1. 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.

2. 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 impliedly promised to repaint the porch.

3. 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).

4. 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.

5. 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

6. Answer D 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. However, the suretyship clause does not apply where the surety promise was made to the principal (seller) and not to the obligee (the creditor). Contracts for the sale of an interest in land fall within the statute of frauds as well. The promise that the creditor is seeking to enforce, however, is not part of a contract for the sale of an interest in land but rather a promise to repay a $25,000 debt owed to the creditor by the seller. Therefore neither of the two statements is correct.

7. Answer A 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 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, in effect the creditor seeks to supplement rather than contradict the writing with extrinsic evidence of the promise. Whether or not the promise will be admissible hinges on whether the writing is completely or only partially integrated.

8. Answer B is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise, such as where the promisor knows that the promisee intended to confer a benefit on the beneficiary. The promisor and promisee retain the power to modify or discharge a duty owed to an intended beneficiary unless and 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," it appears that the creditor is an intended beneficiary, since the performance flows directly to him. But if the buyer and seller later agreed not to pay any of the purchase price to the creditor, this agreement would modify the March 1 agreement, and if it were done before the creditor was aware of the existence of the agreement, it would be effective in discharging the creditor's rights as intended beneficiary.

9. 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. Where a clerical error has been made in reducing an agreement to writing, however, a party may bring an action in equitable reformation to have the writing reformed to correct the error or to include an omitted provision, and the parol evidence rule does not bar the introduction of evidence to show the mistake that forms 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.

10. Answer C is correct. A bona fide purchaser for value is one who takes without notice before delivery of conveyance or payment of the purchase price and is protected as to reasonable expectations arising from the apparent ownership of his assignor. Although the neighbor knew of the $1,500 price differential, this was insufficient to put him on reasonable notice that he should inquire regarding the purchaser's ownership interest in Lot 25. Thus, the landowner would be estopped from claiming superior title to the neighbor, a bona fide purchaser.

11. Answer A is correct. A promise must be bargained for to create an enforceable contract. The woman provided no consideration for the father's gratuitous promise to pay for her losses resulting from the accident. B is incorrect because even if the father's mistake of law is treated as a part of the total state of facts at the time he made the promise, he would bear the risk of mistake and enforcement of his promise would not be unconscionable. C is incorrect because the father's promise does not fall within one of the categories of contracts required to be in writing. It could be performed in one year, and it is not a suretyship agreement; the father thought he was liable, not his son. D is incorrect because a promise is sufficiently definite if it provides a basis for determining breach and for giving a remedy. Although the father's promise to pay for "any losses" is vague, when read in conjunction with the limiting language "as a result of the accident," judicial construction for breach remains possible.

12. Answer C is correct. Because the father's promise to pay the physician was made before the physician began treating the woman, there is no problem with past consideration regarding the physician's services and the physician's care of the woman. It makes no difference that the physician's consideration is conferred upon a third party. Thus, number I is correct.

13. Answer D is correct. In order for a promise to be supported by consideration, the consideration must be bargained-for, or sought by the promisor in exchange for the promise and given by the promisee in exchange for the promise. As long as the consideration is bargained-for, it is immaterial whether it was furnished by the promisee or by a third person. Therefore the physician's promise is enforceable despite the fact that the father furnished the consideration for the physician's promise to treat the woman (therefore statement I is incorrect). Although the woman was not a party to the father-physician contract, she may enforce the contract as a third-party beneficiary if recognition of such a right in her is appropriate to effectuate the intention of the parties. This intention seems to be present, since the physician's obligation (to "take care of the woman") flows directly to her (therefore statement II is incorrect). Because statements I and II are both incorrect, A, B and C are incorrect as well.

14. 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 would be conferred upon a third party and not upon the father.

15. Answer C 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. Although the creditor may argue that the settlement agreement is unenforceable under the preexisting duty rule, the father will argue that his agreement to settle the claim against the creditor furnished sufficient consideration because he held a genuine belief that the creditor had no legal right against him to collect $200.

16. Answer B 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). An exception to the parol evidence rule applies where the extrinsic evidence is offered to interpret an ambiguity in the writing. The department store seeks to introduce in litigation extrinsic evidence of a prior oral agreement by the computer programming company to coordinate its computer program with the department store’s methods of accounting. Since the written memo between the parties is silent with respect to this issue, the evidence should be admissible so long as the writing is found to be partially and not completely integrated. The fact that the writing is only two sentences long and does not contain a merger clause suggests that the memo was only partially integrated, and therefore the department store should be successful in introducing the evidence.

17. Answer D is correct. Where a party's obligation is subject to a constructive condition, that party remains obligated to perform so long as the other party to the contract substantially performed. However, if the obligation is subject to an express condition, the condition must be completely satisfied; if the condition is not satisfied in all respects then the obligation that is subject to the condition will be excused. The department store’s obligation to pay $20,000 is subject to an express condition, since it agrees to pay only "if the computer programming company is successful in shortening by one-half the processing time." The department store is not obligated to pay any portion of the purchase price unless and until the condition is satisfied. Because of the existence of the express condition, the language "within one month of completion" cannot reasonably be construed to require payment before completion has occurred.

18. Answer A is correct. The UCC controls for a sale of goods and, because this transaction involved the sale of computer programs, it qualifies. UCC 2-209 and Comment 2 permit modifications made in good faith. The oral escrow agreement was not the result of duress or extortion and therefore was made in good faith. B is incorrect because the Statute of Frauds does apply to modifications under 2-209(3). C is incorrect because a modification that does not satisfy the Statute of Frauds can operate as a waiver of the contract provision prohibiting oral modifications under 2-209(4). D is incorrect because UCC 2-209 permits modifications without consideration.

19. Answer C is correct. A party is not required to perform by the express date stated in the contract unless time is made of the essence. If time is not of the essence, a reasonable delay is not a material breach. The computer programming company completed performance within 4 days of the completion date specified in the contract, which is a reasonable delay.

20. Answer B is correct. A breaching party can recover the reasonable value of a benefit conferred onto the non-breaching party in quasi-contract as long as the breach did not involve seriously wrongful or unconscionable conduct. If the other party's contractual duties have been discharged, a party can recover for restitution if: (1) the plaintiff has conferred a benefit on the defendant, (2) the plaintiff had a reasonable expectation of being paid, (3) the benefits were conferred at the request of the defendant, and (4) the defendant would be unjustly enriched if retained the benefits without compensation.

21. Answer B is correct. A breaching party can recover the reasonable value of a benefit conferred onto the non-breaching party in quasi-contract as long as the breach did not involve seriously wrongful or unconscionable conduct. If the other party's contractual duties have been discharged, a party can recover for restitution if: (1) the plaintiff has conferred a benefit on the defendant, (2) the plaintiff had a reasonable expectation of being paid, (3) the benefits were conferred at the request of the defendant, and (4) the defendant would be unjustly enriched if it retained the benefits without compensation.

22. 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 reliance on the part of the assistant professor and knowledge of that reliance on the part of the president. Therefore, under Restatement section 90, a statement of reasons would be necessary to determine whether injustice can be avoided only by enforcing the promise.

23. 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."

24. 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.

25. 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.

26. Answer C 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. A is incorrect because the offer was published on the city's sole television station once daily for one week and other means may not give as sufficient notice as a daily television broadcast. B is incorrect because the television station is no longer available and the rules of revocation allow notification by other means reasonably available. D is incorrect because revocation does not require actual notice, but that the revocation be given publicity equal to that given the offer.

27. 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."

28. Answer B is correct. If the reward were characterized as a government bounty, the detective's knowledge of the reward after obtaining the confession and the earlier attempted revocation would not be determinative.

29. 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 when the contract was made, it was not intended to confer a benefit and enforceable rights upon a third party.

30. 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 confer a benefit upon the corporation in servicing the account, his express written contract with the manufacturer would create his expectation of payment, not a theory based upon restitution.

31. 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 at the time that the salesperson conferred a benefit to the manufacturer, he had no reasonable expectation of payment 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 also 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.

32. Answer C is correct. III is not relevant and could not be the basis of a claim against the manufacturer because either party can terminate the employment relationship at any time in an "at-will" employment contract. Furthermore, although it may be a persuasive fact as to the salesperson's character as a good employee, it would not significantly strengthen any claim against the manufacturer because under an "at will" contract, even good employees can be fired at anytime, for any reason, as long as it is not against public policy.

33. Answer C is correct. The fabric company breached the contract because it contained an express prohibition of assignment of rights. A prohibition against the assignment of a contract takes away the assignor's right to assign, not the assignor's power to assign. If an assignment is made in breach of an express contractual provision, the obligor (the business enterprise) has a right to damages for the breach, but this right does not render the assignment ineffective unless the assignee (the finance company) knew of the prohibition. For this reason, A is incorrect. Note: a prohibition against assignment is not the same as an invalidation of an assignment. In the latter situation, if a contractual provision renders an assignment void, the assignor has neither the right nor the power to assign the contract. B is incorrect because the covenant does allow the business enterprise to sue for damages for breach of the covenant. D is incorrect because covenants against assignment can apply to either the buyer or seller, and the express terms of the agreement preclude both parties from assigning the contract.

34. Answer B is correct. The fabric company was required to provide clear and adequate notice to the business enterprise of the assignment to the finance company before the business enterprise made payment. A and C are incorrect because when the business enterprise paid the fabric company before receiving notice of the assignment, the business enterprise's obligation was discharged. D is incorrect because an effective assignment by the fabric company to the finance company resulted in the finance company's standing in the place of the fabric company for receipt of payment. The anti-assignability clause in the contract between the business enterprise and the fabric company took away the fabric company's right to assign, but not its ability to assign.

35. Answer D is correct. Number I is incorrect 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. Number II is incorrect 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, without which its rights to payment under the contract had not vested.

36. Answer D is correct. A party's obligations under a requirements contract subject to the UCC 2-306 are measured by good faith. A shut-down by a requirements buyer for lack of orders or market conditions meets the good faith standard.

37. 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.

38. 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 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 therefore the contract is not one involving aesthetic taste or judgment, and the farmer should be indifferent about whether the work is done by the the painter or by the contractor. 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, even if assented to by the obligee (the farmer), does not effect a novation; a novation would require an express agreement by the farmer to substitute the contractor for the painter.

39. 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.

40. 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).

41. 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).

42. 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).

43. Answer D is correct because the pharmaceutical salesman was not a merchant (UCC), and no consideration was paid for the option (common law), thus the offer was freely revocable. A is incorrect because UCC 2-205 limits firm offers to merchants; the pharmaceutical salesman is a sales person who does not deal in motorcycles or otherwise hold himself out by occupation as having knowledge or skill peculiar to the goods involved in the transaction (UCC 2-104).

44. 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.

45. B is the correct answer. The call of the question asks for the probable legal effect of the friend's conversation with the widget salesman regarding the purchase of the friend's motorcycle, which indicates that the issue is revocation of an offer. The question to be answered, therefore, is whether a contract had been formed between the pharmaceutical salesman and the widget salesman, and if the conversation with the friend impacted that contract. The pharmaceutical salesman offered the widget salesman a unilateral contract. The method of acceptance was the presentation of the motorcycle on or before November 12. B is the best answer because it thoroughly addresses the issues of revocation between the widget salesman and the pharmaceutical salesman, both of which are probable legal effects of the conversation between the widget salesman and the friend.

46. Answer B is correct. A valid contract existed for the sale of lot 101 for $5,000; the owner did not supply consideration for the modification, the modification was coercive to the buyer and not fair and equitable, and the owner could have anticipated that a shopping center was going to be built on adjacent property. The $6,000 price for the remaining forty-nine lots will be enforced because there was no agreement as to these lots, and the owner's statement on May 3 amounted to a revocation of his original offer as to the remaining lots and a new offer.

47. 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.

48. 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.

49. Answer D is correct. An implied-in-fact contract is a type of enforceable contract, but one that is based on a tacit rather than an express promise. An implied-in-fact promise may be inferred from parties' conduct, such as where services are rendered by one person to another under circumstances where it may fairly be presumed that the parties understood that compensation would be paid. The doctor is entitled to recover payment from the victim on an implied-in-fact contract theory, since the victim implicitly agreed to pay for services rendered when the victim sought and received medical treatment from the doctor.

50. Answer D is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise, such as where the promisor must know that the promisee intended to confer a benefit on the beneficiary. The promisor and promisee retain the power to modify or discharge a duty owed to an intended beneficiary unless and until the beneficiary's rights vest. The beneficiary's rights will vest if he materially changes his position in justifiable reliance on the promise or manifests assent to the promise at the request of the promisor or promisee. The doctor appears to be an intended beneficiary of the agreement between the victim and the attorney, since the promise to pay "any physician" who treats the victim's injuries manifests an intent by the parties to confer standing on the doctor to enforce the promise. The doctor's rights as beneficiary did not vest, however, before the victim and the attorney discharged the duty when they executed the release. Although the doctor received notice of the promise, he did not rely on it, since the services were rendered before he received notice of the promise.

51. Answer A is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise, such as where the promisor must know that the promisee intended to confer a benefit on the beneficiary. The promisor and promisee retain the power to modify or discharge a duty owed to an intended beneficiary unless and until the beneficiary's rights vest. The beneficiary's rights will vest if he materially changes his position in justifiable reliance on the promise or manifests assent to the promise at the request of the promisor or promisee. The doctor appears to be an intended beneficiary of the agreement between the victim and the attorney, since the promise to pay "any physician" who treats the victim's injuries manifests an intent by the parties to confer standing on the doctor to enforce the promise. Although the doctor received notice of the promise before the victim and the attorney executed the release, he never gave express notice of his assent to the promise to the victim or to the attorney. The doctor may try to argue, however, that his assent to the promise was implied and therefore his rights as beneficiary had vested, thereby cutting off the right to effect a discharge of the promise to pay.

52. Answer C is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise. A party will be found to be an intended beneficiary where recognition of standing to enforce the promise is appropriate to effectuate the intent of the parties and where the beneficiary is either a creditor beneficiary (where performance of the promise will satisfy a debt of the promisee to pay money to the beneficiary) or a donee beneficiary (where the promisee intends to give the beneficiary the benefit of the performance). If anything, the doctor is merely an incidental beneficiary of the contract between the colleague and the victim, since the colleague's promise to represent the victim in his action against the driver neither satisfies the victim's debt to the doctor nor does it relate to any intent on the victim's part to confer a benefit on the doctor. D is incorrect because any reliance by the doctor on the colleague's promise would not be reasonable, as he cannot show that he is an intended beneficiary of that promise.

53. 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.

54. Answer A is correct. Number I is correct because the builder has partially breached his contract with the landowner by performing late. The landowner is thus entitled to damages caused by the delay. Number II is not correct because the builder has substantially performed, and the landowner therefore cannot withhold his entire payment. Instead the landowner must pay the $5,000 minus any offset for damages caused by the one-month delay.

55. Answer B is correct. The father is entitled to damages representing the reasonable cost of completion, which is an amount equal to what another contractor would require to complete performance minus what the father would have paid to the contractor to complete performance.

56. 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.

57. 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, he 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. He was, however, 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.

58. C is correct. To answer this question, you must first map out the required order of performances. The building owner must convey the apartment to the purchaser, and at the same time the purchaser must convey the farm to the building owner, or no further duty arises on anyone's part. After the purchaser conveys the farm (but no more than three months after), the building owner has a duty to remove the shed behind the apartment. So, the building owner's conveyance of the apartment and the purchaser's tender of the farm are concurrent conditions, and the building owner's removal of the shed is a condition precedent to the purchaser's duty to pay the $1,000. Based on the contract language and order of performances cited in the question, answer C is the least accurate statement concerning that order.

59. A is the correct answer. While the responses seem confusingly similar, this answer can be reached through the process of elimination. D can be eliminated immediately. Clearly, the issue here is the determination of whether the obligation to remove the shed is a condition subsequent or condition precedent, not whether it is a condition at all. Black's Law dictionary defines a condition precedent as "an act or event, other than the lapse of time, that must exist or occur before a duty to perform something promised arises." The building owner's obligation to remove the shed within three months cannot be a condition precedent because it turns on the lapse of time. Therefore, B can be eliminated. Black's Law defines a condition subsequent as "a condition that, if it occurs, will bring something else to an end." In form, the building owner's obligation to remove the shed within three months of the transfer of property was a condition subsequent to the exchange of the purchaser's farm for the building owner's apartment house. In substance, however, it was a condition precedent to the purchaser's obligation to pay the additional $1,000 six months after the exchange. As a result, C is clearly an incomplete response and can be eliminated. Thus, A is the appropriate response and B, C and D are incorrect.

60. 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.

61. 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.

62. 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.

63. 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.

64. Answer A is correct. An offer for a unilateral contract is one that seeks only performance and does not seek a return promise. Offers for both unilateral and bilateral contracts may be accepted by commencing performance; what distinguishes unilateral contracts from bilateral contracts is that with the former, the offeree is not bound to complete the requested performance. The faculty's offer seeks a unilateral contract only, because it would be unreasonable to construe the offer as seeking a return commitment by the offeree to complete the requested performance, since no student can guarantee that she will be the winner of the competition. B, C and D are incorrect because each suggests that the offer reasonably could be construed as an offer for a bilateral contract.

65. 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.

66. 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.

67. Answer D is correct. The agreement expressly stated that the customer would have thirty days after the photographer completed performance to make payment. Additionally, the contract contained a conditional satisfaction clause rendering payment due only if the customer was satisfied with the photographer's performance.

68. 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.

69. 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.

70. 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.

71. Answer A is correct. The man supplied consideration for the husband's promise to pay the man $1,000 because his forbearance to assert a claim against the husband's qualifies as consideration so long as the man had a good faith belief in his right to make such a claim.

72. 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.

73. Answer C is correct. The engineer made no representations or partial disclosures to the stockholder regarding the facts. A is incorrect because the engineer did not misrepresent this knowledge to the stockholder. B is incorrect because the engineer had no confidential or other relationship with the stockholder requiring disclosure. D is incorrect because the stockholder could have obtained this publicly available statement, but absent some relationship requiring disclosure, the engineer would not be required to disclose her superior knowledge regarding the facts of the transaction.

74. 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.

75. Answer D is correct. Under the UCC, the risk of loss passed to the buyer when the seller delivered the goods to the carrier for shipment. For this reason, A and B are incorrect. C is also incorrect because even if the risk of loss had not shifted to the buyer, the subject matter of the contract remains available in the form of replacement chairs, and performance is thus not impossible or impracticable.

76. 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.

77. A is the correct answer.

78. 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.

79. 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.

80. Answer B is correct because the parties had entered into a valid unilateral contract supported by consideration when the woman promised to pay the daughter if she got A's. Although the woman had died, the contract was not impaired and, in fact, became enforceable upon the daughter's performance. Answer A is incorrect because promissory estoppel applies only in the absence of consideration.

81. Answer C 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 and, if the defective delivery is not timely cured, pursue remedies for breach of contract. Since the seller promised to deliver 100 bushels of wheat on August 1 and delivered only 95 bushels on that date, the buyer is entitled to reject the delivery and claim damages for breach.

82. 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.

83. 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, each of A, B and C are incorrect, since each of the statements is accurate. D is the least accurate because as of June 10, in light of the seller's repudiation, the buyer can immediately bring an action for breach and is not obligated to give the seller a commercially reasonable time for performance.

84. 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.

85. 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.

86. 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.

87. 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.

88. 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.

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

90. 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). For these reasons, A is incorrect. B is incorrect because anticipatory repudiation consists of an indication by the seller through words or conduct that breach would occur when performance was due. The nonconforming shipment without notice was an attempted acceptance and simultaneous breach. D is incorrect because even if the manufacturer's telegram "Will deliver proper ties before July 1" could be construed as an offer and not a notice of intent to cure, the retailer's silence in response could not constitute acceptance of an offer to modify.

91. 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.

92. Answer C is correct. The widow orally manifested her intent to gratuitously assign her rights in the passbook savings account directly to her stepson. A and B are incorrect because only promises to make future gifts are revocable. Completed gifts are not revocable, and when she gave her stepson the passbook, she lost her right to revoke. D is incorrect because an assignment takes effect immediately and is not revocable.

93. Answer C is correct. Statements 1 and 2 involve false representations of fact about the car, which the dealer knows to be false, which were made with intent to induce the buyer to enter into the contract, which would induce the buyer to enter into the agreement, and which would cause injury to the buyer because the false statements were made by someone with superior knowledge about the car and they related to its value and ascertainable facts about the car. For these reasons, A and B are incorrect. D is incorrect because Statement 3 represents either an opinion that is open to question or, more likely, a statement of "puffery" upon which the buyer should not have relied.

94. 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.

95. Answer A is correct. The factory's assignment to the finance company was made to secure a loan and, as such, was an assignment of payment rights, not a delegation of duties. The assignment was also made conditional upon the factory not paying its $15,000 loan with the finance company within 50 days. The 50-day time for repayment had not passed on November 16 when the lawsuit was filed, the factory was not in default, and the finance company had not yet assumed any rights under this agreement.B is incorrect because a public filing is not required for a valid assignment. Notice to the obligor (the store) is required.

96. 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.

97. 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.

98. 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.

99. Answer C is correct. Specific performance is not an available remedy in a dispute involving a contract for personal services because such an order might violate the involuntary servitude clause of the Thirteenth Amendment to the Constitution, and such an order would be difficult to supervise and enforce. Contract remedies also reflect a reluctance to restrict individual autonomy and instead permit breach followed by payment of damages.

100. Answer A is correct. Number I is correct because when a party delegates duties under a contract with the consent of the obligee (the sculptor), it does not result in a complete substitution of the delegatee (the newly-licensed architect) for the delegator (the renowned architect). The architect cannot unilaterally release himself from his obligation to the sculptor, and remains liable for the newly-licensed architect's failure to perform or defective performance.

101. Answer A is correct. 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.

102. 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 builder made clear that he was going to breach when performance became due. This statement was an anticipatory repudiation of the agreement.

103. 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.

104. Answer B is correct. The subject matter of the option, five acres of a 100-acre farm, was not identified with reasonable specificity and as such was vague and unenforceable. A is incorrect because separate consideration is not necessary to support an option that is a term under an existing contract, such as the five-year lease agreement between the landowner and the farmer. The option is simply considered one of the rights purchased by the lessee under the lease and is also supported by the $2,000 yearly consideration paid by the farmer. C is incorrect. The landowner's oral promise to survey the land was a promise to perform an act, and this promise was not

105. Answer A is correct. The benefits (planting trees and building grain silo) were not done officiously or gratuitously because at the time the farmer did these things, he reasonably believed that he could exercise his option to purchase a five-acre portion of the farm, which he could only exercise at the end of the lease.

106. 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.

107. 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 its lost profit on the sale to the boater. The advance payment must be restored to the boater to the extent it exceeds the lost profit under the agreement and it does ($4,000.00 minus $2,500.00, the latter of which is the selling price of $12,000.00 minus the manufacturer's price of $9,500.00).

108. 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.

109. 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.

110. Answer D is correct. Damages for breach of contract may be recovered for loss that the breaching party had reason to foresee as a probable result of the breach at the time the contract was made. In addition, damages may not be recoverable to the extent that they cannot be determined with reasonable certainty. Although new businesses may have trouble making this determination with respect to lost profits caused by a breach of contract (such as the baseball star's lost opportunities to obtain other contracts or endorsements), such damages may be awarded if they are not based on mere conjecture and speculation.

111. 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.

112. Answer C is correct. Under the UCC, a quantity term in a contract that is measured by the output of the seller means such actual output as may occur in good faith. The pastry company is permitted under the contract to reduce its output of buns, even to discontinue bun-making entirely, but only if the reason for doing so was made in good faith rather than to avoid its obligation under the contract. Therefore there is a question of fact as to whether the pastry company's decision to discontinue bun-making was made in good faith. A, B and D are incorrect because the question of whether the pastry company has breached the output contract involves an issue of material fact.

113. 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.

114. 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.

115. Answer C is correct. The UCC allows a breaching buyer a limited right to restitution of a downpayment, minus either the liquidated damages amount (whether agreed-upon or the statutory minimum) or the actual damages that can be proven by the seller. Where an injured seller can demonstrate that breach by a buyer has caused it to lose profits due to a lower volume of sales, the seller may recover the profit that the seller would have made from full performance. Because the retailer is a high-volume retailer, the boater's breach likely caused it to lose profits due to lost volume. Therefore the boater may recover restitution of the $4000 downpayment, less the profit that the retailer would have made on the sale.

116. 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).

117. Answer B 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). An exception to the parol evidence rule applies where the extrinsic evidence is offered to prove the existence of a condition precedent to the written agreement. Therefore, evidence of the owner and landscape architect's oral agreement is admissible because it demonstrated the existence of a condition precedent to the writing's taking effect.

118. 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.

119. Answer A is correct. An obligor may delegate its duty under a contract to another unless the other party to the contract has a substantial interest in having the original obligor perform. Therefore, the expert may delegate its duty under its contract with the builder unless the builder has a substantial interest in having the expert (and not the man) perform the contract.

120. 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.

121. 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. Because the brother promised to pay support to their mother and not to the sister, calculating damages to measure the sister's injury for breach of that promise would be impossible to ascertain. B is incorrect because the increased burden to the sister in and of itself would not be a sufficient reason for granting specific performance. C is incorrect because, although typically breach of a promise to pay money will give rise to an adequate damage recovery, it does not necessarily follow that specific performance is never available for breach of a promise to pay money. D is incorrect because the absence of economic harm to the sister should not preclude recovery for breach of contract.

122. 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 in effect, neither party should bear the risk of the event.

123. Answer A is correct. A promise to perform a pre-existing legal duty is not sufficient consideration to support a return promise. Since as of April 1, 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 friend's right to sue on the debt was to be barred by the statute of limitations as of June 30. Since the effect of the April 1 agreement was to revive an obligation that would otherwise have become time-barred, the man's promise was sufficient consideration to support the friend's obligation.

124. Answer D is correct. Under the doctrine of constructive conditions, a party's obligation under a contract is conditioned upon substantial performance of the other party's obligation under the same agreement. In other words, a material breach of an obligation has the effect of discharging the other party's obligation. Therefore, the man's obligation to pay the note in full was conditioned upon the friend refraining from bringing suit on the note. The friend breached that obligation on May 1, and therefore the man's obligation is no longer enforceable.

125. Answer C is correct. Generally, a promise to guarantee a debt to a third person falls under the Statute of Frauds and therefore must be in writing and signed by the party to be charged in order to be enforceable. However, the promise will not fall under the statute where the principal purpose of making the guarantee was to benefit the promisor himself. Therefore, if the father's promise was made for the primary purpose of benefiting his daughter, then his promise to guarantee his daughter's debt falls within the statute of frauds. Because the promise was made verbally, there is no signed writing to satisfy the requirements of the statute. Answer A is incorrect because consideration was given to the daughter.

126. 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.

127. D is the correct answer. The father's letter to the lender was a unilateral contract, accepted upon performance. Therefore, when the lender made the loan to the borrower on the 15th, the contract was effectively accepted even if the father had not yet been notified. Thus, the father's death on the 16th does nothing to render the promise made in his letter to the lender ineffective, and II and III could not be a defense for the father's estate. Additionally, lack of consideration is not a defense because there was valid consideration; the requirement of a benefit to the father as the promisor is broad enough to encompass his getting what he wants - namely, that his daughter be given a loan. Thus, neither, I, II, nor III creates a defense for the father's estate.

128. 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.

129. 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.

130. Answer A is correct. A unilateral modification of a contract (such as the woman's promise to pay an additional $200 for the same work) lacks consideration because of the preexisting duty rule. However some unilateral modifications may be enforceable notwithstanding the lack of additional consideration if the modification was done in good faith in light of circumstances that the parties did not anticipate at the time the contract was formed. Because the painter should have anticipated the circumstances that required his hiring an extra worker, the modification is not enforceable and the woman is not bound by her promise to pay the extra $200. B is incorrect because the promise viewed in the context of the painter's demand was sufficiently definite. C is incorrect because unjust enrichment is not applicable where the benefit has been conferred pursuant to a binding contract. D is incorrect because the facts do not show that performance was impossible.

131. 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.

132. 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.

133. Answer D is correct. Under the UCC, an order to buy goods "for prompt shipment" is interpreted as inviting acceptance either by a prompt promise to ship or by a prompt shipment of conforming or non-conforming goods. Where the goods delivered fail to conform to the contract, the buyer may reject the goods if the rejection is made within a reasonable time after delivery. When the buyer ordered 500 bushels of peaches "for prompt shipment," the seller accepted by shipping No. 2 (rather than No. 1) Royal Fuzz peaches, and therefore the buyer has the right to reject them. Answers A and B are incorrect because the prompt shipment will be interpreted as an acceptance even if the goods are non-conforming. Answer C is incorrect because although a contract was formed, the buyer has the right to reject non-conforming goods.

134. Answer C is correct. Although contract rights generally are freely assignable, 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 unless and until the assignee obtains performance from the obligor. On June 15, the creditor made a gratuitous assignment to the niece of her right to collect $1,000 from the debtor. Because the assignment was a gift, the creditor retained the power to revoke the assignment, which she did when she accepted without objection the $1,000 payment from the debtor.B is incorrect because a novation did not occur on these facts. D is incorrect because contract rights are freely assignable except in very limited circumstances, such as where assignment would materially change the duty of the obligor.

135. 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.

136. Answer B is correct. When a party has committed only a partial (as opposed to a total) breach of a contract, the other party to the contract remains obligated to perform, and refusal to perform will give the partially-breaching party the right to either specific performance or damages for total breach. Because the facts suggest that timely delivery of possession of Greenacre is not of the essence in this agreement, the two-week delay is only a partial breach, and therefore the farmer's refusal to pay the purchase price was a repudiation which justified an action by the landowner for specific performance.Choice D is incorrect because contracts involving the sale of land have historically been regarded as unique and therefore equitable relief has traditionally been allowed, even where the breaching party is the buyer.

137. Answer C is correct. Where a partial breach of contract occurs, the non-breaching party remains obligated to perform the contract but may recover damages for the partial breach. Consequential damages for breach of contract are limited to those that the breaching party had reason to foresee as a probable result of the breach at the time that the contract was made. When the landowner delivered possession of Greenacre 15 days after the time specified in the contract, he committed a partial breach, entitling the farmer to damages for the loss to him resulting from the delay. Because the landowner had no reason to know of the farmer's intended use of the land, the landowner is not obligated to pay damages for the cost of renting another pasture. The landowner is, however, obligated to pay the fair rental value of Greenacre for the 15-day period of delay. Choice D is incorrect because the $2,000 cost of renting another pasture was not reasonably foreseeable to the landowner and therefore not recoverable as consequential damages.

138. 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.

139. 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 and has a material effect on the exchange, unless the court determines that the party asserting mistake should bear the risk of the mistake. As one who is engaged in the business of excavation and who had the opportunity but failed to investigate the condition of the ground to be excavated, the builder should assume the risk that the ground included granite.

140. 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.

141. 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.

142. Answer D is correct. A contract may be rescinded on grounds of unilateral mistake if the mistake relates to a fundamental assumption of the contract that has a material effect on the exchange, if the party asserting mistake should not bear the risk of the mistake and if either (i) the non-mistaken party has reason to know of the mistake or (ii) the effect of the mistake would make enforcement of the contract unconscionable. The wallpaper hanger may argue that the sub-contract should be rescinded on grounds of the $4,000 mistake that he made in computing his sub-bid. If the general contractor had reason to know of the computational error, this would greatly support the wallpaper hanger's argument. Choice A is incorrect because the bid may be found to be irrevocable on a reliance theory even in the absence of an option promise supported by consideration. B is incorrect because it is irrelevant. C is incorrect because the mere fact that the general contractor would make a substantial profit on the contract does not make the effect of the mistake unconscionable.

143. Answer B is correct. A third party acquires standing to enforce a promise only if that party is an intended beneficiary of the promise, such as where the promisor knows that the promisee intended to confer a benefit on the beneficiary. The promisor and promisee retain the power to modify or discharge a duty owed to an intended beneficiary unless and until the beneficiary's rights vest. The beneficiary's rights will vest if he materially changes his position in justifiable reliance on the promise before receiving notice of the discharge. The son is an intended beneficiary of the Widow-Nirvana contract, since Nirvana knew of the widow's intent to give the Mark XX Rolls-Royce to her son. The son's rights as an intended beneficiary under the contract vested when he sold his expensive sports car at a discounted price.

144. 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.

145. Answer C is correct. Under the common law, a unilateral 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). As an exception to the common law rule, a unilateral modification that is fair and equitable and made in light of circumstances not anticipated at the time that the contract was concluded will be binding. Since the construction company's proposal to increase the contract price to $520,000 was made in light of unexpected circumstances (his encounter with solid rock), and since the price increase accurately reflected the increased cost of excavating rock, the construction company should recover the modified contract price.Choice A is incorrect because it fails to take into account the exception to the common law rule.

146. 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.

147. 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.

148. 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.

149. 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.

150. 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

151. 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.

152. 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.

153. Answer D is correct. Under the UCC, a written acceptance 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. Although the wholesale company's form contained a limitation-on-liability clause, the acceptance, nonetheless, operated as an acceptance of the retailer's offer. Since the contract price was $10,000, the clause limiting wholesale company's liability to $100 proposes a material alteration to the contract and therefore will not become part of the contract, since the retailer did not expressly agree to it. A and B are incorrect, because the wholesale company's acceptance is effective notwithstanding the existence of a material additional term. C is incorrect because the liability-limitation clause proposes a material alteration and thus will not become part of the contract.

154. 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.

155. Answer C is correct. When a promise is enforceable on a detrimental reliance theory, 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.

156. Answer B 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 agreed that each party's obligation under the contract of sale was expressly conditioned upon the man giving written notice of resale to the distributor on or before January 2. Since such notice was not given until January 26, any obligation that the distributor undertook under the contract of sale was excused due to the nonoccurrence of the condition.

157. 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.

158. Answer B is correct. A person's nondisclosure of fact may be tantamount to a misrepresentation of fact sufficient to allow rescission of a contract where the person knows that disclosure of the fact would correct the other party's mistake with respect to a basic assumption of the contract, and where nondisclosure amounts to a failure to act in good faith. The fact that the horse earned $400,000 for the trainer soon after the sale (over 250 times the contract price) suggests that nondisclosure of the horse's true abilities related to a basic assumption of the contract relating to the horse's worth. If the son can establish that the trainer was aware that the horse was capable of running a race in record-setting time and that the son was ignorant of this fact, then the son has a plausible argument for rescission on grounds of nondisclosure. A and C are incorrect because neither the son's ignorance of the horse's expertise nor the son's inexperience with evaluating horses alone would be sufficient to establish a basis for rescission. D is incorrect because the son's anger is irrelevant to the enforceability of the contract for the horse's sale.

159. 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.

160. Answer C is correct. Under the doctrine of constructive conditions, a party's obligation to perform a contractual duty is excused if the other party to the contract commits a material breach. Implicit in a requirements contract for the purchase and sale of a good is 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.

161. Answer A is correct. The rights of a third party beneficiary to a contract may not be modified or discharged after the beneficiary's rights vest. The beneficiary's rights will vest if she relies on the promise or manifests assent to the promise at the request of the promisor or promisee. Because the wife declined to accept an advertising account from the soap company after hearing of the owner-dealer contract, she relied on the petroleum dealer's promise. The fact that the contract was performed for six months also suggests implicit acceptance of the petroleum dealer's promise. Therefore, the taxi fleet owner and the petroleum dealer cannot modify or discharge the petroleum dealer's obligation without the wife's consent.

162. Answer A 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 the loss resulting from the breach. Where the parties have agreed that the breaching party's performance is to be retained as liquidated damages, the breaching party is not entitled to restitution if the liquidated damages clause is reasonable in light of the anticipated or actual damages resulting from the breach and the difficulty of proving damages. Although the father may argue that the woman was unjustly enriched to the extent that the deposit exceeded her actual loss, the woman should be able to retain the $200 deposit. Damages representing the inconvenience to the woman resulting from the father's failure to appear are difficult to estimate, and $200 was a reasonable estimate of the anticipated opportunity cost to the woman of not taking other potential customers.

163. 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.

164. 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.

165. 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.

166. Answer B is correct. Under the UCC, an order of goods for prompt shipment may be construed as inviting acceptance by a shipment of conforming or non-conforming goods. However, if the seller indicates that the shipment of non-conforming goods is offered as an accommodation to the buyer, the shipment will not be construed as an acceptance. Because the seller's note makes clear that he shipped red widgets to accommodate the buyer, his shipment of red widgets was not an acceptance of the buyer's offer and therefore was also not a breach of contract. A, C and D are incorrect because, if the buyer rejects the shipment, there is no contract and the buyer has no right to recover damages against the supplier.

167. 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 and C are incorrect. B 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.

168. 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. In other words, performance of the contract by the delegatee ordinarily does not require the assent of the other party to the contract. 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. When the flour wholesaler sold its business and assigned its contracts of sale to Miller, the baked goods producer's agreement to the delegation was not necessary. Therefore A and C are incorrect. B is incorrect because, once the other party to the contract (the flour wholesaler) has received notice of an assignment of rights, the baked goods producer will discharge her obligation only upon payment to the assignee (Miller). Payment to the assignor will not discharge the obligation.

169. 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.

170. 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.

171. 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.

172. Answer B is correct. Specific performance will generally be awarded for breach of contract where monetary damages would be inadequate or impracticable. However, a court will not issue an affirmative injunction compelling a person to specifically perform a personal service contract (although a court might issue a negative injunction in certain circumstances). Because the contractor-homeowner contract obligates the contractor to personally remodel the homeowner's kitchen, it is a personal service contract that is not specifically enforceable.

173. Answer B is correct. When a contractor is injured due to an owner's breach of a construction contract, the contractor generally can recover as expectation damages his expected profit on the contract along with any labor and material expenses incurred up until the time that he learned of the owner's breach. The contractor may not recover for damages that he could have mitigated with reasonable effort. Therefore, the contractor may recover as damages his expected profit on his contract with the homeowner. He cannot, however, recover the $5,000 that he spent on materials because he incurred those expenses after being notified of the homeowner's repudiation of the contract.

174. 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.

175. Answer D is correct. Under the UCC, any trade usage that is observed with sufficient regularity 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. The distribution contract between the distribution company and Fizzy required the distribution company to promote the sale of Fizzy Cola in good faith but did not specify whether the distribution company was restricted from distributing competing brands. Trade usage demonstrating that soft drink distributors uniformly handle only one brand of cola would strengthen Fizzy's argument because it is objective evidence that the agreement prohibits the distribution company from distributing competitors' brands of cola. A, B and C are incorrect because each of these facts, in and of itself, is only inconclusive evidence that the distribution company may have breached its obligation to promote Fizzy Cola in good faith.

176. 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.

177. 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.

178. Answer A is correct. Under the UCC, where reasonable grounds for insecurity arise with respect to the other party's performance, a party may make a written demand for adequate assurance of due performance. Failure to provide such assurance within a reasonable time may be treated as repudiation of the contract. Although the hoarder made a request for assurances of performance which the broker failed to provide, the facts suggest that the hoarder's request for assurances was unreasonable. In order for a demand for assurances to be justified, the insecurity must relate either to the inability or unwillingness of the other party to perform. A mere shift in market price for rare coins does not impugn the broker's willingness or ability to perform the contract. Nor does the broker's October 17 reply manifest a repudiation of the contract. In order to amount to a repudiation, the communication must be an unequivocal statement of a party's inability or unwillingness to perform.

179. 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.

180. 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 becase 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.

181. Answer D is correct. Under the pre-existing duty rule, the performance of a legal duty owed to the promisor is not consideration, if the duty is not subject to serious dispute. Thus the rule does not apply where the pre-existing duty is one 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 pre-existing duty was owed to the insurance company and not to the collector.

182. 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.

183. Answer D 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 (e.g., "I'll buy it if I feel like it."). Such a promise is an illusory promise. The modern approach, however, is to construe a promise wherever possible so as not to be illusory. This can be done, for example, by reading into the promise an obligation to exercise discretion in good faith. So long as the promisor has limited her freedom of action in some way, the court will find consideration sufficient to enforce the return promise. When the woman promised to pay $100 "as soon as I am able," she limited her freedom of action in that she will become obligated to pay the purchase price when it can be demonstrated that she has the ability to pay.

184. 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.

185. Answer B is correct. A waiver is an excuse of the nonoccurrence or delay of a condition to fulfill a duty. A waiver does not require consideration unless the condition being waived is a material term of the agreement. When the fixture company and the druggist agreed to postpone their delivery date under the contract from August 15 to August 20, in effect the druggist waived a non-material term of the agreement, and therefore the waiver was enforceable even without consideration. The druggist, therefore, was not justified in refusing to accept or to pay for the cabinets.

186. 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.

187. Answer A 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 painter's obligation to paint the barns), that performance is due before the other party is obligated to perform, unless the contract specifies otherwise. In this case, the farmer-painter contract not only failed to provide for progress payments, but it expressly provided for payment only "upon the painter's completion of the work on all three barns." Thus the farmer was not obligated to pay any portion of the contract price until the painter had substantially completed painting the three barns.

188. 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.

189. 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.

190. 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.

191. 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.

192. Answer A 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. In other words, the effect of nonoccurrence of the condition will depend on whose obligation is subject to it. The express condition in the buyer-shareholder contract relating to the parent company's approval ("our commitment to buy is conditioned from the parent company") affects the buyer's but not the shareholder's obligation. Since the facts suggest that both the buyer and the parent company are ready and willing to consummate the sale, it appears that those parties waived the nonoccurrence of the condition.

193. Answer B 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). 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.

194. Answer A is correct. Generally, a party that has made a contract with another cannot later disregard the contract and bring suit in restitution against a third person, even if that third person has received a benefit from the contract. For example, where the window company has conferred a benefit (replaced the glass in the window) pursuant to its contract with the tenant, it normally would not be able to recover in restitution from the landlord. However, sometimes recovery in restitution is possible, especially where the third person (the landlord) has not already paid someone else for the work and the claimant's (the window company's) avenues to bring suit to enforce the contract have been exhausted. These and other factors suggest that restitution against the landlord would be just in this case: the tenant is insolvent, the landlord collected on a $2,000 deposit that the tenant forfeited because of the broken window, and the fact that the lease expressly contemplated the tenant fixing any damage to the property suggests that the landlord would have requested the work if given the opportunity.

195. 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, then cashing the check without protest amounts to an acceptance of the offer of an accord and satisfaction of the debt. Mere payment of a lesser sum would not be sufficient consideration to support the modification, however, unless the amount owed to the creditor is not liquidated (i.e., genuinely in dispute). Although the tenant made an offer for an accord in satisfaction that the window company accepted when it cashed the check, it was not enforceable because it lacked consideration - the amount of and basis for the debt which the tenant owed to the window company was not in dispute.C and D are incorrect because an accord and satisfaction is not enforceable unless the debt is genuinely in dispute (in any event, cashing a check with a reservation-of-rights notation most likely would not help the window company).

196. 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.

197. 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.

198. 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 (Newman) breaches the duty, the chef may enforce the contract either against the original obligor (the decorator), or against the delegatee (Newman). The chef may enforce Newman's promise because he is the intended beneficiary of the decorator-Newman contract (under which Newman undertook to design the interior of the chef's new restaurant).

199. Answer C is correct. Where a court finds a contract to be unconscionable at the time that the contract is made, it may refuse to enforce the contract or may enforce the remainder of the contract without the unconscionable term. Unconscionability has been defined as including both procedural and substantive elements: procedural unconscionablity refers to defects in the bargaining process that leave a party with no meaningful choice, and substantive unconscionability refers to contract terms that are unreasonably favorable to the other party.

200. 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 knows that the promisee intended to confer a benefit on the beneficiary. The landholder's next-door neighbor lacks standing to enforce the logger-landholder contract because he is neither a party nor an assignee of the landholder's rights under the contract. He also lacks standing as a third party beneficiary because, although the logger's performance of the contract may have benefited the neighbor, the facts do not suggest that this was either party's intent when entering into the contract. Therefore the neighbor is merely an incidental beneficiary.

201. Answer A is correct. The parol evidence rule bars extrinsic evidence of statements made prior to the execution of a final written agreement where the statements contradict the terms of the final written agreement or where the statements purport to add to the agreement where the agreement is completely integrated (i.e., one that is intended by the parties to be both the final and exclusive manifestation of the parties' understanding). However, an exception to the parol evidence rule applies where the extrinsic evidence is offered to interpret an ambiguity in the final written agreement. Because the writing is ambiguous as to whether Boss signed the construction contract on her own behalf or only as representative of Builder, extrinsic evidence of the negotiations between Builder and Land is admissible to interpret the writing.

202. 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.

203. 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.

204. Answer B is correct. Damages for breach of contract may be recovered for loss that the breaching party had reason to foresee as a probable result of the breach at the time the contract was made. At the time that the mechanic-textile contract was made, neither party was aware of the textile company's prospective liability under its contract with the knitwear company. Indeed, under ordinary circumstances, the textile company would suffer little or no loss due to a delay in machine repair. Because the mechanic did not have reason to foresee the $25,000 loss the textile company sustained due to the mechanic's breach, the loss is not recoverable as an element of damages.

205. 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).

206. 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).

207. 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.

208. 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

209. 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.

210. 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.

211. 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.

212. 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.

213. 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.

214. 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."

215. 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.

216. 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.

217. Answer D is correct. Unless the offer is an option, the offeror may revoke an offer at any time before the offer has been accepted. Under the mail box rule, unless the offer specifies otherwise, notice of acceptance is effective upon dispatch in the mail if a mailed acceptance is invited by the terms of the offer. Because the buyer's order was mailed, the seller's properly stamped and addressed letter was invited by the terms of the offer and was therefore effective upon its dispatch on January 7. Because the buyer did not attempt to revoke the offer until January 8, the seller's acceptance created a contract.

218. 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. 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. 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). Both C and D are incorrect because an award of $10,000 or $10,200 would overcompensate the teacher, violating the principle of expectation damages.

219. 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.

220. 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.

221. 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."

222. 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.

223. 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.

224. 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.

225. D is correct. A promise to pay a debt after the running of the statute of limitations, like the promise in this case, is enforceable without consideration. The enforcement of such a promise is a long-established exception to the requirement that there be consideration to support the enforcement of promises. Thus, answer D is correct and answer B is incorrect.

226. 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.

227. Answer D is correct. Under Uniform Commercial Code § 2-206, an offer to buy goods for prompt shipment is accepted when the seller ships the goods. The contract was created in this case when the wholesaler shipped the bottles. The terms consisted of the negotiated terms plus UCC gap-fillers. The subsequent acknowledgment form was an ineffective effort to modify the terms, and these proposed modifications were not accepted by the buyer.

228. B is correct. The Uniform Commercial Code controls. UCC § 2-202, which is the UCC embodiment of the parol evidence rule, explicitly provides that, while a final written expression of agreement may not be contradicted by any prior agreement, it may be explained or supplemented "by course of dealing or usage of trade or by course of performance." A course of dealing, when inconsistent with a usage of trade, controls. Therefore, the agreement in this case should be interpreted to embody the course of dealing of the parties, which provided for a 5% discount if payment was made within 15 days. Thus, answer B is correct, and answers A and D are incorrect.

229. Answer A is correct. The victim of a breach is entitled to recover only those damages which could not reasonably have been avoided. Failure to take reasonable steps to mitigate damages defeats only a claim for consequential damages. It does not deprive the victims of the breach of the opportunity to claim damages measured by the difference between contract and market price. Here, the mother and son could have paid just $1,000 more to hire a substitute teacher, and they are entitled to recover this amount — which is the amount necessary to put them in the position they would have been in had the contract been performed.

230. 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.

231. 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.

232. 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.

233. 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.

234. 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.

235. 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.

236. 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.

237. C is the correct answer. 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.

238. 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.

239. Answer A is correct. UCC § 2-613 provides that where goods, identified at the time the contract was made, are totally destroyed before the risk of their loss has passed to the buyer and without the fault of either party, the contract is avoided and each party is relieved of its respective obligation to perform. Under UCC § 2-501, the goods were identified at the time of contract formation since the parties agreed to the delivery of a specific automobile. In addition, the facts state that the car was destroyed without the fault of either party and before the risk of loss had passed. Therefore the contract is avoided. The avoidance of the contract excused both parties' performance obligation. Since each party's performance is discharged, neither party can assert a valid claim against the other. Thus, Answer A is correct, and Answers B, C, and D are incorrect.

240. Answer C is correct.

241. 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.

242. Answer A is correct. UCC § 2-206(1)(b) provides that a seller's shipment of nonconforming goods with a notice of accommodation does not constitute an acceptance and breach, but rather a counteroffer, which the buyer is free to either accept or reject. Section 2-206(1)(b) also provides, however, that a contract calling for prompt shipment can be accepted by either a prompt promise to ship or by the prompt shipment of goods. The seller accepted the buyer's offer by a promise to ship when he mailed his June 2 letter. UCC § 2-601 allows a buyer to accept or reject nonconforming goods and in either event recover damages. The buyer has an action for breach since the computer shipped on June 3 failed to conform to the contract formed on June 2 when the seller mailed his letter of acceptance.

243. 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.

244. 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.

245. 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.

246. 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.

247. 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.

248. Answer B is correct. Where one party's performance requires a period of time, that party must complete its performance before the other party is required to perform unless the language or circumstances indicate otherwise. Here the parties did not provide for progress payments. Therefore the builder was required to complete performance before the homeowner was obligated to pay for any of the work the builder had performed. The builder's abandonment of the job constituted a wrongful repudiation giving the homeowner an action for breach. Restatement (Second) of Contracts §§ 234, 235. Thus, Answer B is correct.

249. Answer A is correct. The collector rightfully rejected the goods. However, the collector's exercise of ownership of the painting, after his original rejection, caused the gallery to otherwise dispose of the goods. Therefore, the collector's conduct in selling the painting was wrongful against the gallery and constituted conversion. The gallery should not be limited to the contract price for determining the value of the painting since the remedy for conversion is the fair market value of the goods at the time of the conversion. UCC §§ 2-601 cmt. 2, 1-103. The collector's sale of the painting for $120,000 provides credible evidence of the painting's fair market value at the time of the conversion. In addition, the gallery is not a lost volume seller since the painting was a one-of-a-kind good, which means the gallery was operating at full capacity. Thus, Answer A is correct, and Answers B, C, and D are incorrect.

250. 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.

251. Answer C is correct. Generally, parties who make a contract for an intended beneficiary retain the right to modify the duty by a subsequent contract. The power to modify is terminated, however, when the intended beneficiary materially changes his position in reliance on the promise. The clerk was an intended beneficiary of the promise between the accountant and the bookkeeper since their promise clearly intended to benefit the clerk. The clerk materially changed his position in reliance on the promise when he purchased a retirement home. The clerk's material reliance terminated the ability of the accountant and the bookkeeper to modify their duty. Restatement (Second) of Contracts §§ 302, 311. Thus, Answer C is correct, and Answers A and B are incorrect.

252. 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.

253. 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.

254. Answer B is correct. A misrepresentation of fact that induces assent provides a basis for avoidance of a contract. A misrepresentation is defined as a statement that is not in accord with the facts. Affirmative conduct that is "intended or known likely to prevent another from learning a fact is equivalent to an assertion that the fact does not exist" and constitutes a misrepresentation. The homeowner's painting over the water damage constituted affirmative conduct intended to prevent the buyer from learning of the water damage and the leaking roof. Therefore, the buyer's assent was induced by a misrepresentation, and the buyer can avoid the contract.

255. Answer B is correct. UCC § 2-612(2) provides that a buyer may reject any installment that is nonconforming if the nonconformity substantially impairs the value of that installment and it cannot be cured. The delivery of less than the contracted-for amount constituted a nonconformity that substantially impaired the value of the installment since the wholesaler could not deliver the remaining 5,000 pounds until the day after the bakery needed the flour to fulfill its weekly baking needs, and the bakery was entitled to reject the tender.

256. 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.

257. 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.

258. D is the correct answer.

259. 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.

260. Answer C is correct. The presumed wide availability of credit limits a borrower's recovery to the additional cost of obtaining a loan from another lender. In the typical case, a lender has no reason, at the time of contract formation, to foresee that the borrower will not be able to obtain a substitute loan. Therefore, the borrower's lost profit is considered unforeseeable at the time of contract formation. Here, the merchant is entitled to recover the difference in cost over time between a loan at 10% and one at 8%. Thus, Answer C is correct and Answer D is incorrect.

261. 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.

262. Answer C is correct. The patient cannot recover because she is an incidental beneficiary rather than an intended third-party beneficiary. In a typical third-party situation, X (the promissee) contracts with Y (the promisor) that Y will render some performance to Z (the third-party beneficiary). Only an intended beneficiary has contractual rights, not incidental beneficiaries. Factors to consider when determining if a party is an intended beneficiariary include: (i) whether the beneficiary is identified in the contract, (ii) whether the beneficiary receives performance directly from the promisor, or (iii) whether there is some relationship between the intended beneficiary and the promisee that indicates an intent to benefit the intended 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.

263. 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.

264. 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.

265. 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.

266. 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.

267. 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.

268. 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.

269. 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.

270. 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.

271. 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.

272. 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 likely would exceed $2,500, statement I is incorrect. The builder is also entitled to withhold his remaining performance under the contract. Therefore statement II is correct.

273. Answer B is correct. The father is entitled to damages representing the reasonable cost of completion, which is an amount equal to what another contractor would require to complete performance minus what the father would have paid to the contractor to complete performance.

274. 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.

275. 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. 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 it was made prior to the purchaser's attempted acceptance.

276. 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.

277. Answer D is correct. Although the wholesale distributor is specifically named in the contract, there is no relationship with the wholesale distributor from which it could be inferred that the financier-investor and the winery had the wholesale distributor's interest in mind when they entered into their agreement. The language of the contract also expresses no intent to vest an independent right of enforcement in the wholesale distributor, "if feasible, the wine would be distributed ... only through the wholesale distributor."

278. 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.

279. 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.

280. 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.

281. B is correct. The mother was not a party to the contract between the sister and brother, so the only way for her to have contractual rights is if she was the intended beneficiary of the contract. To determine whether the mother was an intended beneficiary, she must satisfy three elements: 1) she must receive the performance directly, 2) she must be named in the contract, and 3) she must have some relationship with the parties to the contract. In this case, the contract between the sister and brother provided that they would each pay $500 to their mother each month. The mother was named, she directly receives the payments, and she has a relationship with the parties. The mother is an intended beneficiary and thus may prevail in a suit against the brother for April's $500 payment.

282. 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. Because the brother promised to pay support to their mother and not to the sister, calculating damages to measure the sister's injury for breach of that promise would be impossible to ascertain.

283. 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.

284. 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.

285. 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.

286. 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.

287. 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.