his check and memo, and with the shipment sent the owner of the retail specialty shop an invoice that conspicuously stated, among other things, the following lawful provision: "These items shall not be offered for resale at retail." The owner of the retail specialty shop received and read but disregarded the invoice restriction and displayed the 24 LBVC's for resale.

The inventor has a cause of action against the owner of the retail specialty shop for breach of contract only if

A: The inventor, as inventor of the LBVC, was not a merchant.
B: the invoice restriction was a material alteration of the pre-existing terms.
C: the inventor's written reply that quoted $39.99 per LBVC, but did not contain a restriction on retail sales, was not an offer that the owner of the retail specialty shop accepted by ordering 24 LBVC's.
D: the owner of the retail specialty shop was consciously aware when taking delivery of the goods that the television ad had said, "Not available in stores."

The explanation for the answer is:

Answer C is correct. If the inventor's written reply were construed as an offer, the owner of the retail specialty shop accepted that offer when it tendered the requested payment and did not attempt to state additional or different terms in its acceptance. The inventor's letter with shipment, which contained an additional provision, would have no legal effect, and the inventor would not have a cause of action against the owner of the retail specialty shop. However, answer C assumes that the inventor's written reply that quoted $39.99 was not an offer. Based on that assumption, the inventor's shipment of the LBVCs with the attached invoice stating "these items shall not be offered for resale at retail" would be considered an offer and the owner of the retail specialty shop's acceptance and display of the products after reading the invoice would be considered an acceptance of the offer. Because the owner of the retail specialty shop accepted the offer, which included the provision restricting resale of the products, the inventor would have a cause of action against the owner.

Answer A is incorrect because merchant status does not govern all transactions involving the sale of goods and is not necessary for the owner of the retail specialty shop's acceptance to be valid. B is incorrect because the relevance of the invoice as a material alteration under the UCC battle of the forms provision, 2-207, is relevant only if the inventor was determined to be the offeree. Here, the owner of the retail specialty shop was the offeree and its acceptance was valid. D is incorrect because the language, "Not available in stores," could not reasonably be construed as a prohibition on resale, and the inventor's letter to the owner of the retail specialty shop contained no such restriction.

Question 496 - Contracts - Remedies

The question was:

The German-made Doppelpferd is the most popular automobile in the United States. Its U.S. sales are booming, and the average retail markup in such sales is 30 percent. A franchised Doppelpferd dealer in the United States contracted with a purchaser to sell him a new Doppelpferd for $9,000 cash, the sale to be consummated after delivery to the dealer of the car, which the dealer ordered for the purchaser. The signed retail contractual document was a contract drafted by the dealer's lawyer, and the purchaser did not question or object to any of its terms, including the price inserted by the dealer. When the car arrived from Germany, the purchaser repudiated the contract. The dealer at once sold the car for $9,000 cash to another interested buyer, for whom the dealer had also ordered from the manufacturer a Doppelpferd identical to the purchaser's.

In an action against the purchaser for breach of contract, the dealer will probably recover

A: $9,000 minus what it cost the dealer to purchase the car from the manufacturer.
B: $9,000 minus the wholesale price of an identical Doppelpferd in the local wholesale market among dealers.
C: nominal damages only, because the dealer resold the car to the other interested buyer without lowering the retail price.
D: nothing, because the parties' agreement was an adhesion contract and therefore unconscionable.

The explanation for the answer is:

Answer A is correct. The dealer is a volume seller, and is therefore entitled to recover the expected profits lost due to the repudiated sale even if the car is subsequently resold at the same price. The dealer's expectation recovery under the contract is the purchase price paid by the purchaser minus the cost the dealer incurred in obtaining the car.

B and C are incorrect because the dealer is a volume seller, and even though he was able to resell the car, the dealer is still entitled to the lost profits from the earlier sale. A resale to another buyer does not compensate for the lost sale. D is incorrect. A contract of adhesion is not present simply because a product is in great demand and therefore scarce and market prices are 30% above retail. Beyond the mark-up, there are no other facts present to establish that this contract was a standardized agreement whereby one party (the dealer) dictated its unilateral will on many others in the form of a standard contract.

Question 503 - Contracts - Discharge of Contractual Duties

The question was:

On January 1, a builder and a landlowner agreed in writing that the builder would build a house on the landowner's lot according to the landowner's plans and specifications for $60,000, the work to commence on April 1. The landowner agreed to make an initial payment of $10,000 on April 1, and to pay the balance upon completion of the work.

On February 1, the builder notified the landowner that he (the builder) would lose money on the job at that price and would not proceed with the work unless the landowner would agree to increase the price to $90,000. The landowner thereupon, without notifying the builder, agreed in writing with a third-party for the third-party, commencing April 1, to build the house for $75,000, which was the fair market cost of the work to be done.

On April 1, both the builder and the third-party showed up at the building site to begin work, the builder telling the landowner that he had decided to "take the loss" and would build the house for $60,000 as originally agreed. The landowner dismissed the builder and allowed the third-party to begin work on the house.

In a contract action by the builder against the landowner, which of the following would the court decide under the prevailing American view?

A: The landowner will win, because the builder in legal effect committed a total breach of contract.
B: The landowner will win, because the third-party's contract price was $15,000 lower than the $90,000 demanded by the builder on February 1.
C: The builder will win, because the landowner did not tell him before April 1 about the contract with the third-party
D: The builder will win, because he attempted to perform the contract as originally agreed.

The explanation for the answer is:

Answer A is correct. When the builder contacted the landowner on February 1 stating that he would not perform unless the landowner paid the builder more money for the same work, the builder was in total breach of the contract because his statement to the landlord made it clear that he was going to breach when performance became due. This statement was an anticipatory repudiation of the agreement.

B is incorrect because the landowner's agreement with the third-party is not evidence as to the builder's liability under the first agreement. This second agreement with the third-party instead satisfies the landowner's duty to mitigate damages via a substitute transaction. C is incorrect because the builder was in total breach of the agreement on February 1, and the landowner's duties under the contract were discharged. D is incorrect because his attempt at performance was subsequent to a discharge of the landowner's duties under the contract.

Question 504 - Contracts - Remedies

The question was:

On January 1, a builder and a landowner agreed in writing that the builder would build a house on the landowner's lot according to the landowner's plans and specifications for $60,000, the work to commence on April 1. The landowner agreed to make an initial payment of $10,000 on April 1, and to pay the balance upon completion of the work.

On February 1, the builder notified the landowner that he (the builder) would lose money on the job at that price, and would not proceed with the work unless the landowner would agree to increase the price to $90,000. The landowner thereupon, without notifying the builder, agreed in writing with a third-party for the third-party, commencing April 1, to build the house for $75,000, which was the fair market cost of the work to be done.

On April 1, both the builder and the third-party showed up at the building site to begin work, the builder telling the landowner that he had decided to "take the loss" and would build the house for $60,000 as originally agreed. The landowner dismissed the builder and allowed the third-party to begin work on the house.

The third-party finished the house on schedule and then showed the landowner that he (the third-party) had spent $85,000 on the job. The landowner thereupon paid the third-party the full balance of their contract price plus an additional $10,000, so that the third-party would not lose money.

In a contract action by the landowner against the builder, the landowner will recover

A: the difference between the fair market value of the completed house and the builder's original contract price.
B: $30,000, the difference between the builder's original contract price and the amount the builder demanded on February 1.
C: $25,000, the difference between the builder's original contract price and the total amount the landowner paid the third-party for building the house.
D: $15,000, the difference between the builder's original contract price and the third-party's contract price.

The explanation for the answer is:

Answer D is correct. The landowner is entitled to damages representing the difference between the original contract price with the builder ($60,000) and his contract price with the third-party ($75,000). He is not entitled to an additional amount representing the $10,000 extra that he paid the third-party because he was not contractually obligated to pay that amount to the third-party. It would, therefore, not be a part of the actual loss he avoided by the substitute transaction. For this reason C is incorrect.

A is incorrect because this would not represent the landowner's expectation interest under his contract with the builder. B is incorrect because this amount would not represent his actual loss on his contract with the builder. It would not represent a consequential or incidental loss due to the builder's breach because the landowner did not incur an obligation to pay the amount the builder demanded on February 1.

Question 524 - Contracts - Remedies

The question was:

On January 2, a landowner and a builder entered into a written contract in which the builder agreed to build on the landowner's lot a new house for the landowner, according to plans and specifications furnished by the landowner's architect at a contract price of $200,000. The contract provided for specified progress payments and a final payment of $40,000 upon the landowner's acceptance of the house and issuance of a certificate of final approval by the architect. Further, under a "liquidated damages" clause in the agreement, the builder promised to pay the homeowner $500 for each day's delay in completing the house after the following October 1. The homeowner, however, told the builder on January 2, before the contract was signed, that he would be on an around-the-world vacation trip most of the summer and fall and would not return to occupy the house until November 1.

Because she was overextended on other construction jobs, the builder did not complete the house until October 15. The landowner returned on November 1 as planned and occupied the house. Ten days later, after making the $40,000 final payment to the builder, the landowner learned for the first time that the house had not been completed until October 15.

If the landowner sues the builder for breach of contract on account of the fifteen-day delay in completion, which of the following will the court probably decide?

A: The homeowner will recover damages as specified in the contract, i.e., $500 multiplied by fifteen.
B: The homeowner will recover his actual damages, if any, caused by the delay in completion.
C: Having waived the delay by occupying the house and making the final payment, the landowner will recover nothing.
D: The landowner will recover nothing because the contractual completion date was impliedly modified to November 1 when the landowner on January 2 advised the builder about the landowner's prospective trip and return date.

The explanation for the answer is:

Answer B is correct. Both parties knew that the landowner would not be available to take possession on October 1. The liquidated damages provision thus operates as a penalty and will not be enforced because it does not fix damages in light of anticipated or actual harm. Damages will thus be limited to any harm the landowner suffered in taking possession two weeks after the stated completion date. For this reason, A is incorrect. C is incorrect because occupation and payment without knowledge of the delay cannot constitute a voluntary and intentional relinquishment of a right. D is incorrect because this statement, standing alone, is insufficient to indicate the landowner's intent to modify the completion date.

Question 525 - Contracts - Conditions

The question was:

On January 2, a landowner and a builder entered into a written contract in which the builder agreed to build on the landowner's lot a new house for the landowner, according to plans and specifications furnished by the landowner's architect at a contract price of $200,000. The contract provided for specified progress payments and a final payment of $40,000 upon the landowner's acceptance of the house and issuance of a certificate of final approval by the architect. Further, under a "liquidated damages" clause in the agreement, the builder promised to pay the landowner $500 for each day's delay in completing the house after the following October 1. The landowner, however, told the builder on January 2, before the contract was signed, that he would be on an around-the-world vacation trip most of the summer and fall and would not return to occupy the house until November 1.

The builder completed the house on October 14 and, when the landowner returned on November 1, requested the final payment of $40,000 and issuance of a certificate of final approval by the architect. The landowner, however, refused to pay any part of the final installment after the architect told him that the builder "did a great job and I find no defects worth mentioning; but the builder's contract price was at least $40,000 too high, especially in view of the big drop in housing values within the past ten months. I will withhold the final certificate, and you just hold on to your money."

If the builder sues the landowner for the $40,000 final payment after the architect's refusal to issue a final certificate, which of the following will the court probably decide?

A: The builder wins, because nonoccurrence of the condition requiring the architects's certificate of final approval was excused by the architects's bad-faith refusal to issue the certificate.
B: The builder wins, but, because all contractual conditions have not occurred, her recovery is limited to restitution of the benefit conferred on the landowner, minus progress payments already received.
C: The landowner wins, because he can prove by clear and convincing evidence that the fair-market value of the completed house is $160,000 or less.
D: The landowner wins, because he can prove by clear and convincing evidence that the total payment to the builder of $160,000 will yield a fair net profit.

The explanation for the answer is:

Answer A is correct. The condition in the contract requiring a certificate of final approval was withheld in bad faith and will be excused. It was not withheld because the house did not meet specifications, but rather to induce the builder to lower her fee because the housing market had fallen during the ten-month period during which the builder was performing under the contract.

B is incorrect because the condition is excused; the builder is entitled to her expectation recovery under the contract, the final $40,000 payment, and not an equitable theory of recovery. C is incorrect because the present fair market value is not relevant to the certificate of approval, which is based upon compliance with the architect's specifications and completion of the construction in a workmanlike manner. D is incorrect because the parties' agreement is enforceable as to the price to be paid for the house.

Question 570 - Contracts - Consideration

The question was:

A testator, whose nephew was his only heir, died leaving a will that gave his entire estate to charity. The nephew, knowing full well that the testator was of sound mind all of his life, and having no evidence to the contrary, nevertheless filed a suit contesting the testator's will on the ground that the testator was incompetent when the will was signed. The testator's executor, offered the nephew $5,000 to settle the suit, and the nephew agreed.

If the executor then repudiates the agreement and the foregoing facts are proved or admitted in the nephew's suit against the executor for breach of contract, is the nephew entitled to recover under the prevailing view?

A: Yes, because the nephew-executor agreement was a bargained for exchange.
B: Yes, because the law encourages the settlement of disputed claims.
C: No, because the nephew did not bring the will contest in good faith.
D: No, because an agreement to oust the court of its jurisdiction to decide a will contest is contrary to public policy.

The explanation for the answer is:

Answer C is correct. The nephew did not provide consideration when he agreed to settle his claim against the testator's estate because he knew that he was surrendering an invalid claim. Answer A is incorrect because although the nephew bargained for the settlement, he knew he was not agreeing to surrender any right at the time he entered into the agreement. Answer B is incorrect because although the law encourages settlement, it does so when the settlement is undertaken based upon the good faith belief that the party is relinquishing a valid claim. Answer D is incorrect because parties can modify legal rights and settle disputes so long as they do so in good faith.

Question 583 - Contracts - Formation of Contracts

The question was:

On August 1, a geriatric company operating a "lifetime care" home for the elderly admitted an 84-year-old man for a trial period of two months. On September 25, the 84-year-old man and the geriatric company entered into a written lifetime care contract with an effective commencement date of October 1. The full contract price was $20,000, which, as required by the terms of the contract, the 84-year-old man prepaid to the geriatric company on September 25. The 84-year-old man died of a heart attack on October 2.

In a restitutionary action, can the administratrix of the 84-year-old man's estate, a surviving sister, recover on behalf of the estate either all or part of the $20,000 paid to the geriatric company on September 25?

A: Yes, because the geriatric company would otherwise be unjustly enriched at the 84-year-old man's expense.
B: Yes, under the doctrine of frustration of purpose.
C: No, because the 84-year-old man's life span and the duration of the geriatric company's commitment to him was a risk assumed by both parties.
D: No, because the geriatric company can show that between September 25 and the 84-year-old man's death it rejected, because of its commitment to the 84-year-old man, an application for lifetime care from another elderly person.

The explanation for the answer is:

Answer C is correct. Restitution generally is not available to recover a benefit conferred pursuant to a valid and binding contract. When determining whether a contract may be unenforceable on grounds of unconscionability, the fairness of the exchange is determined as of the time that the contract was entered into. Although the price of $20,000 may seem unfair as of October 2, the risk that the 84-year-old man would die within a short period was one that he assumed when he entered into the contract on September 25.

A is incorrect because the benefit was conferred pursuant to a binding contract. B is incorrect because there was no frustration of purpose, the man was given care for the remainder of his life. D is incorrect because the company may enforce the contract at law and does not need to show detrimental reliance.

Question 588 - Contracts - Remedies

The question was:

The plaintiff, a baseball star, contracted with the Municipal Symphony Orchestra, Inc., to perform for $5,000 at a children's concert as narrator of "Peter and the Wolf." Shortly before the concert, the baseball star became embroiled in a highly publicized controversy over whether he had cursed and assaulted a baseball fan. The orchestra canceled the contract out of concern that attendance might be adversely affected by the baseball star's appearance.

The baseball star sued the orchestra for breach of contract. His business agent testified without contradiction that the cancellation had resulted in the baseball star's not getting other contracts for performances and endorsements.

The trial court instructed the jury, in part, as follows: "If you find for the plaintiff, you may award damages for losses which at the time of contracting could reasonably have been foreseen by the defendant as a probable result of its breach. However, the law does not permit recovery for the loss of prospective profits of a new business caused by breach of contract."

On the baseball star's appeal from a jury verdict for the baseball star, and judgment thereon, awarding damages only of the $5,000 fee promised by the orchestra, the judgment will probably be

A: affirmed, because the trial court stated the law correctly.
B: affirmed, because the issue of damages for breach of contract was solely a jury question.
C: reversed, because the test for limiting damages is what the breaching party could reasonably have foreseen at the time of the breach.
D: reversed, because under the prevailing modern view, lost profits of a new business are recoverable if they are established with a reasonable certainty.

The explanation for the answer is:

Answer D is correct. In order to recover lost profit damages, the plaintiff must prove that the losses suffered were substantially certain and not simply speculative. In this case there is uncontroverted testimony that there were forgone profits, and such testimony could establish an amount of damages with reasonable certainty. Therefore, the judgment should be reversed because the jury instructions were improper and the baseball star may be entitled to greater damages. A is incorrect because the trial court's jury instructions stated the outdated traditional rule regarding a new business's ability to recover damages. B is incorrect because the issue is one of law and fact. C is incorrect because certainty, not foreseeability, is the proper limiting test in this situation.

Question 598 - Contracts - Conditions

The question was:

Under a written agreement, a pastry company promised to sell its entire output of baked buns at a specified unit price to a baked goods retailer for one year. The baked goods retailer promised not to sell any other supplier's baked buns.

Shortly after making the contract, and before the pastry company had tendered any buns, the baked goods retailer decided that the contract had become undesirable because of a sudden, sharp decline in its customers' demand for baked buns. It renounced the agreement and the pastry company sues for breach of contract.

Which of the following will the court probably decide?

A: The baked goods retailer wins, because mutuality of obligation was lacking in that the baked goods retailer made no express promise to buy any of the pastry company's baked buns.
B: The baked goods retailer wins, because the agreement was void for indefiniteness of quantity and total price for the year involved.
C: The pastry company wins, because the baked goods retailer's promise to sell at retail the pastry company's baked buns exclusively, if it sold any such buns at all, implied a promise to use its best efforts to sell the pastry company's one-year output of baked buns.
D: The pastry company wins, because under applicable law both parties to a sale-of-goods contract impliedly assume the risk of price and demand fluctuations.

The explanation for the answer is:

Answer C is correct. Under the UCC, a contract for exclusive dealing in a good imposes on the part of the seller an obligation to use best efforts to supply the good and an obligation on the part of the buyer to use its best efforts to promote the good's sale. Therefore the baked goods retailer was under an implied obligation to use its best efforts to promote the sale of the pastry company's buns for the duration of the contract.

Choice A is incorrect because the contract implied an obligation on the part of the baked goods retailer to use its best efforts to promote the sale of the buns. B is incorrect because output contracts are not void for lack of indefiniteness. D is incorrect because it does not identify the legal rule that is at issue in the problem.

Question 605 - Contracts - Consideration

The question was:

On July 18, a shovel manufacturer received an order for the purchase of 500 snow shovels from a wholesaler. The wholesaler had mailed the purchase order on July 15. The order required shipment of the shovels no earlier than September 15 and no later than October 15. Typed conspicuously across the front of the order form was the following: "[the wholesaler] reserves the right to cancel this order at any time before September 1." The manufacturer's mailed response, saying "We accept your order," was received by the wholesaler on July 21.

As of July 22, which of the following is an accurate statement as to whether a contract was formed?

A: No contract was formed, because of the wholesaler's reservation of the right to cancel.
B: No contract was formed, because the wholesaler's order was only a revocable offer.
C: A contract was formed, but prior to September 1 it was terminable at the will of either party.
D: A contract was formed, but prior to September 1 it was an option contract terminable only at the will of the wholesaler.

The explanation for the answer is:

Answer A is correct. A promise is not consideration to support a return promise if by its terms the promisor unconditionally reserves the right of alternative performances, such as reserving the right to cancel an order. Such a promise is an illusory promise. When the wholesaler reserved the right to cancel the order at any time before September 1, this meant that as of July 22, the wholesaler gave only an illusory promise to purchase the shovels. Therefore, as of that time the contract was not enforceable against either party.

B is incorrect because, in general, offers are revocable and a contract may be formed as long as an offer is not actually revoked. Because there is no indication in the fact pattern that the offer was revoked, a valid contract may have been formed. C is incorrect because a contract was not formed as of July 22 and because only the wholesaler reserved the right to terminate. D is incorrect because a contract was not formed as of July 22 and because the facts do not suggest that the manufacturer gave the wholesaler an option.

Question 606 - Contracts - Consideration

The question was:

On July 18, a shovel manufacturer received an order for the purchase of 500 snow shovels from a wholesaler. The wholesaler had mailed the purchase order on July 15. The order required shipment of the shovels no earlier than September 15 and no later than October 15. Typed conspicuously across the front of the order form was the following: "[the wholesaler] reserves the right to cancel this order at any time before September 1." The manufacturer's mailed response, saying "We accept your order," was received by the wholesaler on July 21.

The wholesaler did not cancel the order, and the manufacturer shipped the shovels to the wholesaler on September 15. When the shovels, conforming to the order in all respects, arrived on October 10, the wholesaler refused to accept them.

Which of the following is an accurate statement as of October 10 after the wholesaler rejected the shovels?

A: The wholesaler's order for the shovels, even if initially illusory, became a binding promise to accept and pay for them.
B: The wholesaler's order was an offer that became an option after shipment by the manufacturer.
C: The wholesaler's right to cancel was a condition subsequent, the failure of which resulted in an enforceable contract.
D: In view of the wholesaler's right to cancel its order prior to September 1, the shipment of the shovels on September 15 was only an offer by the manufacturer.

The explanation for the answer is:

Answer A is correct. An illusory promise may become consideration if the time during which the promisor could choose alternative performances has passed. Although reserving the right to terminate a contract for a specified period makes a promise illusory, the promise becomes consideration once the period for exercising the right to terminate has passed. Therefore, because the wholesaler did not exercise its right to cancel the order, the manufacturer became bound to the contract as of September 1.

B and D are incorrect because both parties became bound to a contract as of September 1. C is incorrect because no language that indicates the existence of condition subsequent, and even if there were such language, the failure of a condition subsequent would not create an enforceable contract.

Question 611 - Contracts - Remedies

The question was:

A high-volume, pleasure-boat retailer entered into with a boater, a written contract signed by both parties, to sell the boater a power boat for $12,000. The manufacturer's price of the boat delivered to the retailer was $9,500. As the contract provided, the boater paid the retailer $4,000 in advance and promised to pay the full balance upon delivery of the boat. The contract contained no provision for liquidated damages. Prior to the agreed delivery date, the boater notified the retailer that he would be financially unable to conclude the purchase; the retailer thereupon resold the same boat that the boater had ordered to a third person for $12,000.

If the boater sues the retailer for restitution of the $4,000 advance payment, which of the following should the court decide?

A: The boater's claim should be denied, because, as the party in default, he is deemed to have lost any right to restitution of a benefit conferred on the retailer.
B: The boater's claim should be denied, because, but for his repudiation, the retailer would have made a profit on two boat-sales instead of one.
C: The boater's claim should be upheld in the amount of $4,000 minus the amount of the retailer's lost profit under its contract with the boater.
D: The boater's claims should be upheld in the amount of $3,500 ($4,000 minus $500 as statutory damages under the UCC).

The explanation for the answer is:

Answer C is correct. By repudiating his obligation to pay the remainder of the contract price, the boater breached and the retailer is entitled to recover expectation damages. Since the retailer is a volume seller, under UCC article 2 the retailer is entitled to the expected profit from the lost sale even though the same product was resold at the original price. Therefore, the boater will only be able to recover his down payment of $4,000 minus the profit lost by the retailer from having the original sale fall through.

A is incorrect because it would be unjust enrichment for the retailer to retain an amount greater than its losses under the contract. B is incorrect, but has the correct reasoning. The retailer is entitled to the expected profit from the lost sale, but is not automatically entitled to the full $4,000 advance payment. D is incorrect because as the party who breached the contract, the boater is not entitled to damages. The boater is only entitled to the restitution of the down payment which exceeds the damages caused by his breach.

Question 622 - Contracts - Formation of Contracts

The question was:

A developer, needing a water well on one of his projects, met several times about the matter with a well driller. Subsequently, the well driller sent a developer an unsigned typewritten form captioned "WELL DRILLING PROPOSAL" and stating various terms the two had discussed but not agreed upon, including a "proposed price of $5,000." The form concluded, "This proposal will not become a contract until signed by you [the developer] and then returned to and signed by me [the well driller]."

The developer signed the form and returned it to the well driller, who neglected to sign it but promptly began drilling the well at the proposed site on the developer's project. After drilling for two days, the well driller told the developer during one of the developer's daily visits that he would not finish unless the developer would agree to pay twice the price recited in the written proposal. The developer refused, the well driller quit, and the developer hired substitute to drill the well to completion for a price of $7,500.

In an action by the developer against the well driller for damages, which of the following is the probable decision?

A: The developer wins, because his signing of the well driller's form constituted an acceptance of an offer by the well driller.
B: The developer wins, because the well driller's commencement of performance constituted an acceptance by the well driller of an offer by the developer and an implied promise by the well driller to complete the well.
C: The well driller wins, because he never signed the proposal as required by its terms.
D: The well driller wins, because his commencement of performance merely prevented the developer from revoking his offer, made on a form supplied by the well driller, and did not obligate the well driller to complete the well.

The explanation for the answer is:

Answer B is correct. An offer is a manifestation of a willingness to bargain that creates a capacity in the offeree to form a contract by consent. Since the form that the well driller sent to the developer stated that the proposal would not be a contract until signed by both parties, it is not an offer because it does not manifest an intent to conclude a contract upon mere signing by the developer. However, *after* the developer signed the form, the form became an offer that the well driller could accept either by signing the form or by manifesting assent in some other way (such as by commencing performance).

A is incorrect because the developer's signing of the form amounted to an offer and not an acceptance. C is incorrect because the well driller manifested assent by commencing performance. D is incorrect because the offer sought a return promise, which the well driller implicitly made by commencing performance.

Question 626 - Contracts - Conditions

The question was:

A property owner and a landscape architect signed a detailed writing in which the landscape architect agreed to landscape the owner's residential property in accordance with a design prepared by the landscape architect and incorporated in the writing. The owner agreed to pay $10,000 for the work upon its completion. The owner's spouse was not a party to the agreement, and had no ownership interest in the premises.

At the owner's insistence, the written owner-architect agreement contained a provision that neither party would be bound unless the owner's law partner, an avid student of landscaping, should approve the landscape architect's design. Before the landscape architect commenced the work, the owner's law partner, in the presence of both the owner and the landscape architect, expressly disapproved the landscaping design. Nevertheless, the owner ordered the landscape architect to proceed with the work, and the landscape architect reluctantly did so. When the landscape architect's performance was 40% complete, the owner repudiated his duty, if any, to pay the contract price or any part thereof.

If the landscape architect now sues the owner for damages for breach of contract, which of the following concepts best supports the landscape architect's claim?

A: Substantial performance.
B: Promissory estoppel.
C: Irrevocable waiver of condition.
D: Unjust enrichment.

The explanation for the answer is:

Choice C is correct. The nonoccurrence of an express condition will discharge the contractual obligation of a party who is subject to the condition, unless the nonoccurrence of the condition has been waived by that party. Once the waiver has been given, it cannot be revoked where it is made after the time for the fulfillment of the condition has passed or where the other party has relied on the waiver. Therefore, although the express condition to the owner-architect agreement did not occur (since the necessary approval was not given), the owner waived the condition when the owner ordered the work to proceed. Since the waiver occurred after the nonoccurrence of the condition, and since the landscape architect relied on the waiver by completing 40% of the work, the owner may not revoke the waiver.

Choice A is incorrect because substantial performance is not applicable where performance is subject to an express condition. Choices B and D are incorrect because the landscape architect's claim is better supported on a breach of contract theory.

Question 634 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

An expert in lifting and emplacing equipment atop tall buildings, contracted in a signed writing to lift and emplace certain air-conditioning equipment atop a builder's building. An exculpatory clause in the contract provided that the expert would not be liable for any physical damage to the builder's building occurring during installation of the air-conditioning equipment. There was also a clause providing for per diem damages if the expert did not complete performance by a specified date and a clause providing that "time is of the essence." Another clause provided that any subsequent agreement for extra work under the contract must be in writing and signed by both parties.

With ample time remaining under the contract for commencement and completion of his performance, the expert notified the builder that he was selling his business to a man who was equally expert in lifting and emplacing equipment atop tall buildings, and that the man had agreed to "take over the expert-builder contract."

Assume that the builder orally agreed with the expert to accept the man's services and that the man performed on time but negligently installed the wrong air-conditioning equipment.

Will the builder succeed in an action against the expert for damages for breach of contract?

A: Yes, because the builder did not agree to release the expert from liability under the expert-builder contract.
B: Yes, because the builder received no consideration for the substitution of the man for the expert.
C: No, because by accepting the substitution of the man for the expert, the builder effected a novation, and the expert was thereby discharged of his duties under the expert-builder contract.
D: No, because the liquidated-damage clause in the expert-builder contract provided only for damages caused by delay in performance.

The explanation for the answer is:

Answer A is correct. Unless the other party to the contract (the obligee) agrees otherwise (*e.g.*, by executing a novation substituting the new obligor and releasing the original obligor of its duty), delegation of a contractual duty does not discharge the obligation of the delegating obligor. Although the builder orally agreed to accept the delegation of the expert's duties to the man, that agreement did not effect a novation, or a release of the expert's obligation under the contract.

B is incorrect because a delegation does not require consideration to be effective. C is incorrect because an acceptance of delegation is not the same as a novation. D is incorrect because a liquidated damages provision for delay does not preclude recovery of other types of damages resulting from a breach.

Question 645 - Contracts - Third-Party Rights

The question was:

The aged mother of a sister and brother, both adults, wished to employ a live-in companion so that she might continue to live in her own home. Their mother, however, had only enough income to pay one-half of the companion's $2,000 monthly salary. Learning of their mother's plight, the siblings agreed with each other in a signed writing that on the last day of January and each succeeding month during their mother's lifetime, each would give their mother $500. Their mother then hired the companion.

The siblings made the agreed payments in January, February, and March. In April, however, the brother refused to make any payment and notified his sister and mother that he would make no further payments.

Will their mother succeed in an action for $500 brought against the brother after April 30?

A: Yes, because by making his first three payments, the brother confirmed his intent to contract.
B: Yes, because the mother is an intended beneficiary of a contract between the siblings.
C: No, because a parent cannot sue her child for breach of a promise for support.
D: No, because the siblings intended their payment to their mother to be gifts.

The explanation for the answer is:

B is correct. The mother was not a party to the contract between the sister and the brother, so the only way for her to have contractual rights is if she was the intended beneficiary of the contract. For the mother to be an intended beneficiary, she must be the person to whom performance is to be given. In this case several factors indicate that the mother is an intended beneficiary: the mother is named in the contract, the mother directly receives the payments, and the mother has a close familial relationship with the parties. Therefore, the mother is an intended beneficiary and will prevail in a suit against the brother for the $500 payment.

A is incorrect because modern contract law is based upon the objective test, which does not consider a party's private intent. The brother's intent is irrelevant. Further, whether a contract was formed is not at issue. The issue is whether the mother has contractual rights that may be asserted.

C is incorrect because the mother is simply asserting her rights as an intended beneficiary to the contract; her claim is not solely based on her relationship to the son. Furthermore, there is no rule of contract law which states that a parent may not sue a child.

D is incorrect because the promise to pay $500 was made in exchange for a mutual promise to pay the other $500. Because consideration was present, a contract was formed, and the $500 payments will not be considered gifts.

Question 646 - Contracts - Remedies

The question was:

The aged mother of a sister and brother, both adults, wished to employ a live-in companion so that she might continue to live in her own home. The mother, however, had only enough income to pay one-half of the companion's $2,000 monthly salary. Learning of their mother's plight, the sister and brother agreed with each other in a signed writing that on the last day of January and each succeeding month during their mother's lifetime, each would give their mother $500. Their mother then hired the companion.

The siblings made the agreed payments in January, February, and March. In April, however, the brother refused to make any payment and notified his sister and their mother that he would make no further payments.

There is a valid contract between the siblings, but their mother has declined to sue the brother.

Will the sister succeed in an action against the brother in which she asks the court to order the brother to continue to make his payments to their mother under the terms of the the sibling's contract?

A: Yes, because the sister's remedy at law is inadequate.
B: Yes, because the sister's burden of supporting her mother will be increased if her brother does not contribute his share.
C: No, because a court will not grant specific performance of a promise to pay money.
D: No, because the brother's breach of contract has caused no economic harm to the sister.

The explanation for the answer is:

Answer A is correct. A court may grant specific performance of a contractual obligation where an award of monetary damages is inadequate - in other words, where damages would not be a just or reasonable substitute for performance of the promise, or where calculation of adequate damages would be impracticable. Here the calculation of adequate damages would be impracticable because it is impossible to know how many months the mother will live. Therefore, the sister should be entitled to specific performance.

B is incorrect because the brother's breach does not impose a legal duty on the sister to pay the difference. C is incorrect as a misstatement of the law; the court will not grant specific performance of service contracts, but the promise to pay money is not a service contract. D is incorrect because the absence of economic harm to the sister does not preclude recovery for breach of contract.

Question 657 - Contracts - Formation of Contracts

The question was:

A retailer of guns in a state received on June 1 the following signed letter from a gun-wholesaler in another state: "We have just obtained 100 of the assault rifles you inquired about and can supply them for $250 each. We can guarantee shipment no later than August 1."

On June 10, the wholesaler sold and delivered the same rifles to another merchant for $300 each. Unaware of that transaction, the retailer on the morning of June 11 mailed the wholesaler a letter rejecting the latter's offer, but, changing his mind an hour later, retrieved from his local post office the letter of rejection and immediately dispatched to the wholesaler a letter of acceptance, which the wholesaler received on June 14.

On June 9, a valid federal statute making the interstate sale of assault rifles punishable as a crime had become effective, but neither the retailer nor the wholesaler was aware until June 15 that the statute was already in effect.

As between the retailer and the wholesaler, which of the following is an accurate statement?

A: No contract was formed, because of wholesaler's June 10 sale of the rifles to another merchant revoked the offer to the retailer.
B: If a contract was formed, it is voidable because of mutual mistake.
C: If a contract was formed, it is unenforceable because of supervening impracticability.
D: No contract was formed, because the retailer's June 11 rejection was effective on dispatch.

The explanation for the answer is:

Answer B or C is correct. A party's obligation under a contract may be discharged on grounds of mutual mistake if the mistake related to a basic assumption of the contract having a material effect on the exchange, and if the party seeking discharge should not bear the risk of the mistake. Similarly, a party's obligation under a contract may be discharged on grounds of supervening impracticability if the impracticability is due to an event, the nonoccurrence of which is a basic assumption of the contract, occurring without the fault of either party, and where the party seeking discharge should not bear the risk of the event. Because the federal statute criminalizes the performance required under the contract (the interstate sale of assault rifles), it relates to a basic assumption of the contract and renders performance impracticable for both the retailer and the wholesaler. Because neither party had reason to know that the statute would be enacted, neither party should bear the risk of the event.

Choice A is incorrect because revocation of an offer is only effective when the offeree receives notice of the revocation. Choice D is incorrect because notice of a rejection is effective upon receipt (the mail box rule only applies to an acceptance).

Question 666 - Contracts - Consideration

The question was:

A man owed his friend $1,000, plus interest at 8% until paid, on a long-overdue promissory note, collection of which would become barred by the statute of limitations on June 30. On the preceding April 1, the man and his friend both signed a writing in which the man promised to pay the note in full on the following December 31, plus interest at 8% until that date, and the friend promised not to sue on the note in the meantime. The friend, having received some advice from his nonlawyer brother-in-law, became concerned about the legal effect of the April 1 agreement. On May 1, acting *pro se* as permitted by the rules of the local small claims court, he filed suit to collect the note.

Assuming that there is no controlling statute, is the April 1 agreement an effective defense for the man?

A: Yes, because the man's promise to pay interest until December 31 was consideration for the friend's promise not to sue.
B: Yes, because the law creates a presumption that the man relied on his friend's promise not to sue.
C: No, because there was no consideration for the friend's promise not to sue, in that the man was already obligated to pay $1,000 plus interest at 8% until the payment date.
D: No, because the man's April 1 promise is enforceable with or without consideration.

The explanation for the answer is:

Answer A is correct. Generally, a promise to perform a preexisting legal duty is not sufficient consideration to support a return promise. Since the man was already obligated to pay the friend $1000 at 8% interest, normally a promise to do the same would not be sufficient consideration to support the friend's promise to refrain from suit. However, the man offered to extend interest payments until December 31 in consideration for the friend's promise not to sue during the remaining time under the statute of limitations. Therefore, there was adequate consideration for the April 1 agreement, and it will provide an effective defense against the friend's claim.

B is incorrect because the man does not need to rely on detrimental reliance because there was adequate consideration for the April 1 agreement. C is incorrect because the payment of interest for six additional months is adequate consideration. D is incorrect because the April 1 agreement would provide an adequate defense against the friend's claim.

Question 677 - Contracts - Conditions

The question was:

A borrower asked a lender to lend her $1,000. The lender replied that he would do so only if the borrower's father would guarantee the loan. At the borrower's request, the father mailed a signed letter to the lender: "If you lend $1,000 to my daughter, I will repay it if she doesn't." On September 15, the lender, having read the father's letter, lent $1,000 to the borrower, which the borrower agreed to repay in installments of $100 plus accrued interest on the last day of each month beginning October 31. The father died on September 16. Later that same day, unaware of the father's death, the lender mailed a letter to the father advising that he had made the $1,000 loan to the borrower on September 15.

The borrower did not pay the installments due on October 31, November 30, or December 31, and has informed the lender that she will be unable to make repayments in the foreseeable future.

On January 15, the lender is entitled to a judgment against the borrower for which of the following amounts?

A: Nothing, because if he sues before the entire amount is due, he will be splitting his cause of action.
B: $300 plus the accrued interest, because the borrower's breach is only a partial breach.
C: $1,000 plus the accrued interest, because the borrower's unexcused failure to pay three installments is a material breach.
D: $1,000 plus the accrued interest, because the failure to pay her debts as they come due indicates that the borrower is insolvent and the lender is thereby entitled to accelerate payment of the debt.

The explanation for the answer is:

Answer B is correct. Under the doctrine of anticipatory repudiation, an unequivocal statement of unwillingness or inability to perform a future contractual obligation, if material, may be treated as a total breach of that obligation and give rise to a right to immediately recover damages for that breach. A repudiation of a duty will not operate as a total breach, however, if it occurs after the repudiating party has received all of the agreed exchange for that duty. In such a case, the non-repudiating party must wait until the obligation becomes due before enforcing it. Although the borrower failed to make three repayments of the debt and expressed her inability to repay the debt in the future, the lender cannot accelerate the debt unless the contract specified otherwise. Therefore, the lender can only recover for the three months of unpaid debt that is due and outstanding as of January 15.

Answer A is incorrect because the lender can recover the amount that is due as of January 15. Answer C is incorrect because the breach will be treated as a partial breach. Answer D is incorrect because the debt may not be accelerated unless the contract expressly so provides.

Question 689 - Contracts - Parol Evidence and Interpretation

The question was:

A radio manufacturer and a retailer, after extensive negotiations, entered into a final written agreement in which the manufacturer agreed to sell and the retailer agreed to buy all of its requirements of radios, estimated at 20 units per month, during the period January 1, 1988, and December 31, 1990, at a price of $50 per unit. A dispute arose in December, 1990, when the retailer returned 25 undefective radios to the manufacturer for full credit after the manufacturer had refused to extend the contract for a second three-year period.

In an action by the manufacturer against the retailer for damages due to return of the 25 radios, the manufacturer introduces the written agreement, which expressly permitted the buyer to return defective radios for credit but was silent as to the return of undefective radios for credit. The retailer seeks to introduce evidence that during the three years of the agreement it had returned, for various reasons, 125 undefective radios, for which the manufacturer had granted full credit. The manufacturer objects to the admissibility of this evidence.

The trial court will probably rule that the evidence proffered by the retailer is

A: inadmissible, because the evidence is barred by the parol evidence rule.
B: inadmissible, because the express terms of the agreement control when those terms are inconsistent with the course of performance.
C: admissible, because the evidence supports an agreement that is not within the relevant statute of frauds.
D: admissible, because course-of-performance evidence, when available, is considered the best indication of what the parties intended the writing to mean.

The explanation for the answer is:

Answer D is correct. The parol evidence rule bars the introduction of extrinsic evidence of certain statements made prior to the adoption of a final written agreement. Evidence of course-of-performance, however, is admissible to interpret a writing so long as the evidence can reasonably be construed in a way that is consistent with the writing. Because the written agreement between the manufacturer and the retailer is silent on the issue of returning undefective radios for credit, evidence of the parties' performance during the first three years of the agreement on this issue is admissible to interpret the writing.

Choice A is incorrect because the parol evidence rule does not bar the admission of course-of-performance evidence. Choice B is incorrect because the express terms of the contract are silent on the issue of returning undefective radios. Choice C is incorrect because the statute of frauds is not relevant to the issue of contract interpretation.

Question 690 - Contracts - Consideration

The question was:

A radio manufacturer and a retailer, after extensive negotiations, entered into a final written agreement in which the manufacturer agreed to sell and the retailer agreed to buy all of its requirements of radios, estimated at 20 units per month, during the period January 1, 1988, and December 31, 1990, at a price of $50 per unit. A dispute arose in later December, 1990, when the retailer returned 25 undefective radios to the manufacturer for full credit after the manufacturer had refused to extend the contract for a second three-year period.

In an action by the manufacturer against the retailer for damages due to return of the 25 radios, the manufacturer introduces the written agreement, which expressly permitted the buyer to return defective radios for credit but was silent as to the return of undefective radios for credit. The retailer seeks to introduce evidence that during the three years of the agreement it had returned, for various reasons, 125 undefective radios, for which the manufacturer had granted full credit. The manufacturer objects to the admissibility of this evidence.

Assume the following facts. When the retailer returned the 25 radios in question, it included with the shipment a check payable to the manufacturer for the balance admittedly due on all other merchandise sold and delivered to the retailer. The check was conspicuously marked, "Payment in full for all goods sold to the retailer to date." The manufacturer's credit manager, reading this check notation and knowing that the retailer had also returned the 25 radios for full credit, deposited the check without protest in the manufacturer's local bank account. The canceled check was returned to the retailer a week later.

Which of the following defenses would best serve the retailer?

A: The manufacturer's deposit of the check and its return to the retailer after payment estopped the manufacturer thereafter from asserting that the retailer owed any additional amount.
B: By depositing the check without protest and with knowledge of its wording, the manufacturer discharged any remaining duty to pay on the part of the retailer.
C: By depositing the check without protest and with knowledge of its wording, the manufacturer entered into a novation discharging any remaining duty to pay on the part of the retailer.
D: The parties' good faith dispute over return of the radios suspended the duty of the retailer, if any, to pay any balance due.

The explanation for the answer is:

Answer B is correct. Under the rules of accord and satisfaction, a debtor may make an offer to settle a dispute by offering a check marked "payment in full." If the notation was sufficiently plain that the creditor should have understood it, and if the amount owed to the creditor is an unliquidated sum, then cashing the check without protest amounts to an acceptance of the offer of an accord and satisfaction of the debt. Although mere payment of a lesser sum would not be sufficient consideration to support the accord, consideration is furnished where the amount owed to the creditor is genuinely in dispute. Because there was a good faith dispute between the retailer and the manufacturer relating to the amount that the retailer owed, the check that was sent to settle the dispute furnished sufficient consideration to support the manufacturer's implicit promise to discharge the debt.

A and D are incorrect because when the manufacturer cashed the retailer's check without protest, it accepted the accord and satisfaction and discharged the debt. C is incorrect because there is no evidence of a novation.

Question 702 - Contracts - Impracticability and Frustration of Purpose

The question was:

A business owner entered into a contract with a painter, by the terms of which the painter was to paint the owner's office for $1,000 and was required to do all of the work over the following weekend so as to avoid disruption of the owner's business.

Assume the following facts. The painter commenced work on Saturday morning and had finished half the painting by the time he quit work for the day. That night, without the fault of either party, the office building was destroyed by fire.

Which of the following is an accurate statement?

A: Both parties' contractual duties are discharged, and the painter can recover nothing from the owner.
B: Both parties' contractual duties are discharged, but the painter can recover in quasi-contract from the owner.
C: Only the painter's contractual duty is discharged, because the owner's performance (payment of the agreed price) is not impossible.
D: Only the painter's contractual duty is discharged, and the painter can recover his reliance damages from the owner.

The explanation for the answer is:

Answer B is correct. When the existence of a specific thing (such as the owner's office) is necessary for the performance of a contractual obligation, the destruction of that thing is a supervening event that relates to a basic assumption of the contract; this effectively discharges any obligation of either party under that contract. However, any benefit conferred under the contract prior to the supervening event may be recovered in restitution. Therefore, the destruction of the owner's office discharged the painter's obligation to paint and the owner's obligation to pay for the work. Payment for the work that was already done, however, is nonetheless recoverable in restitution, or quasi contract. Answer A is incorrect because the painter can recover in restitution. Answer C is incorrect because both parties' obligations are effectively discharged. Answer D is incorrect because generally a party cannot recover for reliance damages when a contract has been discharged on grounds of impossibility.

Question 709 - Contracts - Remedies

The question was:

A seller and a buyer, standing on Greenacre, orally agreed to its sale and purchase for $5,000 and orally marked its bounds as "that line of trees down there, the ditch that intersects them, the fence on the other side, and that street on the fourth side."

In which of the following is the remedy of reformation most appropriate?

A: As later reduced to writing, the agreement by clerical mistake included two acres that are actually beyond the fence.
B: The buyer reasonably thought that two acres beyond the fence were included in the oral agreement but the seller did not. As later reduced to writing, the agreement included the two acres.
C: The buyer reasonably thought that the price orally agreed upon was $4,500, but the seller did not. As later reduced to writing, the agreement said $5,000.
D: The buyer reasonably thought that a dilapidated shed backed up against the fence was to be torn down and removed as part of the agreement, but the seller did not. As later reduced to writing, the agreement said nothing about the shed.

The explanation for the answer is:

Answer A is correct. Where a clerical error has been made in reducing an agreement to writing, a party may bring an action in equitable reformation to have the writing reformed to correct the writing or include an omitted provision. The parol evidence rule does not bar the introduction of evidence to show the mistake that forms the basis for reformation. Because the seller and the buyer verbally agreed that the boundary of Greenacre was the fence, the writing may be reformed if it mistakenly includes a reference to the two acres beyond the fence. B, C and D are incorrect because reformation is not available to correct a mistake unless the parties actually reached an agreement prior to reducing the agreement to writing.

Question 730 - Contracts - Formation of Contracts

The question was:

On March 1, an apartment complex received a letter from a retailer offering to sell the apartment complex 1,200 window air conditioners suitable for the apartments in the complex's buildings. The retailer's offer stated that it would remain open until March 20, but that the apartment complex's acceptance must be received on or before that date. On March 16, the apartment complex posted a letter of acceptance. On March 17, the retailer telegraphed the apartment complex to advise that it was revoking the offer. The telegram reached the apartment complex on March 17, but the apartment complex's letter did not arrive at the retailer's address until March 21.

As of March 22, which of the following is a correct statement?

A: The telegram revoking the offer was effective upon receipt.
B: The offer was revocable at any time for lack of consideration.
C: The mail was the only authorized means of revocation.
D: Under the terms of the retailer's offer, the apartment complex's attempted acceptance was ineffective.

The explanation for the answer is:

Answer D is correct. Under the mail box rule, an acceptance is effective upon dispatch in the mail if a mailed acceptance is invited by the terms of the offer. However, if the offer specifies otherwise, the language of the offer controls. Although the retailer's offer stated that the apartment complex's acceptance must be received on or before March 20, the apartment complex's attempted acceptance did not arrive until the 21st and therefore it was ineffective.

Answer A is incorrect because, although revocations generally are effective upon receipt, this one would not have been effective if the apartment complex's acceptance had arrived on or before March 20. Answer B is incorrect because, although offers generally are revocable, the retailer's offer would not have been revocable once the apartment complex had accepted it (if it was accepted before the offer lapsed). Answer C is incorrect because generally revocation can be effected by any means.

Question 741 - Contracts - Parol Evidence and Interpretation

The question was:

A rancher and a fancier of horses signed the following writing: "For $5,000, the rancher will sell to the fancier a gray horse that the fancier may choose from among the grays on the rancher's ranch."

The fancier refused to accept delivery of a gray horse timely tendered by the rancher or to choose among those remaining, on the ground that during their negotiations the rancher had orally agreed to include a saddle, worth $100, and also to give the fancier the option to choose a gray or a brown horse. The fancier insisted on one of the rancher's brown horses, but the rancher refused to part with any of his browns or with the saddle as demanded by the fancier.

If the fancier sues the rancher for damages and seeks to introduce evidence of the alleged oral agreement, the court probably will

A: admit the evidence as to both the saddle and the option to choose a brown horse.
B: admit the evidence as to the saddle but not the option to choose a brown horse.
C: admit the evidence as to the option to choose a brown horse but not the promise to include the saddle.
D: not admit any of the evidence.

The explanation for the answer is:

Answer B is correct. The parol evidence rule bars the introduction of evidence of an agreement made prior to the adoption of a final written contract if the prior agreement relates to matters within the scope of the writing. However, if the prior agreement does not contradict the writing but merely supplements it, evidence of the prior agreement may be admitted if the court finds that the writing is only partially integrated (it did not encompass their entire agreement). Since the written agreement between the rancher and the fancier provides for the sale of a gray horse, evidence of an oral agreement to sell a brown horse contradicts the writing and would therefore be excluded under the rule. On the other hand, evidence relating to the rancher's alleged promise to include a saddle merely supplements the writing, and therefore a court is likely to consider extrinsic evidence on this issue if it finds that the writing is only partially integrated rather than completely integrated.

Choices A and C are incorrect because the evidence relating to the option to choose a brown horse contradicts the writing. Choice D is incorrect because the modern approach to the parol evidence rule permits extrinsic evidence to be admitted to determine whether the writing is partially or completely integrated.

Question 751 - Contracts - Third-Party Rights

The question was:

On December 1, a broker contracted with a collector to sell her one of a certain type of rare coin for $12,000, delivery and payment to occur on the next March 1. To fulfill that contract, and without the collector's knowledge, the broker contracted on January 1 to purchase for $10,000 a specimen of that type of coin from a hoarder, delivery and payment to occur on February 1. The market price of such coins had unexpectedly fallen to $8,000 by February 1, when the hoarder tendered the coin and the broker repudiated.

On February 25, the market in such coins suddenly reversed and had stabilized at $12,000 on March 1. The broker, however, had failed to obtain a specimen of the coin and repudiated his agreement with the collector when she tendered the $12,000 agreed price on March 1.

Later that day, after learning by chance of the broker's dealing with the collector, the hoarder telephoned the collector and said: "Listen, the broker probably owes me at least $2,000 in damages for refusing wrongfully to buy my coin for $10,000 on February 1 when the market was down to $8,000. But I'm in good shape in view of the market's recovery since then, and I think you ought to get after the so-and-so."

If the collector immediately sues the broker for his breach of the broker-hoarder contract, which of the following will the court probably decide?

A: The broker wins, because the collector, if a beneficiary at all of the broker-hoarder contract, was only an incidental beneficiary.
B: The broker wins, because as of March 1 neither the hoarder nor the collector had sustained any damage from the broker's repudiation of both contracts.
C: The collector wins, because she was an intended beneficiary of the broker-hoarder contract, under which damages for the broker's repudiation became fixed on February 1.
D: The collector wins, because she took an effective assignment of the hoarder's claim for damages against the broker when the hoarder suggested that the collector "get after the so-and-so."

The explanation for the answer is:

Answer A is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise. A party is an intended beneficiary of a promise if recognition of a right to performance in the beneficiary is appropriate to effectuate the intent of the parties, such as where the promisor must know that the promisee intended to confer a benefit on the beneficiary. The collector is only an incidental beneficiary of the broker-hoarder contract because the facts suggest that, in agreeing to sell the rare coin to the broker on February 1, the hoarder did not intend to confer a benefit on the collector.

Answer B is incorrect because under the UCC, damages to the hoarder were to be calculated as of the time that the hoarder learned of the broker's repudiation, which was February 1, when the market price had fallen below the contract price. Answer C is incorrect because the collector was only an incidental beneficiary. Answer D is incorrect because in order to be effective, an assignment of contract rights requires language of present transfer; the phrase "I think you ought to get after the so-and-so" was insufficient to effect an assignment of the hoarder's rights under the hoarder-broker contract.

Question 759 - Contracts - Consideration

The question was:

A notorious spendthrift, who was usually broke for that reason, received the following letter from his uncle, a wealthy and prudent man: "I understand you're in financial difficulties again. I promise to give you $5,000 on your birthday next month, but you'd better use it wisely or you'll never get another dime from me." The spendthrift thereupon signed a contract with a car dealer to purchase a $40,000 automobile and to make a $5,000 down payment on the day after his birthday.

If the spendthrift sues his uncle for $5,000 after the latter learned of the car-purchase contract and then repudiated his promise, which of the following is the uncle's best defense?

A: A promise to make a gift in the future is not enforceable.
B: Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless the value of the promised gift is substantially equivalent to the promisee's loss by reliance.
C: Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless that reliance also results in an economic benefit to the promisor.
D: Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless injustice can be avoided only by such enforcement.

The explanation for the answer is:

Answer D is correct. Under the theory of detrimental reliance, a gratuitous promise may be enforceable notwithstanding lack of consideration if the party making the promise has reason to expect the promise will induce reliance on the part of the promisee, there has been reliance in fact, and injustice may be avoided only by enforcement of the promise. The uncle should have foreseen that his promise would induce action on the spendthrift's part, and the spendthrift did in fact rely on the promise. However, the nature of the spendthrift's reliance (buying a car that he could not afford) is inconsistent with the intended purpose of the uncle's gift, which suggests that justice does not require enforcement of the promise.

Answer A is incorrect because some gift promises are enforceable under a reliance theory. Answers B and C are incorrect because reliance does not require equivalence between the value of the promise and the extent of the reliance, nor does it require the reliance to confer a benefit on the promisor.

Question 766 - Contracts - Formation of Contracts

The question was:

A wallpaper hanger sent a general contractor, this telegram: Will do all paperhanging on new Doctors' Building, per owner's specs, for $14,000 if you accept within reasonable time after main contract awarded.

/s/ the wallpaper hanger Three other competing hangers sent the general contractor similar bids in the respective amounts of $18,000, $19,000, and $20,000. The general contractor used the wallpaper hanger's $14,000 figure in preparing and submitting her own sealed bid on Doctors' Building. Before the bids were opened, the wallpaper hanger truthfully advised the general contractor that the former's telegraphic sub-bid had been based on a $4,000 computational error and was therefore revoked. Shortly thereafter, the general contractor was awarded the Doctors' Building construction contract and subsequently contracted with another paperhanger for a price of $18,000. The general contractor now sues the wallpaper hanger to recover $4,000.

Which of the following, if proved, would most strengthen the general contractor's prospect of recovery?

A: After the wallpaper hanger's notice of revocation, the general contractor made a reasonable effort to subcontract with another paperhanger at the lowest possible price.
B: The general contractor had been required by the owner to submit a bid bond and could not have withdrawn or amended her bid on the main contract without forfeiting that bond.
C: The wallpaper hanger was negligent in erroneously calculating the amount of his sub-bid.
D: The general contractor dealt with all of her subcontractors in good faith and without seeking to renegotiate (lower) the prices they had bid.

The explanation for the answer is:

Answer B is correct. Unless the promisor has given an option promise supported by consideration, generally an offer is freely revocable until the time of acceptance. However, an offer may be irrevocable to the extent necessary to avoid injustice if the offeror should reasonably expect the offer to induce substantial reliance on the part of the offeree and where there is reliance in fact. The terms of the wallpaper hanger's offer suggest that the wallpaper hanger expected the general contractor to rely on his bid by utilizing it in calculating the general contractor's overall bid, and the general contractor in fact did rely on his bid. The fact that the general contractor was required to submit a bid bond to guarantee her bid demonstrates the substantial nature of the general contractor's reliance, because it shows the general contractor cannot pass the additional wallpapering cost on to the owner. Therefore this fact, if proved, would most strengthen the general contractor's case for recovery.

A, C and D are incorrect because, although each of these factors (mitigation of damages, the wallpaper hanger's negligence and the general contractor's good faith) may weigh in the general contractor's favor, the wallpaper hanger revoked her bid prior to the general contractor's acceptance. Therefore the general contractor cannot recover from the wallpaper hanger for breach of contract unless she can demonstrate that the wallpaper hanger's bid was irrevocable on a reliance theory.

Question 774 - Contracts - Formation of Contracts

The question was:

For several weeks, a wealthy, unemployed widow, and Nirvana Motors, Inc., negotiated unsuccessfully over the purchase price of a new Mark XX Rolls-Royce Sedan, which, as Nirvana knew, the widow wanted her son to have as a wedding gift. On April 27, Nirvana sent the widow a signed, dated memo saying, "If we can arrive at the same price within the next week, do we have a deal?" The widow wrote "Yes" and her signature at the bottom of his memo and delivered it back to Nirvana on April 29.

On May 1, the widow wrote Nirvana a signed letter offering to buy "one new Mark XX Rolls-Royce sedan, with all available equipment, for $180,000 cash on delivery not later than June 1." By coincidence, Nirvana wrote the widow a signed letter on May 1 offering to sell her "one new Mark XX Rolls-Royce sedan, with all available equipment, for $180,000 cash on delivery not later than June 1." These letters crossed in the mail and were respectively received and read by the widow and Nirvana on May 2.

If the widow subsequently asserts and Nirvana denies that the parties had a binding contract on May 3, which of the following most persuasively supports the widow's position?

A: A sale-of-goods contract may be made in any manner sufficient to show agreement, even though the moment of its making is undetermined.
B: A sale-of goods contract does not require that an acceptance be a mirror image of the offer.
C: With respect both to the making of an agreement and the requirement of consideration, identical cross-offers are functionally the same as an offer followed by a responsive acceptance.
D: Since Nirvana was a merchant in the transaction and the widow was not, Nirvana is estopped to deny that the parties' correspondence created a binding contract.

The explanation for the answer is:

Answer A is correct. Under the UCC, appropriate conduct between the parties may be sufficient to show agreement to a contract for the sale of goods, even if an exchange of correspondence between the parties makes the exact moment of contract formation indeterminate. Nirvana and the widow agreed to enter into a contract for the sale of one new Mark XX Rolls-Royce sedan if they could reach agreement on a price within a week. Five days later, each party received a letter from the other proposing the exact same terms. Although it is unclear which communication was the offer and which was the acceptance, the exchange of correspondence proposing identical terms demonstrates that the condition was met and that the parties' conduct manifested agreement.

Choice B is incorrect because the mirror image rule is not at issue, since the parties' proposed terms were identical. Choice C is incorrect because it does not provide as accurate an explanation as choice A of the relevant rule of contract formation. Choice D is incorrect because Nirvana's status as a merchant is not relevant to the issue of estoppel.

Question 779 - Contracts - Consideration

The question was:

On June 1, a widget manufacturer entered into a written agreement with a tool maker in which the tool maker agreed to produce and sell to the manufacturer 12 sets of newly designed dies to be delivered August 1 for the price of $50,000, payable ten days after delivery. Encountering unexpected expenses in the purchase of special alloy steel required for the dies, the tool maker advised the manufacturer that production costs would exceed the contract price; and on July 1, the manufacturer and the tool maker signed a modification to the June 1 agreement increasing the contract price to $60,000. After timely receipt of 12 sets of dies conforming to the contract specifications, the manufacturer paid the tool maker $50,000 but refused to pay more.

Which of the following concepts of the Uniform Commercial Code, dealing expressly with the sale of goods, best supports an action by the tool maker to recover $10,000 for breach of the manufacturer's July 1 promise?

A: Bargained-for exchange.
B: Promissory estoppel.
C: Modification of contracts without consideration.
D: Unconscionability in the formation of contracts.

The explanation for the answer is:

Answer C is correct. Under the UCC, a modification to a contract for the sale of goods needs no additional consideration to be binding if the modification was made in good faith. Although the modification increasing the purchase price under the tool maker-manufacturer contract was unilateral, and therefore not supported by consideration, the modification was made in light of unexpected increased production costs, which suggests that it was proposed in good faith rather than to coerce the manufacturer into paying a higher price. Answer A is incorrect because of the UCC rule dispensing with consideration for good faith modifications. Answers B and D are incorrect because the facts do not show either detrimental reliance or unconscionability.

Question 785 - Contracts - Consideration

The question was:

A construction company contracted with a warehouse owner to construct for $500,000 a warehouse and an access driveway at highway level. Shortly after commencing work on the driveway, which required for the specified level some excavation and removal of surface material, the construction company unexpectedly encountered a large mass of solid rock.

The construction company informed the warehouse owner (accurately) that because of the rock, the driveway as specified would cost at least $20,000 more than figured, and demanded that for that reason a total contract price of $520,000. Since the warehouse owner was expecting warehousing customers immediately after the agreed completion date, he signed a writing promising to pay the additional $20,000. Following timely completion of the warehouse and driveway, which conformed to the contract in all respects, the warehouse owner refused to pay the construction company more than $500,000.

What is the maximum amount to which the construction company is entitled?

A: $500,000, because there was no consideration for warehouse owner's promise to pay the additional $20,000.
B: $500,000, because the warehouse owner's promise to pay the additional $20,000 was exacted under duress.
C: $520,000, because modification was fair and was made in the light of circumstances not anticipated by the parties when the original contract was made.
D: $520,000, because the reasonable value of the construction company's total performance was that much or more.

The explanation for the answer is:

Answer C is correct. Under the common law, a modification of a contract is unenforceable for lack of consideration (since performance of a pre-existing duty is not sufficient consideration to support the modification). However, where there is an unforeseen difficulty so severe it rises to the level of impracticability, the consideration requirement for a modification will be considered satisfied by the party's promise to complete their pre-existing contractual duty. To be impracticable, the performing party needs to have encountered extreme and unreasonable difficulty or expense that was not anticipated at the time of formation. Here, the construction company ran into an expensive difficulty that caused an increase of $20,000 in the expense to build the driveway. This difficulty was not foreseen by either party, and the increase was an accurate reflection of the cost to deal with the unforeseen difficulty. Therefore, the written modification is valid and the construction company is entitled to a maximum amount of $520,000.

Choice A is incorrect because it fails to take into account the exception to the general common law rule. Choice B is incorrect because the facts do not show that the modification was coercive. Choice D is incorrect because it is the terms of the contract, not the reasonable value of the performance, which governs the recovery in this situation.

Question 786 - Contracts - Remedies

The question was:

A construction company contracted with a warehouse owner to construct for $500,000 a warehouse and an access driveway at highway level. Shortly after commencing work on the driveway, which required for the specified level some excavation and removal of surface material, the construction company unexpectedly encountered a large mass of solid rock.

Upon encountering the rock formation, the construction company, instead of incurring additional costs to remove it, built the access driveway over the rock with a steep grade down to the highway. The warehouse owner, who was out of town for several days, was unaware of this nonconformity until the driveway had been finished. As built, it is too steep to be used safely by trucks or cars, particularly in the wet or icy weather frequently occurring in the area. It would cost $30,000 to tear out and rebuild the driveway at highway level. As built, the warehouse, including the driveway, has a fair market value of $550,000. The warehouse owner has paid $470,000 to the construction company, but refuses to pay more because of the nonconforming driveway, which the construction company has refused to tear out and rebuild.

If the construction company sues the warehouse owner for monetary relief, what is the maximum amount that the construction company is entitled to recover?

A: $30,000, because the fair market value of the warehouse and driveway "as is" exceeds the contract price by $50,000 (more than the cost of correcting the driveway).
B: $30,000, because the construction company substantially performed and the cost of correcting the driveway would involve economic waste.
C: $30,000, minus whatever amount the construction company saved by not building the driveway at the specified level.
D: Nothing, because the warehouse owner is entitled to damages for the cost of correcting the driveway.

The explanation for the answer is:

Answer D is correct. The general damages rule for measuring loss to an owner for breach of a construction contract is that owner is entitled to damages in an amount equivalent to the cost to complete the work as promised. An exception to the rule is where cost to complete damages would be grossly and unfairly out of proportion to the performance contracted for, in which case damages will be limited to the diminution in market value of the construction due to the defect. Although the fair market value of the warehouse and the defective driveway exceeds the contract price, the warehouse owner nonetheless is entitled to the cost to complete damages, because these damages fairly reflect his loss resulting from the defective construction. The warehouse owner therefore was justified in withholding $30,000 from the contract price paid to the construction company.

Choices A and C are incorrect because the warehouse owner is entitled to deduct the $30,000 cost to complete damages from the contract price, as explained above. Choice B is incorrect because the warehouse owner can recover damages for breach regardless of whether the construction company substantially performed the contract.

Question 797 - Contracts - Parol Evidence and Interpretation

The question was:

Responding to the county's written advertisement for bids, a tire salesman was the successful bidder for the sale of tires to the county for the county's vehicles. The tire salesman and the county entered into a signed, written agreement that specified, "It is agreed that the tire salesman will deliver all tires required by this agreement to the county in accordance with the attached bid form and specifications, for a one-year period beginning September 1, 1990." Attached to the agreement was a copy of the bid form and specifications. In the written advertisement to which the tire salesman had responded, but not in the bid form, the county had stated, "Multiple awards may be issued if they are in the best interests of the county." No definite quantity of tires to be bought by the county from the tire salesman was specified in any of these documents.

In January 1991, the tire salesman learned that the county was buying some of its tires from one of the tire salesman's competitors. Contending that the tire salesman-county agreement was a requirements contract, the tire salesman sued the county for the damages caused by the county buying some of its tires from the competitor.

If the county defends by offering proof of the advertisement concerning the possibility of multiple awards, should the court admit the evidence?

A: Yes, because the provision in the written agreement, "all tires required by this agreement," is ambiguous.
B: Yes, because the advertisement was in writing.
C: No, because of the parol evidence rule.
D: No, because it would make the contract illusory.

The explanation for the answer is:

Answer A is correct. The parol evidence rule bars the introduction of evidence of a prior agreement that contradicts the terms of a final written contract. Notwithstanding the parol evidence rule, however, such evidence may be introduced to explain an ambiguity in the written contract. The written contract between the tire salesman and the county provided for the sale to the county of "all tires required by this agreement." It is not clear whether this language manifests an intent by the parties to enter into a requirements contract, which is a type of sales contract that obligates the buyer to purchase all of its requirements of a good from the seller. Because the written contract is ambiguous on this issue, the advertisement may be admitted to demonstrate that the county was not obligated to purchase tires exclusively from the tire salesman.

Answer B is incorrect because the parol evidence rule also applies to written promises made prior to the adoption of a final writing. Answer C is incorrect because an exception to the parol evidence rules applies here. Answer D is incorrect because the admissibility of evidence does not depend on whether a contract is illusory.

Question 798 - Contracts - Parol Evidence and Interpretation

The question was:

Responding to the county's written advertisement for bids, a tire salesman was the successful bidder for the sale of tires to the county for the county's vehicles. The tire salesman and the county entered into a signed, written agreement that specified, "It is agreed that the tire salesman will deliver all tires required by this agreement to the county in accordance with the attached bid form and specifications, for a one-year period beginning September 1, 1990." Attached to the agreement was a copy of the bid form and specifications. In the written advertisement to which the tire salesman had responded, but not in the bid form, the county had stated, "Multiple awards may be issued if they are in the best interests of the county." No definite quantity of tires to be bought by the county from the tire salesman was specified in any of these documents.

In January 1991, the tire salesman learned that the county was buying some of its tires from one of the tire salesman's competitors. Contending that the tire salesman-county agreement was a requirements contract, the tire salesman sued the county for the damages caused by the county buying some of its tires from the competitor.

If the court concludes that the tire salesman-county contract is an agreement by the county to buy its tire requirements from the tire salesman, the tire salesman probably will

A: recover under the contracts clause of the United States Constitution.
B: recover under the provisions of the Uniform Commercial Code.
C: not recover, because the agreement lacks mutuality of obligation.
D: not recover, because the agreement is indefinite as to quantity.

The explanation for the answer is:

Answer B is correct. Under the UCC, a contract for the sale of a good that measures the quantity by the requirements of the buyer for that good means such actual requirements that may occur in good faith. At a minimum this means that the buyer must purchase all of its requirements for the good exclusively from the seller. If the court concludes that the tire salesman-county contract is a requirements contract, then the fact that the county is buying some of its tires from a competitor would mean that the county has breached the requirements contract, entitling the tire salesman to damages. A is incorrect because the contracts clause is not at issue. C is incorrect because the UCC rules regarding requirements contracts make clear that such agreements impose binding obligations on both the buyer and the seller. D is incorrect because, although the quantity term in a requirements contract is flexible, it is sufficiently definite for a court to enforce.

Question 805 - Contracts - Consideration

The question was:

An automobile retailer had an adult daughter who needed a car in her employment but had only $3,000 with which to buy one. The retailer wrote to his daughter, "Give me your $3,000 and I'll give you the car on our lot that we have been using as a demonstrator." The daughter thanked her father and paid him the $3,000. As both the retailer and his daughter knew, the demonstrator was reasonably worth $10,000. After the daughter had paid the $3,000, but before the car had been delivered to her, one of retailer's sales staff sold and delivered the same car to a customer for $10,000. Neither the salesperson nor the customer was aware of the transaction between the retailer and his daughter.

Does the daughter, after rejecting a tendered return of the $3,000 by her father, have an action against him for breach of contract?

A: Yes, because the retailer's promise was supported by bargained-for consideration.
B: Yes, because retailer's promise was supported by the moral obligation a father owes his child as to the necessities of modern life.
C: No, because the payment of $3,000 was inadequate consideration to support the retailer's promise.
D: No, because the salesperson's delivery of the car to the customer made it impossible for the retailer to perform.

The explanation for the answer is:

Answer A is correct. In order to be enforceable, a promise must be supported by bargained-for consideration. Consideration is bargained for if it is sought by the promisor in exchange for the promise. The retailer's promise to give his daughter the car was supported by consideration because the promise was conditioned upon the daughter's promise to pay her father $3,000. Answer B is incorrect because moral obligation does not suffice as consideration. Answer C is incorrect because courts at law do not inquire into the adequacy of considerations exchanged. Answer D is incorrect because the fact that the car was sold to a third party does not discharge the retailer's contractual obligation to sell the car to his daughter, although the daughter may be limited to recovering monetary damages.

Question 810 - Contracts - Consideration

The question was:

An owner and operator of a small business encourages "wellness" on the part of his employees and supports various physical-fitness programs to that end. Learning that one of his employees was a dedicated jogger, the business owner promised to pay her a special award of $100 if she could and would run one mile in less than six minutes on the following Saturday. The employee thanked him and did in fact run a mile in less than six minutes on the day specified. Shortly thereafter, however, the business owner discovered that for more than a year the employee had been running at least one mile in less than six minutes every day as a part of her personal fitness program. He refused to pay the $100.

In an action by the employee against the business owner for breach of contract, which of the following best summarizes the probable decision of the court?

A: The business owner wins, because it is a compelling inference that his promise did not induce the employee to run the specified mile.
B: The business owner wins, because the employee's running of the specified mile was beneficial, not detrimental, to her in any event.
C: The employee wins, because running a mile in less than six minutes is a significantly demanding enterprise.
D: The employee wins, because she ran the specified mile as requested, and her motives for doing so are irrelevant.

The explanation for the answer is:

Answer D is correct. In order to be enforceable, a promise must be supported by bargained-for consideration. Consideration is bargained for if it is given by the promisee in exchange for the promise. It does not matter that the promisee may have benefited from the requested performance, or that her motives for furnishing the requested performance were different from the promisor's, so long as the promisee restrained her freedom of action in some way in reliance on the promise. Because the employee's right to collect the $100 is conditioned upon her running the mile in under six minutes, the business owner's promise is enforceable so long as the employee furnishes the requested act.

Answer A is incorrect because the employee's motives for furnishing the consideration are irrelevant. Answer B is incorrect because consideration does not need to be detrimental to the promisee. Answer C is incorrect because courts at law do not inquire into the adequacy of the consideration exchanged.

Question 812 - Contracts - Conditions

The question was:

Under the terms of a written contract, a builder agreed to construct for a homeowner a garage for $10,000. Nothing was said in the parties' negotiations or in the contract about progress payments during the course of the work.

After completing 25% of the garage strictly according to the homeowner's specifications, the builder demanded payment of $2,000 as a "reasonable progress payment." The homeowner refused, and the builder abandoned the job.

If each party sues the other for breach of contract, which of the following will the court decide?

A: Both parties are in breach, and each is entitled to damages, if any, from the other.
B: Only the builder is in breach and liable for the homeowner's damages, if any.
C: Only the homeowner is in breach and liable for the builder's damages, if any.
D: Both parties took reasonable positions, and neither is in breach.

The explanation for the answer is:

Answer B is correct. Under the doctrine of constructive conditions, a party's contractual obligation is conditioned upon the other party's substantial performance. However, where one party's performance requires a period of time (such as the builder's obligation to construct the garage), that performance is due before the other party is obligated to perform, unless the contract specifies otherwise. Because the contract was silent with respect to progress payments, the homeowner was not obligated to pay any portion of the contract price until the builder had substantially performed his promise to build the garage. The builder therefore was not justified in abandoning the job, and his doing so after completing only 25% of the requested work was itself a material breach of the contract.

Choices A and C are incorrect because the homeowner's refusal to pay when asked was not a breach (although the builder may be able to recover in restitution). Choice D is incorrect because the builder's abandonment of the job without justification amounted to a breach.

Question 813 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

Under the terms of a written contract, a builder agreed to construct for a homeowner a garage for $10,000. Nothing was said in the parties' negotiations or in the contract about progress payments during the course of the work.

After completing 25% of the garage strictly according to the homeowner's specifications, the builder assigned his rights under the contract to a bank as security for an $8,000 loan. The bank immediately notified the homeowner of the assignment. The builder thereafter, without legal excuse, abandoned the job before it was half-complete. The builder subsequently defaulted on the loan from the bank. The builder has no assets. It will cost the homeowner at least $8,000 to get the garage finished by another builder.

If the bank sues the homeowner for $8,000, which of the following will the court decide?

A: The bank wins, because the builder-homeowner contract was in existence and the builder was not in breach when the bank gave the homeowner notice of the assignment.
B: The bank wins, because the bank as a secured creditor over the builder is entitled to priority over the homeowner's unsecured claim against the builder.
C: The homeowner wins, because his right to recoupment on account of the builder's breach is available against the bank as the builder's assignee.
D: The homeowner wins, because his claim against the builder arose prior to the builder's default on his loan from the bank.

The explanation for the answer is:

Answer C is correct. When contract rights are assigned, the assignee acquires a right against the obligor only to the extent that the obligor is under a duty to the assignor. In other words, the assignee acquires no greater rights against the obligor than the assignor had. When the builder (assignor) assigned his contract right to the bank (assignee), the bank's right to payment remained subject to any defense that the homeowner (obligor) could raise against the builder. Therefore, the builder's material breach of the construction contract is a defense that the homeowner can raise against the bank.

Answer A is incorrect because the bank's rights remain vulnerable to any defense that the homeowner can raise, regardless of whether the facts giving rise to the defense occur after the assignment or after the bank gives notice of the assignment. Answer B is incorrect because the rights the bank acquired are subject to the same defenses that the builder's were. Answer D is incorrect because the bank's status as the builder's creditor is irrelevant to whether the homeowner can raise the defense of the builder's breach against the bank.

Question 821 - Contracts - Consideration

The question was:

A developer obtained a bid of $10,000 to tear down her old building and another bid of $90,000 to replace it with a new structure in which she planned to operate a sporting goods store. Having only limited cash available, the developer asked a lender for a $100,000 loan. After reviewing the plans for the project, the lender in a signed writing promised to lend the developer $100,000 secured by a mortgage on the property and repayable over ten years in equal monthly installments at 10% annual interest. The developer promptly accepted the demolition bid and the old building was removed, but the lender thereafter refused to make the loan. Despite diligent efforts, the developer was unable to obtain a loan from any other source.

Does the developer have a cause of action against the lender?

A: Yes, because by having the building demolished, she accepted the lender's offer to make the loan.
B: Yes, because her reliance on the lender's promise was substantial, reasonable, and foreseeable.
C: No, because there was no bargained-for exchange of consideration for the lender's promise to make the loan.
D: No, because the developer's inability to obtain a loan from any other source demonstrated that the project lacked the financial soundness that was a constructive condition to the lender's performance.

The explanation for the answer is:

Answer B is correct. A promise may be enforceable even if not bargained-for where (i) the promisor should reasonably have expected the promise to induce reliance, (ii) there is reliance in fact, and (iii) enforcement of the promise is necessary to prevent injustice. Because the lender reviewed the plans for the project, the lender should reasonably have expected that its promise to lend would induce the developer to accept the bid and to tear down her old building. The substantial nature of the developer's reliance and the fact that she could not obtain financing elsewhere suggests that enforcement of the promise is necessary to avoid injustice.

Answer A is incorrect because the lender's letter cannot reasonably be interpreted as an offer inviting such an acceptance. Answer C is incorrect because a promise can be enforced on a detrimental reliance theory in the absence of a bargained-for exchange. Answer D is incorrect because a court would not imply such a condition; if the lender intended to condition the loan on the financial soundness of the project, it should have expressly stated so in the letter.

Question 822 - Contracts - Remedies

The question was:

A developer obtained a bid of $10,000 to tear down her old building and another bid of $90,000 to replace it with a new structure in which she planned to operate a sporting goods store. Having only limited cash available, the developer asked the lender for a $100,000 loan. After reviewing the plans for the project, the lender in a signed writing promised to lend the developer $100,000 secured by a mortgage on the property and repayable over ten years in equal monthly installments at 10% annual interest. The developer promptly accepted the demolition bid and the old building was removed, but the lender thereafter refused to make the loan. Despite diligent efforts, the developer was unable to obtain a loan from any other source.

Assume that the developer has a cause of action against the lender.

If she sues him for monetary relief, what is the probable measure of her recovery?

A: Expectation damages, measured by the difference between the value of the new building and the old building, less the amount of the proposed loan ($100,000).
B: Expectation damages, measured by the estimated profits from operating the proposed sporting goods store for ten years, less the cost of repaying a $100,000 loan at 10% interest over ten years.
C: Reliance damages, measured by the $10,000 expense of removing the old building, adjusted by the decrease or increase in the market value of the developer's land immediately thereafter.
D: Nominal damages only, because both expectation and reliance damages are speculative, and there is no legal or equitable basis for awarding restitution.

The explanation for the answer is:

Answer C is correct. Because there was no consideration for the lender's promise, any recovery would have to based on a promissory estoppel theory (due to the developer's detrimental reliance). Therefore, the remedy for breach of the promise may be limited as justice requires. A court may limit damages by awarding the injured party the amount necessary to remedy the loss incurred due to the reliance, rather than awarding plaintiff's expectation damages (i.e., damages equivalent to the value of full performance). When the lender breached its promise to make the loan, the developer was injured because she had already torn down the old building. The damages necessary to restore her to the status quo before the promise was made would include the cost of demolition, plus any loss that the developer incurred from the depreciation of the property resulting from the demolition. A and B are incorrect because a court need not award full expectation damages in an action based on detrimental reliance. D is incorrect because the developer's reliance damages can be ascertained with reasonable certainty.

Question 833 - Contracts - Conditions

The question was:

In a writing signed by both parties on December 1, a man agreed to buy from a distributor a gasoline engine for $1,000, delivery to be made on the following February 1. Through a secretarial error, the writing called for delivery on March 1, but neither party noticed the error until February 1. Before signing the agreement, the man and the distributor orally agreed that the contract of sale would be effective only if the man notified the distributor in writing no later than January 2 that the man had arranged to resell the engine to a third person. Otherwise, they agreed orally, "There is no deal." On December 15, the man entered into a contract with a mechanic to resell the engine to the mechanic at a profit.

On December 16, the man notified the distributor by telephone of the man's resale agreement with the mechanic, and explained that a written notice was not feasible because the man's secretary was ill. The distributor replied, "That's okay. I'll get the engine to you on February 1, as we agreed." Having learned, however, that the engine had increased in value about 75% since December 1, the distributor renounced the agreement on February 1.

If the man sues the distributor on February 2 for breach of contract, which of the following concepts best supports the man's claim?

A: Substantial performance.
B: Nonoccurrence of a condition subsequent.
C: Waiver of condition.
D: Novation of buyers.

The explanation for the answer is:

Answer C is correct. A condition is an event that is not certain to occur, which must occur, *unless excused*, before performance under a contract becomes due. The man and the distributor's agreement was subject to an express condition. They agreed that the contract of sale would not come into effect unless the man provided written notice of resale on or before January 2; this condition in fact did not occur. Although nonoccurrence of the condition normally would excuse each party's obligation under the contract, in this case the distributor waived the nonoccurrence of the condition when she verbally agreed on December 16 to send the engine without written notice.

Answer A is incorrect because substantial performance of a condition is not sufficient when the condition is express. Answer B is incorrect because the nonoccurrence of the condition was waived (in any event, the condition at issue here is a condition precedent). Answer D is incorrect because the facts do not indicate a novation.

Question 844 - Contracts - Formation of Contracts

The question was:

A son, who knew nothing about horses, inherited a thoroughbred colt whose disagreeable behavior made him a pest around the barn. The son sold the colt for $1,500 to an experienced racehorse-trainer who knew of the son's ignorance about horses. At the time of the sale, the son said to the trainer, "I hate to say it, but this horse is bad-tempered and nothing special."

Which one of the following scenarios would best support an action by the trainer, rather than the son, to rescind the sale?

A: In his first race after the sale, the horse galloped to a huge lead but dropped dead 100 yards from the finish line because of a rare congenital heart defect that was undiscoverable except by autopsy.
B: The horse won $5 million for the trainer over a three-year racing career but upon being retired was found to be incurably sterile and useless as a breeder.
C: After the horse had won three races for the trainer, it was discovered that by clerical error, unknown to either party, the horse's official birth registration listed an undistinguished racehorse as the sire rather than the famous racehorse that in fact was the sire.
D: A week after the sale, the horse went berserk and inflicted serious injuries upon the trainer that required his hospitalization for six months and a full year for his recovery.

The explanation for the answer is:

Answer A is correct. A contract may be rescinded on grounds of mutual mistake where the mistake relates to a fundamental assumption of the contract that has a material effect on the exchange, and where the party seeking rescission is found by the court not to bear the risk of the mistake. If in his first race after the sale, the horse dropped dead of a rare, undiscoverable heart condition, the trainer could make a plausible argument that the contract be rescinded on grounds of mistake. The condition related to a fundamental assumption (the horse's suitability for racing) that destroyed the subject matter of the contract, and since the heart condition was not expected or discoverable, a court might find that the trainer should not bear the risk of the mistake.

B and C are incorrect because neither of these factors relate to a fundamental assumption of the contract, since the facts suggest that the horse was purchased as a racehorse and not a breeder. D is incorrect because the risk that the horse might go beserk was one of which the trainer had notice, and was therefore a risk that he should bear.

Question 855 - Contracts - Conditions

The question was:

The owner of a fleet of taxis contracted with a dealer in petroleum products for the purchase and sale of the taxi fleet owner's total requirements of gasoline and oil for one year. As part of that agreement, the petroleum dealer also agreed with the taxi fleet owner that for one year the petroleum dealer would place all his advertising with the taxi fleet owner's wife who owned her own small advertising agency. When the wife was informed of the owner-dealer contract, she declined to accept an advertising account from the soap company because she could not handle both the petroleum dealer and the soap company accounts during the same year.

During the first month of the contract, the taxi fleet owner purchased substantial amounts of his gasoline from a supplier other than the petroleum dealer, and the petroleum dealer thereupon notified the wife that he would no longer place his advertising with her agency.

In an action against the petroleum dealer for breach of contract, the wife probably will

A: succeed, because she is a third-party beneficiary of the owner-dealer contract.
B: succeed, because the taxi fleet owner was acting as the wife's agent when he contracted with the petroleum dealer.
C: not succeed, because the failure of a constructive condition precedent excused the petroleum dealer's duty to place his advertising with the wife.
D: not succeed, because the wife did not provide any consideration to support the petroleum dealer's promise to place his advertising with her.

The explanation for the answer is:

Answer C is correct. Under the doctrine of constructive conditions, where one performance will take a period of time to complete while the other can be completed in an instant, completion of the longer performance is a condition precedent to the shorter performance. A party's obligation to perform a contractual duty is excused if the other party fails to satisfy a condition precedent. Implicit in a requirements contract for the purchase and sale of a good is the buyer's obligation to purchase all of its requirements for the good exclusively from the seller for the duration of the contract. Because the taxi fleet owner agreed to purchase its total requirements for gasoline and oil from the petroleum dealer for one year, its purchase of substantial amounts of gasoline from a competitor amounted to a material breach, thereby justifying the petroleum dealer's repudiation of its obligation to place advertising with the wife.

Choice A is incorrect because even if the wife was an intended beneficiary, the petroleum dealer can raise any defense against her that he can raise against the taxi fleet owner (i.e., that the taxi fleet owner committed a material breach). Choice B is incorrect because the facts show that only the taxi fleet owner was party to the contract with the petroleum dealer; the wife was, if anything, only an incidental beneficiary. Choice D is incorrect because the consideration supporting the petroleum dealer's obligation to the wife was the taxi fleet owner's promise pursuant to the requirements contract.

Question 868 - Contracts - Impracticability and Frustration of Purpose

The question was:

A woman owns an exceptionally seaworthy boat that she charters for sport fishing at a $500 daily rate. The fee includes the use of the boat with the woman as the captain, and one other crew member, as well as fishing tackle and bait. On May 1, a father agreed with the woman that the father would have the full-day use of the boat on May 15 for himself and his family for $500. The father paid an advance deposit of $200 and signed an agreement that the deposit could be retained by the woman as liquidated damages in the event the father canceled or failed to appear.

On May 15 at 1 a.m., the Coast Guard had issued offshore "heavy weather" warnings and prohibited all small vessels the size of the woman's from leaving the harbor. This prohibition remained in effect throughout the day. The father did not appear at all on May 15, because he had heard the weather warnings on his radio.

Which of the following is an accurate statement?

A: The contract is discharged because of impossibility, and the father is entitled to return of his deposit.
B: The contract is discharged because of mutual mistake concerning an essential fact, and the father is entitled to return of his deposit.
C: The contract is not discharged, because its performance was possible in view of the exceptional seaworthiness of the woman's boat, and the father is not entitled to return of his deposit.
D: The contract is not discharged and the father is not entitled to return of his deposit because the liquidated-damage clause in effect allocated the risk of bad weather to the father.

The explanation for the answer is:

Answer A is correct. A contract may be rescinded on grounds of supervening impossibility where a party's performance is made impossible without his fault due to the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made. Where a contract has been rescinded on grounds of supervening impossibility, a party may obtain restitution of any benefit conferred by way of part performance of the contract. Because the Coast Guard prohibited vessels such as the woman's from leaving the harbor on the afternoon of May 15 as a consequence of bad weather, performance of the woman-father contract was rendered impossible, and the father should successfully obtain restitution of the $200 deposit.

B is incorrect because the impossibility of performance was due to a supervening event (the occurrence of inclement weather on May 15) and not a mistake of the parties at the time of the contract (May 1). C is incorrect because the Coast Guard's prohibition effectively prevents the woman from performing the contract. D is incorrect because the liquidated damages clause cannot be construed as an allocation of risk of bad weather, as it specifies that the deposit is to be retained by the woman only in the event of breach by the father.

Question 880 - Contracts - Impracticability and Frustration of Purpose

The question was:

The manager of a state fair contracted with a renowned hog breeder to exhibit the breeder's world champion animal for the three weeks of the annual fair, at the conclusion of which the breeder would receive an honorarium of $300. Two days before the opening of the fair, the champion animal took sick with boarsitis, a communicable disease among swine, and, under the applicable state quarantine law, very probably could not be exhibited for at least a month.

Upon learning this, the manager can legally pursue which of the following courses of action with respect to his contract with the breeder?

A: Suspend his own performance, demand assurances from the breeder, and treat a failure by the breeder to give them as an actionable repudiation.
B: Suspend his own performance and recover damages from the breeder for breach of contract unless the breeder at once supplies an undiseased hog of exhibition quality as a substitute for the champion animal.
C: Terminate his own performance and treat the animal's illness as discharging all remaining duties under the contract.
D: Terminate the contract, but only if he (the manager) seeks promptly to obtain for the exhibit a suitable substitute for the champion animal from another hog owner.

The explanation for the answer is:

Answer C is correct. A contract may be rescinded on grounds of supervening impracticability where a party's performance is made impracticable without his fault due to the occurrence of an event, the non-occurrence of which was a basic assumption on which the contract was made. Such event may include the destruction or deterioration of a specific thing necessary for the performance of a duty or the necessity to comply with a governmental order. Because the breeder undertook to exhibit his world champion animal(and not any other hog), the animal's availability for exhibition is a basic assumption of the contract. The animal's illness, which requires him to be quarantined for a month under state law, renders the breeder's performance impracticable. Therefore the manager should treat both parties' obligations under the contract as discharged.

A, B and D are incorrect because the animal's illness provides a basis for excuse of the breeder's obligation. Specifically, as explained above, the breeder is not obligated to provide a substitute hog because the contract only contemplated exhibiting the champion animal.

Question 887 - Contracts - Conditions

The question was:

In a signed writing, a retired general contracted to purchase a 25-foot travel trailer from a trailer company for $15,000, cash on delivery no later than June 1. The general arrived at the trailer company's sales lot on Sunday, May 31, to pay for and take delivery of the trailer, but refused to do so when he discovered that the spare tire was missing.

The trailer company offered to install a spare tire on Monday when its service department would open, but the general replied that he did not want the trailer and would purchase another one elsewhere.

Which of the following is accurate?

A: The general had a right to reject the trailer, but the trailer company was entitled to a reasonable opportunity to cure the defect.
B: The general had a right to reject the trailer and terminate the contract under the perfect tender rule.
C: The general was required to accept the trailer, because the defect could be readily cured.
D: The general was required to accept the trailer, because the defect did not substantially impair its value.

The explanation for the answer is:

Answer A is correct. Under the UCC's perfect tender rule, when a delivery under a contract for the sale of goods fails to conform in any respect to the contract, the buyer has the right to reject the delivery. The seller, however, must be given an opportunity to cure the defective delivery if the time for performance has not yet expired. When the trailer company presented to the general a trailer that was missing a spare tire, the general was entitled to reject the trailer because of its nonconformity with the contract. The trailer company's offer to install a spare tire was a seasonable offer to cure the defect since the contract specified a June 1 delivery. B is incorrect because the buyer would not have the right to terminate if the seller seasonably cured the defect. C and D are incorrect because the perfect tender rule entitles the buyer to reject goods on the basis of material as well as immaterial defects.

Question 896 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A flour wholesaler contracted to deliver to a producer of fine baked goods her flour requirements for a one-year period. Before delivery of the first scheduled installment, the flour wholesaler sold its business and "assigned" all of its sale contracts to Miller, Inc., another reputable and long-time flour wholesaler. The original flour wholesaler informed the baked goods producer of this transaction.

Assume that when Miller tendered the first installment to the baked goods producer in compliance with the flour wholesaler-baked goods contract, the baked goods producer refused to accept the goods.

Which of the following arguments, if any, legally support(s) the baked goods producer's rejection of the goods?

A: Executory requirements contracts are nonassignable.
B: Duties under an executory bilateral contract are assumable only by an express promise to perform on the part of the delegatee.
C: Language of "assignment" in the transfer for value of bilateral sale-of-goods contract affects only a transfer of rights, not a delegation of duties.
D: None of the above.

The explanation for the answer is:

Answer D is correct. Under the UCC, a party may perform his duty through a delegatee unless the other party has a substantial interest in having the original party perform the contract. Although assignment of a requirements contract may potentially affect the burden of the seller in certain cases (such as where the assignee has substantially different requirements than the assignor), courts will still uphold the assignment of such contracts because the UCC rules on requirements contracts impose reasonably objective standards of good faith in specifying requirements. In any event the flour wholesaler-Miller assignment will not have such an effect, because the party assigning its contract is the seller. Because Miller is comparable to the flour wholesaler in terms of reputation and experience, the baked goods producer should not have a particular interest in having the flour wholesaler perform the contract. Therefore A is incorrect. B is incorrect because performance by the delegatee is sufficient. C is incorrect because under the UCC, general language of assignment of a contract will be construed as a delegation of performance as well as an assignment of rights.

Question 904 - Contracts - Consideration

The question was:

A client consulted a lawyer about handling the sale of the client's building, and asked the lawyer what her legal fee would be. The lawyer replied that her usual charge was $100 per hour, and estimated that the legal work on behalf of the client would cost about $5,000 at that rate. The client said, "Okay, let's proceed with it," and the lawyer timely and successfully completed the work. Because of unexpected title problems, the lawyer reasonably spent 75 hours on the matter and shortly thereafter mailed the client a bill for $7,500, with a letter itemizing the work performed and time spent. The client responded by a letter expressing his good-faith belief that the lawyer had agreed to a total fee of no more than $5,000. The client enclosed a check in the amount of $5,000 payable to the lawyer and conspicuously marked, "Payment in full for legal service in connection with the sale of the client's building." Despite reading the "Payment in full. . ." language, the lawyer, without any notation of protest or reservation of rights, endorsed and deposited the check to her bank account. The check was duly paid by the client's bank. A few days later, the lawyer unsuccessfully demanded payment from the client of the $2,500 difference between the amount of her bill and the check, and now sues the client for that difference.

What, if anything, can the lawyer recover from the client?

A: Nothing, because the risk of unexpected title problems in a real-property transaction is properly allocatable to the seller's attorney and thus to the lawyer in this case.
B: Nothing, because the amount of the lawyer's fee was disputed in good faith by the client, and the lawyer impliedly agreed to an accord and satisfaction.
C: $2,500, because the client agreed to an hourly rate for as many hours as the work reasonably required, and the sum of $5,000 was merely an estimate.
D: The reasonable value of the lawyer's services in excess of $5,000, if any, because there was no specific agreement on the total amount of the lawyer's fee.

The explanation for the answer is:

Answer B is correct. Under rules of accord and satisfaction, a debtor may make an offer to settle a dispute by offering a check marked "payment in full." If the notation was sufficiently plain that the creditor should have understood it, and if the amount owed to the creditor is an unliquidated sum, then cashing the check without protest amounts to an acceptance of the offer of an accord and satisfaction of the debt. Although mere payment of a lesser sum would not be sufficient consideration to support the accord, consideration is furnished where the amount owed to the creditor is genuinely in dispute. Even if the client lacked sufficient legal basis to prevail on his claim, his good-faith belief in the validity of the claim makes his promise to settle sufficient consideration to support the modification. Therefore, when the lawyer read the "payment in full" language on the client's $5,000 check and then cashed it without protest, the lawyer accepted the accord and satisfaction of the debt. A, C and D are incorrect because they fail to take into account the effect of the discharge of the client's debt through accord and satisfaction.

Question 914 - Contracts - Consideration

The question was:

On November 1, an accountant and a lawyer contracted for the sale by the accountant to the lawyer of the law books the accountant had inherited from his father. The lawyer agreed to pay the purchase price of $10,000 when the accountant delivered the books on December 1.

On November 10, the lawyer received a signed letter from the accountant that stated: "I have decided to dispose of the book stacks containing the law books you have already purchased. If you want the stacks, I will deliver them to you along with the books on December 1 at no additional cost to you. Let me know before November 15 whether you want them. I will not sell them to anyone else before then." On November 14, the lawyer faxed and the accountant received the following message: "I accept your offer of the stacks." The accountant was not a merchant with respect to either law books or book stacks.

The accountant is contractually obligated to deliver the stacks because

A: The lawyer provided a new bargained-for exchange by agreeing to take the stacks.
B: The accountant's letter (received by the lawyer on November 10) and the lawyer's fax-message of November 14 constituted an effective modification of the original sale-of-books contract.
C: The lawyer's fax-message of November 14 operated to rescind unilaterally the original sale-of-books contract.
D: The accountant's letter (received by the lawyer on November 10) waived the bargained-for consideration that would otherwise be required.

The explanation for the answer is:

Answer B is correct. This is a contract for the sale of goods, thus governed by the UCC. Under the UCC, modification of a contract for the sale of goods needs no additional consideration to be binding. When the accountant proposed on November 10 to supply the book stacks along with the law books at no additional cost, his offer proposed a unilateral modification of the contract, which the lawyer accepted before the offer lapsed. Because the contract involves a sale of goods (books), the modification is enforceable notwithstanding the lack of consideration. A is incorrect because the modification was gratuitous. C is incorrect because the lawyer's November 14 communication was merely an acceptance of the modification and did not discharge the original obligation. D is incorrect because consideration is not required for modification of a sales contract.

Question 915 - Contracts - Formation of Contracts

The question was:

On November 1, an accountant and a lawyer contracted for the sale by the accountant to the lawyer of the law books the accountant had inherited from his father. The lawyer agreed to pay the purchase price of $10,000 when the accountant delivered the books on December 1.

On November 10, the lawyer received a signed letter from the accountant that stated: "I have decided to dispose of the book stacks containing the law books you have already purchased. If you want the stacks, I will deliver them to you along with the books on December 1 at no additional cost to you. Let me know before November 15 whether you want them. I will not sell them to anyone else before then." On November 14, the lawyer faxed and the accountant received the following message: "I accept your offer of the stacks." The accountant was not a merchant with respect to either law books or book stacks.

Assume that on November 12 the accountant told the lawyer that he had decided not to part with the stacks.

Will this communication operate as a legally effective revocation of his offer to deliver the stacks?

A: Yes, because the lawyer had a pre-existing obligation to pay $10,000 for the law books.
B: Yes, because the accountant was not a merchant with respect to book stacks.
C: No, because the accountant had given a signed assurance that the offer would be held open until November 15.
D: No, because by delaying his acceptance until November 14, the lawyer detrimentally relied on the accountant's promise not to sell the stacks to anyone else in the meantime.

The explanation for the answer is:

Answer B is correct. Under the UCC's firm offer rule, an offer by a merchant contained in a signed writing which by its terms gives assurance that it is firm will be irrevocable notwithstanding lack of consideration for the time stated in the offer (if less than three months). Because the accountant is not a merchant of law books or stacks, his November 10 offer to deliver the book stacks does not fall under the UCC firm offer rule. Because the lawyer did not give consideration to support an option, the offer is revocable at any time prior to acceptance by the lawyer.

A is incorrect because the lawyer's pre-existing duty to pay for the law books is not consideration to support the option. C is incorrect because the accountant's assurance does not fall within the firm offer rule, nor is it supported by consideration. D is incorrect because any reliance on the accountant's promise by the lawyer was not reasonable.

Question 927 - Contracts - Formation of Contracts

The question was:

Which of the following fact patterns most clearly suggests an implied-in-fact contract?

A: A county tax assessor mistakenly bills a man for taxes on his neighbor's property, which the man, in good faith, pays.
B: A physician treated a rider without the rider's knowledge or consent, while the rider was unconscious as the result of a fall from his horse.
C: A contrator, thinking that he was paving the customer's driveway for which the contractor had an express contract, mistakenly paved the neighbor's driveway while the neighbor looked on without saying anything or raising any objection.
D: At her mother's request, an accountant filled out and filed her mother's "E-Z" income-tax form (a simple, short form).

The explanation for the answer is:

Answer C is correct. Although based on tacit, and not express, promises, implied-in-fact contracts are enforceable. An implied-in-fact contract may be inferred from parties' conduct, such as where services are rendered by one person for another under circumstances where it may fairly be presumed that the parties understood that compensation would be paid. The contractor paving the neighbor's driveway while the neighbor looks on without raising objection gives rise to the presumption on an implied-in-fact contract theory that the neighbor will pay the contractor for the work.

A is incorrect because it involved the mistaken payment of taxes which cannot reasonably be implied to create an implied obligation on the government's part. B is incorrect because the rider was unconscious when the physician helped him and therefore could not request his services (although physician might recover under restitution theory). D is incorrect because the law presumes that benefits conferred between family members are done gratuitously, without the expectation of payment.

Question 952 - Contracts - Conditions

The question was:

An amateur computer whiz agreed in writing to design three new games a year for a five-year period for a corporation that distributed TV game systems. The writing provided, in a clause separately signed by the computer whiz, that "No modifications shall be binding on the corporation unless made in writing and signed by the corporation's authorized representative."

Because of family problems, the computer whiz delivered and the corporation accepted only two game-designs a year for the first three years; but the games were a commercial success and the corporation made no objection. Accordingly, the computer whiz spent substantial sums on new computer equipment that would aid in speeding up future design work. In the first quarter of the fourth year, however, the corporation terminated the contract on the ground that the computer whiz had breached the annual-quantity term.

In the computer whiz's suit against the corporation for damages, the jury found that the contract had been modified by conduct and the trial court awarded the computer whiz substantial compensatory damages.

Is this result likely to be reversed on appeal?

A: Yes, because the contract's no-oral-modification clause was not expressly waived by the corporation.
B: Yes, because the contract's no-oral-modification clause was a material part of the agreed exchange and could not be avoided without new consideration.
C: No, because the contract's no-oral-modification clause was unconscionable as against an amateur designer.
D: No, because the corporation by its conduct waived the annual-quantity term and the computer whiz materially changed his position in reasonable reliance on that waiver.

The explanation for the answer is:

Answer D is correct. A waiver is an excuse of the nonoccurrence or delay of a condition to a duty. Constructive conditions of exchange can be waived through conduct, by treating a breach as only a partial breach and continuing to perform the contract. Although a waiver may be retractable in certain situations, a waiver is not retractable once the non-waiving party has relied on the waiver. When the corporation accepted only two game-designs per year during the first three years of the contract, the corporation implicitly waived the computer whiz's breach of the annual-quantity term of the contract. The computer whiz relied on this waiver when he spent substantial sums on equipment for future design work. Therefore, it would be unjust to allow the corporation, without prior notice, to claim that the computer whiz breached the annual-quantity term in year four. A, B and C are incorrect because a no-oral-modification clause does not preclude implicit waiver of a constructive condition.

Question 955 - Contracts - Formation of Contracts

The question was:

A U.S. manufacturer on the west coast gave a hardware retailer who was relocating to the east coast the following "letter of introduction" to a hardware wholesaler on the east coast. This will introduce you to my good friend and former customer, a hardware retailer, who will be seeking to arrange the purchase of hardware inventory from you on credit. If you will let him have the goods, I will make good any loss up to $25,000 in the event of his default.

/Signed/ manufacturer. The hardware retailer presented the letter to the hardware wholesaler, who then sold and delivered $20,000 worth of hardware to the hardware retailer on credit. The hardware wholesaler promptly notified the manufacturer of this sale.

Which of the following is NOT an accurate statement concerning the arrangement between the manufacturer and the hardware wholesaler?

A: It was important to enforceability of the manufacturer's promise to the hardware wholesaler that it be embodied in a signed writing.
B: By extending the credit to the hardware retailer, the hardware wholesaler effectively accepted the manufacturer's offer for a unilateral contract.
C: Although the manufacturer received no consideration from the hardware retailer, the manufacturer's promise is enforceable by the hardware wholesaler.
D: The manufacturer's promise is enforceable by the hardware wholesaler whether or not the hardware wholesaler gave the manufacturer seasonable notice of the extension of credit to the hardware retailer.

The explanation for the answer is:

Answer D is correct. An offer for a unilateral contract seeks acceptance by performance and not a return promise. In order for the acceptance to be effective, however, the offeree must give seasonable notice of acceptance to the promisor where the offeree has reason to know that the offeror will not learn of the acceptance without notice. The manufacturer's offer to the hardware wholesaler is an offer to enter a unilateral contract because the manufacturer does not seek a return commitment from the hardware wholesaler but rather for the wholesaler to provide credit to the hardware retailer. Because the hardware wholesaler lives far from the manufacturer, however, he has reason to know that the manufacturer will not learn of his acceptance unless he gives notice, and therefore the hardware wholesaler must give notice of the extension of credit to the hardware retailer.

A, B and C are incorrect because they are each accurate statements: the manufacturer's promise to guarantee the debt falls within the surety clause of the statute of frauds, the hardware wholesaler's extension of credit to the hardware retailer effected an acceptance of an offer for a unilateral contract, and the manufacturer's promise is enforceable by the hardware wholesaler notwithstanding the fact that the hardware retailer provided no consideration, because the consideration was furnished by the hardware wholesaler.

Question 959 - Contracts - Conditions

The question was:

A broker needed a certain rare coin to complete a set that he had contracted to assemble and sell to a collector. On February 1, the broker obtained such a coin from a hoarder in exchange for $1,000 and the broker's signed, written promise to re-deliver to the hoarder "not later than December 31 this year" a comparable specimen of the same kind of coin without charge to the hoarder. On February 2, the broker consummated sale of the complete set to the collector.

On October 1, the market price of rare coins suddenly began a rapid, sustained rise; on October 15 the hoarder wrote the broker for assurance that the latter would timely meet his coin-replacement commitment. The broker replied, "In view of the surprising market, it seems unfair that I should have to replace your coin within the next few weeks."

After receiving the broker's message on October 17, the hoarder telephoned the broker, who said, "I absolutely will not replace your coin until the market drops far below its present level." The hoarder then sued the broker on November 15 for the market value of a comparable replacement-coin as promised by the broker in February. The trial began on December 1.

If the broker moves to dismiss the hoarder's complaint, which of the following is the hoarder's best argument in opposing the motion.

A: The hoarder's implied duty of good faith and fair dealing in enforcement of the contract required her to mitigate her losses on the rising market by suing promptly, as she did, after becoming reasonably apprehensive of a prospective breach by the broker.
B: Although the doctrine of anticipatory breach is not applicable under the prevailing view if, at the time of repudiation, the repudiatee owes the repudiator no remaining duty of performance, the doctrine applies in this case because the hoarder, the repudiatee, remains potentially liable under an implied warranty that the coin advanced to the broker was genuine.
C: When either party to a sale-of-goods contract repudiates with respect to a performance not yet due, the loss of which will substantially impair the value of the contract to the other, the aggrieved party may in good faith resort to any appropriate remedy for breach.
D: Anticipatory repudiation, as a deliberate disruption without legal excuse of an ongoing contractual relationship between the parties, may be treated by the repudiatee at her election as a present tort, actionable at once.

The explanation for the answer is:

Answer C is correct. Under the UCC, when either party to a contract for the sale of goods repudiates the contract with respect to a future performance that will substantially affect the value of that performance, the non-repudiating party may resort to any appropriate remedy for breach. A repudiation is an unequivocal statement of inability or unwillingness to perform. The broker's October 17 statement that he "absolutely will not" replace the hoarder's coin until the market drops manifests such an intent; therefore the hoarder is entitled to treat his statement as a total breach of contract, even though performance is not due until December 31.

A is incorrect because an injured party must act reasonably to mitigate damages only after the other party commits a material breach or repudiates the contract. B is incorrect because, although the common law recognizes an exception where the non-repudiating party owes no remaining duty of performance, the UCC rule (which governs the hoarder-broker contract because it is for the sale of a good) provides for no such exception. D is incorrect because repudiation typically does not entitle the non-repudiating party to bring a tort action.

Question 966 - Contracts - Defenses to Enforceability

The question was:

A ski-shop operator, in a telephone conversation with a glove manufacturer, ordered 12 pairs of vortex-lined ski gloves at the glove manufacturer's list price of $600 per dozen "for delivery in 30 days." The glove manufacturer orally accepted the offer, and immediately faxed to the ski-shop operator this signed memo: "Confirming our agreement today for your purchase of a dozen pairs of vortex-lined ski gloves for $600, the shipment will be delivered in 30 days." Although the ski-shop operator received and read the glove manufacturer's message within minutes after its dispatch, she changed her mind three weeks later about the purchase and rejected the conforming shipment when it timely arrived.

On learning of the rejection, does the glove manufacturer have a cause of action against the ski-shop operator for breach of contract?

A: Yes, because the gloves were identified in the contract and tendered to the ski-shop operator.
B: Yes, because the glove manufacturer's faxed memo to the ski-shop operator was sufficient to make the agreement enforceable.
C: No, because the agreed price was $600 and the ski-shop operator never signed a writing evidencing a contract with the glove manufacturer.
D: No, because the ski-shop operator neither paid for nor accepted any of the goods tendered.

The explanation for the answer is:

Answer B is correct. Under the UCC, a contract for the sale of goods for $500 or more must be evidenced by a writing that is signed by the person against whom enforcement is sought. As an exception to the rule, a signed writing will not be required between merchants where a written confirmation of a contract of sale has been sent and the recipient fails to give notice of objection to the confirmation within ten days of its receipt. The contract between the ski-shop operator and the glove manufacturer falls within the UCC statute of frauds, since it is for $600. However, because the ski-shop operator and the glove manufacturer both appear to be merchants and because the ski-shop operator failed to object to the writing within ten days of its receipt, it appears that the glove manufacturer's faxed memo is a written confirmation that falls within the exception. A and D are incorrect because they are not relevant to the issue raised in the problem. C is incorrect because, although the contract falls within the UCC statute of frauds provision, an exception to the rule applies.

Question 967 - Contracts - Consideration

The question was:

A burglar stole a collector's impressionist painting valued at $400,000. The collector, who had insured the painting for $300,000 with an insurance company, promised to pay $25,000 to a full-time investigator for the insurance company if he effected the return of the painting to her in good condition. By company rules, the insurance company permits its investigators to accept and retain rewards from policyholders for the recovery of insured property. The investigator, by long and skillful detective work, recovered the picture and returned it undamaged to the collector.

If the collector refuses to pay the investigator anything, and he sues her for $25,000, what is the probable result under the prevailing modern rule?

A: The collector wins, because the investigator owed the insurance company a preexisting duty to recover the picture if possible.
B: The collector wins, because the insurance company, the investigator's employer, had a preexisting duty to return the recovered painting to the collector.
C: The investigator wins, because the collector will benefit more from return of the $400,000 painting than from receiving the $300,000 policy proceeds.
D: The investigator wins, because the preexisting duty rule does not apply if the promisee's (the investigator's) duty was owed to a third person.

The explanation for the answer is:

Answer D is correct. Traditionally, when a preexisting duty was owed to a third party, a new promise to perform the same duty would not constitute consideration. However, under the prevailing modern rule, the new promise will constitute consideration when the original promise was owed to a third party. Therefore the investigator's performance of effecting the return of the painting to the collector was sufficient consideration to support her promise to pay the investigator $25,000 because the preexisting duty was owed to the insurance company and not to the collector.

A is incorrect because the rule does not apply when the duty is owed to a third person. B is incorrect because the fact that the insurance company is also obligated is not relevant to whether the investigator furnished sufficient consideration. C is incorrect because the extent to which the collector will benefit is not relevant to whether the investigator furnished sufficient consideration.

Question 970 - Contracts - Consideration

The question was:

A girl, who was a minor both in fact and appearance, bought on credit and took delivery of a telescope from 30-year-old seller for an agreed price of $100. Upon reaching the age of majority soon thereafter, the girl encountered the seller and said, "I am sorry for not having paid you that $100 for the telescope when the money was due, but I found out it was only worth $75. So I now promise to pay you $75." The girl subsequently repudiated this promise and refused to pay anything.

In an action for breach of contract by the seller against the girl, the seller's probable recovery is

A: nothing, because the girl was a minor at the time of the original transaction.
B: nothing, because there was no consideration for the promise made by the girl after reaching majority.
C: $75.
D: $100.

The explanation for the answer is:

Answer C is correct. Normally, promises made in recognition of a past benefit conferred (such as the girl's promise to pay the seller $75) are not enforceable because any benefit received by the girl was not bargained-for (the telescope was not given in exchange for the $75). As an exception to the rule, courts will enforce such a promise if the promise reaffirms a promise made pursuant to an earlier bargained-for exchange that was not enforceable at the time because of infancy. Although the girl's earlier promise to pay $100 for the telescope was not enforceable because the girl lacked capacity to contract, her later promise to pay $75 for the telescope is enforceable: first, because the girl no longer lacks capacity to contract; and second, because her subsequent promise falls within the exception to the rule and is enforceable notwithstanding the lack of consideration.

A is incorrect because the issue is not the enforceability of the original contract, but rather that of the subsequent promise. B is incorrect because the girl's subsequent promise falls within the exception to the rule. D is incorrect because only the subsequent promise is enforceable.

Question 978 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A patient owed a physician $25,000 for professional services. The physician orally assigned this claim to her adult daughter as a wedding gift. Shortly thereafter, on suffering sudden, severe losses in the stock market, the physician assigned by a signed writing the same claim to her stockbroker in partial satisfaction of advances legally made by the stockbroker in the physician's previous stock-market transactions. Subsequently, the patient, without knowledge of either assignment, paid the physician the $25,000 then due, which the physician promptly lost at a horse track, although she remains solvent.

Assuming that Article 9 of the Uniform Commercial Code does NOT apply to either of the assignments in this situation, which of the following is a correct statement of the parties' rights and liabilities?

A: As the assignee prior in time, the daughter can recover $25,000 from the patient, who acted at her peril in paying the physician.
B: As the sole assignee for value, the stockbroker can recover $25,000 from the patient, who acted at her peril in paying the physician.
C: Neither the daughter nor the stockbroker can recover from the patient, but the daughter, though not the stockbroker, can recover $25,000 from the physician.
D: Neither the daughter nor the stockbroker can recover from the patient, but the stockbroker, though not the daughter, can recover $25,000 from the physician.

The explanation for the answer is:

Answer D is correct. When a contract right is assigned to a party gratuitously (i.e., without receiving anything in exchange), the assignor retains the power to revoke the assignment if done prior to receiving payment from the obligor, or before the assignee has relied on the assignment or brought suit to enforce it. Revocation may be effected by giving notice of revocation, obtaining performance from the obligor or assigning the same contract right to a different assignee. Until the obligor receives notice of an assignment, the obligor may discharge its contractual duty by rendering performance to the assignor.

The physician made a gratuitous assignment of the $25,000 right to payment to her daughter, which the physician revoked when she assigned the same contract right to the stockbroker. Because the stockbroker did not give the obligor (the patient) notice of the assignment, the patient could (and did) discharge her obligation under the contract by paying the physician directly. Because the stockbroker never received payment, however, the physician's debt to the stockbroker is still enforceable.

A is incorrect because the assignment to the daughter was revoked when the physician assigned the right to the stockbroker. B is incorrect because the patient did not receive notice of the assignment, and therefore effectively discharged her obligation by paying the physician directly. C is incorrect because the daughter cannot recover the $25,000 from the physician because the assignment was revoked.

Question 990 - Contracts - Remedies

The question was:

By the terms of a written contract signed by both parties on January 15, a computer store agreed to sell a specific ICB personal computer to a customer for $3,000, and the customer agreed to pick up and pay for the computer at the store on February 1. The customer unjustifiably repudiated on February 1. Without notifying the customer, the store subsequently sold at private sale the same specific computer to a different buyer, who paid the same price ($3,000) in cash. The ICB is a popular product. The computer store can buy from the manufacturer more units than it can sell at retail.

If the store sues the customer for breach of contract, the store will probably recover

A: nothing, because it received a price on resale equal to the contract price that the customer had agreed to pay.
B: nothing, because the store failed to give the customer proper notice of the store's intention to resell.
C: the store's anticipated profit on the sale to the customer plus incidental damages, if any, because the store lost that sale.
D: $3,000 (the contract price), because the customer intentionally breached the contract by repudiation.

The explanation for the answer is:

Answer C is correct. Under the UCC, where the buyer has repudiated a contract the seller may, if resale is done in accordance with UCC rules (which among other things requires giving notice to buyer of any private resale), recover the difference between the contract price and the resale price, plus any incidental damages. In the alternative, the seller may recover the difference between the contract price and the market price at the time for tender. Where the market formula of damages is inadequate, the seller may recover its lost profit on the sale (plus incidental damages), if the seller can demonstrate that it could have profitably made the extra sale had the contract gone forward (i.e., that it is a "lost volume" seller). When the customer repudiated the contract to buy the computer from the store, the store resold the computer to a different buyer for the same contract price. Because the store did not give notice of resale to the customer, it may not rely on the resale formula in calculating damages, but this will have no effect on damages because the resale and the contract price are the same. But because the store can obtain more units than it can sell at retail, this suggests that the store is a "lost volume" seller and therefore can recover the profit it expected to earn on the contract, plus incidental damages.

A is incorrect because the UCC allows recovery of lost profit, as explained above. B is incorrect because failure to give notice of resale does not completely cut off the seller's right to recover damages. D is incorrect because the UCC formula requires subtracting from the contract price the value of the good to be sold (regardless of the nature of the repudiation).

Question 1001 - Contracts - Remedies

The question was:

In a single writing, Painter contracted with Farmer to paint three identical barns on her rural estate for $2,000 each. The contract provided for Farmer's payment of $6,000 upon Painter's completion of the work on all three barns. Painter did not ask for any payment when the first barn was completely painted, but she demanded $4,000 after painting the second barn.

Assume that Farmer rightfully refused Painter's demand for payment.

If Painter immediately terminates the contract without painting the third barn, what is Painter entitled to recover from Farmer?

A: Nothing, because payment was expressly conditioned on completion of all three barns.
B: Painter's expenditures plus anticipated "profit" in painting the first two barns, up to a maximum recovery of $4,000.
C: The reasonable value of Painter's services in painting the two barns, less Farmer's damages, if any, for Painter's failure to paint the third barn.
D: The amount that the combined value of the two painted barns has been increased by Painter's work.

The explanation for the answer is:

Answer C is correct. A breaching party is entitled to recover in restitution for the reasonable value of the benefit conferred on the non-breaching party in the way of part performance, less any damages that the non-breaching party suffered due to the breach. Since Painter terminated the contract without justification, it is the breaching party. As a breaching plaintiff, Painter is entitled to recover damages equivalent to the reasonable value of its services in painting the two barns, minus any additional cost to Farmer (above what it would have paid under the contract) of having the third barn painted. A is incorrect because, even if Painter's right to payment was expressly conditioned upon completion, failure to satisfy the condition would not cut off Painter's right to recover in restitution. B is incorrect because a breaching party is not entitled to recover expectation damages (which would include lost profit). D is incorrect because it does not subtract from the restitution recovery any damages for the loss Farmer suffered due to the breach.

Question 1008 - Contracts - Formation of Contracts

The question was:

On December 15, a lawyer received from a retailer of supplies an offer consisting of its catalog and a signed letter stating, "We will supply you with as many of the items in the enclosed catalog as you order during the next calendar year. We assure you that this offer and the prices in the catalog will remain firm throughout the coming year."

Assume that no other correspondence passed between the retailer and the lawyer until the following April 15 (four months later), when the retailer received from the lawyer a faxed order for "100 reams of your paper, catalog item #101."

Did the lawyer's April 15 fax constitute an effective acceptance of the retailer's offer at the prices specified in the catalog?

A: Yes, because the retailer had not revoked its offer before April 15.
B: Yes, because a one-year option contract had been created by the retailer's offer.
C: No, because under applicable law the irrevocability of the retailer's offer was limited to a period of three months.
D: No, because the lawyer did not accept the retailer's offer within a reasonable time.

The explanation for the answer is:

Answer A is correct. Under the UCC's firm offer rule, an offer by a merchant for the sale of goods contained in a signed writing which by its terms gives assurance that it is firm will be irrevocable, notwithstanding lack of consideration, for the time stated in the offer (or if no time is stated, for a reasonable time), but in no case may the period of irrevocability exceed three months. If the three-month period lapses and no consideration is given to support an option, then the offer can be revoked at any time before acceptance (or before it lapses). Because the retailer's firm offer was not supported by consideration, it became revocable as of March 15. However, the lawyer accepted the offer before the retailer revoked it and before the offer lapsed (because the offer stated that it would be open for the entire year); therefore, the retailer is bound to a contract to supply the paper.

B is incorrect because a firm offer becomes revocable after three months unless consideration is given to support an option. C is incorrect because notwithstanding the three-month limit on irrevocability, the lawyer accepted before the retailer revoked the offer. D is incorrect because the terms of the offer stated that it would be open for a year.

Question 1009 - Contracts - Formation of Contracts

The question was:

On December 15, a lawyer received from a retailer of supplies an offer consisting of its catalog and a signed letter stating, "We will supply you with as many of the items in the enclosed catalog as you order during the next calendar year. We assure you that this offer and the prices in the catalog will remain firm throughout the coming year."

Assume that on January 15, having at that time received no reply from the lawyer, the retailer notified the lawyer that effective February 1, it was increasing the prices of certain specified items in its catalog.

Is the price increase effective with respect to catalog orders the retailer receives from the lawyer during the month of February?

A: No, because the retailer's original offer, including the price term, became irrevocable under the doctrine of promissory estoppel.
B: No, because the retailer is a merchant with respect to office supplies; and its original offer, including the price term, was irrevocable throughout the month of February.
C: Yes, because the retailer received no consideration to support its assurance that it would not increase prices.
D: Yes, because the period for which the retailer gave assurance that it would not raise prices was longer than three months.

The explanation for the answer is:

Answer B is correct. Under the UCC's firm offer rule, an offer by a merchant for the sale of goods contained in a signed writing which by its terms gives assurance that it is firm will be irrevocable, notwithstanding lack of consideration, for the time stated in the offer, but in no case may the period of irrevocability exceed three months. The retailer is a merchant, because it is a retailer of office supplies. The offer that it sent to the lawyer is a firm offer because it was made by a merchant, is contained in a signed writing, and provides the necessary assurances. The fact that the period of irrevocability exceeds three months does not invalidate the firm offer, but the offer will only be firm for a three-month period. Because, as of January 15, the three-month period had not yet elapsed, the offer is still firm and the retailer is not free to change the prices contained in the December 15 offer.

A is incorrect because the facts do not show substantial reliance on the offer. C is incorrect because UCC firm offers do not require consideration to be enforceable. D is incorrect because, as explained above, when the offer purports to be firm for more than three months, the firm offer is not invalidated but rather is irrevocable for three months.

Question 1018 - Contracts - Consideration

The question was:

A buyer contracted in writing with a shareholder, who owned all of XYZ Corporation's outstanding stock, to purchase all of her stock at a specified price per share. At the time this contract was executed, the buyer's contracting officer said to the shareholder, "Of course, our commitment to buy is conditioned on our obtaining approval of the contract from our parent company." The shareholder replied, "Fine. No problem."

Assume that the parent company orally approved the contract, but that the shareholder changed her mind and refused to consummate the sale on two grounds: (1) when the agreement was made there was no consideration for her promise to sell, and (2) the parent company's approval of the contract was invalid.

If the buyer sues the shareholder for breach of contract, is the buyer likely to prevail?

A: Yes, because the buyer's promise to buy, bargained for and made in exchange for the shareholder's promise to sell, was good consideration even though it was expressly conditioned on an event that was not certain to occur.
B: Yes, because any possible lack of consideration for the shareholder's promise to sell was expressly waived by the shareholder when the agreement was made.
C: No, because mutuality of obligation between parties was lacking when the agreement was made.
D: No, because the condition of the parent company's approval of the contract was an essential part of the agreed exchange and was not in a signed writing.

The explanation for the answer is:

Answer A is correct. A promise is not consideration to support a return promise if by its terms the promisor unconditionally reserves the right of alternative performances, such as reserving the right to cancel the contract. Such a promise is an illusory promise. However, where a promisor's obligation is conditioned upon the occurrence of an event that is outside of the promisor's control, the mere fact that the obligation is subject to a condition does not render the promise illusory. Because the buyer presumably does not control the actions of its parent company, the fact that the buyer's obligation is conditioned upon the parent company's approval does not render it illusory, since the buyer will be bound once the condition is satisfied, and the occurrence or nonoccurrence of the condition is for the most part outside of the buyer's control.

B is incorrect because the shareholder agreed to the condition; it is not a waiver. C is incorrect because there is mutuality of obligation in that each party made a binding promise. D is incorrect because the fact that the parent company's approval was not in writing does not render it invalid.

Question 1020 - Contracts - Parol Evidence and Interpretation

The question was:

A buyer contracted in writing with a shareholder, who owned all of XYZ Corporation's outstanding stock, to purchase all of her stock at a specified price per share. At the time this contract was executed, the buyer's contracting officer said to the shareholder, "Of course, our commitment to buy is conditioned on our obtaining approval of the contract from our parent company." The shareholder replied, "Fine. No problem."

The shareholder is willing and ready to consummate the sale of her stock to the buyer, but the latter refuses to perform on the ground (which is true) that the parent company has firmly refused to approve the contract.

If the shareholder sues the buyer for breach of contract and seeks to exclude any evidence of the oral condition requiring the parent company's approval, the court will probably

A: admit the evidence as proof of a collateral agreement.
B: admit the evidence as proof of a condition to the existence of an enforceable obligation, and therefore not within the scope of the parol evidence rule.
C: exclude the evidence on the basis of a finding that the parties' written agreement was a complete integration of their contract.
D: exclude the evidence as contradicting the terms of the parties' written agreement, whether or not the writing was a complete integration of the contract.

The explanation for the answer is:

Answer B is correct. The parol evidence rule bars extrinsic evidence of a prior agreement where the prior agreement contradicts the terms of a final written agreement or where the prior agreement purports to add to a completely integrated agreement (i.e., one that is intended by the parties to be both the final and exclusive manifestation of the parties' understanding). An exception to the parol evidence rule applies where the extrinsic evidence is offered to prove that the written agreement is to take effect only upon the occurrence of a stated condition (even if the condition is for only one party's benefit). Because the buyer-shareholder agreement will only take effect upon approval by the parent company, extrinsic evidence of this oral understanding is admissible notwithstanding the parol evidence rule.

A is incorrect because the condition appears to be an integral part of the contract of sale. C and D are incorrect because the exception to the parol evidence rule for conditions precedent applies regardless of whether the final writing is partially or completely integrated and regardless of whether the extrinsic evidence may contradict the final writing (although these facts fail to suggest any such contradiction).

Question 1041 - Contracts - Formation of Contracts

The question was:

A potential buyer telegraphed a vendor on June 1, "At what price will you sell 100 of your QT-Model garbage-disposal units for delivery around June 10?" Thereafter, the following communications were exchanged:

1. Telegram from the vendor received by the potential buyer on June 2: "You're in luck. We have only 100 QT's, all on clearance at 50% off usual wholesale of $120 per unit, for delivery at our shipping platform on June 12."
2. Letter from the potential buyer received in U.S. mail by the vendor on June 5: "I accept. Would prefer to pay in full 30 days after invoice."
3. Telegram from the vendor received by the potential buyer on June 6: "You must pick up at our platform and pay C.O.D."
4 Letter from the potential buyer received in U.S. mail by the vendor on June 9: "I don't deal with people who can't accommodate our simple requests."
5. Telegram from the potential buyer received by the vendor on June 10, after the vendor has sold and delivered all of the QT's to another buyer earlier that day: "Okay. I'm over a barrel and will pick up the goods on your terms June 12."

The potential buyer now sues the vendor for breach of contract.

Which of the following arguments will best serve the vendor's defense?

A: The vendor's telegram received on June 2 was merely a price quotation, not an offer.
B: The potential buyer's letter received on June 5 was not an acceptance because it varied the terms of the vendor's initial telegram.
C: The potential buyer's use of the mail in response to the vendor's initial telegram was an ineffective method of acceptance.
D: The potential buyer's letter received on June 9 was an unequivocal refusal to perform that excused the vendor even if the parties had previously formed a contract.

The explanation for the answer is:

Answer D is correct. The UCC rejects the common-law mirror image rule. Under the UCC, a written acceptance of a contract for the sale of goods generally will operate as such even if it states additional or different terms. The additional or different terms, however, will not become part of the contract if they materially alter the contract, unless the offeror expressly agrees to such term. The potential buyer's June 5th letter operated as an acceptance of the vendor's offer, but proposed a later payment date. Because the vendor expressly rejected this proposed term, it did not form part of the contract. Therefore, the potential buyer's June 9th communication operated as a repudiation of an existing agreement to buy 100 QT's.

A is incorrect because the vendor's June 2nd communication manifests an intent to make an offer. B is incorrect because the UCC rejects the common-law mirror image rule (which finds communications that vary the terms of an offer to be a counteroffer and not an acceptance). C is incorrect because in this case the mail box rule is irrelevant to whether a contract was formed, because the potential buyer's acceptance was received before any attempted revocation.

Question 1053 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A famous chef entered into a written agreement with his friend, a well-known interior decorator respected for his unique designs, in which the decorator agreed, for a fixed fee, to design the interior of the chef's new restaurant, and, upon the chef's approval of the design plan, to decorate and furnish the restaurant accordingly. The agreement was silent as to assignment or delegation by either party. Before beginning the work, the decorator sold his decorating business to Newman under an agreement in which the decorator assigned to Newman, and Newman agreed to complete, the chef-decorator contract. Newman, also an experienced decorator of excellent repute, advised the chef of the assignment, and supplied him with information confirming both Newman's financial responsibility and past commercial success.

Is the chef obligated to permit Newman to perform the chef-decorator agreement?

A: Yes, because the agreement contained no prohibition against assignment or delegation.
B: Yes, because the chef received adequate assurances of Newman's ability to complete the job.
C: No, because the decorator's duties were of a personal nature, involving his reputation, taste, and skill.
D: No, because the decorator's purported delegation to Newman of his obligations to the chef effected a novation.

The explanation for the answer is:

Answer C is correct. Unless the contract provides otherwise, a contractual duty may be delegated to another unless the other party to the contract has a substantial interest in having the original obligor perform. Typically the other party will have such an interest where the contract is a personal services contract involving fancy, taste and judgment. Although the the chef-decorator contract was silent on the issue of assignability, the facts suggest that the chef would have a substantial interest in having the decorator and no other person design the interior of his new restaurant. Therefore, the decorator's delegation of the duty to Newman without the chef's consent amounts to a breach of contract.

A is incorrect because delegation is restricted in this case even though the contract is silent on the issue. B is incorrect because the chef need not accept the delegation regardless of assurances of performance from Newman. D is incorrect because a novation would require express agreement from the chef to substitute Newman for the decorator.

Question 1054 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A famous chef entered into a written agreement with his neighbor, a well-known interior decorator respected for his unique designs, in which the decorator agreed, for a fixed fee, to design the interior of the chef's new restaurant, and, upon the chef's approval of the design plan, to decorate and furnish the restaurant accordingly. The agreement was silent as to assignment or delegation by either party. Before beginning the work, the decorator sold his decorating business to his friend under an agreement in which the decorator assigned to the friend, and the friend agreed to complete, the chef-decorator contract. The friend, also an experienced decorator of excellent repute, advised the chef of the assignment, and supplied him with information confirming both the friend's financial responsibility and past commercial success.

If the chef allows the friend to perform and approves his design plan, but the friend fails without legal excuse to complete the decorating as agreed, against whom does the chef have an enforceable claim for breach of contract?

A: The decorator only, because the decorator's agreement with the friend did not discharge his duty to the chef, and the friend made no express promise to the chef.
B: Only the friend, because the decorator's duty to the chef was discharged when the decorator obtained a skilled decorator (the friend) to perform the chef-decorator contract.
C: Only the friend, because the chef was an intended beneficiary of the decorator-friend agreement, and the decorator's duty to the chef was discharged when the chef permitted the friend to do the work and approved the friend's designs.
D: Either the decorator, because his agreement with the friend did not discharge his duty to the chef, or the friend, because the chef was an intended beneficiary of the decorator-friend agreement.

The explanation for the answer is:

Answer D is correct. Unless the other party to the contract (the obligee, or the chef) agrees otherwise (e.g., by executing a novation substituting the new obligor and releasing the original obligor of its duty), delegation of a contractual duty does not discharge the obligation of the delegating obligor (the decorator). Therefore, where a duty has been delegated (in this case, the duty to design the interior of the chef's new restaurant) and the delegatee (The friend) breaches the duty, the chef may enforce the contract either against the original obligor (the decorator), or against the delegatee (The friend). The chef may enforce The friend's promise because he is the intended beneficiary of the decorator-The friend contract (under which The friend undertook to design the interior of the chef's new restaurant).

A is incorrect because the chef is an intended beneficiary of the decorator-The friend agreement (in other words, allowing the chef standing to enforce the contract would be appropriate to effectuate the parties' understanding, since The friend must have understood that the decorator's intent was to confer a benefit on the chef). B and C are incorrect because delegation will not discharge the obligor's original duty (unless the parties execute a novation).

Question 1084 - Contracts - Conditions

The question was:

A fixtures company, in a signed writing, contracted with an apartment complex for the sale to the apartment complex of 50 identical sets of specified bathroom fixtures, 25 sets to be delivered on March 1, and the remaining 25 sets on April 1. The agreement did not specify the place of delivery, or the time or place of payment.

Which of the following statements is correct?

A: The fixtures company must tender 25 sets to the apartment complex at the apartment complex's place of business on March 1, but does not have to turn them over to the apartment complex until the complex pays the contract price for the 25 sets.
B: The fixtures company has no duty to deliver 25 sets on March 1 at the fixtures company's place of business unless the apartment complex tenders the contract price for the 25 sets on that date.
C: The fixtures company must deliver 25 sets on March 1, and the apartment complex must pay the contract price for the 25 sets within a reasonable time after their delivery.
D: The fixtures company must deliver 25 sets on March 1, but the apartment complex's payment is due only upon the delivery of all 50 sets.

The explanation for the answer is:

Answer B is correct. Under the UCC, unless the contract specifies otherwise, a buyer's obligation to pay is conditioned upon tender of the goods by seller. Tender is effected when the seller makes conforming goods available for the buyer's disposition and gives the buyer notice sufficient to enable the buyer to take delivery. Unless the contract specifies otherwise, the place of delivery is the seller's place of business, and payment is due at the time and place where the buyer is to receive the goods. Because the fixtures company-apartment complex contract is silent with respect to the place of delivery, tender by the fixtures company does not require them to deliver the goods to the apartment complex's place of business, but only to make the goods available at the fixtures company's place of business for the apartment complex to take delivery.

A is incorrect because tender does not require the fixtures company to deliver the goods to the apartment complex's place of business. C and D are incorrect because, since the contract is silent with respect to the time of payment, the apartment complex must make payment for the delivered goods on March 1, when the fixtures company has tendered delivery.

Question 1085 - Contracts - Conditions

The question was:

A fixtures company, in a signed writing, contracted with an apartment complex for the sale to the apartment complex of 50 identical sets of specified bathroom fixtures, 25 sets to be delivered on March 1, and the remaining 25 sets on April 1. The agreement did not specify the place of delivery, or the time or place of payment.

On March 1, the fixtures company tendered 24 sets to the apartment complex and explained, "One of the 25 sets was damaged in transit from the manufacturer to us, but we will deliver a replacement within 5 days."

Which of the following statements is correct?

A: The apartment complex is entitled to accept any number of the 24 sets, reject the rest, and cancel the contract both as to any rejected sets and the lot due on April 1.
B: The apartment complex is entitled to accept any number of the 24 sets and to reject the rest, but is not entitled to cancel the contract as to any rejected sets or the lot due on April 1.
C: The apartment complex must accept the 24 sets but is entitled to cancel the rest of the contract.
D: The apartment complex must accept the 24 sets and is not entitled to cancel the rest of the contract.

The explanation for the answer is:

Answer D is correct. The UCC defines an installment contract as one that provides for the delivery of goods in separate lots to be separately accepted. When an installment under such a contract is non-conforming, the buyer must accept that installment if the seller gives adequate assurance of the defect's cure, unless the non-conformity substantially impairs the value of the installment and cannot be cured. Because the fixtures company-apartment complex contract is an installment contract and because the fixtures company gave assurances that the defective shipment would be cured within five days, the apartment complex must accept the rest of the shipment and would not be justified in canceling the rest of the contract.

A and B are incorrect because the UCC's "perfect tender" rule (which entitles a buyer to reject a tender of delivery that fails in any respect to conform to the contract) does not apply to installment contracts. C is incorrect because a buyer under an installment contract may treat the contract as breached only if the non-conformity of one or more installments substantially impairs the value of the contract as a whole.

Question 1105 - Contracts - Parol Evidence and Interpretation

The question was:

A written construction contract, under which a contractor agreed to build a new house for an owner at a fixed price of $200,000, contained the following provision: Prior to construction or during the course thereof, this contract may be modified by mutual agreement of the parties as to "extras" or other departures from the plans and specifications provided by the owner and attached hereto. Such modifications, however, may be authorized only in writing, signed by both parties. During construction, the contractor incorporated into the structure overhanging gargoyles and other "extras" orally requested by the owner for orally agreed prices in addition to the contract price. The owner subsequently refused to pay anything for such extras, aggregating $30,000 at the agreed prices, solely on the ground that no written, signed authorization for them was ever effected.

If the contractor sues the owner on account of the "extras," which, if any, of the following will effectively support the owner's defense?

A: The parol evidence rule.
B: The preexisting duty rule.
C: Failure of an express condition.
D: The owner does not have a valid defense.

The explanation for the answer is:

Answer D is correct. A provision in a written contract that specifies that any modification to the agreement is unenforceable unless made in writing and signed by both parties is referred to as a no-oral-modification clause. Such clauses are common in construction contracts (such as the owner-contractor agreement) and may be enforceable unless the contractor has relied on a verbal request for extras (as was done in this case).

None of the rules listed provides an effective defense for the owner. A is incorrect because the parol evidence rule does not apply to modifications made *after* the adoption of a final writing. B is incorrect because the pre-existing duty rule (which requires that modifications be supported by consideration) is not relevant to the owner's claim that a written authorization was required. C is incorrect because an argument based on express conditions could be rebutted by showing that the parties effectively waived the condition by entering into a verbal agreement which the contractor relied upon.

Question 1110 - Contracts - Formation of Contracts

The question was:

On April 1, an owner and a buyer signed a writing in which the owner, in consideration of $100 to be paid to the owner by the buyer, offered the buyer the right to purchase Greenacre for $100,000 within 30 days. The writing further provided, "This offer will become effective as an option only if and when the $100 consideration is in fact paid." On April 20, the owner, having received no payment or other communication from the buyer, sold and conveyed Greenacre to a citizen for $120,000. On April 21, the owner received a letter from the buyer enclosing a cashier's check for $100 payable to the owner and stating, "I am hereby exercising my option to purchase Greenacre and am prepared to close whenever you're ready."

Which of the following, if proved, best support the buyer's suit against the owner for breach of contract?

A: The buyer was unaware of the sale to the citizen when the owner received the letter and check from the buyer on April 21.
B: On April 15, the buyer decided to purchase Greenacre, and applied for and obtained a commitment from a bank for a $75,000 loan to help finance the purchase.
C: When the April 1 writing was signed, the owner said to the buyer, "Don't worry about the $100; the recital of '$100 to be paid' makes this deal binding."
D: The owner and the buyer are both professional dealers in real estate.

The explanation for the answer is:

Answer A is correct. An option promise, which makes an offer irrevocable during the time stated, requires consideration to be enforceable. Even if consideration is not furnished, however, the offer can be accepted by the offeree unless the offer lapses or the offeree receives notice of revocation by the offeror. Because the requested consideration had not been paid, the owner's April 1 letter was not effective as an option at the time that the owner conveyed Greenacre to the citizen. Because the offer was not set to lapse until April 30, the buyer was still free to accept the owner's offer on April 21, unless it could be shown that the buyer received notice that the owner conveyed Greenacre to a third party (which would have the effect of revoking the offer, because it demonstrates the owner's inability to enter into the contract).

B is incorrect because the buyer's reliance would not be reasonable under these circumstances; the buyer could have protected itself simply by paying the $100 to create an enforceable option. C is incorrect because most courts do not regard a mere recital of consideration as sufficient to create an option. D is incorrect because the parties' status as professionals is not relevant to whether the owner's offer was accepted in time.

Question 1111 - Contracts - Remedies

The question was:

On April 1, an owner and a buyer signed a writing in which the owner, in consideration of $100 to be paid to the owner by the buyer, offered the buyer the right to purchase Greenacre for $100,000 within 30 days. The writing further provided, "This offer will become effective as an option only if and when the $100 consideration is in fact paid." On April 20, the owner, having received no payment or other communication from the buyer, sold and conveyed Greenacre to a citizen for $120,000. On April 21, the owner received a letter from the buyer enclosing a cashier's check for $100 payable to the owner and stating, "I am hereby exercising my option to purchase Greenacre and am prepared to close whenever you're ready."

Assume that, for whatever reason, the buyer prevails in the suit against the owner.

Which of the following is the buyer entitled to recover?

A: Nominal damages only, because the remedy of specific performance was not available to the buyer.
B: The fair market value, if any, of an assignable option to purchase Greenacre for $100,000.
C: $20,000, plus the amount, if any, by which the fair market value of Greenacre on the date of the owner's breach exceeded $120,000.
D: The amount, if any, by which the fair market value of Greenacre on the date of the owner's breach exceeded $100,000.

The explanation for the answer is:

Answer D is correct. Although breach of a contract for real estate typically would entitle the buyer to specific performance, specific performance is not possible in this case because the property has been sold to the citizen. As a substitute for specific performance, the buyer may recover expectation damages, or damages that are intended to give the injured party the value of the promise. Damages to an injured buyer in a contract for the sale of real estate are usually measured by the difference between the contract price and the market value of the property as of the time that the buyer learned of the breach, plus any incidental or consequential damages. So if the buyer prevails in her suit against the owner, she may recover damages equal to the excess of the market value of Greenacre over the contract price.

A is incorrect because the buyer is entitled to recover either specific performance or expectation damages. B is incorrect because the owner's breach ultimately has caused the buyer to lose Greenacre itself and not just an option to purchase Greenacre. C is incorrect because typically expectation damages are not measured by the better of the contract price-resale price differential and the contract price-market value differential (although each of these is a theoretically possible method of measuring expectation damages).

Question 1123 - Contracts - Conditions

The question was:

On June 1, a seller and a buyer contracted in writing for the sale and purchase of the seller's cattle ranch (a large single tract) and to close the transaction on December 1.

On October 1, the buyer told the seller, "I'm increasingly unhappy about our June 1 contract because of the current cattle market, and do not intend to buy your ranch unless I'm legally obligated to do so."

If the seller sues the buyer on October 15 for breach of contract, the seller will probably

A: win, because the buyer committed a total breach by anticipatory repudiation on October 1.
B: win, because the buyer's October 1 statement created reasonable grounds for the seller's insecurity with respect to the buyer's performance.
C: lose, because the parties contracted for the sale and conveyance of a single tract, and the seller cannot bring suit for breach of such a contract prior to the agreed closing date.
D: lose, because the buyer's October 1 statement to the seller was neither a repudiation nor a present breach of the June 1 contract.

The explanation for the answer is:

Answer D is correct. Under the doctrine of anticipatory repudiation, an unequivocal statement of unwillingness or inability to perform a future contractual obligation, if material, may be treated as a total breach of that obligation and give rise to a right to immediately recover damages for that breach. In order to amount to a repudiation, however, the statement must be unequivocal; a statement that merely expresses doubt over a party's ability or willingness to perform is not sufficient. The buyer's October 1 statement to the seller that he did not intend to buy the ranch unless legally obligated to do so may have given rise to insecurity over his willingness to perform the contract, but it was not a repudiation. Nor was it a breach, since performance was not due until December 1.

A is incorrect because the buyer's statement was not a clear manifestation of a prospective unwillingness to close the contract on December 1. B is incorrect because grounds for insecurity are not alone sufficient to entitle the seller to treat the contract as breached. Although C is partially correct in that the buyer's obligation is not due until the closing date, the seller could have brought suit on October 15 if the buyer's statement had been sufficiently unequivocal to amount to a repudiation of the contract.

Question 1124 - Contracts - Conditions

The question was:

On June 1, a seller and a buyer contracted in writing for the sale and purchase of the seller's cattle ranch (a large single tract) and to close the transaction on December 1.

The buyer unequivocally repudiated the contract on August 1. On August 15, the seller urged the buyer to change her mind and proceed with the scheduled closing on December 1. On October 1, having heard nothing further from the buyer, the seller sold and conveyed his ranch to a rancher without notice to the buyer. On December 1, the buyer attempted to close under the June 1 contract by tendering the full purchase price to the seller. The seller rejected the tender.

If the buyer sues the seller for breach of contract, the buyer will probably

A: win, because the seller failed to seasonably notify the buyer of any pending sale to the rancher.
B: win, because the seller waived the buyer's August 1 repudiation by urging her to retract it on August 15.
C: lose, because the buyer did not retract her repudiation before the seller materially changed his position in reliance thereon by selling the ranch to the rancher.
D: lose, because acceptance of the purchase price by the seller was a concurrent condition to the seller's obligation to convey the ranch to the buyer on December 1.

The explanation for the answer is:

Answer C is correct. If the effect of a repudiation is to deprive the non-repudiating party of a substantial part of the contract, it gives the non-repudiating party the right to terminate the contract and pursue remedies for total breach. The repudiating party, however, is still free to retract the repudiation and reinstate the contract if done before the non-repudiating party either materially relies on the repudiation or indicates that she considers the repudiation to be final. Although the buyer attempted to retract his repudiation on December 1, his repudiation was not timely because the seller had already materially relied on the repudiation on October 1 by conveying his ranch to the rancher.

A is incorrect because the seller did not have to give notice in order for his reliance to preclude retraction of the repudiation. B is incorrect because the seller's efforts to preserve the contractual relationship cannot be construed as waiving any right the seller had to pursue remedies for breach of contract. D is incorrect because the seller is not obligated to convey the ranch to the buyer if the buyer has repudiated the contract and the time for retracting the repudiation has passed.

Question 1126 - Contracts - Remedies

The question was:

A contractor agreed to build a power plant for a public utility. A subcontractor agreed with the contractor to lay the foundation for $200,000. The subcontractor supplied goods and services worth $150,000, for which the contractor made progress payments aggregating $100,000 as required by the subcontract. The subcontractor then breached by unjustifiably refusing to perform further. The contractor reasonably spent $120,000 to have the work completed by another subcontractor.

The subcontractor sues the contractor for the reasonable value of benefits conferred, and the contractor counterclaims for breach of contract.

Which of the following should be the court's decision?

A: The subcontractor recovers $50,000, the benefit conferred on the contractor for which the subcontractor has not been paid.
B: The subcontractor recovers $30,000, the benefit the subcontractor conferred on the contractor minus the $20,000 in damages incurred by the contractor.
C: The contractor recovers $20,000, the excess over the contract price that was paid by the contractor for the performance it had bargained to receive from the subcontractor.
D: Neither party recovers anything, because the subcontractor committed a material, unexcused breach and the contractor received a $50,000 benefit from the subcontractor for which the subcontractor has not been paid.

The explanation for the answer is:

Answer C is correct. A party in breach generally is entitled to restitution of any benefit that he has conferred in the way of part performance in excess of any loss to the non-breaching party resulting from the breach. In measuring restitution to the breaching party, the value of the benefit conferred should not exceed the contract price for such services. The subcontractor appears to have entered into a losing contract, since the value of the services rendered up to the time of breach ($150,000) exceeds the contract rate for such services ($100,000). But because the subcontractor was the breaching party, he is not entitled to recover the amount by which the reasonable value of his services exceeded the contract rate; rather he is limited to restitution of what he would have earned on the contract.

Because the subcontractor has already been given progress payments of $100,000 for the work, there is no basis for restitution to the subcontractor. The contractor, however, is entitled to the damages resulting from the subcontractor's breach. Specifically, the contractor may recover the additional $20,000 cost of hiring another subcontractor to complete the work that the subcontractor refused to do. A, B and D are incorrect because, as explained above, a breaching plaintiff (such as the subcontractor) may not recover in restitution what he would have forfeited by entering into a losing contract.

Question 1137 - Contracts - Parol Evidence and Interpretation

The question was:

A computer company contracted in writing with a bank to sell and deliver to the bank a mainframe computer using a new type of magnetic memory, then under development but not perfected by the computer company, at a price substantially lower than that of a similar computer using current technology. The contract's delivery term was "F.O.B. the bank, on or before July 31."

Assume that the computer company tendered the computer to the bank on August 15, and that the bank rejected it because of delay.

If the computer company sues the bank for breach of contract, which of the following facts, if proved, will best support a recovery by the computer company?

A: The delay did not materially harm the bank.
B: The computer company believed, on the assumption that the bank was getting a "super deal" for its money, that the bank would not reject because of the late tender of delivery.
C: The computer company's delay in tender was caused by a truckers' strike.
D: A usage in the relevant trade allows computer sellers a 30-day leeway in a specified time of delivery, unless the usage is expressly negated by the contract.

The explanation for the answer is:

Answer D is correct. Under the UCC, any trade usage that is observed with sufficient regularity in a place, vocation, or trade so as to justify an expectation that the parties contracted with reference to it can be introduced to interpret the parties' agreement, so long as the usage can be reasonably construed as being consistent with the express terms of the contract. Indeed, the UCC defines "agreement" as including the parties' express terms as well as those that are implied by applicable trade usage. Although the written contract between the computer company and the bank called for delivery "on or before July 31," the trade usage that the computer company seeks to introduce suggests that buyers should allow for up to 30-days' leeway beyond that date. If the contract were construed in light of this usage, then the August 15 delivery would not be a breach of the contract and the bank would be in breach for refusing to take delivery on that date. The fact that buyers and sellers typically negate the usage with express language if the delivery date is to be construed strictly suggests that the trade usage is fairly persuasive evidence of the parties' intent.

A is incorrect because even an immaterial delay in delivery would entitle the bank to reject delivery of the computer. B is incorrect because such an inference would not be reasonable if the contract is literally construed as requiring delivery "on or before July 31." C is incorrect because a truckers' strike would not justify excuse on grounds of impracticability, because the facts do not suggest that the availability of ground shipment is a basic assumption on which the contract was made.

Question 1138 - Contracts - Impracticability and Frustration of Purpose

The question was:

A computer company contracted in writing with a bank to sell and deliver to the bank a mainframe computer using a new type of magnetic memory, then under development but not perfected by the computer company, at a price substantially lower than that of a similar computer using current technology. The contract's delivery term was "F.O.B. the bank, on or before July 31."

After making the contract with the bank, the computer company discovered that the new technology it intended to use was unreliable and that no computer manufacturer could yet build a reliable computer using that technology. The computer company thereupon notified the bank that it was impossible for the computer company or anyone else to build the contracted-for computer "in the present state of the art."

If the bank sues the computer company for failure to perform its computer contract, the court will probably decide the case in favor of

A: the computer company, because its performance of the contract was objectively impossible.
B: the computer company, because a contract to build a machine using technology under development imposes only a duty on the builder to use its best efforts to achieve the result contracted for.
C: the bank, because the law of impossibility does not apply to merchants under the applicable law.
D: the bank, because the computer company assumed the risk, in the given circumstances, that the projected new technology would not work reliably.

The explanation for the answer is:

Answer D is correct. Under the UCC, delay or non-delivery by a seller is not a breach of a contract of sale where performance has been made impracticable by the occurrence of an event the non-occurrence of which was a basic assumption of the contract. Excuse on grounds of impracticability will not be available, however, if the event in question was sufficiently foreshadowed so as to fairly be viewed as part of the risks that the seller assumed when entering into the contract. At the time that it undertook to sell the mainframe computer, the computer company was aware that the new technology it was planning to utilize was not yet perfected. Therefore, the fact that this technology turned out to be unreliable is a risk that the computer company should bear, and therefore the computer company's failure to perform the contract should not be excused.

A is incorrect because the UCC test for excuse on grounds of impracticability focuses not on whether performance is impossible but on whether the party seeking excuse should be found to bear the risk of the event that renders performance impracticable. B is incorrect because it is not true; if the computer company wanted to undertake only a "best efforts" obligation, it should have expressly so stated in the contract. C is incorrect because the UCC doctrine of impracticability applies to merchants as well as non-merchants.

Question 1150 - Contracts - Consideration

The question was:

A manager, aged 60, who had no plans for early retirement, had worked for an insurance company for 20 years as a managerial employee-at-will when he had a conversation with the company's president about the manager's post-retirement goal of extensive travel around the United States. A month later, the president handed the manager a written, signed resolution of the company's Board of Directors stating that when and if the manager should decide to retire, at his option, the company, in recognition of his past service, would pay him a $2,000-per-month lifetime pension. (The company had no regularized retirement plan for at-will employees.) Shortly thereafter, the manager retired and immediately bought a $30,000 recreational vehicle for his planned travels. After receiving the promised $2,000 monthly pension from the insurance company for six months, the manager, now unemployable elsewhere, received a letter from the insurance company, advising him that the pension would cease immediately because of recessionary budget constraints affecting in varying degrees all managerial salaries and retirement pensions.

In a suit against the insurance company for breach of contract, the manager will probably

A: win, because he retired from the company as bargained-for consideration for the Board's promise to him of a lifetime pension.
B: win, because he timed his decision to retire and to buy the recreational vehicle in reasonable reliance on the Board's promise to him of a lifetime pension.
C: lose, because the Board's promise to him of a lifetime pension was an unenforceable gift promise.
D: lose, because he had been an employee-at-will throughout his active service with the company.

The explanation for the answer is:

Answer B is correct. Under the theory of detrimental reliance, a gratuitous promise may be enforceable notwithstanding lack of consideration if the party making the promise has reason to expect the promise will induce reliance on the part of the promisee, where there has been reliance in fact, and where injustice may be avoided only by enforcement of the promise. The manager's conversation with the company's president gave the insurance company reason to expect that a promise of a lifetime pension would induce reliance on the part of the manager. The manager relied in fact by retiring and spending $30,000 on a trailer. Finally, justice requires enforcement because the manager is no longer eligible for employment.

A is incorrect because the company's promise to pay a pension was not conditioned upon the manager's retirement, and therefore it was not part of a bargained-for exchange. C is incorrect because gift promises may be enforceable on grounds of promissory estoppel. D is incorrect because the manager's status as an at-will employee does not affect his ability to enforce the pension promise on a detrimental reliance theory.

Question 1153 - Contracts - Third-Party Rights

The question was:

In exchange for valid and sufficient consideration, a mother orally promised her son, who had no car and wanted a minivan, "to pay to anyone from whom you buy a minivan within the next six months the full purchase-price thereof." Two months later, the son bought a used minivan on credit from a car dealership for $8,000. At the time, the dealership was unaware of the mother's earlier promise to her son, but learned of it shortly after the sale.

Can the dealership enforce the mother's promise to her son?

A: Yes, under the doctrine of promissory estoppel.
B: Yes, because the dealership is an intended beneficiary of the mother-son contract.
C: No, because the mother's promise to her son is unenforceable under the suretyship clause of the statute of frauds.
D: No, because the dealership was neither identified when the mother's promise was made nor aware of it when the minivan sale was made.

The explanation for the answer is:

Answer B is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise. A party is an intended beneficiary of a promise if recognition of a right to performance in the beneficiary is appropriate to effectuate the intent of the parties, such as where the promisor knows that the promisee intended to confer a benefit on the beneficiary. The dealership is an intended beneficiary of the mother's promise to her son because both parties understood that the purpose of the contract between them was to confer a benefit on the future seller of the son's minivan. This purpose is clear from the terms of the mother's promise, which was to pay the purchase price "to anyone from whom you buy a minivan."

A is incorrect because the dealership was not aware of the mother's promise at the time that it sold the minivan to the son, and therefore could not have relied on it. C is incorrect because the suretyship provision of the statute of frauds does not apply where the surety promise was made to the principal (the son) and not to the obligee (the dealership). D is incorrect because, although the dealership's identification and awareness of the mother's promise is relevant to determining when its rights as beneficiary vest, it is not relevant to determining whether it is an intended or incidental beneficiary.

Question 1157 - Contracts - Formation of Contracts

The question was:

A breeder bought a two-month-old registered boar at auction from a seller for $800. No express warranty was made. Fifteen months later, tests by experts proved conclusively that the boar had been born incurably sterile. If this had been known at the time of the sale, the boar would have been worth no more than $100.

In an action by the breeder against the seller to avoid the contract and recover the price paid, the parties stipulate that, as both were and had been aware, the minimum age at which the fertility of a boar can be determined is about 12 months.

Which of the following will the court probably decide?

A: The breeder wins, because the parties were mutually mistaken as to the boar's fertility when they made the agreement.
B: The breeder wins, because the seller impliedly warranted that the boar was fit for breeding.
C: The seller wins, because the breeder assumed the risk of the boar's sterility.
D: The seller wins, because any mistake involved was unilateral, not mutual.

The explanation for the answer is:

Answer C is correct. A contract may be rescinded on grounds of mutual mistake of fact if the mistake relates to a fundamental assumption of the contract having a material effect on the exchange, unless the court determines that the party asserting mistake should bear the risk of the mistake. The effect of the mistake was material to the value of the exchange in this case, as it reduced the boar's value from $800 to $100. But the boar's fertility is not a fundamental assumption of the contract, because both parties knew that fertility could not yet be determined at the time of sale. In addition, although the breeder could not have investigated whether the boar was fertile at the time of sale, it seems likely that the court nonetheless would find that the breeder implicitly assumed the risk of the boar's infertility, since the breeder was aware of this possibility yet went forward with the purchase.

A is incorrect because, as explained above, it is unlikely that the court would find mistake on these facts. B is incorrect because the facts do not suggest such an implied term since both parties were aware that such a determination was not possible at the time of the contract. D is incorrect because a unilateral mistake would apply where one but not the other party was operating under mistake at the time of the contract; in this case, *neither* party could have known at the time of the contract whether the boar was sterile.

Question 1165 - Contracts - Consideration

The question was:

A chef purchased the front portion of the land needed for a restaurant he desired to build and operate, but the back portion was the subject of a will dispute between a sister and brother. The sister's attorney advised that her claim was doubtful. The chef, knowing only that the unresolved dispute existed, agreed in a signed writing to pay the sister $6,000, payable $1,000 annually, in exchange for a quitclaim deed (a deed containing no warranties) from the sister, who promptly executed such a deed to the chef and received the chef's first annual payment. Shortly thereafter, the probate court handed down a decision in the brother's favor, ruling that the sister had no interest in the land. This decision has become final. The chef subsequently defaulted when his second annual installment came due.

In an action against the chef for breach of contract, the sister will probably

A: lose, because she was aware at the time of the agreement with the chef that her claim to the property quitclaimed was doubtful.
B: lose, because she suffered no legal detriment in executing the quitclaim deed.
C: win, because the chef bargained for, and received in exchange, a quitclaim deed from the sister.
D: win, because the chef, by paying the first $1,000 installment, is estopped to deny that his agreement with the sister is an enforceable contract.

The explanation for the answer is:

Answer C is correct. In order to be enforceable, a promise must be supported by consideration. Consideration is a return promise or performance which is bargained-for, i.e., sought by the promisor in exchange for the promise and given by the promisee in exchange for the promise. Courts at law do not inquire into the adequacy of consideration as long as the consideration was bargained-for; it is often said that "even a peppercorn will suffice" for consideration. In exchange for the chef's promise to pay the sister $6,000, the sister agreed to convey (and promptly conveyed) to the chef a quitclaim deed for a piece of property. Although the sister was aware that her claim to the property was doubtful, and although the deed contained no warranty of title, her promise to convey the quitclaim deed was sufficient consideration to support the chef's promise.

Choice A is incorrect because what matters for finding consideration is the existence of an exchange, even if the values exchanged are unequal (the answer would be different if, instead of giving the quitclaim deed, the sister had promised to forbear from bringing a claim that she knew was doubtful). B is incorrect because the legal test for consideration focuses on the existence of a bargain rather than legal detriment. D is incorrect because the chef paid the first $1,000 before he became aware of the true value of the quitclaim deed.

Question 1170 - Contracts - Defenses to Enforceability

The question was:

A dry goods retailer telephoned a towel manufacturer and offered to buy for $5 each a minimum of 500 and a maximum of 1,000 large bath towels, to be delivered in 30 days. The manufacturer orally accepted this offer and promptly sent the following letter to the retailer, which the retailer received two days later: "This confirms our agreement today by telephone to sell you 500 large bath towels for 30-day delivery. /s/ Manufacturer." Twenty-eight days later, the manufacturer tendered to the retailer 1,000 (not 500) conforming bath towels, all of which the retailer rejected because it had found a better price term from another supplier. Because of a glut in the towel market, the manufacturer cannot resell the towels except at a loss.

In a suit by the manufacturer against the retailer, which of the following will be the probable decision?

A: The manufacturer can enforce a contract for 1,000 towels, because the retailer ordered and the manufacturer tendered that quantity.
B: The manufacturer can enforce a contract for 500 towels, because the manufacturer's letter of confirmation stated that quantity term.
C: There is no enforceable agreement, because the retailer never signed a writing.
D: There is no enforceable agreement, because the manufacturer's letter of confirmation did not state a price term.

The explanation for the answer is:

Answer B is correct. Under the UCC's Statute of Frauds, a contract for the sale of goods for $500 or more is not enforceable unless there is a writing sufficient to indicate that a contract has been made, which is signed by the party against whom enforcement is sought. The writing need not contain all of the terms of the contract, but it is only enforceable to the extent of the quantity term stated in the writing. The contract between the manufacturer and the retailer falls within the UCC Statute of Frauds because it is for over $500. However, when dealing with two merchants, there is something called the Confirmatory Memo Rule. In contracts between merchants, if one party, within a reasonable time after an oral understanding has been reached, sends a **written** confirmation to the other party that binds the sender, it will satisfy the Statute of Frauds requirements against the recipient as well, if the recipient knew of the memo's contents and failed to object to the memo's contents in writing within 10 days of when the confirmatory memo was received.

A is incorrect because the contract is only enforceable to the extent of the quantity term stated in the confirmation. C is incorrect because the writing only needs to be signed by one party when dealing with merchants. D is incorrect because the UCC Statute of Frauds does not require that the price term be stated in the writing.

Question 1201 - Contracts - Remedies

The question was:

In January, a teacher contracted with a summer camp to serve as its head counselor at a salary of $10,000 for 10 weeks of service from the first of June to the middle of August. In March, the camp notified the teacher that it had hired someone else to act as head counselor and that the teacher's services would not be needed. In April, the teacher spent $200 traveling to interview at the only other nearby summer camp for a position as its head counselor. The teacher was not chosen for that job. The teacher then took a position teaching in a local summer school at a salary of $6,000 for the same 10-week period as the summer camp.

In a breach-of-contract action against the camp, to which of the following amounts, as damages, is the teacher entitled?

A: $4,000.
B: $4,200.
C: $10,000.
D: $10,200.

The explanation for the answer is:

Answer B is correct. The goal is to put the teacher in the position he or she would have occupied but for the breach. Mitigation expenses can be recovered, if reasonable, even if those particular expenses are not connected to a successful mitigation attempt. Answer A is incorrect because it fails to provide for recovery of the $200 expense incurred in the reasonable, albeit unsuccessful, effort to mitigate damages by applying for the head counselor position at another nearby summer camp. Answer B is correct because it accounts for recovery of the difference between the contract salary ($10,000) and the amount earned at the local summer school ($6,000), PLUS the reasonable expenses incurred in seeking to mitigate after the breach ($200 travel expenses). Answers C and D are incorrect because an award of $10,000 or $10,200 would overcompensate the teacher, violating the principle of expectation damages.

Question 1207 - Contracts - Discharge of Contractual Duties

The question was:

A lumber supplier agreed to sell and a furniture manufacturer agreed to buy all of the lumber that the manufacturer required over a two-year period. The sales contract provided that payment was due 60 days after delivery, but that a 3% discount would be allowed if the manufacturer paid within 10 days of delivery. During the first year of the contract, the manufacturer regularly paid within the 10-day period and received the 3% discount. Fifteen days after the supplier made its most recent lumber delivery to the manufacturer, the supplier had received no payment from the manufacturer. At this time, the supplier became aware of rumors from a credible source that the manufacturer's financial condition was precarious. The supplier wrote the manufacturer, demanding assurances regarding the manufacturer's financial status. The manufacturer immediately mailed its latest audited financial statements to the supplier, as well as a satisfactory credit report prepared by the manufacturer's banker. The rumors proved to be false. Nevertheless, the supplier refused to resume deliveries. The manufacturer sued the lumber supplier for breach of contract.

Will the manufacturer prevail?

A: No, because the contract was unenforceable, since the manufacturer had not committed to purchase a definite quantity of lumber.
B: No, because the supplier had reasonable grounds for insecurity and was therefore entitled to cancel the contract and refuse to make any future deliveries.
C: Yes, because the credit report and audited financial statements provided adequate assurance of due performance under the contract.
D: Yes, because the supplier was not entitled to condition resumption of deliveries on the receipt of financial status information.

The explanation for the answer is:

Answer C is correct. A party to a contract with reasonable grounds to worry that the other party might not perform can request adequate assurances of performance, pursuant to Uniform Commercial Code § 2-609. The supplier in this case did so, but the information provided by the manufacturer would be regarded as satisfying the request for an assurance of performance. Therefore the supplier's refusal to continue performance constituted a breach of contract for which the manufacturer is entitled to compensation.

Answer A is incorrect. A quantity term expressed in terms of a manufacturer's requirements is enforceable. Uniform Commercial Code § 2-306 provides that "a term which measures the quantity by the . . . requirements of the buyer means such actual . . . requirements as may occur in good faith . . . ." Essentially, the definiteness of quantity requirement is satisfied if there is an available objective method for determining the quantity, and the requirements of a manufacturer would generally satisfy that need. In this case, once the manufacturer provided the supplier with adequate assurance in the form of audited financial statements and a credit report, the supplier was bound to perform under the contract.

Answer B is incorrect. Under Uniform Commercial Code § 2-609, a party to a contract who has reasonable grounds for insecurity is entitled to request assurances, and is also entitled to suspend performance pending receipt of that assurance. A failure to provide an adequate assurance within a reasonable time (not to exceed 30 days) can be treated as a repudiation, which may give rise to a right to terminate the contract. In this case, the supplier was entitled to seek assurance, but once the manufacturer provided the supplier with adequate assurance in the form of audited financial statements and a credit report, the supplier was bound to perform under the contract.

Answer D is incorrect. This answer correctly concludes that the manufacturer will prevail, but it misstates the reason why this is so. Uniform Commercial Code § 2-609 provides that a party to a contract with reasonable grounds to worry that the other party might not perform can request adequate assurance of performance. In this case, the supplier heard rumors from a credible source that the manufacturer's financial condition was insecure. This would be enough to trigger the right to request assurance, and so it is incorrect to assert that the supplier was not entitled to request assurance. Nevertheless, the manufacturer will prevail because it in fact provided adequate assurance in the form of audited financial statements and a credit report. Therefore the

Question 1207 - Contracts - Discharge of Contractual Duties

supplier's refusal to continue performance constituted a breach of contract for which the manufacturer is entitled to compensation.

Question 1214 - Contracts - Consideration

The question was:

A landowner and a contractor entered into a written contract under which the contractor agreed to build a building and pave an adjacent sidewalk for the landowner at a price of $200,000. Later, while construction was proceeding, the landowner and the contractor entered into an oral modification under which the contractor was not obligated to pave the sidewalk but still would be entitled to $200,000 upon completion. The contractor completed the building. The landowner, after discussions with his landscaper, demanded that the contractor pave the adjacent sidewalk. The contractor refused.

Has the contractor breached the contract?

A: No, because the oral modification was in good faith and therefore enforceable.
B: Yes, because a discharge of a contractual obligation must be in writing.
C: Yes, because the parol evidence rule bars proof of the oral modification.
D: Yes, because there was no consideration for the discharge of the contractor's duty to pave the sidewalk.

The explanation for the answer is:

Answer D is correct. Because it is a contract for services, this contract is governed by the common law of contracts, and not the Uniform Commercial Code. The prevailing common law view is that a modification to a contract requires consideration to be valid. Here, there was no consideration for the elimination of the contractor's duty to pave the sidewalk. The contractor actually promised to do less than he was under a pre-existing duty to do, and so there was no enforceable modification of the contract. Thus, Answer D is correct.

Answer A is incorrect. This contract is governed by the common law of contracts, and not the Uniform Commercial Code. Unlike the UCC, the prevailing common law view is that a modification to a contract requires consideration to be valid. Here, there was no consideration for the elimination of the contractor's duty to pave the sidewalk. The contractor actually promised to do less than he was under a pre-existing duty to do, and so there was no enforceable modification of the contract.

Answer B is incorrect. It is true that the contractor breached the contract, but there is no rule requiring the discharge of a contractual obligation to be in writing. There are many ways in which a discharge might arise, in addition to discharges by mutual agreement. But even in the case of discharge by mutual agreement, there is no general rule requiring a writing. The issue is whether the parties' oral exchange regarding the sidewalk resulted in an enforceable modification of the contract. As explained above, the contract modification is unenforceable for lack of consideration.

Answer C is incorrect. It is true that the contractor breached the contract, but the parol evidence rule is not applicable. The parol evidence rule applies to exclude some kinds of evidence with respect to discussions held, or correspondence exchanged, either prior to or contemporaneous with the making of a contract. In this case the crucial exchange occurred AFTER the contract was made, and so the issue is whether that exchange resulted in an enforceable modification of the contract. As explained above, the contract modification is unenforceable for lack of consideration.

Question 1224 - Contracts - Remedies

The question was:

During negotiations to purchase a used car, a buyer asked a dealer whether the car had ever been in an accident. The dealer replied: "It is a fine car and has been thoroughly inspected and comes with a certificate of assured quality. Feel free to have the car inspected by your own mechanic." In actuality, the car had been in an accident and the dealer had repaired and repainted the car, successfully concealing evidence of the accident. The buyer declined to have the car inspected by his own mechanic, explaining that he would rely on the dealer's certificate of assured quality. At no time did the dealer disclose that the car had previously been in an accident. The parties then signed a contract of sale. After the car was delivered and paid for, the buyer learned about the car's involvement in a major accident.

If the buyer sues the dealer to rescind the transaction, is the buyer likely to succeed?

A: No, because the buyer had the opportunity to have the car inspected by his own mechanic and declined to do so.
B: No, because the dealer did not affirmatively assert that the car had not been in an accident.
C: Yes, because the contract was unconscionable.
D: Yes, because the dealer's statement was intentionally misleading and the dealer had concealed evidence of the accident.

The explanation for the answer is:

Answer D is correct. When a seller induces a buyer into consenting to a contract by means of a material misrepresentation, the resulting contract is voidable at the election of the buyer. In this case, the buyer asked a direct question about whether the car had ever been in an accident, and the seller gave an answer that a reasonable buyer would take as an assurance that the seller at least had no knowledge of the car's involvement in an accident. The accident history of the car would be material to the buyer's decision. The seller's statement, taken in context, and in light of the seller's active steps to conceal evidence of the damage and repair, would be the legal equivalent of a statement that the car had not been in an accident. The seller actively concealed the damage and would not escape responsibility for misleading the buyer merely because the seller did not answer the question more directly—by saying, for example, "No, the car has never been in an accident."

Answer A is incorrect. When a seller induces a buyer into consenting to a contract by means of a material misrepresentation, the resulting contract is voidable at the election of the buyer. Although there might be some instances in which a failure to independently inspect property might constitute a defense to a claim of misrepresentation, the facts of this case don't justify such a conclusion. The buyer is entitled to rely on the truth of material representations made by the seller, and need not conduct independent tests to see whether the seller is lying, even if such an independent test would reveal the lie. In this case, the seller actively concealed the damage, and would not escape responsibility for misleading the buyer merely because the seller did not answer the question more directly—by saying, for example, "No, the car has never been in an accident."

Answer B is incorrect. When a seller induces a buyer into consenting to a contract by means of a material misrepresentation, the resulting contract is voidable at the election of the buyer. In this case, the buyer asked a direct question about whether the car had ever been in an accident, and the seller gave an answer that a reasonable buyer would take as an assurance that the seller at least had no knowledge of the car's involvement in an accident. The seller's statement, taken in context, and in light of the seller's active steps to conceal evidence of the damage and repair, would be the legal equivalent of a statement that the car had not been in an accident. The seller actively concealed the damage and would not be permitted to escape being held responsible for misleading the buyer merely because the seller did not answer the question more directly—by saying, for example, "No, the car has never been in an accident."

Answer C is incorrect. This answer correctly concludes that the buyer may rescind the contract, but it misstates the reason why this is so. When a seller induces a buyer into consenting to a contract by means of a material misrepresentation, the resulting contract is voidable at the election of the buyer. Unconscionability arises when there are unfair terms, coupled with an unfair bargaining process. In some cases,

Question 1224 - Contracts - Remedies

unconscionability may be found where a seller has made misrepresentations, or concealed material facts, but not every case of misrepresentation presents a case of unconscionability. In this case, apart from the fact that the seller concealed the damage to the car, and gave a misleading answer to the buyer's question, there is insufficient evidence that the contract was unconscionable.

Question 1230 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

On January 5, a creditor lent $1,000 to a debtor under a contract calling for the debtor to repay the loan at the rate of $100 per month payable on the first day of each month. On February 1, at the debtor's request, the creditor agreed to permit payment on February 5. On March 1, the debtor requested a similar time extension and the creditor replied, "Don't bother me each month. Just change the date of payment to the fifth of the month. But you must now make the payments by cashier's check." The debtor said, "Okay," and made payments on March 5 and April 5. On April 6, the creditor sold the loan contract to a bank, but did not tell the bank about the agreement permitting payments on the fifth of the month. On April 6, the bank wrote to the debtor: "Your debt to [the creditor] has been assigned to us. We hereby inform you that all payments must be made on the first day of the month."

Can the debtor justifiably insist that the payment date for the rest of the installments is the fifth of each month?

A: No, because a contract modification is not binding on an assignee who had no knowledge of the modification.
B: No, because although the creditor waived the condition of payment on the first of the month, the bank reinstated it.
C: Yes, because although the creditor waived the condition of payment on the first of the month, the creditor could not assign to the bank his right to reinstate that condition.
D: Yes, because the creditor could assign to the bank only those rights the creditor had in the contract at the time of the assignment.

The explanation for the answer is:

Answer D is correct. An assignee succeeds to a contract as the contract stands at the time of the assignment. In this case, the parties had modified the contract as to the time payment was due. (Note that there was consideration for the promise to accept payments later; the consideration was the debtor's promise to make future payments by cashier's check.) Accordingly, the debtor can insist that the payments be due on the fifth of each month.

Answer A is incorrect. This answer implies the existence of a rule which would make a contract modification ineffective where an assignee had no notice of it—-but there is no such rule. As explained above, the assignee bank in this case succeeded to the contract as it stood at the time of the assignment.

Answer B is incorrect. It is true that if a party waives a condition, that party may reinstate the condition with respect to future acts of performance, but that rule is not applicable here. The assignee bank in this case succeeded to the contract as it stood at the time of the assignment. The parties had modified the contract by mutual agreement, changing the term which specified the time payments were due, and the opportunity to reinstate a condition was no longer available. That is, this case raises an issue of modification of terms, and not a mere waiver. (Note that there was consideration for the promise to accept payments later; the consideration was the debtor's promise to make future payments by cashier's check.) Accordingly, the debtor can insist that the payments be due on the fifth of each month.

Answer C is incorrect. It is true that the debtor in this case can insist that the payments be due on the fifth of each month, but this answer misstates the reason why this is so. An assignee succeeds to a contract as the contract stands at the time of the assignment. In this case, the parties had modified the contract by mutual agreement prior to its assignment to the bank, changing the term which specified the time payments were due. (Note that there was consideration for the promise to accept payments later; the consideration was the debtor's promise to make future payments by cashier's check.) This is not a case where the creditor has waived prompt payment under the contract—-the parties mutually agreed to modify the contract. Moreover, if there had been no modification, but simply a waiver of the due date by the creditor, then the assignee bank would have had the right to reinstate the condition that payments be made on the first of the month.

Question 1231 - Contracts - Remedies

The question was:

A buyer entered into a written contract to purchase from a seller 1,000 sets of specially manufactured ball bearings of a nonstandard dimension for a price of $10 per set. The seller correctly calculated that it would cost $8 to manufacture each set. Delivery was scheduled for 60 days later. Fifty-five days later, after the seller had completed production of the 1,000 sets, the buyer abandoned the project requiring use of the specially manufactured ball bearings and repudiated the contract with the seller. After notifying the buyer of his intention to resell, the seller sold the 1,000 sets of ball bearings to a salvage company for $2 per set. The seller sued the buyer for damages.

What damages should the court award to the seller?

A: $2 per set, representing the difference between the cost of production and the price the buyer agreed to pay.
B: $6 per set, representing the difference between the cost of manufacture and the salvage price.
C: $8 per set, representing the lost profits plus the unrecovered cost of production.
D: Nominal damages, as the seller failed to resell the goods by public auction.

The explanation for the answer is:

Answer C is correct. The Uniform Commercial Code controls. The seller is entitled to be put in the position it would have been in if the contract had been performed. The proper measure of damages here is set out in UCC § 2-708(2), which provides that a seller is entitled to the profit the seller would have made ($2 per set), plus an allowance for costs reasonably incurred ($8 per set), minus payments received for resale of the goods ($2 per set)—here, the salvage. Accordingly, the seller should recover $2 + $8 - $2 = $8 per set.

Answer A is incorrect. The Uniform Commercial Code controls. The seller is entitled to be put in the position it would have been in if the contract had been performed. Two dollars per set fails to accomplish that goal. This would have been a correct answer ONLY IF the seller had not yet begun manufacturing the ball bearings. The seller incurred those costs in preparing for performance, and is entitled to recover them in order to protect its expectation interest. As explained above, the proper measure of damages here is the profit the seller would have made plus an allowance for costs reasonably incurred, minus payments received for resale of the goods.

Answer B is incorrect. The Uniform Commercial Code controls. The seller is entitled to be put in the position it would have been in if the contract had been performed. Six dollars per set fails to accomplish that goal. The difference between the cost of manufacture and the salvage price fails to take account of the lost profit the seller is entitled to recover. As explained above, the proper measure of damages here is the profit the seller would have made plus an allowance for costs reasonably incurred, minus payments received for resale of the goods.

Answer D is incorrect. The Uniform Commercial Code controls. The seller is entitled to be put in the position it would have been in if the contract had been performed. As explained above, the proper measure of damages here is the profit the seller would have made plus an allowance for costs reasonably incurred, minus payments received for resale of the goods.

Question 1238 - Contracts - Formation of Contracts

The question was:

A bakery offered a chef a permanent full-time job as a pastry chef at a salary of $2,000 per month. The chef agreed to take the position and to begin work in two weeks. In her employment application, the chef had indicated that she was seeking a permanent job. One week after the chef was hired by the bakery, a hotel offered the chef a position as a restaurant manager at a salary of $2,500 a month. The chef accepted and promptly notified the bakery that she would not report for work at the bakery.

Is the bakery likely to prevail in a lawsuit against the chef for breach of contract?

A: No, because a contract for permanent employment would be interpreted to mean the chef could leave at any time.
B: No, because the position the chef took with the hotel was not substantially comparable to the one she had agreed to take with the bakery.
C: Yes, because the chef's acceptance of a permanent position meant that she agreed to leave the bakery only after a reasonable time.
D: Yes, because the chef's failure to give the bakery a chance to match the salary offered by the hotel breached the implied right of first refusal.

The explanation for the answer is:

Answer A is correct. The issue here is the interpretation of the term "permanent employment" in the bakery-chef contract. It is well established that "permanent employment" means "employment-at-will" in this context. In an employment-at-will relationship, either party can terminate the agreement at any time, without the termination being considered a breach (unless the termination were to violate an important public policy — which is not the case here). Accordingly, the chef is not liable for breach of contract.

Answer B is incorrect. This answer correctly concludes that the bakery will not prevail in a breach of contract action against the chef, but it misstates the reason why this is so. The question whether the job the baker took with the hotel was comparable to the one she left at the bakery is not relevant here. The comparability issue DOES arise in cases in which an employee who has been terminated is offered another job; in such cases the employee's claim for breach would be reduced by wages which could have been earned at jobs which are not different and inferior. That is not the case in this problem.

Answer C is incorrect because it is grounded in an incorrect interpretation of the meaning of the word "permanent" in the context of employment agreements, as explained above.

Answer D is incorrect. This answer is incorrect because it presumes the existence of an "implied right of first refusal." While some contracts do create rights of first refusal, such rights must be created by express agreement, and not by implication. In the context of employment agreements, it is well established that "permanent employment" means "employment-at-will." In an employment-at-will relationship, either party can terminate the agreement at any time, without the termination being considered a breach (unless the termination were to violate an important public policy — which is not the case here). Accordingly, the chef is not liable for breach of contract.

Question 1248 - Contracts - Consideration

The question was:

A car dealer owed a bank $10,000, due on June 1. The car dealer subsequently sold an automobile to a buyer at a price of $10,000, payable at $1,000 per month beginning on June 1. The car dealer then asked the bank whether the bank would accept payments of $1,000 per month for 10 months beginning June 1, without interest, in payment of the debt. The bank agreed to that arrangement and the car dealer then directed the buyer to make the payments to the bank. When the buyer tendered the first payment to the bank, the bank refused the payment, asserting that it would accept payment only from the car dealer. On June 2, the bank demanded that the car dealer pay the debt in full immediately. The car dealer refused to pay and the bank sued the car dealer to recover the $10,000.

In this suit, which of the following arguments best supports the bank's claim for immediate payment?

A: The agreement to extend the time for payment was not in writing.
B: The car dealer could not delegate its duty to pay to the buyer.
C: The car dealer gave no consideration for the agreement to extend the time of payment.
D: The car dealer's conduct was an attempted novation that the bank could reject.

The explanation for the answer is:

Answer C is correct. The bank had a right to insist on payment of the note, and promised to allow the car dealer to pay the debt in installments. There was no consideration for the bank's promise. There WOULD have been consideration if the dealer had assigned its right to receive payment from the retail buyer; the benefit to the bank would have been the addition of another obligor from whom it could expect payment. There was no assignment here, but rather an instruction to the retail buyer to redirect his payments. Accordingly, the bank may reinstate the due date despite its earlier waiver; it is not bound by the installment agreement and may demand full payment at once.

Answer A is incorrect. There is no requirement that a promise, like that made by the bank, be in writing. The parties could have made an enforceable oral agreement to reschedule the payments—-so long as there was consideration for promises made by the parties. Because there was no consideration given by the dealer, the bank is not bound by its earlier waiver of the due date and may demand full payment at once.

Answer B is incorrect. This answer mischaracterizes the transactions at issue because the car dealer hasn't attempted to delegate its duty to pay under the contract. The dealer simply directed the car buyer to make payments to the bank rather than to it. Moreover, the bank may reinstate the due date despite its earlier waiver; because there was no consideration given by the dealer, the bank is not bound by the installment agreement and may demand full payment at once.

Answer D is incorrect. The transaction in this instance cannot properly be characterized as a novation. A novation is a three-party agreement in which one party is substituted for another, the other being released from obligation. So, for example, X owes Y. X, Y, and Z all agree that Z will undertake an obligation to Y, and X will be released from any duties to Y under the original agreement. That would be a novation. There was no attempted novation here. Moreover, the bank may reinstate the due date despite its earlier waiver; because there was no consideration given by the dealer, the bank is not bound by the installment agreement and may demand full payment at once.

Question 1281 - Contracts - Remedies

The question was:

A landowner entered into a single contract with a builder to have three different structures built on separate pieces of property owned by the landowner. Each structure was distinct from the other two and the parties agreed on a specific price for each. After completing the first structure in accordance with the terms of the contract, the builder demanded payment of the specified price for that structure. At the same time, the builder told the landowner that the builder was "tired of the construction business" and would not even begin the other two structures. The landowner refused to pay anything to the builder.

Is the builder likely to prevail in a suit for the agreed price of the first structure?

A: No, because substantial performance is a constructive condition to the landowner's duty to pay at the contract rate.
B: No, because the builder's cessation of performance without legal excuse is a willful breach of the contract.
C: Yes, because the contract is divisible, and the landowner will be required to bring a separate claim for the builder's failure to complete the other two structures.
D: Yes, because the contract is divisible, but the landowner will be able to deduct any recoverable damages caused by the builder's failure to complete the contract.

The explanation for the answer is:

Answer D is correct. Contract law acknowledges the fact that parties sometimes embody obligations which are in most respects separable into a single document or agreement. The rules for damages permit the separable components to be treated separately, which is appropriate here, since the structures were to be built on separate pieces of land, and there were prices related to each distinct property. Another rationale for the divisibility of obligations is to avoid a forfeiture.

Answer A is incorrect. The substantial performance rule doesn't apply here, because the obligations were separable, and the builder DID substantially complete the first structure. The builder is likely to recover the agreed price of the first structure, less any recoverable damages caused to the landowner as a result of the builder's breach.

Answer B is incorrect. Though willfulness might, in some cases, be a factor to be considered in a breach of contract case, it doesn't affect recovery in this case. The builder is likely to recover the agreed price of the first structure, less any recoverable damages caused to the landowner as a result of the builder's breach. The obligations of the builder were severable for purposes of calculating damages; the structures were to be built on separate pieces of land and there were distinct prices related to each distinct property.

Answer C is incorrect. The first part of the statement is correct-—the contract is divisible. But this does not mean that the victim of the breach is required to bring separate claims. Though the contract has separable components, for damages purposes, it is still a single contract. In addition, requiring separate claims would be inconsistent with the law's goal of providing for the disposition, in a single action, of closely-related claims. The builder is likely to recover the agreed price of the first structure, less any recoverable damages caused to the landowner as a result of the builder's breach.

Question 1285 - Contracts - Defenses to Enforceability

The question was:

In financial straits and needing $4,000 immediately, a nephew orally asked his uncle for a $4,000 loan. The uncle replied that he would lend the money to the nephew only if the nephew's mother "guaranteed" the loan. At the nephew's suggestion, the uncle then telephoned the nephew's mother, told her about the loan, and asked if she would "guarantee" it. She replied, "Surely. Lend my son the $4,000 and I'll repay it if he doesn't." The uncle then lent $4,000 to the nephew, an amount the nephew orally agreed to repay in six weeks. The next day, the nephew's mother wrote to him and concluded her letter with the words, "Son, I was happy to do you a favor by promising your uncle I would repay your six-week $4,000 loan if you don't. /s/ Mother." Neither the nephew nor his mother repaid the loan when it came due and the uncle sued the mother for breach of contract. In that action, the mother raised the statute of frauds as her only defense.

Will the mother's statute-of-frauds defense be successful?

A: No, because the amount of the loan was less than $5,000.
B: No, because the mother's letter satisfies the statute-of-frauds requirement.
C: Yes, because the mother's promise to the uncle was oral.
D: Yes, because the nephew's promise to the uncle was oral.

The explanation for the answer is:

Answer B is correct. The statute of frauds requires that promises to answer for the debt of another be made in writing. But the memorandum sufficient to satisfy the statute needn't be written at the time of the making of the promise, nor need it be a writing addressed to the promisee. In this case, the mother's letter to her son, the nephew, satisfies the requirement of the statute of frauds. Thus, answer B is correct, and answer C is incorrect.

Answer A is incorrect. The amount of the loan is irrelevant here. The writing requirement arises under the suretyship provision of the statute of frauds. A person selecting this answer might be thinking of the $500 limit which may trigger a writing requirement in cases involving sales of goods under the UCC. The UCC does not apply here, since this is not a sale of goods. As to the enforceability of the mother's promise, the statute of frauds requires a writing in cases of promises to answer for the debt of another. As explained above, the letter written by the mother to her son, the nephew, is sufficient to satisfy the statute of frauds.

Answer D is incorrect. The issue in this case is not the enforceability of the nephew's promise, but the enforceability of the mother's promise. And even if the issue did involve the nephew's promise, there is no statute of frauds requirement that a promise to repay a debt be in writing. As to the enforceability of the mother's promise, the statute of frauds requires a writing in cases of promises to answer for the debt of another. As explained above, the letter written by the mother to her son, the nephew, is sufficient to satisfy the statute of frauds.

Question 1289 - Contracts - Formation of Contracts

The question was:

On May 1, an uncle mailed a letter to his adult nephew that stated: "I am thinking of selling my pickup truck, which you have seen and ridden in. I would consider taking $7,000 for it." On May 3, the nephew mailed the following response: "I will buy your pickup for $7,000 cash." The uncle received this letter on May 5 and on May 6 mailed a note that stated: "It's a deal." On May 7, before the nephew had received the letter of May 6, he phoned his uncle to report that he no longer wanted to buy the pickup truck because his driver's license had been suspended.

Which of the following statements concerning this exchange is accurate?

A: There is a contract as of May 3.
B: There is a contract as of May 5.
C: There is a contract as of May 6.
D: There is no contract.

The explanation for the answer is:

Answer C is correct. The uncle's original letter was not an offer. It was merely a statement indicating a possible interest in selling the truck, and a suggestion as to a price that might be acceptable. It would be regarded, if anything, as a statement soliciting an offer. The nephew's letter, mailed on May 3, constituted an offer to buy the pickup. The uncle's note, mailed on May 6, constituted an acceptance of the nephew's offer, and was effective when mailed. Therefore a contract arose on May 6.

Answer A is incorrect. There was no contract formed on May 3, because the uncle's original letter was not an offer. It was merely a statement indicating a possible interest in selling the truck and a suggestion as to a price that might be acceptable. It would be regarded, if anything, as a statement soliciting an offer. The nephew's letter, mailed on May 3, constituted an offer to buy the pickup truck. The uncle's note, mailed on May 6, constituted an acceptance of the nephew's offer, and was effective when mailed. And so a contract arose on May 6.

Answer B is incorrect. On May 5 the uncle received the offer from the nephew, but had not yet accepted it. As a result, there was no contract on May 5. The uncle's note, mailed on May 6, constituted an acceptance of the nephew's offer, and was effective when mailed. Therefore a contract arose on May 6.

Answer D is incorrect. The nephew's letter, mailed on May 3, constituted an offer to buy the pickup truck. The uncle's note, mailed on May 6, constituted an acceptance of the nephew's offer, and was effective when mailed. And so a contract arose on May 6. The law would treat the nephew's May 3 letter as an offer, even though the nephew might have mistakenly believed it to be an acceptance of an offer. The nephew's May 7 phone call was too late to constitute a revocation of his May 3 offer, since it had already been accepted. The nephew's license revocation would not constitute a defense to the existence of the contract for sale.

Question 1292 - Contracts - Conditions

The question was:

A seller and a buyer entered into a contract obligating the seller to convey title to a parcel of land to the buyer for $100,000. The agreement provided that the buyer's obligation to purchase the parcel was expressly conditioned upon the buyer's obtaining a loan at an interest rate no higher than 10%. The buyer was unable to do so, but did obtain a loan at an interest rate of 10.5% and timely tendered the purchase price. Because the value of the land had increased since the time of contracting, the seller refused to perform. The buyer sued the seller.

Will the buyer prevail?

A: No, because an express condition will only be excused to avoid forfeiture.
B: No, because the contract called for a loan at an interest rate not to exceed 10% and it could not be modified without the consent of the seller.
C: Yes, because the buyer detrimentally changed position in reliance on the seller's promise to convey.
D: Yes, because the buyer's obtaining a loan at an interest rate no higher than 10% was not a condition to the seller's duty to perform.

The explanation for the answer is:

Answer D is correct. A duty of performance becomes absolute when conditions to performance are either met or excused. Courts look beyond the words of a condition, and if it is clear that the purpose of the condition was to benefit or protect one of the parties, the language of the condition will be interpreted as if that intention had been embodied in the contract terms. If a condition has not been met, the party who was to have benefited by the condition may choose to either terminate his liability or waive the condition by proceeding under the contract. The party who was to benefit from the condition, however, is the only party who may elect to waive the condition; the performance of the other party is unaffected. In this case, it is clear that the condition was intended for the benefit of the buyer. Because the condition was not met – i.e. the buyer did not secure a loan at an interest rate of 10% or lower, and the condition was intended for the benefit of the buyer, the buyer may elect to either terminate his performance under the contract or continue with his obligation to purchase the parcel. Because the condition of obtaining a loan at an interest rate of 10% or lower was designed to benefit the buyer, not the seller, the seller is still obligated to convey title to the parcel of land.

A is incorrect. This statement of the law is much too broad to be true. Courts look beyond the words of a condition, and if it is clear that the purpose of the condition was to benefit or protect one of the parties, the language of the condition will be interpreted as if that intention had been embodied in the contract terms. In this case it is clear that the language of the condition was intended for the benefit of the buyer, and so the seller's duty was not subject to the condition.

B is incorrect. The issue in this dispute does not concern the modification of the contract. The parties did nothing which could be interpreted as an attempt to modify the agreement. The issue is whether the seller's duty is conditional. Courts look beyond the words of a condition, and if it is clear that the purpose of the condition was to benefit or protect one of the parties, the language of the condition will be interpreted as if that intention had been embodied in the contract terms. In this case it is clear that the language of the condition was intended for the benefit of the buyer, and so the seller's duty was not subject to the condition.

C is incorrect. While it is true that the buyer changed position because of the seller's promise, that fact is not relevant to the question of whether the seller's duty to perform is subject to a condition. Courts look beyond the words of a condition, and if it is clear that the purpose of the condition was to benefit or protect one of the parties, the language of the condition will be interpreted as if that intention had been embodied in the contract terms. In this case it is clear that the language of the condition was intended for the benefit of the buyer, and so the seller's duty was not subject to the condition.

Question 1297 - Contracts - Formation of Contracts

The question was:

An innkeeper, who had no previous experience in the motel or commercial laundry business and who knew nothing about the trade usages of either business, bought a motel and signed an agreement with a laundry company for the motel's laundry services. The one-year agreement provided for "daily service at $500 a week." From their conversations during negotiation, the laundry company knew that the innkeeper expected laundry services seven days a week. When the laundry company refused to pick up the motel's laundry on two successive Sundays and indicated that it would not ever do so, the innkeeper canceled the agreement. The laundry company sued the innkeeper for breach of contract. At trial, clear evidence was introduced to show that in the commercial laundry business "daily service" did not include service on Sundays.

Will the laundry company succeed in its action?

A: No, because the laundry company knew the meaning the innkeeper attached to "daily service," and, therefore, the innkeeper's meaning will control.
B: No, because the parties attached materially different meanings to "daily service," and, therefore, no contract was formed.
C: Yes, because the parol evidence rule will not permit the innkeeper to prove the meaning she attached to "daily service."
D: Yes, because the trade usage will control the interpretation of "daily service."

The explanation for the answer is:

Answer A is correct. When parties attach significantly different meanings to the same material term, the meaning that controls is that "attached by one of them if at the time the agreement was made . . . that party did not know of any different meaning attached by the other, and the other knew the meaning attached by the first party." Restatement (Second) of Contracts § 201. In this case, the innkeeper did not know, at the time of contract formation, that the laundry company attached a different meaning to the term "daily service" than its apparent meaning of "every day." Conversely, the laundry company knew the innkeeper thought he was contracting for "every day" service. Accordingly, the innkeeper's understanding of the term will control.

Answer B is incorrect. While it is sometimes the case that no agreement arises when parties attach significantly different meanings to the same material term, that principle is not applicable when, as here, one of the parties is aware of the meaning intended by the other. Thus, a contract was formed despite the fact that the parties attached different meanings to "daily service." As explained above, the laundry service knowingly attached a different meaning to "daily service," and the innkeeper's understanding of the term will control.

Answer C is incorrect. The parol evidence rule is not applicable here. The apparent meaning of "daily service" is "every day." This is the meaning asserted by the innkeeper, and so it is not the innkeeper that is seeking to alter the apparent meaning of the term, but rather the laundry company. That is, to the extent that there is extrinsic evidence here, it is not being offered by the innkeeper, but rather by the laundry company. As explained above, the innkeeper's understanding of the term "daily service" will control.

Answer D is incorrect. While it is often the case that trade usages control the interpretation of terms in a contract, that is not true here. As explained above, the innkeeper's understanding of the term "daily service" will control because the laundry company knew that the innkeeper was not aware of the trade usage.

Question 1299 - Contracts - Remedies

The question was:

A carpenter contracted with a homeowner to remodel the homeowner's home for $10,000, to be paid on completion of the work. On May 29, relying on his expectation that he would finish the work and have the homeowner's payment on June 1, the carpenter contracted to buy a car for "$10,000 in cash, if payment is made on June 1; if payment is made thereafter, the price is $12,000." The carpenter completed the work according to specifications on June 1 and demanded payment from the homeowner on that date. The homeowner, without any excuse, refused to pay. Thereupon, the carpenter became very excited, suffered a minor heart attack, and, as a result, incurred medical expenses of $1,000. The reasonable value of the carpenter's services in remodeling the homeowner's home was $13,000.

In an action by the carpenter against the homeowner, which of the following should be the carpenter's measure of recovery?

A: $10,000, the contract price.
B: $11,000, the contract price plus $1,000 for the medical expenses incurred because the homeowner refused to pay.
C: $12,000, the contract price plus $2,000, the bargain that was lost because the carpenter could not pay cash for the car on June 1.
D: $13,000, the amount the homeowner was enriched by the carpenter's services.

The explanation for the answer is:

Answer A is correct. The carpenter is entitled to the contract price for the work done--$10,000. The other items of damage are unrecoverable either because they were unforeseeable at the time the contract was made or because they were not caused by the breach. No unjust enrichment claim is viable on these facts, because an unjust enrichment claim cannot exceed the contract price when all of the work giving rise to the claim has been done and the only remaining obligation is the payment of the price. This limitation on unjust enrichment claims was recapitulated in the well known case of Oliver v. Campbell, 273 P.2d 15 (Cal. 1954), and represents the current rule in such cases.

Answer B is incorrect. The carpenter is entitled only to the contract price for the work done. The medical expenses are unrecoverable because even if the heart attack was caused by the breach, which would be difficult to establish, the medical expenses were unforeseeable at the time the contract was made.

Answer C is incorrect. The carpenter is entitled only to the contract price for the work done. The $2,000 for the loss of the bargain on the car was unforeseeable at the time the contract to do the work was made. That car contract was a special circumstance, of which the homeowner had no notice.

Answer D is incorrect. The carpenter is entitled only to the contract price for the work done. No unjust enrichment claim is viable on these facts, because an unjust enrichment claim cannot exceed the contract price when all of the work giving rise to the claim has been done and the only remaining obligation of the homeowner is the payment of the price. The claim has been "liquidated" and the work substantially performed. This limitation on unjust enrichment claims was recapitulated in the well known case of Oliver v. Campbell, 273 P.2d 15 (Cal. 1954), and represents the current rule in such cases.

Question 1309 - Contracts - Conditions

The question was:

A fugitive was wanted for murder. The authorities offered the following reward: "$20,000 to anyone who provides information leading to the arrest and conviction of this fugitive." A private detective knew of the reward, located the fugitive, and brought him to the authorities, who arrested him. The authorities then determined that while the fugitive had, in fact, committed the crime, he had been directed to commit the crime by his boss. The authorities and the fugitive then agreed that in exchange for the fugitive's testimony against his boss, all charges against the fugitive would be dropped. The fugitive testified and was released. The authorities refused to pay the reward to the private detective on the ground that the fugitive was never convicted.

Would the private detective be likely to prevail in a breach of contract action against the authorities?

A: No, because the private detective failed to notify the authorities that he had accepted the reward offer.
B: No, because the express conditions set out in the reward were not met.
C: Yes, because the authorities' agreement with the fugitive was against public policy.
D: Yes, because the authorities themselves prevented the conviction of the fugitive.

The explanation for the answer is:

Answer D is correct. A performance that is subject to an express condition cannot become due unless the condition occurs or its nonoccurrence is excused. The detective's entitlement to the award was subject to two conditions: the arrest and conviction of the fugitive. The first, the arrest, was satisfied when the detective delivered the fugitive to the authorities. The second, the conviction, did not occur. Its nonoccurrence is excused, however, under the doctrine of prevention, which requires that a party refrain from conduct that prevents or hinders the occurrence of a condition. Here, the authorities hindered the occurrence of the second condition by negotiating a deal with the fugitive and dropping the charges against him.

Answer A is incorrect. In an offer for a unilateral contract, an offeree who accepts by rendering the requested performance is required to give notice only if the offeree has reason to know that the offeror would not learn of the requested performance with reasonable certainty and promptness. Such is not the case here since the offeror learned of the performance when the detective took the fugitive to the authorities.

Answer B is incorrect. The general rule is that a party's performance does not become due until all express conditions to it have occurred or are excused. In this case, the detective's entitlement to the award was subject to two conditions: the arrest and conviction of the fugitive. As explained above, the first condition (the arrest) occurred, but the second condition (the conviction) did not. The occurrence of the second condition is excused, however, because the authorities themselves prevented the condition from occurring.

Answer C is incorrect. This answer is nonresponsive because it relates to the enforceability of the agreement between the fugitive and the authorities rather than the enforcement of the purported contract between the authorities and the detective. The dispositive issue is the effect of the nonoccurrence of an express condition. In this case, the detective's entitlement to the award was subject to two conditions: the arrest and conviction of the fugitive. As explained above, the first condition (the arrest) occurred, but the second condition (the conviction) did not. The occurrence of the second condition is excused, however, because the authorities themselves prevented the condition from occurring.

Question 1313 - Contracts - Conditions

The question was:

A buyer and a seller entered into a contract for the sale of 10,000 novelty bracelets. The seller had the bracelets in stock. The contract specified that the seller would ship the bracelets by a third-party carrier. However, the contract did not specify either who was to pay the costs of carriage or the place of tender for the bracelets.

On the above facts, when would the risk of loss of the bracelets pass to the buyer?

A: When the contract was made.
B: When the bracelets were identified to the contract by the seller, assuming the goods conformed to the contract.
C: When the bracelets were delivered to a carrier and a proper contract for their carriage was made.
D: When the bracelets were unloaded on the buyer's premises by the carrier.

The explanation for the answer is:

Under UCC § 2-509(1), a contract that requires the seller to ship goods to the buyer by a third-party carrier is either a shipment or a destination contract. Comment 5 to UCC § 2-503 provides that where the contract is otherwise silent, a shipment contract is presumed where the contract requires shipment by a third-party carrier. Since this is a shipment contract, the risk of loss would pass from the seller to the buyer when the seller duly delivered the goods to the third-party carrier. Thus, Answer C is correct.

Answer D is incorrect because it states the risk-shifting rule for a destination contract. Under a destination contract, the risk of loss shifts from the seller to the buyer when the goods are duly tendered to the buyer rather than when the goods are unloaded.

Answer A is incorrect. UCC § 2-509(1)(a) and (b) together refute the notion that the risk of loss passes from the seller to the buyer at the time of contract formation.

Answer B is incorrect. UCC § 2-501 defines the concept of identification but does not articulate the standard for determining when the risk of loss passes under the circumstances present here. UCC § 2-509(1) governs the passing of the risk of loss under these circumstances.

Question 1317 - Contracts - Consideration

The question was:

In a written contract, an architect agreed to draw up the plans for and to supervise construction of a client's new house. In return, the client agreed to pay the architect a fee of $10,000 to be paid upon the house's completion. After completion, the client claimed erroneously but in good faith that the architect's plans were defective. The client orally offered to pay the architect $7,500 in full settlement of the claim for the fee. The architect orally accepted that offer despite the fact that the reasonable value of his services was in fact $10,000. The client paid the architect $7,500 pursuant to their agreement.

The architect subsequently sued the client for the remaining $2,500. In a preliminary finding, the trier of fact found that there were no defects in the architect's plans.

Will the architect be likely to prevail in his action against the client for $2,500?

A: Yes, because payment of $7,500 cannot furnish consideration for the architect's promise to surrender his claim.
B: Yes, because the oral agreement to modify the written contract is not enforceable.
C: No, because the architect's promise to accept $7,500 became binding when the client made the payment.
D: No, because the architect's acceptance of partial payment constituted a novation.

The explanation for the answer is:

Answer C is correct. An accord occurs when one party to a contract agrees to accept performance different from the performance promised in the original agreement. An accord generally requires consideration, which can be less than that called for in the original contract. Payment of a lesser amount than is due on a valid claim constitutes valid consideration if there is a bona fide dispute as to the amount owed, and the dispute is made in good faith. Satisfaction is the performance of the accord, and it discharges both the accord and the original debt.

The architect's agreement to accept a payment for less than the amount due constituted an effective accord, supported by consideration, which was satisfied with the payment of $7,500. Consideration is present because of the good faith dispute as to the amount owed. By compromising, each party surrenders its respective claim as to how much is owed. Thus, Answer C is correct.

Answer A is incorrect. The rule of *Foakes v. Beer*, which is a specific application of the pre-existing duty rule, provides that part payment of a liquidated debt is invalid for a lack of consideration. The rule does not apply, however, where there is a compromise of a claim disputed in good faith. This exception applies even if it later becomes apparent that the reason for disputing the claim was invalid.

Answer B is incorrect. The statute of frauds is removed as a defense when an oral agreement is fully performed. Moreover, the dispositive issue is whether consideration exists to enforce the agreement to settle the claim.

Answer D is incorrect. A novation arises where either one or both of the parties to a contract is replaced by a third party. The architect's acceptance of payment does not constitute a novation since neither the client nor the architect was replaced by a third party.

Question 1326 - Contracts - Remedies

The question was:

A homeowner and a contractor entered into a contract for the construction of a home for the price of $300,000. The contractor was to earn a profit of $10,000 for the job. After the contractor had spent $45,000 on labor and materials, including $5,000 on oak flooring not yet installed, the homeowner informed the contractor that the homeowner had lost his job and could not pay for any services. The homeowner told the contractor to stop working immediately. The reasonable market value of the labor and materials provided by the contractor at that point, including the oak flooring, was $40,000. The contractor used the $5,000 worth of oak flooring on another job.

In an action by the contractor against the homeowner for damages, which of the following would be the largest amount of damages recoverable by the contractor?

A: $40,000, the reasonable value of the services the contractor had provided.
B: $40,000, the contractor's construction costs.
C: $50,000, the contractor's construction costs of $45,000 plus the $10,000 profit minus the $5,000 saved by reusing the oak flooring on another job.
D: $55,000, the contractor's construction costs of $45,000 plus the $10,000 profit.

The explanation for the answer is:

Answer C is correct. $50,000 represents the contractor's expectation measure of recovery and gives the contractor the benefit of the bargain-this amount would place the contractor in the position he would have been in but for the breach. It is also the greatest amount the contractor is able to recover. The general expectation formula permits the contractor to recover $50,000 and can be computed as follows:

General expectation formula = loss in value + other loss - cost avoided - loss avoided:

LIV = the difference between the performance the nonbreaching party should have received under the contract and what was actually received, if anything, in this case, $300,000 less $0

OL = consequential and incidental damages, if any, in this case, $0

CA = the additional costs the nonbreaching party can avoid by rightfully discontinuing performance under the contract as a result of the other party's breach, in this case, $290,000 less $45,000

LA = the beneficial effects of the breach due to the nonbreaching party's ability to salvage or reallocate resources that otherwise would have been devoted to performing under the contract, in this case, $5,000

So $300,000 + $0 - $245,000 - $5,000 = $50,000.

Answer A is incorrect. The $40,000 figure is an attempt to calculate the contractor's restitution recovery, measured by the benefit conferred on the owner, which will yield the smallest amount of recovery. The restitutionary measure would not allow the contractor to recover damages related to the benefit of the bargain. Circumstances are not present that would cause the contractor to seek damages based on the restitution principle and forgo his expectation measure of recovery. In addition, the $40,000 amount is incorrect as a restitution amount since it fails to deduct the $5,000 worth of oak flooring the contractor used on another job. Restatement (Second) of Contracts §§ 371, 347.

Answer B is incorrect. $40,000 represents the contractor's reliance measure of recovery and fails to take into account the contractor's benefit of the bargain, the profit the contractor anticipated making on the project. Reliance damages are measured based on the contractor's unreimbursed expenses for labor and materials, $45,000, less the salvage value of the oak flooring, $5,000, which equals $40,000. Circumstances are not present that would cause the contractor to seek damages based on the reliance principle and forgo his expectation measure of recovery. Restatement (Second) of Contracts §§ 349, 347.

Question 1326 - Contracts - Remedies

Answer D is incorrect. A $55,000 damages recovery will place the contractor in a better position than he would have been in but for the breach because it fails to take into account the loss avoided--the beneficial effects of the breach due to the contractor's ability to salvage or reallocate resources that otherwise would have been devoted to performing under the contract. Here the loss avoided is the $5,000 worth of oak flooring that the contractor used on another job. Restatement (Second) of Contracts § 347.

Question 1336 - Contracts - Formation of Contracts

The question was:

While waiting in line to open an account with a bank, a customer read a poster on the bank's wall that said, "New Customers! $25 FOR 5 MINUTES. If you stand in line for more than five minutes, we will pay you $25! We like happy customers! (This offer may be withdrawn at any time.)" The customer started timing his wait and just as five minutes was about to pass, the bank manager tore the poster down and announced, "The $25 stand-in-line promotion is over." The customer waited in line for 10 more minutes before being served.

In the customer's action against the bank for $25, will the customer prevail?

A: No, because the bank withdrew its offer before the customer completed the requested performance.
B: No, because the bank's statement was a nonbinding gift promise.
C: Yes, because the bank could not revoke its offer once the customer had commenced performance.
D: Yes, because the customer's presence in line served as notice to the bank that he had accepted.

The explanation for the answer is:

Answer C is correct. Restatement (Second) of Contracts § 45 provides that where an offer invites acceptance by performance, the offeree's beginning of performance creates an option contract which precludes the offeror from revoking its offer. Here, the offer invited acceptance only by performance--by standing in line for five minutes. The customer had commenced waiting in line and was timing how long he had been standing in line. At that point, the customer had commenced performance, and the bank could not revoke its offer. Thus, Answer C is correct and Answer A is incorrect.

Answer B is incorrect. The consideration required for an enforceable contract is present. The bank's promise to pay the customer $25 and the customer's standing in line constituted a bargained-for exchange. Restatement (Second) of Contracts § 45; 71.

Answer D is incorrect. The customer's mere presence in line constituted the beginning of performance but not the requested acceptance--standing in line for more than five minutes.

Question 1345 - Contracts - Remedies

The question was:

On May 1, a seller and a buyer entered into a written contract, signed by both parties, for the sale of a tract of land for $100,000. Delivery of the deed and payment of the purchase price were scheduled for July 1. On June 1, the buyer received a letter from the seller repudiating the contract. On June 5, the buyer bought a second tract of land at a higher price as a substitute for the first tract. On June 10, the seller communicated a retraction of the repudiation to the buyer.

The buyer did not tender the purchase price for the first tract on July 1, but subsequently sued the seller for breach of contract.

Will the buyer likely prevail?

A: No, because the seller retracted the repudiation prior to the agreed time for performance.
B: No, because the buyer's tender of the purchase price on July 1 was a constructive condition to the seller's duty to tender a conveyance.
C: Yes, because the seller's repudiation was nonretractable after it was communicated to the buyer.
D: Yes, because the buyer bought the second tract as a substitute for the first tract prior to the seller's retraction.

The explanation for the answer is:

Answer D is correct. The general rule is that a repudiating party may retract its repudiation. An attempted retraction is ineffective, however, if it occurs after the injured party has materially changed its position in reliance on the repudiation. The buyer's purchase of the second tract of land constituted such a change in position and thus terminated the seller's ability to retract his repudiation. Thus, Answer D is correct and Answer A is incorrect.

Answer B is incorrect. Ordinarily in a real estate transaction the tender of the purchase price and of the real property are to occur simultaneously. Here, however, the seller's repudiation and the buyer's subsequent action in reliance on the repudiation discharged the buyer's obligation to tender the purchase price on July 1.

Answer C is incorrect. Repudiations may be retracted unless the injured party materially changes position or considers the repudiation final before the retraction. The buyer's purchase of the second tract of land constituted such a change in position and thus terminated the seller's ability to retract his repudiation.

Question 1349 - Contracts - Consideration

The question was:

A debtor's liquidated and undisputed $1,000 debt to a creditor was due on March 1. On March 15, the creditor told the debtor that if the debtor promised to pay the $1,000 on or before December 1, then the creditor wouldn't sue to collect the debt. The debtor orally agreed. On April 1, the creditor sued the debtor to collect the debt that had become due on March 1. The debtor moved to dismiss the creditor's complaint.

Should the court grant the debtor's motion?

A: No, because there was no consideration to support the creditor's promise not to sue.
B: No, because there was no consideration to support the debtor's promise to pay $1,000 on December 1.
C: Yes, because a promise to allow a debtor to delay payment on a past debt is enforceable without consideration.
D: Yes, because the debtor was bargaining for the creditor's forbearance.

The explanation for the answer is:

Answer A is correct. The law supports the settlement of debts and claims. However, consideration is required for a settlement to be enforceable. Under the pre-existing duty rule, the creditor's promise to forbear from suing to collect was not supported by consideration from the debtor since the amount due was liquidated and the debtor promised to do nothing more than he was already obligated to do. The creditor's promise here was not supported by consideration from the debtor since it allowed for payment of an undisputed amount, $1,000, after the time for payment of the debt had passed. Thus, Answer A is correct.

Answer B is incorrect. The creditor's promise to forbear from filing suit would have been sufficient consideration to support the debtor's promise. There was, however, no consideration coming from the debtor to support the creditor's promise since the debtor promised nothing more than to pay an undisputed debt after it was due.

Answer C is incorrect. This is an incorrect statement of the rule of *Foakes v. Beer* and the preexisting duty rule that requires consideration to enforce a promise to allow a debtor to delay payment on an undisputed debt, as explained above.

Answer D is incorrect. The debtor may have hoped that the creditor would forbear, but the debtor provided no consideration to support the creditor's forbearance, as explained above.

Question 1351 - Contracts - Parol Evidence and Interpretation

The question was:

On March 1, a homeowner contacted a builder about constructing an addition to the homeowner's house. The builder orally offered to perform the work for $200,000 if his pending bid on another project was rejected. The homeowner accepted the builder's terms and the builder then prepared a written contract that both parties signed. The contract did not refer to the builder's pending bid. One week later, upon learning that his pending bid on the other project had been accepted, the builder refused to perform any work for the homeowner.

Can the homeowner recover for the builder's nonperformance?

A: No, because efficiency principles justify the builder's services being directed to a higher-valued use.
B: No, because the builder's duty to perform was subject to a condition.
C: Yes, because the builder's attempt to condition his duty to perform rendered the contract illusory.
D: Yes, because the parol evidence rule would bar the builder from presenting evidence of oral understandings not included in the final writing.

The explanation for the answer is:

Answer B is correct. The homeowner cannot recover for the builder's nonperformance based on the oral condition to the contract. Normally, the parol evidence rule bars from evidence prior or contemporaneous negotiations and agreements that contradict, modify, or vary contractual terms if the contract is intended to be a complete and final expression of the parties' agreement. However, the condition exception to the parol evidence rule permits the admission of extrinsic evidence to establish an oral condition to the parties' performance under the contract. Here, the builder's acceptance of the contract was conditioned on the rejection of his bid on another project. This condition was not written in the contract. However, as explained above, this oral condition will be allowed into evidence as an exception to the parol evidence rule. Because the builder's bid was accepted on the other project, the condition in the contract did not occur, and the builder will not be in breach of the contract. Thus, Answer B is correct, and Answer D is incorrect.

Answer A is incorrect. Although contract law supports the principle of efficient breach, the principle does not discharge a breaching party's duty to perform or its responsibility to compensate the non-breaching party for damages arising from the breaching party's failure to perform.

Answer C is incorrect. The builder made a definite commitment to perform even though it was conditioned on his other bid being rejected. The builder's promise to perform was not illusory since the possibility the condition might occur limited the builder's freedom of action by binding him to perform if the condition was satisfied.

Question 1356 - Contracts - Remedies

The question was:

A buyer ordered a new machine from a manufacturer. The machine arrived on time and conformed in all respects to the contract. The buyer, however, rejected the machine because he no longer needed it in his business and returned the machine to the manufacturer. The manufacturer sold many such machines each year and its factory was not operating at full capacity.

In an action by the manufacturer against the buyer for breach of contract, which of the following is NOT a proper measure of the manufacturer's damages?

A: The contract price of the machine.
B: The difference between the contract price and the market price of the machine.
C: The difference between the contract price and the price obtained from a proper resale of the machine.
D: The profit the manufacturer would have made on the sale of the machine to the buyer.

The explanation for the answer is:

Answer A is correct. The manufacturer does not have an action for the contract price, which is available under three circumstances, none of which is present here: (i) where the buyer has accepted the goods, (ii) the goods are lost or damaged within a commercially reasonable time after the risk of loss has passed to the buyer, or (iii) the seller is unable after reasonable efforts to resell the goods.

Answer B is incorrect. UCC § 2-708(1) gives a seller the right to recover the difference between the contract price and the market price of goods when a buyer has wrongfully rejected the goods. Note, however, that since the manufacturer is a lost volume seller, it would be better off seeking damages under UCC § 2-708(2), since it is unlikely that a market differential formula will result in the recovery of any direct damages by the manufacturer with respect to what appear to be standard goods.

Answer C is incorrect. UCC &#2-706 allows a seller to recover the difference between the contract price and resale price when a buyer has wrongfully rejected the goods. Note, however, that the manufacturer would be better off seeking damages under UCC § 2-708(2), since it is a lost volume seller and it is unlikely that a resale will result in the recovery of any direct damages by the manufacturer with respect to what appear to be standard goods.

Answer D is incorrect. UCC § 2-708(2) provides the lost volume seller (a seller not operating at full capacity) with an action to recover lost profit. A recovery under UCC § 2-708(2) would adequately compensate the manufacturer for its direct damages.

Question 1357 - Contracts - Formation of Contracts

The question was:

An insurance company issued an insurance policy to a homeowner. The policy failed to contain certain coverage terms required by a state insurance statute. When the homeowner suffered a loss due to a theft that was within the policy's terms, the insurance company refused to pay, claiming that the contract was unenforceable because it violated the statute.

Will the homeowner succeed in an action against the insurance company to recover for the loss?

A: No, because the insurance policy is not a divisible contract.
B: No, because the insurance policy violated the statute.
C: Yes, because the homeowner belongs to the class of persons intended to be protected by the statute.
D: Yes, because the insurance policy would be strictly construed against the insurance company as the drafter.

The explanation for the answer is:

Answer C is correct. A contract that violates a state statute may be declared unenforceable on grounds of public policy. Where, however, the contract violates a policy that was intended for the benefit of a contracting party seeking relief, the contract may be enforceable in order to avoid frustrating the policy behind the statute. Accordingly, public policy would not prevent the enforcement of the contract by those within the class of persons, including the homeowner, that the statute was intended to protect. Thus, Answer C is correct.

Answer A is incorrect. The statement accurately states that the insurance policy is not a divisible contract. The doctrine of divisibility is typically employed to permit a breaching party who is to receive money under the contract to recover a portion of the contract price for having completed a portion of the work. The doctrine of divisibility is not relevant here, however, since the focus of this question is the enforceability of a contract entered into in violation of a statute.

Answer B is incorrect. Generally, a contract that violates a regulatory statute may be unenforceable as against public policy if the policy against enforcement outweighs the interest of enforcement. This general rule is subject, however, to an exception when those intended to be protected by the statute would be harmed by a finding of unenforceability, as explained above.

Answer D is incorrect. While as a general rule an insurance policy is interpreted against the drafter, the insurance company, this rule is primarily applicable in disputes involving the interpretation of contract language, which is not at issue in this question.

Question 1378 - Contracts - Remedies

The question was:

On March 1, an excavator entered into a contract with a contractor to perform excavation work on a large project. The contract expressly required that the excavator begin work on June 1 to enable other subcontractors to install utilities. On May 15, the excavator requested a 30-day delay in the start date for the excavation work because he was seriously behind schedule on another project. When the contractor refused to grant the delay, the excavator stated that he would try to begin the work for the contractor on June 1.

Does the contractor have valid legal grounds to cancel the contract with the excavator and hire a replacement?

A: Yes, because the excavator committed an anticipatory repudiation of the contract by causing the contractor to feel insecure about the performance.
B: Yes, because the excavator breached the implied covenant of good faith and fair dealing.
C: No, because the excavator would be entitled to specific performance of the contract if he could begin by June 1.
D: No, because the excavator did not state unequivocally that he would delay the beginning of his work.

The explanation for the answer is:

Answer D is correct. An anticipatory repudiation occurs when a party unequivocally manifests an intention not to perform or an inability to perform. Expressions of doubt as to a party's ability to perform or a mere request by a party (excavator) that the other party (contractor) consider modifying their agreement would not constitute an anticipatory repudiation. Restatement (Second) of Contracts § 250 cmt. b.

Answer A is incorrect. Expressions of doubt by a party as to its willingness or ability to perform do not amount to the affirmative manifestation of intent required to constitute an anticipatory repudiation. Expressions of doubt on one party's part may, however, give the other party the right to demand adequate assurance. Restatement (Second) of Contracts §§ 250 cmt. b, 251.

Answer B is incorrect. A mere request by the excavator, who had reasonable grounds for making the request, is not a violation of the implied covenant of good faith and fair dealing. Restatement (Second) of Contracts §§ 250, 251.

Answer C is incorrect. The contractor's cancellation of the contract would be wrongful and would entitle the excavator to monetary damages (anticipated profit), but not specific performance, which is available only where monetary damages are inadequate. Restatement (Second) of Contracts §§ 250, 359.

Question 1388 - Contracts - Remedies

The question was:

On March 1, a mechanic contracted to repair a textile company's knitting machine by March 6. On March 2, the textile company contracted to manufacture and deliver specified cloth to a customer on March 15. The textile company knew that it would have to use the machine then under repair to perform this contract. Because the customer's order was for a rush job, the two parties included in their contract a liquidated damages clause, providing that the textile company would pay $5,000 for each day's delay in delivery after March 15.

The mechanic was inexcusably five days late in repairing the machine, and, as a result, the textile company was five days late in delivering the cloth to the customer. The textile company paid $25,000 to the customer as liquidated damages and then sued the mechanic for $25,000. Both the mechanic and the textile company knew when making their contract on March 1 that under ordinary circumstances the textile company would sustain few or no damages of any kind as a result of a five-day delay in the machine repair.

Assuming that the $5,000-per-day liquidated damages clause in the contract between the textile company and the customer is valid, which of the following arguments will serve as the mechanic's best defense to the textile company's action?

A: Time was not of the essence in the contract between the mechanic and the textile company.
B: The mechanic had no reason to foresee on March 1 that the customer would suffer consequential damages in the amount of $25,000.
C: By entering into the contract with the customer while knowing that its knitting machine was being repaired, the textile company assumed the risk of any delay loss to the customer.
D: In all probability, the liquidated damages paid by the textile company to the customer are not the same amount as the actual damages sustained by the customer in consequence of the late delivery of the cloth.

The explanation for the answer is:

Answer A is incorrect. The mechanic contracted to complete the repairs by a specified time. His failure to execute the repairs within the time set forth in the contract constituted a breach entitling the textile company to damages. The recovery of consequential damages, however, requires more than a determination of breach. Additional requirements, such as foreseeability of the damages, must be satisfied. Restatement (Second) of Contracts §§ 346, 351.

Answer B is correct. Assuming other requirements are met, an aggrieved party is entitled to recover consequential damages only if they were reasonably foreseeable to the breaching party. The textile company did not inform the mechanic of its contract with the customer, and thus the mechanic had no reason to know what impact his failure to timely perform would have on the textile company's relationship with its customer. Restatement (Second) of Contracts § 351.

Answer C is incorrect. The facts are insufficient to support this conclusion since the textile company had contracted with the mechanic for repairs to be completed within a time frame that would have allowed the textile company to timely fulfill its contractual obligations to the customer.

Answer D is incorrect. There are insufficient facts to support this conclusion. No information is provided concerning the actual damages sustained by the customer. Moreover, the facts assume the validity of the liquidated damages provision.

Question 1393 - Contracts - Remedies

The question was:

A seller and a buyer entered into a written agreement providing that the seller was to deliver 1,000 cases of candy bars to the buyer during the months of May and June. Under the agreement, the buyer was obligated to make a selection by March 1 of the quantities of the various candy bars to be delivered under the contract. The buyer did not make the selection by March 1, and on March 2 the seller notified the buyer that because of the buyer's failure to select, the seller would not deliver the candy bars. The seller had all of the necessary candy bars on hand on March 1 and made no additional sales or purchases on March 1 or March 2. On March 2, after receiving the seller's notice that it would not perform, the buyer notified the seller of its selection and insisted that the seller perform. The seller refused.

If the buyer sues the seller for breach of contract, is the buyer likely to prevail?

A: No, because a contract did not exist until selection of the specific candy bars, and the seller withdrew its offer before selection.
B: No, because selection of the candy bars by March 1 was an express condition to the seller's duty to perform.
C: Yes, because a delay of one day in making the selection did not have a material effect on the seller.
D: Yes, because upon the buyer's failure to make a selection by March 1, the seller had a duty to make a reasonable selection.

The explanation for the answer is:

Answer A is incorrect. UCC § 2-311(1) specifically rejects the notion that a contract that is otherwise sufficiently definite is invalid because the agreement failed to specify the assortment of goods to be delivered to the buyer.

Answer B is incorrect. While the buyer's selection was an express condition, the buyer's breach was minor and immaterial. Because the breach by the buyer was minor, the seller's performance is not excused, only delayed.

Answer C is correct. UCC § 2-311 imposes a duty on a buyer to cooperate by specifying the assortment of goods where the contract fails to so provide. A seller can treat the buyer's failure to specify as a breach by failure to accept the contracted-for goods only if the buyer's failure to specify materially impacts the seller's performance. The seller had an available supply of candy bars and had entered into no new contracts. These facts support the conclusion that the buyer's failure to select did not materially impact the seller's performance. Therefore the seller unjustifiably refused to accept the buyer's selection of goods. UCC § 2-311.

Answer D is incorrect. The right of the seller to select is merely one of the options available to the seller when the buyer's failure to select has a material impact on the seller's performance. The buyer's failure to select did not have a material impact on the seller's performance, and the buyer still had the opportunity to select the assortment of candy bars. UCC § 2-311(3).

Question 1414 - Contracts - Impracticability and Frustration of Purpose

The question was:

An engineer entered into a written contract with an owner to serve in the essential position of on-site supervisor for construction of an office building. The day after signing the contract, the engineer was injured while bicycling and was rendered physically incapable of performing as the on-site supervisor. The engineer offered to serve as an off-site consultant for the same pay as originally agreed to by the parties.

Is the owner likely to prevail in an action against the engineer for damages resulting from his failure to perform under the contract?

A: No, because the engineer offered a reasonable substitute by offering to serve as an off-site consultant.
B: No, because the engineer's physical ability to perform as on-site supervisor was a basic assumption of the contract.
C: Yes, because the engineer breached the contract by disappointing the owner's expectations.
D: Yes, because the engineer's duty to perform was personal and absolute.

The explanation for the answer is:

Answer B is correct. The engineer is not in breach. The incapacity of a particular person to perform his or her duty under a contract renders the performance impracticable and operates as an excuse for nonperformance. The parties contracted for the engineer to personally provide on-site services. Therefore, the engineer's continued ability to perform those services was a basic assumption of the contract, and his nonperformance is excused.

Answer A is incorrect because an offer by a party to perform less than what was contracted for, even if the substituted performance is reasonable, will not excuse a breach. More importantly, because the parties contracted for the engineer to personally provide on-site services, the engineer's continued ability to perform those services was a basic assumption of the contract. He became unable to do so through no fault of his own, and his nonperformance is therefore excused.

Answers C and D are incorrect because the engineer is not in breach. Because the parties contracted for the engineer to personally provide on-site services, his continued ability to perform those services was a basic assumption of the contract. The incapacity of a particular person to perform his or her duty under a contract renders the performance impracticable and operates as an excuse for nonperformance.

Question 1418 - Contracts - Remedies

The question was:

An experienced rancher contracted to harvest his neighbor's wheat crop for $1,000 "when the crop [was] ripe." In early September, the neighbor told the rancher that the crop was ripe. The rancher delayed because he had other customers to attend to. The neighbor was concerned that the delay might cause the crop to be lost, for hailstorms were common in that part of the country in the fall. In fact, in early October, before the crop was harvested, it was destroyed by a hailstorm.

Is the rancher liable for the loss?

A: No, because no time for performance was established in the contract.
B: No, because the neighbor failed to tell the rancher that the crop might be destroyed by a hailstorm.
C: Yes, because at the time the contract was made, the rancher had reason to foresee the loss as a probable result of his breach.
D: Yes, because a party who undertakes a contractual obligation is liable for all the consequences that flow from his breach.

The explanation for the answer is:

Answer C is correct. The rules of contract law limit the recoverability of damages for a breach of contract. According to the Restatement (Second) of Contracts § 351, a non-breaching party is entitled to recover damages that the party in breach "had reason to foresee as a probable result of the breach" when the parties entered into the contract. Reason to foresee can arise from circumstances that result in the breaching party having had actual or constructive knowledge of the loss that might result from the breach. Therefore, the neighbor's failure to specifically inform the rancher that the crop might be destroyed by a hailstorm does not determine whether the loss was foreseeable. Thus, Answer B is incorrect. In this case, the rancher's experience and the frequency of hailstorms in the fall combined to make the loss resulting from the rancher's breach foreseeable. Thus, Answer C is correct.

Answer D is incorrect because, even though it states the correct result, it provides the wrong rationale. A party that breaches a contract is liable only for damages that were foreseeable as the probable result of the breach when the parties entered into the contract.

Answer A is incorrect. The language in the contract tying the rancher's performance to when the crop was ripe was sufficient to establish the time of the rancher's performance. The rancher will be liable for the loss because such a loss was foreseeable, given the rancher's experience and the frequency of hailstorms in the fall.

Question 1422 - Contracts - Formation of Contracts

The question was:

A niece had worked in her aunt's bookstore for many years. The bookstore business, which was housed in a building that the aunt leased, was independently appraised at $200,000. The aunt decided to retire. She wrote to the niece, expressing her affection for the niece and offering to sell her the bookstore business for $125,000 if the landlord would agree to a transfer of the lease. The letter also specified when the aunt would transfer the business. The niece wrote back accepting her aunt's offer. In a phone call to the niece, the aunt stated that the landlord had approved the transfer of the lease and that she would now ask her attorney to draft a written contract so that there would be a record of the terms. Before the attorney had finished drafting the document, the aunt changed her mind about selling the business and informed the niece of her decision.

In an action for breach of contract brought by the niece against her aunt, is the niece likely to prevail?

A: No, because the motivation for the transfer of the business was the aunt's affection for her niece, not the price.
B: No, because the promised consideration was inadequate in light of the market value of the business.
C: Yes, because the condition concerning the landlord's assent to the transfer of the lease was beyond the control of either party.
D: Yes, because the document being drafted by the attorney was merely a record of an agreement already made, not a condition to it.

The explanation for the answer is:

Answer D is correct. Manifestations of assent are sufficient to conclude an enforceable contract even though parties manifest intent to memorialize their agreement in a writing that is not subsequently prepared. Here, the parties' agreement on essential terms constituted the manifestation of mutual assent sufficient to create an enforceable contract.

Answer A is incorrect. The niece's promise to pay $125,000 and the aunt's promise to sell the business constituted the requisite consideration to enforce the agreement. The fact that the aunt's promise to sell her business may have been induced, in part, by affection for her niece would not negate the existence of a bargained-for exchange between the niece and the aunt.

Answer B is incorrect. If a bargained-for exchange is present, there is no additional requirement, such as an equivalency of exchange, in order to satisfy the consideration requirement of an enforceable contract. The niece's promise to pay $125,000 and the aunt's promise to sell her business constituted consideration. In addition, the niece's promise to pay $125,000 for a business appraised at $200,000 does not constitute the gross inadequacy of exchange that so shocks the conscience as to warrant invalidating the agreement.

Answer C is incorrect. Conditions are often beyond the control of either party. The dispositive issue is whether the existence of an enforceable contract was conditioned on the attorney drafting a written agreement that reflected the niece's and aunt's understandings. Manifestations of assent are sufficient to conclude an enforceable contract even though parties manifest intent to memorialize their agreement in a writing that is not subsequently prepared.

Question 1432 - Contracts - Formation of Contracts

The question was:

An actor straight out of drama school and an agent entered into a one-year written contract that described the services the agent would provide. Because he was eager for work, the actor agreed, in the contract, to pay the agent 15% of his yearly earnings. At the end of the year, the actor was so pleased with his many roles that he gave the agent 20% of his earnings. After the first contract had expired, the actor and the agent decided to continue working together. They photocopied their old contract, changed the date, and signed it. At the end of the year, a dispute arose as to what percentage of earnings the actor owed. It is a trade practice in the acting profession for actors to pay their agents 10% of their yearly earnings, payable at the end of the year.

What percentage of the actor's earnings is a court most likely to award the agent?

A: 20%, because course of dealing is given greater weight than trade usage.
B: 15%, because it was an express term of the contract.
C: 10%, because trade usage is the applicable default rule.
D: Nothing, because the contract is too indefinite.

The explanation for the answer is:

Answer B is correct. The parties' new contract adopted the terms of their previous contract, which included the 15% fee. Evidence of express terms is given greater weight than evidence of trade usage. Therefore the express term, the 15% fee, is controlling because a court would give it greater weight than the evidence of trade usage, the 10% fee.

Answer A is incorrect. The generally applicable standard, which provides that evidence of course of dealing is given greater weight than evidence of trade usage, is inapplicable here because a "course of dealing" was never established and because the written contract was explicit. One instance of previous conduct is insufficient to establish a prior course of dealing.

Answer C is incorrect. Evidence of an express term is given greater weight than evidence of trade usage. The parties' new contract adopted the terms of their previous contract, which specifically included the 15% fee. Therefore the express term of 15% controls the amount of the fee to which the agent is entitled.

Answer D is incorrect. The contract contains the essential terms, including the duration, a description of the agent's services, and the method for calculating the agent's fee, 15% of the actor's earnings in this case.

Question 1443 - Contracts - Formation of Contracts

The question was:

A buyer sent a seller an offer to buy 50 tons of cotton of a specified quality. The offer contained no terms except those specifying the amount and quality of the cotton. The seller then sent an acknowledgment by fax. The acknowledgment repeated the terms of the buyer's offer and stated that shipment would occur within five days. Among 12 printed terms on the acknowledgment was a statement that any dispute about the cotton's quality would be submitted to arbitration. Neither the buyer nor the seller said anything further about arbitration. The seller shipped the cotton, and it was accepted by the buyer. A dispute arose between the buyer and the seller as to the quality of the cotton, and the seller asserted that the dispute had to be submitted to arbitration. The buyer instead sued the seller in court.

In that suit, which of the following arguments best supports the seller's position that the buyer must submit the dispute to arbitration?

A: Arbitration is a more efficient method of resolving disputes than resolving them in court.
B: The provision for arbitration did not contradict any term in the buyer's offer.
C: The provision for arbitration did not materially alter the parties' contract.
D: The seller's acknowledgment containing a provision for arbitration constituted a counteroffer that was accepted by the buyer when it accepted delivery of the cotton.

The explanation for the answer is:

Answer C is correct. Because the buyer's offer was silent as to arbitration, the arbitration provision in the seller's acknowledgment should be characterized as an additional term. Under UCC § 2-207(2), an additional term is considered a proposal for addition to the contract. Section 2-207(2) also provides that an additional term becomes a term of the parties' contract unless certain specified circumstances are present. One such circumstance is where an additional term materially alters the parties' contract. Because none of the other circumstances appear applicable here, the arbitration provision will be considered a term of the contract if the seller can successfully argue that the provision did not materially alter the parties' contract. Thus, Answer C is correct.

Answer A is incorrect. Even assuming that arbitration is a more efficient dispute resolution mechanism, arbitration's relative efficiency is not the governing standard for assessing whether the arbitration provision became a term of the parties' agreement.

Answer B is incorrect. The question as to whether the arbitration provision did or did not contradict an express term of the offer is not the appropriate standard for determining whether the provision became a term of the parties' contract. As stated above, the correct standard is whether the seller's acknowledgement should be characterized as an additional term.

Answer D is incorrect. Under the common law, an additional material term in a response to an offer constitutes a counteroffer. However, UCC Article 2 governs this transaction because it involves a sale of goods. Under UCC § 2-207, the presence of an additional term--the arbitration provision in the seller's acknowledgment--did not give rise to a counteroffer. Rather, a contract was formed, and the arbitration provision constituted a proposal for an addition to the contract. Moreover, under UCC § 2-207, a buyer's mere acceptance of goods does not constitute assent to an additional term contained in a seller's acceptance. However, under the standards set out in UCC § 2-207(2), the arbitration provision will be considered a term of the contract if the seller can successfully argue that the provision did not materially alter the parties' contract.

Question 1445 - Contracts - Third-Party Rights

The question was:

A janitorial service contracted in writing with a hospital for a one-year term. Under the terms of the contract, the janitorial service agreed to clean the hospital daily in accordance with the hygiene standards of the city's health code. Because the janitorial service did not clean a patient's room in accordance with the required hygiene standards, the patient contracted an infection that required continued hospitalization. In addition to suing the hospital, the patient sued the janitorial service for breach of contract.

Which of the following statements is most accurate with respect to the breach of contract claim against the janitorial service?

A: The janitorial service is liable to the patient as a matter of public policy, because it violated the city's health code.
B: The patient is an intended third-party beneficiary under the contract, because the janitorial service's promise was intended to benefit all hospital patients.
C: The patient has no claim for breach of contract against the janitorial service, because she is an incidental beneficiary.
D: The patient cannot sue on the contract, because she was not named in the contract.

The explanation for the answer is:

Answer C is correct. The patient cannot recover because she is an incidental beneficiary rather than an intended third-party beneficiary. Here, the circumstances fail to indicate that the hospital intended to give the patient the benefit of the promised performance. Thus, Answer C is correct and Answer B is incorrect.

Answer A is incorrect. A violation of public policy may render a contract unenforceable. Here, however, the patient's ability to recover against the janitorial service will be governed by a third-party beneficiary theory, under which she would be an incidental beneficiary and therefore not eligible to recover damages.

Answer D is incorrect. An intended third-party beneficiary acquires rights under a contract whether or not the party is identified as an intended beneficiary at the time the contract is made. In this case, however, the patient is an incidental beneficiary rather than an intended third-party beneficiary, and therefore she cannot recover on a breach of contract claim.

Question 1452 - Contracts - Defenses to Enforceability

The question was:

A developer contracted in writing to sell to a buyer a house on a one-acre lot for $100,000. The developer told the buyer that the lot abutted a national park and that the water for the house came from a natural artesian spring. The developer knew that both of these representations were important to the buyer and that both were false. The buyer moved into the house and eight months later learned that a private golf course was being constructed on the adjacent land and that the water for his house was piped in from the city reservoir. The buyer immediately sued the developer to avoid the contract.

The construction of the golf course will probably increase the market value of the buyer's property, and the water from the city reservoir exceeds all established standards for drinking water.

Is the buyer likely to prevail?

A: No, because eight months exceeds a reasonable time for contract avoidance.
B: No, because the developer's misstatements caused no economic harm to the buyer.
C: Yes, because the contract was void ab initio.
D: Yes, because the buyer retained the power to avoid the contract due to fraud.

The explanation for the answer is:

Answer D is correct. A party may avoid a contract to which the party's assent was induced by fraud. The time period within which a party may avoid a contract due to misrepresentation does not begin to run until that party either knows or has reason to know of the misrepresentation. In this case, the buyer's eight-month delay will not preclude him from avoiding the contract because he did not learn of the misrepresentation until eight months after the parties entered into the contract; the buyer immediately sought to avoid the contract after learning of the misrepresentation. Thus, Answer D is correct, and Answer A is incorrect.

Answer B is incorrect. A party may avoid a contract to which the party's assent was induced by fraud even if the resulting transaction is fair on its terms. Because the buyer immediately sought to avoid the contract after learning of the misrepresentation, he will likely prevail.

Answer C is incorrect. Void ab initio means void from the outset. An agreement to which assent is induced by a misrepresentation is not void. Rather, it is voidable, which permits the party whose assent was induced by the misrepresentation to avoid the agreement.

Question 1458 - Contracts - Conditions

The question was:

A lawn service company agreed in writing to purchase from a supplier all of its requirements for lawn care products during the next calendar year. In the writing, the supplier agreed to fulfill those requirements and to give the company a 10% discount off its published prices, but it reserved the right to increase the published prices during the year. After the parties had performed under the agreement for three months, the supplier notified the company that it would no longer give the company the 10%discount off the published prices.

Does the company have a viable claim against the supplier for breach of contract?

A: Yes, because part performance of the agreement by both parties made it enforceable for the full year.
B: Yes, because the company's agreement to buy all of its lawn care products from the supplier made the agreement enforceable.
C: No, because the supplier could, and did, revoke its offer with respect to future deliveries.
D: No, because the absence of a minimum quantity term rendered the company's promise illusory.

The explanation for the answer is:

Answer B is correct. The parties entered into an enforceable requirements contract under UCC § 2-306. Although the terms of the parties' agreement granted the supplier the discretion to increase the published prices during the year, the contract did not grant the supplier the right to discontinue the promised 10% discount off the published prices. The supplier's refusal to give the company the 10% discount was a breach of the contract's agreed-upon terms. Thus, Answer B is correct.

Answer A is incorrect. The contract is enforceable because the parties entered into an enforceable requirements contract under UCC § 2-306. Pursuant to the terms of their contract, the parties agreed to a one-year term. Therefore, part performance is not required in order for the contract to be enforceable for a full year.

Answer C is incorrect. Revocation relates to the contract formation process. Given that mutual assent has occurred, revocation is not a relevant issue. The parties entered into an enforceable requirements contract under UCC § 2-306.

Answer D is incorrect. UCC § 2-306(1) validates the enforceability of requirements contracts even if the parties do not include a minimum quantity term in their agreement. Therefore, the absence of a minimum quantity term in the parties' requirements contract did not render it illusory, and the contract is enforceable under UCC § 2-306.

Question 1463 - Contracts - Discharge of Contractual Duties

The question was:

On June 1, a general contractor and a subcontractor entered into a contract under which the subcontractor agreed to deliver all of the steel joists that the general contractor required in the construction of a hospital building. The contract provided that delivery of the steel joists would begin on September 1.

Although the general contractor had no reason to doubt the subcontractor's ability to perform, the general contractor wanted to be sure that the subcontractor was on track for delivery in September. He therefore wrote a letter on July 1 to the subcontractor demanding that the subcontractor provide assurance of its ability to meet the September 1 deadline. The subcontractor refused to provide such assurance.

The general contractor then immediately obtained the steel joists from another supplier.

If the subcontractor sues the general contractor for breach of contract, is the subcontractor likely to prevail?

A: No, because the subcontractor anticipatorily repudiated the contract when it failed to provide adequate assurance.
B: No, because the contract failed to specify a definite quantity.
C: Yes, because a demand for assurance constitutes a breach of contract when the contract does not expressly authorize a party to demand assurance.
D: Yes, because the subcontractor's failure to provide assurance was not a repudiation since there were no reasonable grounds for the general contractor's insecurity.

The explanation for the answer is:

Answer D is correct. The adequate assurance doctrine requires that a party respond to a demand for adequate assurance only if the demand is reasonable and justified. A demand is justified if the party making the demand has reasonable grounds for insecurity with respect to the other party's potential performance. The facts in this case state that the general contractor had no reason to doubt the subcontractor's ability to perform. Therefore, the general contractor was unjustified in demanding adequate assurance, and the subcontractor properly refused to respond to the demand. See UCC § 2-609. Thus, Answer D is correct, and Answer A is incorrect.

Answer B is incorrect. The parties entered into a requirements contract that under UCC § 2-306(1) will not fail for indefiniteness because the contract did not include a specific quantity term. The subcontractor will likely prevail because under the adequate assurance doctrine, a party need respond to a demand for adequate assurance only if the demand is reasonable and justified, and the general contractor's demand for assurance was unjustified.

Answer C is incorrect. The adequate assurance doctrine is a UCC implied term that arises by operation of law. Therefore, the doctrine's applicability is not dependent upon the express authority of the party seeking assurance. However, in this case, the general contractor's demand for assurance was unjustified because he had no reasonable grounds for insecurity. Therefore, the subcontractor will likely prevail.

Question 1471 - Contracts - Conditions

The question was:

A seller entered into a contract to sell to a buyer a house for a price of $150,000. The contract contained the following clause: "This contract is conditional on the buyer's securing bank financing at an interest rate of 7% or below." The buyer did not make an application for bank financing and therefore did not secure it, and refused to proceed with the purchase. The seller sued the buyer for breach of contract.

Is the seller likely to prevail?

A: No, because the buyer did not secure bank financing.
B: No, because the contract did not expressly impose on the buyer any obligation to apply for bank financing.
C: Yes, because a court will excuse the condition to avoid a disproportionate forfeiture.
D: Yes, because a court will imply a term imposing on the buyer a duty to use reasonable efforts to secure bank financing.

The explanation for the answer is:

Answer D is correct. A performance that is subject to an express condition cannot become due unless the condition occurs or its nonoccurrence is excused. According to the Restatement (Second) of Contracts, the duty of good faith is implied inasmuch as "every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." The duty of good faith imposed an obligation on the buyer to make reasonable efforts to secure bank financing. Accordingly, the failure of the condition (in this case, the bank financing commitment) to occur did not discharge the buyer's performance obligation. Thus, Answer D is correct.

Answer A is incorrect because, as stated above, the buyer had a good faith duty to try and secure bank financing. The buyer breached this duty by failing to apply for financing.

Answer B is incorrect because, as stated above, the duty of good faith imposed an obligation on the buyer to make reasonable efforts to secure the described bank financing.

Answer C is incorrect. A performance that is subject to an express condition cannot become due unless the condition occurs or its nonoccurrence is excused. The nonoccurrence of a condition may be excused in order to avoid disproportionate forfeiture. The excuse is inapplicable here because there was no forfeiture, which is defined by the comments to § 229 of the Restatement (Second) of Contracts as "the denial of compensation that results when the obligee loses his right to the agreed exchange after he has relied substantially, as by preparation or performance, on the expectation of that exchange."

Question 1477 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A computer retail outlet contracted to service a bank's computer equipment for one year at a fixed monthly fee under a contract that was silent as to assignment or delegation by either party. Three months later, the retail outlet sold the service portion of its business to an experienced and well-financed computer service company. The only provision in the agreement between the retail outlet and the computer service company relating to the outlet's contract with the bank stated that the outlet "hereby assigns all of its computer service contracts to [the computer service company]."

The computer service company performed the monthly maintenance required under the service contract. Its performance was defective, however, and caused damage to the bank's operations.

Whom can the bank sue for damages arising from the computer service company's defective performance?

A: The retail outlet only, because the computer service company made no promises to the bank.
B: Either the retail outlet or the computer service company, because the bank has not released the outlet and the bank is an intended beneficiary of the outlet's agreement with the computer service company.
C: Either the retail outlet or the computer service company, because since each has the right to enforce the bank's performance of its contract with the retail outlet, mutuality of remedy renders either potentially liable for the defective performance.
D: The computer service company only, because it is a qualified and a financially responsible supplier of computer services.

The explanation for the answer is:

Answer B is correct. The retail outlet effectively delegated to the computer service company the outlet's duty of performance owed to the bank. However, absent consent by the obligee (the bank) or performance by the delegatee (the computer service company), an effective delegation does not relieve the delegating party (the retail outlet) of its duty to the obligee. When the computer service company purchased the service contracts, the bank also became an intended beneficiary of the computer service company's promise to the retail outlet. The computer service company expressly agreed with the retail outlet to perform the outlet's obligation to the bank, making the bank an intended beneficiary of that obligation. Thus, both the retail outlet and the computer service company remain liable to the bank.

Answer A is incorrect. The computer service company expressly agreed with the retail outlet to perform the outlet's obligation to the bank, thus imposing a duty on the computer service company of which the bank was an intended beneficiary. Therefore, the bank is also entitled to sue the computer service company for its defective performance.

Answer C is incorrect. Assuming an effective assignment, the right of the retail outlet to the bank's performance was extinguished. It is true that the bank can sue either the retail outlet or the computer service company, but it can do so (a) because the bank has not released the outlet and (b) because the bank is an intended beneficiary of the outlet's agreement with the computer service company.

Answer D is incorrect. The competence and financial responsibility of the retail outlet's delegate, the computer service company, will not discharge the retail outlet's obligation to the bank. The retail outlet effectively delegated to the computer service company the outlet's duty of performance owed to the bank. However, absent consent by the obligee (the bank) or performance by the delegatee (the computer service company), an effective delegation does not relieve the delegating party (the retail outlet) of its duty to the obligee.

Question 1482 - Contracts - Parol Evidence and Interpretation

The question was:

A farmer contracted to sell 100,000 bushels of wheat to a buyer. When the wheat arrived at the destination, the buyer discovered that the farmer had delivered only 96,000 bushels. The buyer sued the farmer for breach of contract. At the trial of the case, the court found that the written contract was intended as a complete and exclusive statement of the terms of the agreement. The farmer offered to prove that in the wheat business, a promise to deliver a specified quantity is considered to be satisfied if the delivered quantity is within 5% of the specified quantity. The buyer objected to the offered evidence.

Is the court likely to admit the evidence offered by the farmer?

A: No, because the offered evidence is inconsistent with the express language of the agreement.
B: No, because the written contract was totally integrated.
C: Yes, because the offered evidence demonstrates that the farmer substantially performed the contract.
D: Yes, because the offered evidence explains or supplements the agreement by usage of trade.

The explanation for the answer is:

Answer D is correct. This transaction involves a sale of goods and is subject to UCC Article 2. Under Article 2, evidence of trade usage that can be construed as reasonably consistent with an agreement's express language is admissible to interpret or supplement an agreement. The majority rule provides that trade usage will be viewed as consistent with an agreement's express language unless the usage completely negates specific express language. The trade usage allowing for a variation of up to 5% does not completely negate but rather qualifies the express language calling for the delivery of 100,000 bushels of wheat. Thus, Answer D is correct and Answer A is incorrect. Answer B is incorrect because the rule stated above applies regardless of whether the written agreement is a complete integration.

Answer C is incorrect. Under UCC § 2-601, the applicable standard for determining breach of a non-installment transaction involving a sale of goods is the perfect tender rule and not the substantial performance standard. However, the offered evidence of trade usage would establish that there was no breach; according to the trade usage standards, the farmer's delivery of 96,000 bushels was performance that conformed to the agreement.

Question 1486 - Contracts - Parol Evidence and Interpretation

The question was:

The mother of a son and a daughter was dying. The daughter visited her mother in a hospice facility and said, "You know that I have always been the good child, and my brother has always been the bad child. Even so, you have left your property in the will to us fifty-fifty. But it would be really nice if you would sell me the family home for $100,000."

"I don't know," said the mother. "It is worth a lot more than that-at least $250,000."

"That is true," said the daughter. "But I have always been good and visited you, and my brother has never visited you, so that ought to be worth something. And besides, if you won't sell me the house for that price, maybe I won' t visit you anymore, either."

"Oh, I wouldn't want that," said the mother, and she signed a contract selling the house to her daughter for $100,000.

Shortly thereafter, the mother died. When her son found out that the house had been sold and was not part of his mother's estate, he sued to have the contract avoided on behalf of the mother.

On what ground would the contract most likely be avoided?

A: Duress.
B: Inadequate consideration.
C: Mistake.
D: Undue influence.

The explanation for the answer is:

Answer D is correct. A contract is voidable if the elements of undue influence--undue susceptibility to pressure and excessive pressure--are established. The undue susceptibility element can be established either by the circumstances (e.g., the mother's illness) or the existence of a confidential relationship (such as a parent-child relationship). The following facts support a finding of excessive pressure: the daughter's statement that she might not visit her mother, the daughter pressuring her mother to sell the property while her mother was in a hospice facility, the mother assenting without obtaining independent advice, and the mother's susceptibility to pressure.

Answer A is incorrect. A contract can be avoided on the basis of duress. However, the facts fail to establish the elements of duress. Duress requires an improper threat. The daughter's statement that she might not visit her mother does not constitute an improper threat sufficient to support avoidance based on duress.

Answer B is incorrect. If a bargained-for exchange is present, there is no additional requirement, such as an equivalency of exchange, to satisfy the consideration requirement of an enforceable contract. Moreover, the imbalance in the exchange between the mother and her daughter does not constitute the gross inadequacy of exchange that so shocks the conscience as to warrant invalidating the agreement.

Answer C is incorrect. The mistake doctrine supports avoidance of a contract. An essential element of the mistake doctrine is a mistake, which is defined as a "belief that is not in accord with the facts." The facts in this case fail to establish a legally cognizable mistake.

Question 1492 - Contracts - Formation of Contracts

The question was:

A borrower owed a lender $50,000 due on March 1. On January 10, the lender telephoned the borrower and said that he would discharge the debt if the borrower would promise to pay the lender $45,000 by January 15. The borrower responded, "I will attempt to get the money together." On January 11, the lender again telephoned the borrower and said that he had changed his mind and would expect the borrower to make full payment on March 1. On January 15, the borrower tendered $45,000 as full payment, which the lender refused to accept. On March 1, the borrower refused the lender's demand for $50,000, and the lender sued for that amount.

Which of the following statements best supports the lender's position?

A: The borrower's January 10 statement was not a return promise, and therefore the lender effectively revoked his offer on January 11.
B: The January 10 telephone conversation between the lender and the borrower created an executory accord and therefore did not operate as a discharge of the $50,000 debt.
C: The lender's offer to discharge the debt was a gift promise and therefore was not binding on the lender.
D: The lender's promise to discharge the $50,000 debt was not enforceable because it was not in writing.

The explanation for the answer is:

Answer A is correct. The lender's offer requested that the borrower accept by making a return promise. The borrower's response to the lender's offer was a statement of intention, which was not sufficiently promissory to constitute acceptance of an offer and create a binding contract. The mutual assent required for an enforceable executory accord did not arise from the January 10 conversation between the lender and the borrower. Therefore the lender effectively revoked his offer on January 11. Thus, Answer A is correct and Answer B is incorrect.

Answer C is incorrect. An offer in which a creditor promises to accept a payment for less than the amount owed prior to the due date is sufficient consideration to support a return promise by a borrower accepting the offer. Moreover, the dispositive issue is not whether there was consideration but whether the borrower's response to the lender's offer was an acceptance. The borrower's response to the lender's offer was a statement of intention, which was not sufficiently promissory to constitute acceptance of an offer and create a binding contract.

Answer D is incorrect. The purported contract between the lender and the borrower was not a transaction that would fall within a statute of frauds. Moreover, the dispositive issue is not compliance with the statute of frauds but whether the borrower's response to the lender's offer was sufficiently promissory to constitute an acceptance.

Question 1498 - Contracts - Remedies

The question was:

A seller entered into an agreement to sell a machine to a buyer for $5,000. At the time of the order, the buyer gave the seller a down payment of $1,000. The buyer then built a foundation for the machine at a cost of $250. The seller failed to deliver the machine. The buyer made reasonable efforts to find a similar machine and bought one for $5,500 that did not fit on the foundation. The buyer sued the seller for breach of contract.

Which of these amounts claimed by the buyer, if any, could best be described as restitution?

A: The $250 cost of the foundation.
B: The $500 difference in price.
C: The $1,000 down payment.
D: None of the claimed amounts.

The explanation for the answer is:

Answer C is correct. The protection of the restitutionary interest restores to a party any benefit conferred to the other party. Restatement (Second) of Contracts § 344(c). Under UCC § 2-711(3), on a rightful rejection, a buyer is entitled to a return of any payments made on the goods. Thus Answer C is correct, and Answer D is incorrect.

The $250 cost of the foundation conferred no benefit on the seller and would constitute a component of the buyer's expectation measure rather than a restitutionary measure of recovery. In this case, however, the buyer would be entitled to return of the down payment as restitution. Thus, Answer A is incorrect.

The $500 difference conferred no benefit to the seller and would constitute a component of the buyer's expectation measure of recovery rather than a restitutionary measure of recovery. In this case, the buyer would be entitled to return of the down payment as restitution. Thus, Answer B is incorrect.

Question 1508 - Contracts - Formation of Contracts

The question was:

A restaurant supplier sent a letter to a regular customer offering to sell the customer an industrial freezer for $10,000. Two days later, the customer responded with a letter that stated: "I accept your offer on the condition that you provide me with a warranty that the freezer is merchantable." In response to the customer's letter, the supplier called the customer and stated that the offer was no longer open. The supplier promptly sold the freezer to another buyer for $11,000.

If the customer sues the supplier for breach of contract, is the customer likely to prevail?

A: No, because the customer's letter added a term, making it a counteroffer.
B: No, because the subsequent sale to a bona fide purchaser for value cut off the claims of the customer.
C: Yes, because the customer's letter was an acceptance of the supplier's offer, since the warranty of merchantability was already implied in the sale.
D: Yes, because the supplier's letter was a firm offer that could not be revoked for a reasonable time.

The explanation for the answer is:

A is Incorrect. It is true that a purported acceptance that is conditioned on an offeror's assent to a term additional to or different from the terms contained in an offer is a counteroffer. In this case, however, the customer's letter constituted an acceptance rather than a counteroffer. Under UCC § 2-314, a warranty of merchantability is implied in every contract for the sale of a good by a seller who is a merchant with respect to goods of that kind. Therefore, the condition contained in the customer's letter merely stated a term that was already implied in the sale. A contract arose when the customer mailed its letter accepting the offer. Accordingly, the supplier's attempted revocation of its offer was ineffective, and its sale of the freezer to the third party breached its contract with the customer.

B is Incorrect. Under some circumstances, the sale of goods to a bona fide purchaser may cut off the claims of other parties. In this case, however, the dispositive issue is whether the customer's letter in response to the supplier's offer constituted an acceptance or a counteroffer. Under UCC § 2-314, a warranty of merchantability is implied in every contract for the sale of a good by a seller who is a merchant with respect to goods of that kind. Therefore, the condition contained in the customer's letter merely stated a term that was already implied in the sale. A contract arose when the customer mailed its letter accepting the offer. Accordingly, the supplier's attempted revocation of its offer was ineffective, and its sale of the freezer to the third party breached its contract with the customer.

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D is Incorrect. The supplier's letter did not create a firm offer because it failed to give assurance that the offer would be held open, a principal requirement of a firm offer under UCC § 2-205. The dispositive issue here is whether the customer's response to the supplier's offer constituted an acceptance or a counteroffer. Under UCC § 2-314, a warranty of merchantability is implied in every contract for the sale of a good by a seller who is a merchant with respect to goods of that kind. Therefore, the condition contained in the customer's letter merely stated a term that was already implied in the sale. A contract arose when the customer mailed its letter accepting the offer. Accordingly, the supplier's attempted revocation of its offer was ineffective, and its sale of the freezer to the third party breached its contract with the customer.

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Question 1513 - Contracts - Formation of Contracts

The question was:

A seller sent an email to a potential buyer, offering to sell his house to her for $150,000. The buyer immediately responded via email, asking whether the offer included the house's front porch swing. The seller emailed back: "No, it doesn't." The buyer then ordered a front porch swing and emailed back to the seller: "I accept your offer." The seller refused to sell the house to the buyer, claiming that the offer was no longer open.

Is there a contract for the sale of the house?

A: No, because the buyer's initial email was a counteroffer.
B: No, because the offer lapsed before the buyer accepted.
C: Yes, because the buyer relied on the offer by ordering the swing.
D: Yes, because the buyer's initial email merely asked for information.

The explanation for the answer is:

A is incorrect. A reply to an offer that merely requests information regarding the offer constitutes an inquiry rather than a counteroffer. The buyer's response asking whether the seller intended to include the front porch swing in his offer was an inquiry rather than a counteroffer. The buyer's subsequent email stating "I accept your offer" was an acceptance that created a contract between the parties. Therefore, the seller's attempted revocation of his offer was ineffective.

B is incorrect. An offeree's power of acceptance may terminate due to a lapse of time when the offeree fails to accept the offer within the time stated in the offer or within a reasonable time. In this case, the offer did not include an express time limitation. Therefore, the buyer could accept within a reasonable period of time. The email exchanges between the buyer and the seller demonstrate that the buyer accepted the seller's offer within a reasonable time period. The dispositive issue here is whether the buyer's reply to the seller's offer constituted an acceptance or a counteroffer.

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C is incorrect. An offeree's reliance on an offer can create a binding option contract that precludes an offeror from revoking its offer. In this case, however, there is no indication that the buyer's purchase of the swing was the type of act performed in substantial reliance on the offer that the seller reasonably could have expected at the time he communicated his offer. The dispositive issue here is whether the buyer's reply to the seller's offer constituted an acceptance or a counteroffer.

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Question 1513 - Contracts - Formation of Contracts

The question was:

A seller sent an email to a potential buyer, offering to sell his house to her for $150,000. The buyer immediately responded via email, asking whether the offer included the house's front porch swing. The seller emailed back: "No, it doesn't." The buyer then ordered a front porch swing and emailed back to the seller: "I accept your offer." The seller refused to sell the house to the buyer, claiming that the offer was no longer open.

Is there a contract for the sale of the house?

A: No, because the buyer's initial email was a counteroffer.
B: No, because the offer lapsed before the buyer accepted.
C: Yes, because the buyer relied on the offer by ordering the swing.
D: Yes, because the buyer's initial email merely asked for information.

The explanation for the answer is:

A is incorrect. A reply to an offer that merely requests information regarding the offer constitutes an inquiry rather than a counteroffer. The buyer's response asking whether the seller intended to include the front porch swing in his offer was an inquiry rather than a counteroffer. The buyer's subsequent email stating "I accept your offer" was an acceptance that created a contract between the parties. Therefore, the seller's attempted revocation of his offer was ineffective.

B is incorrect. An offeree's power of acceptance may terminate due to a lapse of time when the offeree fails to accept the offer within the time stated in the offer or within a reasonable time. In this case, the offer did not include an express time limitation. Therefore, the buyer could accept within a reasonable period of time. The email exchanges between the buyer and the seller demonstrate that the buyer accepted the seller's offer within a reasonable time period. The dispositive issue here is whether the buyer's reply to the seller's offer constituted an acceptance or a counteroffer.

A reply to an offer that merely requests information regarding the offer constitutes an inquiry rather than a counteroffer. The buyer's response asking whether the seller intended to include the front porch swing in his offer was an inquiry rather than a counteroffer. The buyer's subsequent email stating "I accept your offer" was an acceptance that created a contract between the parties. Therefore, the seller's attempted revocation of his offer was ineffective.

C is incorrect. An offeree's reliance on an offer can create a binding option contract that precludes an offeror from revoking its offer. In this case, however, there is no indication that the buyer's purchase of the swing was the type of act performed in substantial reliance on the offer that the seller reasonably could have expected at the time he communicated his offer. The dispositive issue here is whether the buyer's reply to the seller's offer constituted an acceptance or a counteroffer.

A reply to an offer that merely requests information regarding the offer constitutes an inquiry rather than a counteroffer. The buyer's response asking whether the seller intended to include the front porch swing in his offer was an inquiry rather than a counteroffer. The buyer's subsequent email stating "I accept your offer" was an acceptance that created a contract between the parties. Therefore, the seller's attempted revocation of his offer was ineffective.

D is correct. A reply to an offer that merely requests information regarding the offer constitutes an inquiry rather than a counteroffer. The buyer's response asking whether the seller intended to include the front porch swing in his offer was an inquiry rather than a counteroffer. The buyer's subsequent email stating "I accept your offer" was an acceptance that created a contract between the parties. Therefore, the seller's attempted revocation of his offer was ineffective.

Question 1518 - Contracts - Defenses to Enforceability

The question was:

In a telephone conversation, a jewelry maker offered to buy 100 ounces of gold from a precious metals company if delivery could be made within 10 days. The jewelry maker did not specify a price, but the market price for 100 ounces of gold at the time of the conversation was approximately $65,000. Without otherwise responding, the company delivered the gold six days later.

In the meantime, the project for which the jewelry maker planned to use the gold was canceled. The jewelry maker therefore refused to accept delivery of the gold or to pay the $65,000 demanded by the company.

Is there an enforceable contract between the jewelry maker and the company?

A: No, because the parties did not agree on a price term.
B: No, because the parties did not put their agreement in writing.
C: Yes, because the absence of a price term does not defeat the formation of a valid contract for the sale of goods where the parties otherwise intended to form a contract.
D: Yes, because the company relied on an implied promise to pay when it delivered the gold.

The explanation for the answer is:

A is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

B is correct. The parties failed to comply with the writing requirement of UCC § 2-201(1). Under that section, a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating a contract of sale that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

C is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, however, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

D is incorrect. The dispositive issue in this case is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

Question 1518 - Contracts - Defenses to Enforceability

The question was:

In a telephone conversation, a jewelry maker offered to buy 100 ounces of gold from a precious metals company if delivery could be made within 10 days. The jewelry maker did not specify a price, but the market price for 100 ounces of gold at the time of the conversation was approximately $65,000. Without otherwise responding, the company delivered the gold six days later.

In the meantime, the project for which the jewelry maker planned to use the gold was canceled. The jewelry maker therefore refused to accept delivery of the gold or to pay the $65,000 demanded by the company.

Is there an enforceable contract between the jewelry maker and the company?

A: No, because the parties did not agree on a price term.
B: No, because the parties did not put their agreement in writing.
C: Yes, because the absence of a price term does not defeat the formation of a valid contract for the sale of goods where the parties otherwise intended to form a contract.
D: Yes, because the company relied on an implied promise to pay when it delivered the gold.

The explanation for the answer is:

A is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

B is correct. The parties failed to comply with the writing requirement of UCC § 2-201(1). Under that section, a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating a contract of sale that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

C is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, however, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

D is incorrect. The dispositive issue in this case is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

Question 1518 - Contracts - Defenses to Enforceability

The question was:

In a telephone conversation, a jewelry maker offered to buy 100 ounces of gold from a precious metals company if delivery could be made within 10 days. The jewelry maker did not specify a price, but the market price for 100 ounces of gold at the time of the conversation was approximately $65,000. Without otherwise responding, the company delivered the gold six days later.

In the meantime, the project for which the jewelry maker planned to use the gold was canceled. The jewelry maker therefore refused to accept delivery of the gold or to pay the $65,000 demanded by the company.

Is there an enforceable contract between the jewelry maker and the company?

A: No, because the parties did not agree on a price term.
B: No, because the parties did not put their agreement in writing.
C: Yes, because the absence of a price term does not defeat the formation of a valid contract for the sale of goods where the parties otherwise intended to form a contract.
D: Yes, because the company relied on an implied promise to pay when it delivered the gold.

The explanation for the answer is:

A is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

B is correct. The parties failed to comply with the writing requirement of UCC § 2-201(1). Under that section, a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating a contract of sale that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

C is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, however, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

D is incorrect. The dispositive issue in this case is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

Question 1518 - Contracts - Defenses to Enforceability

The question was:

In a telephone conversation, a jewelry maker offered to buy 100 ounces of gold from a precious metals company if delivery could be made within 10 days. The jewelry maker did not specify a price, but the market price for 100 ounces of gold at the time of the conversation was approximately $65,000. Without otherwise responding, the company delivered the gold six days later.

In the meantime, the project for which the jewelry maker planned to use the gold was canceled. The jewelry maker therefore refused to accept delivery of the gold or to pay the $65,000 demanded by the company.

Is there an enforceable contract between the jewelry maker and the company?

A: No, because the parties did not agree on a price term.
B: No, because the parties did not put their agreement in writing.
C: Yes, because the absence of a price term does not defeat the formation of a valid contract for the sale of goods where the parties otherwise intended to form a contract.
D: Yes, because the company relied on an implied promise to pay when it delivered the gold.

The explanation for the answer is:

A is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

B is correct. The parties failed to comply with the writing requirement of UCC § 2-201(1). Under that section, a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating a contract of sale that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

C is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, however, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

D is incorrect. The dispositive issue in this case is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

Question 1518 - Contracts - Defenses to Enforceability

The question was:

In a telephone conversation, a jewelry maker offered to buy 100 ounces of gold from a precious metals company if delivery could be made within 10 days. The jewelry maker did not specify a price, but the market price for 100 ounces of gold at the time of the conversation was approximately $65,000. Without otherwise responding, the company delivered the gold six days later.

In the meantime, the project for which the jewelry maker planned to use the gold was canceled. The jewelry maker therefore refused to accept delivery of the gold or to pay the $65,000 demanded by the company.

Is there an enforceable contract between the jewelry maker and the company?

A: No, because the parties did not agree on a price term.
B: No, because the parties did not put their agreement in writing.
C: Yes, because the absence of a price term does not defeat the formation of a valid contract for the sale of goods where the parties otherwise intended to form a contract.
D: Yes, because the company relied on an implied promise to pay when it delivered the gold.

The explanation for the answer is:

A is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

B is correct. The parties failed to comply with the writing requirement of UCC § 2-201(1). Under that section, a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating a contract of sale that is signed by the party against whom enforcement is sought. In this case, the absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer, but in this case, the jewelry maker did not accept the gold.

C is incorrect. Under UCC § 2-305, a contract may be enforceable in the absence of a price term so long as the parties otherwise intended to enter into a contract. In this case, however, the dispositive issue is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

D is incorrect. The dispositive issue in this case is whether the parties' oral agreement is enforceable. Under UCC § 2-201(1), a contract for the sale of goods for a price of $500 or more is not enforceable unless there is a writing indicating the contract that is signed by the party against whom enforcement is sought. The absence of such a writing signed by the jewelry maker renders the parties' oral agreement unenforceable. An exception to the writing requirement arises when a seller delivers goods that are accepted by the buyer. In this case, however, the jewelry maker did not accept the gold.

Question 1524 - Contracts - Consideration

The question was:

A man sent an email to a friend that stated: "Because you have been a great friend to me, I am going to give you a rare book that I own." The friend replied by an email that said: "Thanks for the rare book. I am going to give you my butterfly collection." The rare book was worth $10,000; the butterfly collection was worth $100. The friend delivered the butterfly collection to the man, but the man refused to deliver the book.

If the friend sues the man to recover the value of the book, how should the court rule?

A: For the man, because there was no bargained-for exchange to support his promise.
B: For the man, because the consideration given for his promise was inadequate.
C: For the friend, because she gave the butterfly collection to the man in reliance on receiving the book.
D: For the friend, because she conferred a benefit on the man by delivering the butterfly collection.

The explanation for the answer is:

A is correct. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

B is incorrect. Instead of giving inadequate consideration, the friend gave no consideration at all. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

C is incorrect. Although it is true that a promisee's reliance may provide the basis for the enforcement of a promise in the absence of consideration, that principle is inapplicable here. The man's promise failed to induce reliance by the friend of the type that the man reasonably might have expected when he promised to give her the rare book. In addition, this is not a case in which injustice could only be avoided by the enforcement of the man's promise. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

D is incorrect. The fact that a promisee confers a benefit on a promisor does not create an enforceable obligation on the part of the promisor. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

Question 1524 - Contracts - Consideration

The question was:

A man sent an email to a friend that stated: "Because you have been a great friend to me, I am going to give you a rare book that I own." The friend replied by an email that said: "Thanks for the rare book. I am going to give you my butterfly collection." The rare book was worth $10,000; the butterfly collection was worth $100. The friend delivered the butterfly collection to the man, but the man refused to deliver the book.

If the friend sues the man to recover the value of the book, how should the court rule?

A: For the man, because there was no bargained-for exchange to support his promise.
B: For the man, because the consideration given for his promise was inadequate.
C: For the friend, because she gave the butterfly collection to the man in reliance on receiving the book.
D: For the friend, because she conferred a benefit on the man by delivering the butterfly collection.

The explanation for the answer is:

A is correct. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

B is incorrect. Instead of giving inadequate consideration, the friend gave no consideration at all. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

C is incorrect. Although it is true that a promisee's reliance may provide the basis for the enforcement of a promise in the absence of consideration, that principle is inapplicable here. The man's promise failed to induce reliance by the friend of the type that the man reasonably might have expected when he promised to give her the rare book. In addition, this is not a case in which injustice could only be avoided by the enforcement of the man's promise. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

D is incorrect. The fact that a promisee confers a benefit on a promisor does not create an enforceable obligation on the part of the promisor. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

Question 1524 - Contracts - Consideration

The question was:

A man sent an email to a friend that stated: "Because you have been a great friend to me, I am going to give you a rare book that I own." The friend replied by an email that said: "Thanks for the rare book. I am going to give you my butterfly collection." The rare book was worth $10,000; the butterfly collection was worth $100. The friend delivered the butterfly collection to the man, but the man refused to deliver the book.

If the friend sues the man to recover the value of the book, how should the court rule?

A: For the man, because there was no bargained-for exchange to support his promise.
B: For the man, because the consideration given for his promise was inadequate.
C: For the friend, because she gave the butterfly collection to the man in reliance on receiving the book.
D: For the friend, because she conferred a benefit on the man by delivering the butterfly collection.

The explanation for the answer is:

A is correct. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

B is incorrect. Instead of giving inadequate consideration, the friend gave no consideration at all. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

C is incorrect. Although it is true that a promisee's reliance may provide the basis for the enforcement of a promise in the absence of consideration, that principle is inapplicable here. The man's promise failed to induce reliance by the friend of the type that the man reasonably might have expected when he promised to give her the rare book. In addition, this is not a case in which injustice could only be avoided by the enforcement of the man's promise. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

D is incorrect. The fact that a promisee confers a benefit on a promisor does not create an enforceable obligation on the part of the promisor. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

Question 1524 - Contracts - Consideration

The question was:

A man sent an email to a friend that stated: "Because you have been a great friend to me, I am going to give you a rare book that I own." The friend replied by an email that said: "Thanks for the rare book. I am going to give you my butterfly collection." The rare book was worth $10,000; the butterfly collection was worth $100. The friend delivered the butterfly collection to the man, but the man refused to deliver the book.

If the friend sues the man to recover the value of the book, how should the court rule?

A: For the man, because there was no bargained-for exchange to support his promise.
B: For the man, because the consideration given for his promise was inadequate.
C: For the friend, because she gave the butterfly collection to the man in reliance on receiving the book.
D: For the friend, because she conferred a benefit on the man by delivering the butterfly collection.

The explanation for the answer is:

A is correct. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

B is incorrect. Instead of giving inadequate consideration, the friend gave no consideration at all. To constitute consideration, a return promise must be bargained for. A return promise is bargained for when it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise to give the man her butterfly collection did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

C is incorrect. Although it is true that a promisee's reliance may provide the basis for the enforcement of a promise in the absence of consideration, that principle is inapplicable here. The man's promise failed to induce reliance by the friend of the type that the man reasonably might have expected when he promised to give her the rare book. In addition, this is not a case in which injustice could only be avoided by the enforcement of the man's promise. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

D is incorrect. The fact that a promisee confers a benefit on a promisor does not create an enforceable obligation on the part of the promisor. The dispositive issue here is whether the friend's promise to give her butterfly collection to the man constituted consideration for the man's promise. Because the man's promise to give the rare book to the friend did not seek a return promise or performance, the friend's promise did not constitute consideration for the man's promise. Accordingly, no contract arose between the parties, and the court should rule in favor of the man.

Question 1530 - Contracts - Defenses to Enforceability

The question was:

A farmer who wanted to sell her land received a letter from a developer that stated, "I will pay you $1,100 an acre for your land." The farmer's letter of reply stated, "I accept your offer." Unbeknownst to the farmer, the developer had intended to offer only $1,000 per acre but had mistakenly typed "$1,100." As both parties knew, comparable land in the vicinity had been selling at prices between $1,000 and $1,200 per acre.

Which of the following states the probable legal consequences of the correspondence between the parties?

A: There is no contract, because the parties attached materially different meanings to the price term.
B: There is no enforceable contract, because the developer is entitled to rescission due to a mutual mistake as to a basic assumption of the contract.
C: There is a contract formed at a price of $1,000 per acre.
D: There is a contract formed at a price of $1,100 per acre.

The explanation for the answer is:

A is incorrect. There is a general rule that contract formation may be defeated, under some circumstances, where parties attach materially different meanings to a material term. That rule, however, is inapplicable here where the critical issue relates to the developer's intent, as manifested by his conduct, and the impact of the farmer's lack of knowledge of the developer's mistake. An enforceable contract requires mutual assent as determined by the parties' objective, rather than subjective, manifestations of that assent. Here, given the parties' knowledge of the price of comparable land, the developer's offer created a reasonable understanding that the developer would purchase the land for $1,100 per acre. Moreover, because the farmer neither knew nor had reason to know that the developer intended to purchase the land for only $1,000 per acre, the developer will be bound to purchase it for $1,100 per acre. Accordingly, the parties' conduct gave rise to a contract formed at $1,100 per acre when the farmer accepted the developer's offer.

B is incorrect. While a mutual mistake may give rise to an action for rescission, there was no mutual mistake in this case. The critical issue here relates to the developer's intent as manifested by his conduct, and the impact of the farmer's lack of knowledge of the developer's mistake. An enforceable contract requires mutual assent as determined by the parties' objective, rather than subjective, manifestations of assent. Given the parties' knowledge of the price of comparable land, the developer's offer created a reasonable understanding that the developer would purchase the land for $1,100 per acre. Moreover, because the farmer neither knew nor had reason to know that the developer intended to purchase the land for only $1,000 per acre, the developer will be bound to purchase it for $1,100 per acre. Accordingly, the parties' conduct gave rise to a contract formed at $1,100 per acre when the farmer accepted the developer's offer.

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Question 1536 - Contracts - Parol Evidence and Interpretation

The question was:

A buyer and a seller entered into a written contract for the sale of a copy machine, using the same form contract that they had used a number of times in the past. The contract stated that payment was due 30 days after delivery and provided that the writing contained the complete and exclusive statement of the parties' agreement.

On several past occasions, the buyer had taken a 5% discount from the contract price when paying within 10 days of delivery, and the seller had not objected. On this occasion, when the buyer took a 5% discount for paying within 10 days, the seller objected because his profit margin on this particular machine was smaller than on his other machines.

If the seller sues the buyer for breach of contract, may the buyer introduce evidence that the 5% discount was a term of the agreement?

A: No, because the seller timely objected to the buyer's proposal for different terms.
B: No, because the writing contained the complete and exclusive agreement of the parties.
C: Yes, because a modification made in good faith does not require consideration.
D: Yes, because evidence of course of dealing is admissible even if the writing contains the complete and exclusive agreement of the parties.

The explanation for the answer is:

A is incorrect. Under UCC § 1-303(b), course of dealing is defined as "a sequence of conduct concerning previous transactions between the parties to a particular transaction . . . ." In this case, on several past occasions the buyer had taken a 5% discount without objection from the seller, thus establishing a course of dealing. Given the course of dealing between the parties, the seller's objection to the 5% discount, after the buyer had acted in accordance with the course of dealing, was ineffective. Under the UCC's parol evidence rule, course-of-dealing evidence is admissible to explain or supplement a final written agreement.

B is incorrect. Under UCC § 1-303(b), course of dealing is defined as "a sequence of conduct concerning previous transactions between the parties to a particular transaction . . . ." In this case, on several past occasions the buyer had taken a 5% discount without objection from the seller, thus establishing a course of dealing. Under the UCC's parol evidence rule, course-of-dealing evidence is admissible to explain or supplement a final written agreement even if the parties intended the agreement to be complete and exclusive. Accordingly, the course-of-dealing evidence is admissible.

C is incorrect. UCC Article 2 contains a general rule that a good- faith modification does not require consideration to be enforceable. However, the enforceability of a modification is not at issue here. The issue here is whether the UCC's parol evidence rule will preclude the admissibility of evidence of course of dealing. The facts indicate that in the parties' previous contracts the buyer had taken a 5% discount without objection from the seller. This conduct amounted to a course of dealing that is defined under UCC § 1-303(b) as "a sequence of conduct concerning previous transactions between the parties to a particular transaction . . . ." Because the UCC's parol evidence rule explicitly allows for the admission of course-of-dealing evidence to explain or supplement a final written agreement, the evidence is admissible.

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C: Yes, because a modification made in good faith does not require consideration.
D: Yes, because evidence of course of dealing is admissible even if the writing contains the complete and exclusive agreement of the parties.

The explanation for the answer is:

A is incorrect. Under UCC § 1-303(b), course of dealing is defined as "a sequence of conduct concerning previous transactions between the parties to a particular transaction . . . ." In this case, on several past occasions the buyer had taken a 5% discount without objection from the seller, thus establishing a course of dealing. Given the course of dealing between the parties, the seller's objection to the 5% discount, after the buyer had acted in accordance with the course of dealing, was ineffective. Under the UCC's parol evidence rule, course-of-dealing evidence is admissible to explain or supplement a final written agreement.

B is incorrect. Under UCC § 1-303(b), course of dealing is defined as "a sequence of conduct concerning previous transactions between the parties to a particular transaction . . . ." In this case, on several past occasions the buyer had taken a 5% discount without objection from the seller, thus establishing a course of dealing. Under the UCC's parol evidence rule, course-of-dealing evidence is admissible to explain or supplement a final written agreement even if the parties intended the agreement to be complete and exclusive. Accordingly, the course-of-dealing evidence is admissible.

C is incorrect. UCC Article 2 contains a general rule that a good- faith modification does not require consideration to be enforceable. However, the enforceability of a modification is not at issue here. The issue here is whether the UCC's parol evidence rule will preclude the admissibility of evidence of course of dealing. The facts indicate that in the parties' previous contracts the buyer had taken a 5% discount without objection from the seller. This conduct amounted to a course of dealing that is defined under UCC § 1-303(b) as "a sequence of conduct concerning previous transactions between the parties to a particular transaction . . . ." Because the UCC's parol evidence rule explicitly allows for the admission of course-of-dealing evidence to explain or supplement a final written agreement, the evidence is admissible.

D is correct. Under UCC § 1-303(b), course of dealing is defined as "a sequence of conduct concerning previous transactions between the parties to a particular transaction . . . ." In this case, on several past occasions the buyer had taken a 5% discount without objection from the seller, thus establishing a course of dealing. Under the UCC's parol evidence rule, course-of-dealing evidence is admissible to explain or supplement a final written agreement even if the parties intended the agreement to be complete and exclusive. Accordingly, the course-of-dealing evidence is admissible.

Question 1542 - Contracts - Parol Evidence and Interpretation

The question was:

A buyer purchased a new car from a dealer under a written contract that provided that the price of the car was $20,000 and that the buyer would receive a "trade-in allowance of $7,000 for the buyer's old car." The old car had recently been damaged in an accident. The contract contained a merger clause stating: "This writing constitutes the entire agreement of the parties, and there are no other understandings or agreements not set forth herein." When the buyer took possession of the new car, she delivered the old car to the dealer. At that time, the dealer claimed that the trade-in allowance included an assignment of the buyer's claim against her insurance company for damage to the old car. The buyer refused to provide the assignment.

The dealer sued the buyer to recover the insurance payment. The dealer has offered evidence that the parties agreed during their negotiations for the new car that the dealer was entitled to the insurance payment.

Should the court admit this evidence?

A: No, because the dealer's acceptance of the old car bars any additional claim by the dealer.
B: No, because the merger clause bars any evidence of the parties' prior discussions concerning the trade-in allowance.
C: Yes, because a merger clause does not bar evidence of fraud.
D: Yes, because the merger clause does not bar evidence to explain what the parties meant by "trade-in allowance."

The explanation for the answer is:

A is incorrect. A buyer's mere acceptance of goods does not waive its potential claims against a seller. The dispositive issue here is whether the parol evidence rule will allow the proffered evidence. Under that rule, a merger clause does not conclusively determine that an agreement is completely integrated. Moreover, a finding that an agreement is completely integrated does not necessarily bar the admission of extrinsic evidence. Although extrinsic evidence is inadmissible to supplement or contradict the express terms of a completely integrated agreement, such evidence is admissible to explain the terms of an agreement. In this case, evidence of the parties' discussions during their negotiations is admissible to aid in explaining whether they intended "trade-in allowance" to include an assignment of the buyer's claim against her insurance company.

B is incorrect. Under the UCC's parol evidence rule, a merger clause does not conclusively determine that an agreement is completely integrated. Moreover, a finding that an agreement is completely integrated does not necessarily bar the admission of extrinsic evidence. Although extrinsic evidence is inadmissible to supplement or contradict the express terms of a completely integrated agreement, such evidence is admissible to explain the terms of an agreement. In this case, evidence of the parties' discussions during their negotiations is admissible to aid in explaining whether they intended "trade-in allowance" to include an assignment of the buyer's claim against her insurance company.

C is incorrect. The UCC's parol evidence rule allows the introduction of extrinsic evidence to establish fraud even if an agreement is completely integrated. Because there is no indication of fraud in this case, the fraud exception is irrelevant. The dispositive issue here is whether the parol evidence rule will allow the proffered evidence. Under that rule, a merger clause does not conclusively determine that an agreement is completely integrated. Moreover, a finding that an agreement is completely integrated does not necessarily bar the admission of extrinsic evidence. Although extrinsic evidence is inadmissible to supplement or contradict the express terms of a completely integrated agreement, such evidence is admissible to explain the terms of an agreement. In this case, evidence of the parties' discussions during their negotiations is admissible to aid in explaining whether they intended "trade-in allowance" to include an assignment of the buyer's claim against her insurance company.

D is correct. Under the UCC's parol evidence rule, a merger clause does not conclusively establish that an agreement is completely integrated. Moreover, a finding that an agreement is completely integrated does not necessarily bar the admission of extrinsic evidence. Although extrinsic evidence is inadmissible to supplement

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The dealer sued the buyer to recover the insurance payment. The dealer has offered evidence that the parties agreed during their negotiations for the new car that the dealer was entitled to the insurance payment.

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Question 1548 - Contracts - Conditions

The question was:

A buyer agreed in writing to purchase a car from a seller for $15,000, with the price to be paid on a specified date at the seller's showroom. The contract provided, and both parties intended, that time was of the essence. Before the specified date, however, the seller sold the car to a third party for $20,000. On the specified date, the buyer arrived at the showroom but brought only $10,000. When the seller did not appear at the showroom, the buyer called the seller and asked whether the seller would accept $10,000 for the car immediately and the remaining $5,000 in six weeks. The seller told the buyer that he had sold the car to the third party.

If the buyer sues the seller for breach of contract, will the buyer be likely to prevail?

A: No, because the contractual obligations were discharged on the ground of impossibility.
B: No, because the buyer was not prepared to tender her performance on the specified date.
C: Yes, because the buyer's breach was not material.
D: Yes, because the seller anticipatorily repudiated the contract when he sold the car to the third party.

The explanation for the answer is:

A is incorrect. While the seller's sale of the car to a third party rendered it impossible for the seller to sell the car to the buyer, such conduct does not meet the standard to establish impossibility as a legal defense for nonperformance. Similarly, the buyer's tender of less than the full payment does not, without more, establish a legal basis for impossibility. The dispositive issue here relates to the effect of neither party tendering performance on the date specified in the contract. Under UCC Article 2, a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

B is correct. Even though the facts demonstrate that the seller repudiated the contract by selling the car to a third party, the seller did not end up breaching the contract. Under UCC Article 2, a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

C is incorrect. UCC Article 2 adopts the perfect tender rule, rather than the material breach rule, as the generally applicable standard. The dispositive issue here relates to the effect of neither party tendering performance on the date specified in the contract. Under Article 2, a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

D is incorrect. While the seller's sale of the car to a third party would seem to constitute an anticipatory repudiation, as it turned out, neither party was prepared to tender performance at the time or in the manner specified in the contract. UCC Article 2 provides that a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

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If the buyer sues the seller for breach of contract, will the buyer be likely to prevail?

A: No, because the contractual obligations were discharged on the ground of impossibility.
B: No, because the buyer was not prepared to tender her performance on the specified date.
C: Yes, because the buyer's breach was not material.
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If the buyer sues the seller for breach of contract, will the buyer be likely to prevail?

A: No, because the contractual obligations were discharged on the ground of impossibility.
B: No, because the buyer was not prepared to tender her performance on the specified date.
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D: Yes, because the seller anticipatorily repudiated the contract when he sold the car to the third party.

The explanation for the answer is:

A is incorrect. While the seller's sale of the car to a third party rendered it impossible for the seller to sell the car to the buyer, such conduct does not meet the standard to establish impossibility as a legal defense for nonperformance. Similarly, the buyer's tender of less than the full payment does not, without more, establish a legal basis for impossibility. The dispositive issue here relates to the effect of neither party tendering performance on the date specified in the contract. Under UCC Article 2, a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

B is correct. Even though the facts demonstrate that the seller repudiated the contract by selling the car to a third party, the seller did not end up breaching the contract. Under UCC Article 2, a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

C is incorrect. UCC Article 2 adopts the perfect tender rule, rather than the material breach rule, as the generally applicable standard. The dispositive issue here relates to the effect of neither party tendering performance on the date specified in the contract. Under Article 2, a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

D is incorrect. While the seller's sale of the car to a third party would seem to constitute an anticipatory repudiation, as it turned out, neither party was prepared to tender performance at the time or in the manner specified in the contract. UCC Article 2 provides that a seller's tender of delivery of goods and a buyer's tender of payment are concurrent conditions of exchange. Therefore, the buyer and the seller were obligated to simultaneously tender their respective performances. Because neither party was prepared to tender performance at the time or in the manner stipulated in the contract, each party's performance obligation was discharged. Accordingly, neither the buyer nor the seller has a claim for breach of contract.

Question 1557 - Contracts - Remedies

The question was:

A mill and a bakery entered into a written contract that obligated the mill to deliver to the bakery 1,000 pounds of flour every Monday for 26 weeks at a specified price per pound. The mill delivered the proper quantity of flour in a timely manner for the first 15 weeks. However, the 16th delivery was tendered on a Tuesday, and amounted to only 800 pounds. The mill told the bakery that the 200-pound shortage would be made up on the delivery due the following Monday. The late delivery and the 200-pound shortage will not significantly disrupt the bakery's operations.

How may the bakery legally respond to the nonconforming tender?

A: Accept the 800 pounds tendered, but notify the mill that the bakery will cancel the contract if the exact amount is not delivered on the following Monday.
B: Accept the 800 pounds tendered, but notify the mill that the bakery will deduct from the price any damages for losses due to the nonconforming tender.
C: Reject the 800 pounds tendered, but notify the mill that the bakery will accept delivery the following Monday if it is conforming.
D: Reject the 800 pounds tendered, and notify the mill that the bakery is canceling the contract.

The explanation for the answer is:

A is incorrect. Because the contract authorizes the delivery of flour in separate lots to be separately accepted, the parties entered into an installment contract. UCC § 2-612 adopts a "substantial impairment" standard for determining whether a buyer can reject a particular installment or cancel the entire contract. A buyer can reject an installment if a nonconformity substantially impairs that installment and the nonconformity cannot be cured. A buyer can cancel the contract only when the nonconformity with respect to one or more installments substantially impairs the value of the whole contract. Here, the mill's tender of less than the contracted-for quantity did not amount to a nonconformity that substantially impaired the value of either the 16th installment or the whole contract. The mill's proposed cure, the delivery of the remaining 200 pounds on the following Monday, is sufficient given that the late delivery and the shortage will not significantly disrupt the bakery's business. Accordingly, not only must the bakery accept the delivery of the tendered 800 pounds of flour, it also must accept the remaining 200 pounds that the mill proposes to deliver on the following Monday.

B is correct. Because the contract authorizes the delivery of flour in separate lots to be separately accepted, the parties entered into an installment contract. UCC § 2-612 adopts a "substantial impairment" standard for determining whether a buyer can reject a particular installment or cancel the entire contract. A buyer can reject an installment if a nonconformity substantially impairs that installment and the nonconformity cannot be cured. Here the mill's tender of less than the contracted-for quantity did not amount to a nonconformity that substantially impaired either the value of the 16th installment or the whole contract. The mill's proposed cure, the delivery of the remaining 200 pounds on the following Monday, is sufficient given that the late delivery and the shortage will not significantly disrupt the bakery's business. Accordingly, the bakery must accept the delivery of the tendered 800 pounds of flour but may deduct from the price any damages for losses resulting from the late delivery.

C is incorrect. Because the contract authorizes the delivery of flour in separate lots to be separately accepted, the parties entered into an installment contract. UCC § 2-612 adopts a "substantial impairment" standard for determining whether a buyer can reject a particular installment or cancel the entire contract. A buyer can reject an installment if a nonconformity substantially impairs that installment and the nonconformity cannot be cured. Here the mill's tender of less than the contracted-for quantity did not amount to a nonconformity that substantially impaired either the value of the 16th installment or the whole contract. The mill's proposed cure, the delivery of the remaining 200 pounds on the following Monday, is sufficient given that the late delivery and the shortage will not significantly disrupt the bakery's business. Accordingly, not only must the bakery accept the delivery of the tendered 800 pounds of flour, it also must accept the remaining 200 pounds that the mill proposes to deliver on the following Monday.

D is incorrect. Because the contract authorizes the delivery of flour in separate lots to be separately accepted,

Question 1557 - Contracts - Remedies

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Question 1557 - Contracts - Remedies

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C is incorrect. Because the contract authorizes the delivery of flour in separate lots to be separately accepted, the parties entered into an installment contract. UCC § 2-612 adopts a "substantial impairment" standard for determining whether a buyer can reject a particular installment or cancel the entire contract. A buyer can reject an installment if a nonconformity substantially impairs that installment and the nonconformity cannot be cured. Here the mill's tender of less than the contracted-for quantity did not amount to a nonconformity that substantially impaired either the value of the 16th installment or the whole contract. The mill's proposed cure, the delivery of the remaining 200 pounds on the following Monday, is sufficient given that the late delivery and the shortage will not significantly disrupt the bakery's business. Accordingly, not only must the bakery accept the delivery of the tendered 800 pounds of flour, it also must accept the remaining 200 pounds that the mill proposes to deliver on the following Monday.

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Question 1561 - Contracts - Conditions

The question was:

A buyer agreed to purchase a seller's house for $250,000 "on condition that the buyer obtain mortgage financing within 30 days." Thirty days later, the buyer told the seller that the buyer would not purchase the house because the buyer had not obtained mortgage financing. The seller asked the buyer where the buyer had tried to obtain mortgage financing, and the buyer responded, "I was busy and didn't have time to seek mortgage financing."

If the seller sues the buyer for breach of contract, is the court likely to find the buyer in breach?

A: No, because the buyer's performance was subject to a condition that did not occur.
B: No, because the promise was illusory since the buyer was not obligated to do anything.
C: Yes, because a promise was implied that the buyer had to make reasonable efforts to obtain mortgage financing.
D: Yes, because a reasonable interpretation of the agreement is that the buyer had an obligation to purchase the house for $250,000 in 30 days.

The explanation for the answer is:

A is incorrect. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

B is incorrect. The duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Accordingly, the buyer's promise to secure financing was not illusory. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. In this case, the non-occurrence of the condition to the buyer's obligation to perform was excused, because the buyer failed to make reasonable efforts to secure mortgage financing. Therefore, the court is likely to find that the buyer is in breach.

C is correct. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

D is incorrect. The contract explicitly stated that the buyer's obligation to perform was expressly conditioned on the buyer obtaining mortgage financing. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

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The explanation for the answer is:

A is incorrect. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

B is incorrect. The duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Accordingly, the buyer's promise to secure financing was not illusory. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. In this case, the non-occurrence of the condition to the buyer's obligation to perform was excused, because the buyer failed to make reasonable efforts to secure mortgage financing. Therefore, the court is likely to find that the buyer is in breach.

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The explanation for the answer is:

A is incorrect. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

B is incorrect. The duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Accordingly, the buyer's promise to secure financing was not illusory. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. In this case, the non-occurrence of the condition to the buyer's obligation to perform was excused, because the buyer failed to make reasonable efforts to secure mortgage financing. Therefore, the court is likely to find that the buyer is in breach.

C is correct. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

D is incorrect. The contract explicitly stated that the buyer's obligation to perform was expressly conditioned on the buyer obtaining mortgage financing. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

Question 1561 - Contracts - Conditions

The question was:

A buyer agreed to purchase a seller's house for $250,000 "on condition that the buyer obtain mortgage financing within 30 days." Thirty days later, the buyer told the seller that the buyer would not purchase the house because the buyer had not obtained mortgage financing. The seller asked the buyer where the buyer had tried to obtain mortgage financing, and the buyer responded, "I was busy and didn't have time to seek mortgage financing."

If the seller sues the buyer for breach of contract, is the court likely to find the buyer in breach?

A: No, because the buyer's performance was subject to a condition that did not occur.
B: No, because the promise was illusory since the buyer was not obligated to do anything.
C: Yes, because a promise was implied that the buyer had to make reasonable efforts to obtain mortgage financing.
D: Yes, because a reasonable interpretation of the agreement is that the buyer had an obligation to purchase the house for $250,000 in 30 days.

The explanation for the answer is:

A is incorrect. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

B is incorrect. The duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Accordingly, the buyer's promise to secure financing was not illusory. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. In this case, the non-occurrence of the condition to the buyer's obligation to perform was excused, because the buyer failed to make reasonable efforts to secure mortgage financing. Therefore, the court is likely to find that the buyer is in breach.

C is correct. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

D is incorrect. The contract explicitly stated that the buyer's obligation to perform was expressly conditioned on the buyer obtaining mortgage financing. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

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If the seller sues the buyer for breach of contract, is the court likely to find the buyer in breach?

A: No, because the buyer's performance was subject to a condition that did not occur.
B: No, because the promise was illusory since the buyer was not obligated to do anything.
C: Yes, because a promise was implied that the buyer had to make reasonable efforts to obtain mortgage financing.
D: Yes, because a reasonable interpretation of the agreement is that the buyer had an obligation to purchase the house for $250,000 in 30 days.

The explanation for the answer is:

A is incorrect. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

B is incorrect. The duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Accordingly, the buyer's promise to secure financing was not illusory. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. In this case, the non-occurrence of the condition to the buyer's obligation to perform was excused, because the buyer failed to make reasonable efforts to secure mortgage financing. Therefore, the court is likely to find that the buyer is in breach.

C is correct. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

D is incorrect. The contract explicitly stated that the buyer's obligation to perform was expressly conditioned on the buyer obtaining mortgage financing. A performance that is subject to an express condition cannot become due unless the condition occurs or its non-occurrence is excused. However, the duty of good faith, which is implied in every contract, imposed an obligation on the buyer to make reasonable efforts to secure mortgage financing. Because the buyer made no such efforts, the non-occurrence of the condition to the buyer's obligation to purchase the house--the buyer's securing financing--was excused. Accordingly, the court is likely to find that the buyer is in breach.

Question 1566 - Contracts - Discharge of Contractual Duties

The question was:

A producer contracted to pay an inexperienced performer a specified salary to act in a small role in a play the producer was taking on a six-week road tour. The contract was for the duration of the tour. On the third day of the tour, the performer was hospitalized with a stomach disorder. The producer replaced her in the cast with an experienced actor. One week later, the performer recovered, but the producer refused to allow her to resume her original role for the remainder of the tour.

In an action by the performer against the producer for breach of contract, which of the following, if proved, would be the producer's best defense?

A: The actor, by general acclaim, was much better in the role than the performer had been.
B: The actor was the only replacement the producer could find, and the actor would accept nothing less than a contract for the remainder of the six-week tour.
C: The producer offered to employ the performer as the actor's understudy for the remainder of the six-week tour at the performer's original salary, but the performer declined.
D: Both the producer and the performer knew that a year earlier the performer had been incapacitated for a short period of time by the same kind of stomach disorder.

The explanation for the answer is:

A is incorrect. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. The relative quality of the actor's performance is not a circumstance that would give the producer the right to cancel the performer's contract.

B is correct. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel the contract include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. The unwillingness of the actor, the only replacement available, to take a contract for less than the remainder of the six-week tour and the uncertainty surrounding when the performer might return to work would have discharged the producer's performance obligations and justified his cancellation of the contract with the performer.

C is incorrect. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. Because the producer had the right to cancel the contract, his action in offering the performer a job as understudy is irrelevant.

D is incorrect. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour.

Question 1566 - Contracts - Discharge of Contractual Duties

A history of having been ill for a short time would not justify the producer's cancellation of the contract. In fact, the short period of time that the performer had been incapacitated a year earlier from the same illness would weaken the producer's defense.

Question 1566 - Contracts - Discharge of Contractual Duties

The question was:

A producer contracted to pay an inexperienced performer a specified salary to act in a small role in a play the producer was taking on a six-week road tour. The contract was for the duration of the tour. On the third day of the tour, the performer was hospitalized with a stomach disorder. The producer replaced her in the cast with an experienced actor. One week later, the performer recovered, but the producer refused to allow her to resume her original role for the remainder of the tour.

In an action by the performer against the producer for breach of contract, which of the following, if proved, would be the producer's best defense?

A: The actor, by general acclaim, was much better in the role than the performer had been.
B: The actor was the only replacement the producer could find, and the actor would accept nothing less than a contract for the remainder of the six-week tour.
C: The producer offered to employ the performer as the actor's understudy for the remainder of the six-week tour at the performer's original salary, but the performer declined.
D: Both the producer and the performer knew that a year earlier the performer had been incapacitated for a short period of time by the same kind of stomach disorder.

The explanation for the answer is:

A is incorrect. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. The relative quality of the actor's performance is not a circumstance that would give the producer the right to cancel the performer's contract.

B is correct. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel the contract include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. The unwillingness of the actor, the only replacement available, to take a contract for less than the remainder of the six-week tour and the uncertainty surrounding when the performer might return to work would have discharged the producer's performance obligations and justified his cancellation of the contract with the performer.

C is incorrect. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. Because the producer had the right to cancel the contract, his action in offering the performer a job as understudy is irrelevant.

D is incorrect. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour.

Question 1566 - Contracts - Discharge of Contractual Duties

A history of having been ill for a short time would not justify the producer's cancellation of the contract. In fact, the short period of time that the performer had been incapacitated a year earlier from the same illness would weaken the producer's defense.

Question 1566 - Contracts - Discharge of Contractual Duties

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In an action by the performer against the producer for breach of contract, which of the following, if proved, would be the producer's best defense?

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B: The actor was the only replacement the producer could find, and the actor would accept nothing less than a contract for the remainder of the six-week tour.
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Question 1566 - Contracts - Discharge of Contractual Duties

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Question 1566 - Contracts - Discharge of Contractual Duties

A history of having been ill for a short time would not justify the producer's cancellation of the contract. In fact, the short period of time that the performer had been incapacitated a year earlier from the same illness would weaken the producer's defense.

Question 1566 - Contracts - Discharge of Contractual Duties

The question was:

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In an action by the performer against the producer for breach of contract, which of the following, if proved, would be the producer's best defense?

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The explanation for the answer is:

A is incorrect. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. The relative quality of the actor's performance is not a circumstance that would give the producer the right to cancel the performer's contract.

B is correct. After the performer became ill, the temporary impracticability doctrine excused the performer's contractual obligation and also gave the producer the right to suspend his performance obligation during the period that the performer's illness prevented her from acting. The critical issue here is whether the producer also had the right to cancel the contract. Circumstances that would give the producer the right to cancel the contract include the degree of uncertainty relating to the nature and duration of the performer's illness and the extent to which a delay in making substitute arrangements would have prevented the producer from continuing the tour. The unwillingness of the actor, the only replacement available, to take a contract for less than the remainder of the six-week tour and the uncertainty surrounding when the performer might return to work would have discharged the producer's performance obligations and justified his cancellation of the contract with the performer.

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Question 1566 - Contracts - Discharge of Contractual Duties

A history of having been ill for a short time would not justify the producer's cancellation of the contract. In fact, the short period of time that the performer had been incapacitated a year earlier from the same illness would weaken the producer's defense.

Question 1571 - Contracts - Remedies

The question was:

An art collector paid a gallery $1,000 to purchase a framed drawing from the gallery's collection. The price included shipping by the gallery to the collector's home. The gallery's owner used inadequate materials to wrap the drawing. The frame broke during shipment and scratched the drawing, reducing the drawing's value to $300. The collector complained to the gallery owner, who told the collector to take the drawing to a specific art restorer to have the drawing repaired. The collector paid the restorer $400 to repair the drawing, but not all of the scratches could be fixed. The drawing, after being repaired, was worth $700. The gallery owner subsequently refused to pay either for the repairs or for the damage to the drawing.

In an action by the collector against the gallery owner for damages, which of the following awards is most likely?

A: Nothing.
B: $300.
C: $400.
D: $700.

The explanation for the answer is:

A is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector nothing would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

B is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $300 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

C is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $400 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

D is correct. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, a further adjustment is required. Here the repairs failed to

Question 1571 - Contracts - Remedies

restore the drawing to its value as warranted. Therefore, the collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

Question 1571 - Contracts - Remedies

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In an action by the collector against the gallery owner for damages, which of the following awards is most likely?

A: Nothing.
B: $300.
C: $400.
D: $700.

The explanation for the answer is:

A is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector nothing would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

B is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $300 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

C is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $400 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

D is correct. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, a further adjustment is required. Here the repairs failed to

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restore the drawing to its value as warranted. Therefore, the collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

Question 1571 - Contracts - Remedies

The question was:

An art collector paid a gallery $1,000 to purchase a framed drawing from the gallery's collection. The price included shipping by the gallery to the collector's home. The gallery's owner used inadequate materials to wrap the drawing. The frame broke during shipment and scratched the drawing, reducing the drawing's value to $300. The collector complained to the gallery owner, who told the collector to take the drawing to a specific art restorer to have the drawing repaired. The collector paid the restorer $400 to repair the drawing, but not all of the scratches could be fixed. The drawing, after being repaired, was worth $700. The gallery owner subsequently refused to pay either for the repairs or for the damage to the drawing.

In an action by the collector against the gallery owner for damages, which of the following awards is most likely?

A: Nothing.
B: $300.
C: $400.
D: $700.

The explanation for the answer is:

A is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector nothing would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

B is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $300 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

C is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $400 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

D is correct. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, a further adjustment is required. Here the repairs failed to

Question 1571 - Contracts - Remedies

restore the drawing to its value as warranted. Therefore, the collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

Question 1571 - Contracts - Remedies

The question was:

An art collector paid a gallery $1,000 to purchase a framed drawing from the gallery's collection. The price included shipping by the gallery to the collector's home. The gallery's owner used inadequate materials to wrap the drawing. The frame broke during shipment and scratched the drawing, reducing the drawing's value to $300. The collector complained to the gallery owner, who told the collector to take the drawing to a specific art restorer to have the drawing repaired. The collector paid the restorer $400 to repair the drawing, but not all of the scratches could be fixed. The drawing, after being repaired, was worth $700. The gallery owner subsequently refused to pay either for the repairs or for the damage to the drawing.

In an action by the collector against the gallery owner for damages, which of the following awards is most likely?

A: Nothing.
B: $300.
C: $400.
D: $700.

The explanation for the answer is:

A is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector nothing would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

B is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $300 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

C is incorrect. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Awarding the collector $400 would violate the expectation damages principle. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, an adjustment is required. The collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

D is correct. The gallery's use of inadequate materials to wrap the drawing constituted a breach of warranty. Therefore, the collector is entitled to be placed in the position he would have been in but for the gallery's breach. Under UCC § 2-714(2), the generally applicable standard for measuring the collector's resulting damages would be the difference between the value of the drawing as accepted and the value of the drawing if it had been as warranted. Repair costs often are used to determine this difference in value, but when repairs fail to restore the goods to their value as warranted, a further adjustment is required. Here the repairs failed to

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restore the drawing to its value as warranted. Therefore, the collector is entitled to recover the repair costs ($400) plus the difference between the value of the drawing if it had been as warranted and its value after the repairs ($1,000 - $700 = $300). Accordingly, the collector should recover $700.

Question 1578 - Contracts - Remedies

The question was:

A businesswoman sold her business to a company for $25 million in cash pursuant to a written contract that was signed by both parties. Under the contract, the company agreed to employ the businesswoman for two years as a vice president at a salary of $150,000 per year. After six months, the company, without cause, fired the businesswoman.

Which of the following statements best describes the businesswoman's rights after the discharge?

A: She can recover the promised salary for the remainder of the two years if she remains ready to work.
B: She can recover the promised salary for the remainder of the two years if no comparable job is reasonably available and she does not take another job.
C: She can rescind the contract of sale and get back her business upon tender to the company of $25 million.
D: She can get specific performance of her right to serve as a vice president of the company for two years.

The explanation for the answer is:

A is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. However, a wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. In this case, to avoid a reduction in her damages, the businesswoman is required to do more than remain ready to work. Her recovery will be reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

B is correct. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. A wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. However, if no comparable employment is reasonably available and the businesswoman does not take another job, the businesswoman is entitled to recover the promised salary for the remainder of the two years.

C is incorrect. The company's unjustified termination of the businesswoman's employment constituted a material breach of contract. Nevertheless, a court would likely employ the concept of divisibility to preclude the businesswoman from rescinding the contract of sale. As stated in Restatement (Second) of Contracts § 240, a contract is divisible where "the performances to be exchanged under an exchange of promises can be apportioned into corresponding pairs of part performances so that the parts of each pair are properly regarded as agreed equivalents." Here, the agreed equivalents would be the sale of the business and the corresponding $25 million purchase price, and the businesswoman's promise to work for the company and the corresponding yearly salary of $150,000. Applying this concept, the businesswoman would be able to recover damages for the company's breach of its promise to employ her, but she would not be permitted to rescind the contract of sale.

D is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. The general rule is that employers cannot obtain specific performance requiring an employee who has breached a personal services contract to work for the employer. It is also true generally that courts refuse to grant specific performance of an employment contract against a breaching employer. Consequently, the businesswoman's recovery will consist of the unpaid salary under the contract, reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

Question 1578 - Contracts - Remedies

The question was:

A businesswoman sold her business to a company for $25 million in cash pursuant to a written contract that was signed by both parties. Under the contract, the company agreed to employ the businesswoman for two years as a vice president at a salary of $150,000 per year. After six months, the company, without cause, fired the businesswoman.

Which of the following statements best describes the businesswoman's rights after the discharge?

A: She can recover the promised salary for the remainder of the two years if she remains ready to work.
B: She can recover the promised salary for the remainder of the two years if no comparable job is reasonably available and she does not take another job.
C: She can rescind the contract of sale and get back her business upon tender to the company of $25 million.
D: She can get specific performance of her right to serve as a vice president of the company for two years.

The explanation for the answer is:

A is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. However, a wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. In this case, to avoid a reduction in her damages, the businesswoman is required to do more than remain ready to work. Her recovery will be reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

B is correct. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. A wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. However, if no comparable employment is reasonably available and the businesswoman does not take another job, the businesswoman is entitled to recover the promised salary for the remainder of the two years.

C is incorrect. The company's unjustified termination of the businesswoman's employment constituted a material breach of contract. Nevertheless, a court would likely employ the concept of divisibility to preclude the businesswoman from rescinding the contract of sale. As stated in Restatement (Second) of Contracts § 240, a contract is divisible where "the performances to be exchanged under an exchange of promises can be apportioned into corresponding pairs of part performances so that the parts of each pair are properly regarded as agreed equivalents." Here, the agreed equivalents would be the sale of the business and the corresponding $25 million purchase price, and the businesswoman's promise to work for the company and the corresponding yearly salary of $150,000. Applying this concept, the businesswoman would be able to recover damages for the company's breach of its promise to employ her, but she would not be permitted to rescind the contract of sale.

D is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. The general rule is that employers cannot obtain specific performance requiring an employee who has breached a personal services contract to work for the employer. It is also true generally that courts refuse to grant specific performance of an employment contract against a breaching employer. Consequently, the businesswoman's recovery will consist of the unpaid salary under the contract, reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

Question 1578 - Contracts - Remedies

The question was:

A businesswoman sold her business to a company for $25 million in cash pursuant to a written contract that was signed by both parties. Under the contract, the company agreed to employ the businesswoman for two years as a vice president at a salary of $150,000 per year. After six months, the company, without cause, fired the businesswoman.

Which of the following statements best describes the businesswoman's rights after the discharge?

A: She can recover the promised salary for the remainder of the two years if she remains ready to work.
B: She can recover the promised salary for the remainder of the two years if no comparable job is reasonably available and she does not take another job.
C: She can rescind the contract of sale and get back her business upon tender to the company of $25 million.
D: She can get specific performance of her right to serve as a vice president of the company for two years.

The explanation for the answer is:

A is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. However, a wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. In this case, to avoid a reduction in her damages, the businesswoman is required to do more than remain ready to work. Her recovery will be reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

B is correct. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. A wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. However, if no comparable employment is reasonably available and the businesswoman does not take another job, the businesswoman is entitled to recover the promised salary for the remainder of the two years.

C is incorrect. The company's unjustified termination of the businesswoman's employment constituted a material breach of contract. Nevertheless, a court would likely employ the concept of divisibility to preclude the businesswoman from rescinding the contract of sale. As stated in Restatement (Second) of Contracts § 240, a contract is divisible where "the performances to be exchanged under an exchange of promises can be apportioned into corresponding pairs of part performances so that the parts of each pair are properly regarded as agreed equivalents." Here, the agreed equivalents would be the sale of the business and the corresponding $25 million purchase price, and the businesswoman's promise to work for the company and the corresponding yearly salary of $150,000. Applying this concept, the businesswoman would be able to recover damages for the company's breach of its promise to employ her, but she would not be permitted to rescind the contract of sale.

D is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. The general rule is that employers cannot obtain specific performance requiring an employee who has breached a personal services contract to work for the employer. It is also true generally that courts refuse to grant specific performance of an employment contract against a breaching employer. Consequently, the businesswoman's recovery will consist of the unpaid salary under the contract, reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

Question 1578 - Contracts - Remedies

The question was:

A businesswoman sold her business to a company for $25 million in cash pursuant to a written contract that was signed by both parties. Under the contract, the company agreed to employ the businesswoman for two years as a vice president at a salary of $150,000 per year. After six months, the company, without cause, fired the businesswoman.

Which of the following statements best describes the businesswoman's rights after the discharge?

A: She can recover the promised salary for the remainder of the two years if she remains ready to work.
B: She can recover the promised salary for the remainder of the two years if no comparable job is reasonably available and she does not take another job.
C: She can rescind the contract of sale and get back her business upon tender to the company of $25 million.
D: She can get specific performance of her right to serve as a vice president of the company for two years.

The explanation for the answer is:

A is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. However, a wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. In this case, to avoid a reduction in her damages, the businesswoman is required to do more than remain ready to work. Her recovery will be reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

B is correct. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. A wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. However, if no comparable employment is reasonably available and the businesswoman does not take another job, the businesswoman is entitled to recover the promised salary for the remainder of the two years.

C is incorrect. The company's unjustified termination of the businesswoman's employment constituted a material breach of contract. Nevertheless, a court would likely employ the concept of divisibility to preclude the businesswoman from rescinding the contract of sale. As stated in Restatement (Second) of Contracts § 240, a contract is divisible where "the performances to be exchanged under an exchange of promises can be apportioned into corresponding pairs of part performances so that the parts of each pair are properly regarded as agreed equivalents." Here, the agreed equivalents would be the sale of the business and the corresponding $25 million purchase price, and the businesswoman's promise to work for the company and the corresponding yearly salary of $150,000. Applying this concept, the businesswoman would be able to recover damages for the company's breach of its promise to employ her, but she would not be permitted to rescind the contract of sale.

D is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. The general rule is that employers cannot obtain specific performance requiring an employee who has breached a personal services contract to work for the employer. It is also true generally that courts refuse to grant specific performance of an employment contract against a breaching employer. Consequently, the businesswoman's recovery will consist of the unpaid salary under the contract, reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

Question 1578 - Contracts - Remedies

The question was:

A businesswoman sold her business to a company for $25 million in cash pursuant to a written contract that was signed by both parties. Under the contract, the company agreed to employ the businesswoman for two years as a vice president at a salary of $150,000 per year. After six months, the company, without cause, fired the businesswoman.

Which of the following statements best describes the businesswoman's rights after the discharge?

A: She can recover the promised salary for the remainder of the two years if she remains ready to work.
B: She can recover the promised salary for the remainder of the two years if no comparable job is reasonably available and she does not take another job.
C: She can rescind the contract of sale and get back her business upon tender to the company of $25 million.
D: She can get specific performance of her right to serve as a vice president of the company for two years.

The explanation for the answer is:

A is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. However, a wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. In this case, to avoid a reduction in her damages, the businesswoman is required to do more than remain ready to work. Her recovery will be reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

B is correct. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. A wrongfully discharged employee is expected to mitigate damages by making reasonable efforts to seek comparable employment. However, if no comparable employment is reasonably available and the businesswoman does not take another job, the businesswoman is entitled to recover the promised salary for the remainder of the two years.

C is incorrect. The company's unjustified termination of the businesswoman's employment constituted a material breach of contract. Nevertheless, a court would likely employ the concept of divisibility to preclude the businesswoman from rescinding the contract of sale. As stated in Restatement (Second) of Contracts § 240, a contract is divisible where "the performances to be exchanged under an exchange of promises can be apportioned into corresponding pairs of part performances so that the parts of each pair are properly regarded as agreed equivalents." Here, the agreed equivalents would be the sale of the business and the corresponding $25 million purchase price, and the businesswoman's promise to work for the company and the corresponding yearly salary of $150,000. Applying this concept, the businesswoman would be able to recover damages for the company's breach of its promise to employ her, but she would not be permitted to rescind the contract of sale.

D is incorrect. The company's unjustified termination of the businesswoman's employment constituted a breach of contract entitling the businesswoman to recover monetary damages. The general rule is that employers cannot obtain specific performance requiring an employee who has breached a personal services contract to work for the employer. It is also true generally that courts refuse to grant specific performance of an employment contract against a breaching employer. Consequently, the businesswoman's recovery will consist of the unpaid salary under the contract, reduced by the compensation she earned or could have earned if she had made reasonable efforts to secure comparable employment.

Question 1581 - Contracts - Remedies

The question was:

On June 15, a teacher accepted a contract for a one-year position teaching math at a public high school at a salary of $50,000, starting in September. On June 22, the school informed the teacher that, due to a change in its planned math curriculum, it no longer needed a full-time math teacher. The school offered instead to employ the teacher as a part-time academic counselor at a salary of $20,000, starting in September. The teacher refused the school's offer. On June 29, the teacher was offered a one-year position to teach math at a nearby private academy for $47,000, starting in September. The teacher, however, decided to spend the year completing work on a graduate degree in mathematics and declined the academy's offer.

If the teacher sues the school for breach of contract, what is her most likely recovery?

A: $50,000, the full contract amount.
B: $30,000, the full contract amount less the amount the teacher could have earned in the counselor position offered by the school.
C: $3,000, the full contract amount less the amount the teacher could have earned in the teaching position at the academy.
D: Nothing, because the school notified the teacher of its decision before the teacher had acted in substantial reliance on the contract.

The explanation for the answer is:

A is incorrect. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

B is incorrect. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Because it is unlikely that a court would consider the counseling position to be comparable employment, the teacher's damages should not be reduced by the $20,000 she would have earned if she had accepted that position. On the other hand, her damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

C is correct. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

D is incorrect. The teacher and the school entered into an enforceable contract, and the school's unjustified nonperformance constituted a breach of contract. The teacher is therefore entitled to recover damages that will place her in the position she would have been in but for the breach and need not show reliance in order to recover. However, while she is entitled to damages from the breach, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully

Question 1581 - Contracts - Remedies

discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

Question 1581 - Contracts - Remedies

The question was:

On June 15, a teacher accepted a contract for a one-year position teaching math at a public high school at a salary of $50,000, starting in September. On June 22, the school informed the teacher that, due to a change in its planned math curriculum, it no longer needed a full-time math teacher. The school offered instead to employ the teacher as a part-time academic counselor at a salary of $20,000, starting in September. The teacher refused the school's offer. On June 29, the teacher was offered a one-year position to teach math at a nearby private academy for $47,000, starting in September. The teacher, however, decided to spend the year completing work on a graduate degree in mathematics and declined the academy's offer.

If the teacher sues the school for breach of contract, what is her most likely recovery?

A: $50,000, the full contract amount.
B: $30,000, the full contract amount less the amount the teacher could have earned in the counselor position offered by the school.
C: $3,000, the full contract amount less the amount the teacher could have earned in the teaching position at the academy.
D: Nothing, because the school notified the teacher of its decision before the teacher had acted in substantial reliance on the contract.

The explanation for the answer is:

A is incorrect. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

B is incorrect. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Because it is unlikely that a court would consider the counseling position to be comparable employment, the teacher's damages should not be reduced by the $20,000 she would have earned if she had accepted that position. On the other hand, her damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

C is correct. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

D is incorrect. The teacher and the school entered into an enforceable contract, and the school's unjustified nonperformance constituted a breach of contract. The teacher is therefore entitled to recover damages that will place her in the position she would have been in but for the breach and need not show reliance in order to recover. However, while she is entitled to damages from the breach, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully

Question 1581 - Contracts - Remedies

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Question 1581 - Contracts - Remedies

The question was:

On June 15, a teacher accepted a contract for a one-year position teaching math at a public high school at a salary of $50,000, starting in September. On June 22, the school informed the teacher that, due to a change in its planned math curriculum, it no longer needed a full-time math teacher. The school offered instead to employ the teacher as a part-time academic counselor at a salary of $20,000, starting in September. The teacher refused the school's offer. On June 29, the teacher was offered a one-year position to teach math at a nearby private academy for $47,000, starting in September. The teacher, however, decided to spend the year completing work on a graduate degree in mathematics and declined the academy's offer.

If the teacher sues the school for breach of contract, what is her most likely recovery?

A: $50,000, the full contract amount.
B: $30,000, the full contract amount less the amount the teacher could have earned in the counselor position offered by the school.
C: $3,000, the full contract amount less the amount the teacher could have earned in the teaching position at the academy.
D: Nothing, because the school notified the teacher of its decision before the teacher had acted in substantial reliance on the contract.

The explanation for the answer is:

A is incorrect. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

B is incorrect. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Because it is unlikely that a court would consider the counseling position to be comparable employment, the teacher's damages should not be reduced by the $20,000 she would have earned if she had accepted that position. On the other hand, her damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

C is correct. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

D is incorrect. The teacher and the school entered into an enforceable contract, and the school's unjustified nonperformance constituted a breach of contract. The teacher is therefore entitled to recover damages that will place her in the position she would have been in but for the breach and need not show reliance in order to recover. However, while she is entitled to damages from the breach, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully

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Question 1581 - Contracts - Remedies

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If the teacher sues the school for breach of contract, what is her most likely recovery?

A: $50,000, the full contract amount.
B: $30,000, the full contract amount less the amount the teacher could have earned in the counselor position offered by the school.
C: $3,000, the full contract amount less the amount the teacher could have earned in the teaching position at the academy.
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The explanation for the answer is:

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C is correct. The teacher is entitled to recover damages that will place her in the position she would have been in but for the school's breach. However, an injured party is expected to make reasonable efforts to mitigate the loss resulting from the other party's breach. In the case of a wrongfully discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

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Question 1581 - Contracts - Remedies

discharged employee, the employee is expected to accept an offer of comparable employment. If the employee fails or refuses to do so, the employee's recovery is reduced by the amount of the loss that the employee could have avoided by accepting comparable employment. Here, the teacher's damages of $50,000 should be reduced by the $47,000 she would have earned if she had accepted the comparable teaching position at the private academy. Therefore, the teacher is entitled to recover $3,000 from the school.

Question 1581 - Contracts - Remedies

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Question 1581 - Contracts - Remedies

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Question 1586 - Contracts - Remedies

The question was:

A produce distributor contracted to provide a grocer with eight crates of lettuce at the distributor's listed price. The distributor's shipping clerk mistakenly shipped only seven crates to the grocer. The grocer accepted delivery of the seven crates but immediately notified the distributor that the delivery did not conform to the contract. The distributor's listed price for seven crates of lettuce was 7/8 of its listed price for eight crates. The distributor shipped no more lettuce to the grocer, and the grocer has not yet paid for any of the lettuce.

How much, if anything, is the distributor entitled to collect from the grocer?

A: Nothing, because the tender of all eight crates was a condition precedent to the grocer's duty to pay.
B: The reasonable value of the seven crates of lettuce, minus the grocer's damages, if any, for the distributor's failure to deliver the full order.
C: The listed price for the seven crates of lettuce, minus the grocer's damages, if any, for the distributor's failure to deliver the full order.
D: The listed price for the seven crates of lettuce.

The explanation for the answer is:

A is incorrect. The distributor's nonconforming shipment constituted both an acceptance of the grocer's offer to purchase and a breach of the parties' contract. With respect to a nonconforming tender, UCC § 2-601 allows a buyer to accept the whole, reject the whole, or partially accept or reject commercial units. A buyer who accepts a tender of goods, whether conforming or nonconforming, becomes obligated to pay the seller the contract price of the goods. Accordingly, the grocer's acceptance of the nonconforming shipment obligated it to pay the distributor's listed price for the seven crates, reduced by any damages for losses resulting from the nonconforming shipment.

B is incorrect. The distributor's nonconforming shipment constituted both an acceptance of the grocer's offer to purchase and a breach of the parties' contract. With respect to a nonconforming tender, UCC § 2-601 allows a buyer to accept the whole, reject the whole, or partially accept or reject commercial units. A buyer who accepts a tender of goods, whether conforming or nonconforming, becomes obligated to pay the seller the contract price of the goods. Accordingly, the grocer's acceptance of the nonconforming shipment obligated it to pay the distributor's listed price for, rather than the reasonable value of, the seven crates of lettuce. The price paid by the grocer will be reduced by any damages for losses resulting from the nonconforming shipment.

C is correct. The distributor's nonconforming shipment constituted both an acceptance of the grocer's offer to purchase and a breach of the parties' contract. With respect to a nonconforming tender, UCC § 2-601 allows a buyer to accept the whole, reject the whole, or partially accept or reject commercial units. A buyer who accepts a tender of goods, whether conforming or nonconforming, becomes obligated to pay the seller the contract price of the goods. Accordingly, the grocer's acceptance of the nonconforming shipment obligated it to pay the distributor's listed price for the seven crates, reduced by any damages for losses resulting from the nonconforming shipment.

D is incorrect. The distributor's nonconforming shipment constituted both an acceptance of the grocer's offer to purchase and a breach of the parties' contract. With respect to a nonconforming tender, UCC § 2-601 allows a buyer to accept the whole, reject the whole, or partially accept or reject commercial units. A buyer who accepts a tender of goods, whether conforming or nonconforming, becomes obligated to pay the seller the contract price of the goods. Accordingly, the grocer's acceptance of the nonconforming shipment obligated it to pay the distributor's listed price for the seven crates. However, that price should be reduced by any damages for losses resulting from the nonconforming shipment.

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Question 1587 - Contracts - Third-Party Rights

The question was:

A seller borrowed $5,000 from a bank. Soon thereafter the seller filed for bankruptcy, having paid nothing on his debt to the bank.

Five years after the debt had been discharged in bankruptcy, the seller contracted to sell certain goods to a buyer for $5,000. The contract provided that the buyer would pay the $5,000 to the bank "as payment of the $5,000 the seller owes the bank." The only debt that the seller ever owed the bank is the $5,000 debt that was discharged in bankruptcy. The seller delivered the goods to the buyer, who accepted them.

If the bank becomes aware of the contract between the seller and the buyer, and the buyer refuses to pay anything to the bank, is the bank likely to succeed in an action against the buyer for $5,000?

A: No, because the buyer's promise to pay the bank was not supported by consideration.
B: No, because the seller's debt was discharged in bankruptcy.
C: Yes, because the bank was an intended beneficiary of the contract between the buyer and the seller.
D: Yes, because no consideration is required to support a promise to pay a debt that has been discharged in bankruptcy.

The explanation for the answer is:

A is incorrect. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Thus their agreement was supported by consideration. Moreover, a promisee (the seller) can intend that a third party be the beneficiary of the performance the promisee expects to receive from a promisor (the buyer). Because the parties' agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

B is incorrect. The bank was an intended beneficiary of the contract between the buyer and the seller, and the fact of discharge is irrelevant. The seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

C is correct. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

D is incorrect. It is true that a promise by a debtor to pay a debt that has been discharged in bankruptcy requires no consideration to be enforceable. In this case, however, the discharge of the seller's debt is irrelevant. Here, the seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

Question 1587 - Contracts - Third-Party Rights

The question was:

A seller borrowed $5,000 from a bank. Soon thereafter the seller filed for bankruptcy, having paid nothing on his debt to the bank.

Five years after the debt had been discharged in bankruptcy, the seller contracted to sell certain goods to a buyer for $5,000. The contract provided that the buyer would pay the $5,000 to the bank "as payment of the $5,000 the seller owes the bank." The only debt that the seller ever owed the bank is the $5,000 debt that was discharged in bankruptcy. The seller delivered the goods to the buyer, who accepted them.

If the bank becomes aware of the contract between the seller and the buyer, and the buyer refuses to pay anything to the bank, is the bank likely to succeed in an action against the buyer for $5,000?

A: No, because the buyer's promise to pay the bank was not supported by consideration.
B: No, because the seller's debt was discharged in bankruptcy.
C: Yes, because the bank was an intended beneficiary of the contract between the buyer and the seller.
D: Yes, because no consideration is required to support a promise to pay a debt that has been discharged in bankruptcy.

The explanation for the answer is:

A is incorrect. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Thus their agreement was supported by consideration. Moreover, a promisee (the seller) can intend that a third party be the beneficiary of the performance the promisee expects to receive from a promisor (the buyer). Because the parties' agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

B is incorrect. The bank was an intended beneficiary of the contract between the buyer and the seller, and the fact of discharge is irrelevant. The seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

C is correct. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

D is incorrect. It is true that a promise by a debtor to pay a debt that has been discharged in bankruptcy requires no consideration to be enforceable. In this case, however, the discharge of the seller's debt is irrelevant. Here, the seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

Question 1587 - Contracts - Third-Party Rights

The question was:

A seller borrowed $5,000 from a bank. Soon thereafter the seller filed for bankruptcy, having paid nothing on his debt to the bank.

Five years after the debt had been discharged in bankruptcy, the seller contracted to sell certain goods to a buyer for $5,000. The contract provided that the buyer would pay the $5,000 to the bank "as payment of the $5,000 the seller owes the bank." The only debt that the seller ever owed the bank is the $5,000 debt that was discharged in bankruptcy. The seller delivered the goods to the buyer, who accepted them.

If the bank becomes aware of the contract between the seller and the buyer, and the buyer refuses to pay anything to the bank, is the bank likely to succeed in an action against the buyer for $5,000?

A: No, because the buyer's promise to pay the bank was not supported by consideration.
B: No, because the seller's debt was discharged in bankruptcy.
C: Yes, because the bank was an intended beneficiary of the contract between the buyer and the seller.
D: Yes, because no consideration is required to support a promise to pay a debt that has been discharged in bankruptcy.

The explanation for the answer is:

A is incorrect. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Thus their agreement was supported by consideration. Moreover, a promisee (the seller) can intend that a third party be the beneficiary of the performance the promisee expects to receive from a promisor (the buyer). Because the parties' agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

B is incorrect. The bank was an intended beneficiary of the contract between the buyer and the seller, and the fact of discharge is irrelevant. The seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

C is correct. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

D is incorrect. It is true that a promise by a debtor to pay a debt that has been discharged in bankruptcy requires no consideration to be enforceable. In this case, however, the discharge of the seller's debt is irrelevant. Here, the seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

Question 1587 - Contracts - Third-Party Rights

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A seller borrowed $5,000 from a bank. Soon thereafter the seller filed for bankruptcy, having paid nothing on his debt to the bank.

Five years after the debt had been discharged in bankruptcy, the seller contracted to sell certain goods to a buyer for $5,000. The contract provided that the buyer would pay the $5,000 to the bank "as payment of the $5,000 the seller owes the bank." The only debt that the seller ever owed the bank is the $5,000 debt that was discharged in bankruptcy. The seller delivered the goods to the buyer, who accepted them.

If the bank becomes aware of the contract between the seller and the buyer, and the buyer refuses to pay anything to the bank, is the bank likely to succeed in an action against the buyer for $5,000?

A: No, because the buyer's promise to pay the bank was not supported by consideration.
B: No, because the seller's debt was discharged in bankruptcy.
C: Yes, because the bank was an intended beneficiary of the contract between the buyer and the seller.
D: Yes, because no consideration is required to support a promise to pay a debt that has been discharged in bankruptcy.

The explanation for the answer is:

A is incorrect. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Thus their agreement was supported by consideration. Moreover, a promisee (the seller) can intend that a third party be the beneficiary of the performance the promisee expects to receive from a promisor (the buyer). Because the parties' agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

B is incorrect. The bank was an intended beneficiary of the contract between the buyer and the seller, and the fact of discharge is irrelevant. The seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

C is correct. The buyer and the seller entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

D is incorrect. It is true that a promise by a debtor to pay a debt that has been discharged in bankruptcy requires no consideration to be enforceable. In this case, however, the discharge of the seller's debt is irrelevant. Here, the seller and the buyer entered into a bargained-for exchange for the sale and purchase of goods. Because their agreement provided that the buyer would pay to the bank the $5,000 that the buyer had promised to pay for the goods, the bank was an intended beneficiary of the enforceable agreement between the seller and the buyer, and the buyer is obligated to pay the bank.

Question 1593 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A builder borrowed $10,000 from a lender to finance a small construction job under a contract with a homeowner. The builder gave the lender a writing that stated, "Any money I receive from the homeowner will be paid immediately to the lender, regardless of any demands from other creditors." The builder died after completing the job but before the homeowner paid. The lender demanded that the homeowner pay the $10,000 due to the builder directly to the lender. The homeowner refused, saying that he would pay directly to the builder's estate everything that he owed the builder.

Is the lender likely to succeed in an action against the homeowner for $10,000?

A: No, because the builder's death terminated the lender's right to receive payment directly from the homeowner.
B: No, because the writing the builder gave to the lender did not transfer to the lender the right to receive payment from the homeowner.
C: Yes, because the builder had manifested an intent that the homeowner pay the $10,000 directly to the lender.
D: Yes, because the lender is an intended beneficiary of the builder-homeowner contract.

The explanation for the answer is:

A is incorrect. The builder never gave the lender a valid assignment. An assignment arises when the holder of a right, an obligee, manifests the intent to make a present transfer of that right to another, the assignee. An assignment is to be distinguished from a promise to do something in the future, such as the payment of money. Here, the writing in which the builder promised to pay the lender the $10,000 he received from the homeowner did not transfer to the lender the right to receive payment directly from the homeowner, and thus it did not create an assignment.

B is correct. An assignment arises when the holder of a right, an obligee, manifests the intent to make a present transfer of that right to another, the assignee. Upon an assignment, the assignor's rights are extinguished and transferred to the assignee. An assignment is to be distinguished from a promise to do something in the future, such as the payment of money. Here, the writing in which the builder promised to pay the lender the $10,000 he received from the homeowner did not transfer to the lender the right to receive payment directly from the homeowner, and thus it did not create an assignment.

C is incorrect. It may have been the builder's subjective intent to have the homeowner pay the $10,000 directly to the lender if the builder died, but more was required in order for the lender to have the right to receive that direct payment. The dispositive issue here is whether the builder gave the lender a valid assignment. An assignment arises when the holder of a right, an obligee, manifests the intent to make a present transfer of that right to another, the assignee. An assignment is to be distinguished from a promise to do something in the future, such as the payment of money. Here, the writing in which the builder promised to pay to the lender the $10,000 he received from the homeowner did not transfer to the lender the right to receive payment directly from the homeowner, and thus it did not create an assignment.

D is incorrect. Because any rights that may have been granted to the lender were not created by the contract between the builder and the homeowner, the lender did not acquire third-party beneficiary status. The dispositive issue here is whether the builder gave the lender a valid assignment. An assignment arises when the holder of a right, an obligee, manifests the intent to make a present transfer of that right to another, the assignee. An assignment is to be distinguished from a promise to do something in the future, such as the payment of money. Here, the writing in which the builder promised to pay to the lender the $10,000 he received from the homeowner did not transfer to the lender the right to receive payment directly from the homeowner, and thus it did not create an assignment.

Question 1593 - Contracts - Assignment of Rights and Delegation of Duties

The question was:

A builder borrowed $10,000 from a lender to finance a small construction job under a contract with a homeowner. The builder gave the lender a writing that stated, "Any money I receive from the homeowner will be paid immediately to the lender, regardless of any demands from other creditors." The builder died after completing the job but before the homeowner paid. The lender demanded that the homeowner pay the $10,000 due to the builder directly to the lender. The homeowner refused, saying that he would pay directly to the builder's estate everything that he owed the builder.

Is the lender likely to succeed in an action against the homeowner for $10,000?

A: No, because the builder's death terminated the lender's right to receive payment directly from the homeowner.
B: No, because the writing the builder gave to the lender did not transfer to the lender the right to receive payment from the homeowner.
C: Yes, because the builder had manifested an intent that the homeowner pay the $10,000 directly to the lender.
D: Yes, because the lender is an intended beneficiary of the builder-homeowner contract.

The explanation for the answer is:

A is incorrect. The builder never gave the lender a valid assignment. An assignment arises when the holder of a right, an obligee, manifests the intent to make a present transfer of that right to another, the assignee. An assignment is to be distinguished from a promise to do something in the future, such as the payment of money. Here, the writing in which the builder promised to pay the lender the $10,000 he received from the homeowner did not transfer to the lender the right to receive payment directly from the homeowner, and thus it did not create an assignment.

B is correct. An assignment arises when the holder of a right, an obligee, manifests the intent to make a present transfer of that right to another, the assignee. Upon an assignment, the assignor's rights are extinguished and transferred to the assignee. An assignment is to be distinguished from a promise to do something in the future, such as the payment of money. Here, the writing in which the builder promised to pay the lender the $10,000 he received from the homeowner did not transfer to the lender the right to receive payment directly from the homeowner, and thus it did not create an assignment.

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Question 1593 - Contracts - Assignment of Rights and Delegation of Duties

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Is the lender likely to succeed in an action against the homeowner for $10,000?

A: No, because the builder's death terminated the lender's right to receive payment directly from the homeowner.
B: No, because the writing the builder gave to the lender did not transfer to the lender the right to receive payment from the homeowner.
C: Yes, because the builder had manifested an intent that the homeowner pay the $10,000 directly to the lender.
D: Yes, because the lender is an intended beneficiary of the builder-homeowner contract.

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B is correct. An assignment arises when the holder of a right, an obligee, manifests the intent to make a present transfer of that right to another, the assignee. Upon an assignment, the assignor's rights are extinguished and transferred to the assignee. An assignment is to be distinguished from a promise to do something in the future, such as the payment of money. Here, the writing in which the builder promised to pay the lender the $10,000 he received from the homeowner did not transfer to the lender the right to receive payment directly from the homeowner, and thus it did not create an assignment.

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Is the lender likely to succeed in an action against the homeowner for $10,000?

A: No, because the builder's death terminated the lender's right to receive payment directly from the homeowner.
B: No, because the writing the builder gave to the lender did not transfer to the lender the right to receive payment from the homeowner.
C: Yes, because the builder had manifested an intent that the homeowner pay the $10,000 directly to the lender.
D: Yes, because the lender is an intended beneficiary of the builder-homeowner contract.

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