1. X--A contractor painted an owner's house under a contract which called for payment of $2,000. The owner, contending in good faith that the porch had not been painted properly, refused to pay anything. On June 15, the contractor mailed a letter to the owner stating, "I am in serious need of money. Please send the $2,000 to me before July 1." On June 18, the owner replied, "I will settle for $1,800 provided you agree to repaint the porch." The contractor did not reply to this letter.

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

A. partial breach of contract only if the contractor had properly or substantially painted the porch.

B. partial breach of contract whether or not the contractor had properly or substantially painted the porch.

C. total breach of contract only if the contractor had properly or substantially painted the porch.

D. total breach of contract whether or not the contractor had properly or substantially painted the porch.

2. A contractor had painted an owner's house under a contract which called for payment of $2,000. The owner, contending in good faith that the porch had not been painted properly, refused to pay anything. On June 15, the contractor mailed a letter to the owner stating, "I am in serious need of money. Please send the $2,000 to me before July 1." On June 18, the owner replied, "I will settle for $1,800 provided you agree to repaint the porch." The contractor did not reply to this letter. Thereafter the owner mailed a check for $1,800 marked "Payment in full on the painting contract as per letter dated June 18." The contractor received the check on June 30. Because he was badly in need of money, the contractor cashed the check without objection and spent the proceeds but has refused to repaint the porch. After cashing the check the contractor sued the owner for $200.00. The contractor probably will

A. succeed if he can prove that he had painted the porch according to specifications.

B. succeed, because he cashed the check under economic duress.

C. not succeed, because he cashed the check without objection.

D. not succeed, because he is entitled to recover only the reasonable value of his services.

3. A contractor had painted an owner's house under a contract which called for payment of $2,000. The owner, contending in good faith that the porch had not been painted properly, refused to pay anything. On June 15, the contractor mailed a letter to the owner stating, "I am in serious need of money. Please send the $2,000 to me before July 1." On June 18, the owner replied, "I will settle for $1,800 provided you agree to repaint the porch." The contractor did not reply to this letter. Thereafter the owner mailed a check for $1,800 marked "Payment in full on the painting contract as per letter dated June 18." The contractor received the check on June 30. Because he was badly in need of money, the contractor cashed the check without objection and spent the proceeds but has refused to repaint the porch. In an action by the owner against the contractor for any provable damages the owner sustained because the porch was not repainted, he probably will

A. succeed, because by cashing the check the contractor impliedly promised to repaint the porch.

B. succeed, because the contractor accepted the owner's offer by not replying to the letter of June 18.

C. not succeed, because the owner's letter of June 18 was a counter-offer which the contractor never accepted.

D. not succeed, because there is no consideration to support the contractor's promise, if any.

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

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

A. Her acting contract with the agent was legally severable into weekly units.

B. Her performance of the literal terms of the contract was physically impossible.

C. Her reliance on the engagement with the agent by declining another acting role created an estoppel against the agent.

D. Her failure to perform for one week was not a material failure so as to discharge the agent's duty to perform.

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

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

A. The agent could only find one replacement, who demanded a contract for a minimum of six months if she was to perform at all.

B. The replacement, by general acclaim, was much better in the role than the original actress had been.

C. The agent had offered the original actress a position as the replacement's understudy at a salary of $100 a week, which the original actress declined.

D. The agent had offered the actress a secretarial position at a salary of $300 a week, which the actress declined.

6. On March 1, a seller orally agreed to sell his land, Homestead, to a buyer for $46,000 to be paid on March 31. The buyer orally agreed to pay $25,000 of the purchase price to a creditor of the seller in satisfaction of a debt which the seller said he had promised to pay the creditor. On March 10, the buyer dictated the agreement to his secretary but omitted all reference to the payment of the $25,000 to the creditor. In typing the agreement, the secretary mistakenly typed in $45,000 rather than $46,000 as the purchase price. Neither the buyer nor the seller carefully read the writing before signing it on March 15. Neither noticed the error in price and neither raised any question concerning omission of the payment to the creditor. In an action by the creditor against the buyer for $25,000, which of the following is (are) correct?

I. The buyer could successfully raise the Statute of Frauds as a defense because the agreement was to answer for the debt of another.

II. The buyer could successfully raise the Statute of Frauds as a defense because the agreement was for the sale of an interest in land.

A. I only

B. II only

C. Both I and II

D. Neither I nor II

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

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

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

A. Whether the buyer-seller agreement was completely integrated.

B. Whether the buyer was negligent in not having carefully read the written agreement.

C. Whether the seller was negligent in not having carefully read the written agreement.

D. Whether the creditor was a party to the contract.

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

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

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

A. There was no consideration to support the seller's antecedent promise to pay the creditor the $25,000.

B. On March 5, before the creditor was aware of the oral agreement between the seller and the buyer, the seller agreed with the buyer not to pay any part of the purchase price to the creditor.

C. Whatever action the creditor may have had against the buyer was barred by the statute of limitations prior to March 1.

D. Before he instituted his action against the buyer, the creditor had not notified either the buyer or seller that he had accepted the buyer-seller arrangement for paying the creditor.

9. On March 1, a seller orally agreed to sell his land, Homestead, to the buyer for $46,000 to be paid on March 31. The buyer orally agreed to pay $25,000 of the purchase price to a creditor of the seller in satisfaction of a debt which the seller said he had promised to pay the creditor. On March 10, the buyer dictated the agreement to his secretary but omitted all reference to the payment of the $25,000 to the creditor. In typing the agreement, the secretary mistakenly typed $45,000 rather than $46,000 as the purchase price. Neither the buyer nor the seller carefully read the writing before signing it on March 15. Neither noticed the error in price and neither raised any question concerning omission of the payment to the creditor. If the buyer refused to pay more than $45,000 for Homestead, in an action by the seller against the buyer for an additional $1,000, it would be to the seller's advantage to try to prove that

A. the writing was intended only as a sham.

B. the writing was only a partial integration.

C. there was a mistake in integration.

D. there was a misunderstanding between the seller and the buyer concerning the purchase price.

10. A landowner was the owner of a large subdivision. A purchaser became interested in purchasing a lot but could not decide between Lot 40 and Lot 41. The price and fair market value of each of those two lots was $5,000. The purchaser paid the landowner $5,000, which the landowner accepted, and the landowner delivered to the purchaser a deed which was properly executed, complete, and ready for recording in every detail except that the space in the deed for the lot number was left blank. The landowner told the purchaser to fill in either Lot 40 or Lot 41 according to his decision and then to record the deed. The purchaser visited the development the next day and completely changed his mind, selecting Lot 25. He filled in Lot 25 and duly recorded the deed. The price of Lot 25 and its fair market value was $7,500. Before the landowner had time to learn of the purchaser's actions, the purchaser sold Lot 25 to a neighbor for $6,000 by a duly and properly executed, delivered, and recorded warranty deed. The neighbor knew that the landowner had put a price of $7,500 on Lot 25, but he knew no other facts regarding the landowner-purchaser transaction. The neighbor's attorney accurately reported the purchaser's record title to be good, marketable, and free of encumbrances. Neither the neighbor nor his attorney made any further investigation outside the record. The landowner brought an appropriate action against the neighbor to recover title to Lot 25. If the landowner loses, the most likely basis for the judgment is that

A. the Statute of Frauds prevents the introduction of any evidence of the landowner's and the purchaser's agreement.

B. recording of the deed from the landowner to the purchaser precludes any question of its genuineness.

C. as between the landowner and a bona fide purchaser, the landowner is estopped.

D. the clean hands doctrine bars the landowner from relief.

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

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

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

A. Lack of consideration

B. Mistake of fact as to basic assumption

C. Statute of Frauds

D. Indefiniteness of the father's promise

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

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

Which of the following, if true, would be significant in determining whether or not there was bargained-for consideration to support the father's promise to the physician?

I. The physician had not begun treating the woman before the father called him.

II. The father had a contract with the woman.

A. I only

B. II only

C. Both I and II

D. Neither I nor II

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

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

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

I. The woman furnished no consideration, either express or implied.

II. The physician's contract was with the father and not with the woman.

III. Whatever contract the physician may have had with the woman was discharged by novation on account of the agreement with the father.

A. I only

B. I and II only

C. II and III only

D. Neither I nor II nor III

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

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

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

A. Yes, because the creditor had detrimentally relied on the father's promise.

B. Yes, because the father's promise was supported by a bargained-for exchange.

C. No, because the creditor's claim against the son's estate was worthless.

D. No, because the father at most had only a moral obligation to pay the son's debts.

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

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

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

A. Yes, because the son's debt of $200 was liquidated and undisputed.

B. Yes, because the creditor honestly believed that he had a legal right against the father for the full $200.

C. No, because the father honestly believed that the creditor did not have a legal right against him for the $200.

D. No, because the father was not contractually obligated to pay the creditor $200 in the first place.

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

The department store will pay the computer programming company $20,000 in two equal installments within one month of completion if the computer programming company is successful in shortening by one-half the processing time for the financial transactions now handled on the department store’s Zenon 747 computer; the computer programming company to complete by July 1. This agreement may be amended only by a signed writing.

On June 6, the computer programming company demanded $10,000, saying the job was one-half done. The parties orally agreed that the store should deposit $20,000 in escrow, pending completion to the satisfaction of the store’s computer systems manager. On July 5, the programming company completed the programs. Tests showed that the computer programs, not being perfectly coordinated with the store’s billing methods, cut processing time by only 47 percent. The department store’s computer systems manager refused in good faith to certify satisfactory completion, requested that the escrow agent return the $20,000, and asserted that nothing was owed to the programming company even though the department store continued to use the programs.

The department store denies liability on the ground that the programming company had orally agreed to coordinate with the department store’s methods of accounting, and the programming company seeks to bar introduction of that agreement based on the parol evidence rule. The department store’s most effective argument is that

A. the parol evidence rule does not bar the introduction of evidence for the purpose of interpreting a written agreement.

B. the memorandum was not a completely integrated agreement.

C. the department store detrimentally relied on the oral promise of coordination in signing the memorandum.

D. the memorandum was not a partially integrated agreement.

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

The department store will pay the computer programming company $20,000 in two equal installments within one month of completion if the computer programming company is successful in shortening by one-half the processing time for the financial transactions now handled on the department store's Zenon 747 computer; the computer programming company to complete by July 1. This agreement may be amended only by a signed writing.

On June 6, the computer programming company demanded $10,000, saying the job was one-half done. After the department store denied liability, the parties orally agreed that the department store should deposit $20,000 in escrow, pending completion to the satisfaction of the department store’s computer systems manager.

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

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

A. Yes, because June 6 was within one month of completion

B. Yes, because the computer programming company had done one-half the job.

C. No, because of a constructive condition precedent requiring at least substantial completion of the work before the department store would have a duty to pay.

D. No, because "within one month of completion" would, in these circumstances, be interpreted to mean "within one month after completion."

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

The department store will pay the computer programming company $20,000 in two equal installments within one month of completion if the computer programming company is successful in shortening by one-half the processing time for the financial transactions now handled on the department store’s Zenon 747 computer; the computer programming company to complete by July 1. This agreement may be amended only by a signed writing.

On June 6, the computer programming company demanded $10,000, saying the job was one-half done. After the department store denied liability, the parties orally agreed that the department store should deposit $20,000 in escrow, pending completion to the satisfaction of the department store computer systems manager. The escrow deposit was thereupon made. On July 5, the computer programming company completed the programs. Tests then showed that the computer programs cut processing time by only 47 percent.

The department store’s computer systems manager refused in good faith to certify satisfactory completion. The department store requested the escrow agent to return the $20,000 and asserted that nothing was owed to the computer programming company even though the department store continued to use the programs.

Was the escrow agreement a valid modification?

A. Yes, because it was the compromise of an honest dispute.

B. Yes, because the Statute of Frauds does not apply to subsequent oral modifications.

C. No, because it was oral.

D. No, because it was not supported by consideration.

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

The department store will pay the computer programming company $20,000 in two equal installments within one month of completion if the computer programming company is successful in shortening by one-half the processing time for the financial transactions now handled on the department store’s Zenon 747 computer; the computer programming company to complete by July 1. This agreement may be amended only by a signed writing.

On June 6, the computer programming company demanded $10,000, saying the job was one-half done. After the department store denied liability, the parties orally agreed that the department store should deposit $20,000 in escrow, pending completion to the satisfaction of the department store’s computer systems manager. The escrow deposit was thereupon made. On July 5, the computer programming company completed the programs, having used an amount of time in which it could have earned $18,000 had it devoted that time to other jobs. Tests by the computer programming company and the department store computer systems manager then showed that the computer programs, not being perfectly coordinated with the department store’s billing methods, cut processing time by only 47 percent. They would, however, save the department store $12,000 a year. Further, if the department store would spend $5,000 to change its invoice preparation methods, as recommended by the computer programming company, the programs would cut processing time by a total of 58 percent, saving the department store another $8,000 a year.

The department store’s computer systems manager refused in good faith to certify satisfactory completion. The department store requested the escrow agent to return the $20,000 and asserted that nothing was owed to the computer programming company even though the department store continued to use the programs.

Assume that the programs completed on July 5 had cut processing time by one-half for all of the department store’s financial transactions. Is the department store entitled to renounce the contract because of the computer programming company’s delay in completion?

A. Yes, because "the computer programming company to complete by July 1" is an express condition.

B. Yes, because the doctrine of substantial performance does not apply to commercial contracts.

C. No, because both parties manifested an understanding that time was not of the essence.

D. No, because the contract did not contain a liquidated damages clause dealing with delay in completion.

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

The department store will pay the computer programming company $20,000 in two equal installments within one month of completion if the computer programming company is successful in shortening by one-half the processing time for the financial transactions now handled on the department store’s Zenon 747 computer; the computer programming company to complete by July 1. This agreement may be amended only by a signed writing.

On June 6, the computer programming company demanded $10,000, saying the job was one-half done. After the department store denied liability, the parties orally agreed that the department store should deposit $20,000 in escrow, pending completion to the satisfaction of the department store’s computer systems manager. The escrow deposit was thereupon made. On July 5, the computer programming company completed the programs, having used an amount of time in which it could have earned $18,000 had it devoted that time to other jobs. Tests by the computer programming company and the department store’s computer systems manager then showed that the computer programs, not being perfectly coordinated with the department store’s billing methods, cut processing time by only 47 percent. They would, however, save the department store $12,000 a year. Further, if the department store would spend $5,000 to change its invoice preparation methods, as recommended by the computer programming company, the programs would cut processing time by a total of 58 percent, saving the department store another $8,000 a year. The department store’s computer systems manager refused in good faith to certify satisfactory completion. The department store requested the escrow agent to return the $20,000 and asserted that nothing was owed to the computer programming company even though the department store continued to use the programs.

Assume that the computer programming company’s delay in completion did not give the department store the right to renounce the contract and that the parties' escrow agreement was enforceable. Is the computer programming company entitled to recover damages for breach of the contract?

A. Yes, because the computer programming company had substantially performed.

B. Yes, because the program would save the department store $12,000 a year.

C. No, because shortening the processing time by one-half was an express condition subsequent.

D. No, because the department store's computer systems manager did not certify satisfactory completion of the programs.

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

The department store will pay the computer programming company $20,000 in two equal installments within one month of completion if the computer programming company is successful in shortening by one-half the processing time for the financial transactions now handled on the department store’s Zenon 747 computer; the computer programming company to complete by July 1. This agreement may be amended only by a signed writing.

On June 6, the computer programming company demanded $10,000, saying the job was one-half done. After the department store denied liability, the parties orally agreed that the department store should deposit $20,000 in escrow, pending completion to the satisfaction of the department store’s computer systems manager. The escrow deposit was thereupon made. On July 5, the computer programming company completed the programs, having used an amount of time in which it could have earned $18,000 had it devoted that time to other jobs. Tests by the computer programming company and the department store’s computer systems manager then showed that the computer programs, not being perfectly coordinated with the department store’s billing methods, cut processing time by only 47 percent. They would, however, save the department store $12,000 a year. Further, if the department store would spend $5,000 to change its invoice preparation methods, as recommended by the computer programming company, the programs would cut processing time by a total of 58 percent, saving the department store another $8,000 a year.

The department store’s computer systems manager refused in good faith to certify satisfactory completion. The department store requested the escrow agent to return the $20,000 and asserted that nothing was owed to the computer programming company even though the department store continued to use the programs.

Assume that the computer programming company was in breach of contract because of its four-day delay in completion and that an express condition precedent to the department store’s duty to pay the contract price has failed. Can the computer programming company nevertheless recover the reasonable value of its service?

A. Yes, because continued use of the programs by the department store would save at least $12,000 a year.

B. Yes, because the department store was continuing to use programs created by the computer programming company for which, as the department store knew, the computer programming company expected to be paid.

C. No, because failure of an express condition precedent excused the department store from any duty to compensate the computer programming company.

D. No, because such a recovery by the computer programming company would be inconsistent with a claim by the department store against the computer programming company for breach of contract.

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

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

A. There is no evidence that tenured teachers are any more qualified than he is.

B. He leased a home in reliance on an oral promise of reemployment by the college president.

C. He was the only teacher at the college whose contract was not renewed that year.

D. In the expectation of remaining at the college, he had just moved his elderly parents to the town in which college is located.

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

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

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

A. the land is located in a state where the Statute of Frauds will not be applied if there has been such part performance as will result in an irreparable hardship if the contract is not performed.

B. the land is located in a state where the Statute of Frauds will not be applied if there has been such part performance that is by its very nature unequivocally referable to the contract.

C. the son is precluded by the "clean hands" doctrine from enforcing his claim against the nephew.

D. the blood relationship of uncle-nephew is sufficient to remove the necessity for any writing to satisfy the Statute of Frauds.

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

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here.

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

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

A. Only by an offeree's return promise to make a reasonable effort to bring about the arrest and conviction of an arsonist within the scope of the offer.

B. Only by an offeree's making the arrest and assisting in the successful conviction of an arsonist within the scope of the offer.

C. By an offeree's supplying information leading to arrest and conviction of an arsonist within the scope of the offer.

D. By an offeree's communication of assent through the same medium (television) used by the city in making its offer.

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

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here.

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

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

A. by lapse of time, on December 31 of the year in which it was made.

B. not by lapse of time, but only by effective revocation.

C. not by revocation, but only by lapse of a reasonable time.

D. either by lapse of a reasonable time or earlier by effective revocation.

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

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here.

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

If the city's reward offer was revocable, revocation could be effectively accomplished only

A. by publication in the legal notices of a local newspaper.

B. in the same manner as made, i.e., by local telecast at least once daily for one week.

C. in the same manner as made or by a comparable medium and frequency of publicity.

D. by notice mailed to all residents of the city and all other reasonably identifiable, potential offerees.

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

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here.

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

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

A. A unilateral offer of employment by the store which became irrevocable for a reasonable number of days after the detective commenced his investigation of the store's arson.

B. An employment for compensation subject to a condition precedent that the detective succeeds in his investigation.

C. A series of daily bilateral contracts, the store exchanging an express promise to pay the daily rate for the detective's implied promise to pursue his investigation with reasonable diligence.

D. A series of daily unilateral contracts, the store exchanging an express promise to pay the daily rate for the detective's daily activity of investigating the store's arson.

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

The City will pay $10,000 for the arrest and conviction of anyone guilty of any of the 2006 arsons committed here.

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

In a suit by the detective against the city to recover the $10,000 reward, which of the following, in light of the facts given, most usefully supports the detective's claim?

A. The city was benefited as a result of the detective's services.

B. The city's offer was in the nature of a bounty, so that the elements of contract are not essential to the city's liability.

C. The fact that the city attempted to revoke its offer only a few months after making it demonstrated that the attempted revocation was in bad faith.

D. Although there was no bargained for exchange between the detective and the city, the detective's claim for the reward is supported by a moral obligation on the part of the city.

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

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

A. The creditor was incapable of performing the mechanic's work.

B. The mechanic had not performed his work in a workmanlike manner.

C. On March 1, the mechanic had promised the owner that he would not assign the contract.

D. The creditor was not the intended beneficiary of the mechanic-owner contract.

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

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

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

Assume that the manufacturer's termination of the salesperson's employment was not wrongful.

If the salesperson, after demand and refusal, sues the manufacturer for the corporation sale commission, which of the following is the most likely to result?

A. The salesperson will win, because he had procured the sale of the computer.

B. The salesperson will win, because he had promised the corporation that he would assist in making the equipment work.

C. The manufacturer will win, because the coworker is entitled to the commission on a quantum meruit basis.

D. The manufacturer will win, because the salesperson was not employed as the manufacturer's salesperson when the company was billed for the computer.

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

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

A. The salesperson will win, because the manufacturer benefited as a result of the salesperson's services.

B. The salesperson will win, because the manufacturer made an implied-in-fact promise to pay a reasonable commission for services that result in sales.

C. The salesperson will lose, because there is an express contractual provision pre-empting the subject of compensation for his services.

D. The salesperson will lose, because he cannot perform his agreement to assist the customer for six months.

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

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

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

Which of the following additional facts, if shown by the evidence, would support a claim by the salesperson against the manufacturer?

I. The manufacturer terminated the salesperson because the coworker is the son of the company's president, who wanted his son to have the commission instead of the salesperson.

II. The manufacturer and the salesperson were mistaken; the salesperson had in fact exceeded his sales quotas for 2005 and 2006.

III. The salesperson had worked for the manufacturer as a salesperson for 20 years.

A. I only

B. II only

C. I and II only

D. I, II, and III.

33. X-- A new business enterprise about to commence the manufacture of clothing, entered into written agreement to purchase all of its monthly requirements of a certain elasticized fabric for a period of three years from a fabric company at a specified unit price, and agreed upon delivery and payment terms. The agreement also provided:

1. The parties covenant not to assign this contract.

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

Which of the following accurately states the legal effect of the covenant not to assign the contract?

A. The covenant made the assignment to the finance company ineffective.

B. The covenant had no legal effect.

C. The fabric company’s assignment was a breach of its contract with the new enterprise but was nevertheless effective to transfer the fabric company’s rights against the new enterprise to the finance company.

D. By normal interpretation, a covenant against assignment in a sale-of-goods agreement applies only to the buyer, not the seller.

34. A new business enterprise about to commence the manufacture of clothing, entered into a written agreement to purchase all of its monthly requirements of a certain elasticized fabric for a period of three years from a fabric company at a specified unit price, and agreed upon delivery and payment terms. The agreement also provided:

1. The parties covenant not to assign this contract.

2. Payments coming due hereunder for the first two months shall be made directly by the new business enterprise to the creditor of the fabric company.

The fabric company promptly made an "assignment of the contract" to a finance company as security for a $100,000 loan. The new enterprise subsequently ordered, took delivery of, and paid the fabric company the agreed price ($5,000) for the new enterprise’s requirement of the fabric for the first month of its operation.

Assume that the assignment from the fabric company to the finance company was effective, and that the new enterprise was unaware of the assignment when it paid the fabric company the $5,000. Which of the following is correct?

A. The new business enterprise is liable to the finance company for $5,000.

B. The fabric company is liable to the finance company for $5,000.

C. The new business enterprise and the fabric company are each liable to the finance company for $2,500.

D. Neither the new business enterprise nor the fabric company is liable to the finance company for any amount.

35. X-- A new business enterprise about to commence the manufacture of clothing, entered into a written agreement to purchase all of its monthly requirements of a certain elasticized fabric for a period of three years from a fabric company at a specified unit price, and agreed upon delivery and payment terms. The agreement also provided:

1. The parties covenant not to assign this contract.

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

I. The creditor was an incidental beneficiary of the new business enterprise-fabric company agreement.

II. The creditor has a prior right to the new business enterprise's $5,000 payment as against either the fabric company or the finance company.

A. I only

B. II only

C. Both I and II

D. Neither I nor II

36. A new business enterprise about to commence the manufacture of clothing entered into a written agreement to purchase all of its monthly requirements of a certain elasticized fabric for a period of three years from a fabric company at a specified unit price and agreed delivery and payment terms. The agreement also provided:

1. The parties covenant not to assign this contract.

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

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

A. The fabric company's rights under its agreement with the new business enterprise were personal and therefore nonassignable.

B. The fabric company's "assignment of the contract" to the finance company to secure a loan would normally be interpreted as a delegation of the fabric company's duties under the contract as well as an assignment of its rights; and its duties, owed to the new business enterprise, were personal and therefore non-delegable.

C. The original contract between the new business enterprise and the fabric company was unenforceable by either party for want of legally sufficient consideration for the fabric company's promise to supply the new business enterprise's requirements of the elasticized fabric.

D. the new business enterprise ceased in good faith to have any further requirements for elasticized fabric.

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

A. The landowner acted with due diligence in completing the house.

B. The landowner can prove actual "undue hardship" caused by the delay.

C. the expressions "inside date" and "outside date" are construed to make time of the essence.

D. there is a showing of good faith in the builder's efforts to terminate the contract.

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

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

A. The painter is in breach of contract.

B. The farmer may refuse to accept performance by the contractor.

C. The farmer is required to accept performance by the contractor.

D. There is a novation.

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

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

A. has a cause of action against the painter for damages.

B. has a cause of action only against the contractor for damages.

C. has a cause of action against the painter for damages only after he has first exhausted his remedies against the contractor.

D. does not have a cause of action against the painter for damages, because he waived his rights against the painter by permitting the contractor to perform the work.

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

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

A. It constitutes an acceptance of the goods.

B. It constitutes a waiver of the buyer's remedy of private sale in the case of nonconforming goods.

C. It does not impair a buyer's right of inspection or his remedies.

D. It is invalid.

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

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

A. Specific performance

B. Damages measured by the difference between the value of the goods delivered and the value of conforming goods

C. Damages measured by the price paid plus the difference between the contract price and the cost of buying substitute goods

D. None, since he waived his remedies by agreeing to pay before inspection

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

Can the buyer resell the wool?

A. Yes, in a private sale.

B. Yes, in a private sale but only after giving the seller reasonable notice of his intention to resell.

C. yes, but only at a public sale.

D. No.

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

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

Sincerely,

[signed] the pharmaceutical salesman

The widget salesman replied by mail the following day:

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

Sincerely,

[signed] the widget salesman

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

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

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

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

A. Under the Uniform Commercial Code the offer was irrevocable until noon, November 12.

B. Such language prevented an effective acceptance by the widget salesman prior to noon, November 12.

C. At common law, such language created a binding option in the widget salesman's favor.

D. Such language did not affect the offeror's power of revocation of the offer.

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

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

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

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

A. The letter bound both parties to a unilateral contract as soon as the widget salesman mailed it.

B. Mailing of the letter by the widget salesman did not, of itself, prevent a subsequent, effective revocation by the pharmaceutical salesman of his offer.

C. The letter bound both parties to a bilateral contract, but only when received by the pharmaceutical salesman on November 10.

D. Regardless of whether the pharmaceutical salesman's offer had proposed a unilateral or a bilateral contract, the letter was an effective acceptance upon receipt, if not upon dispatch.

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

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

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

What is the probable legal effect of the friend's conversation with the widget salesman and report that he (the friend) had sold his Sujocki to the pharmaceutical salesman on November 10?

A. This report had no legal effect because the pharmaceutical salesman's offer was irrevocable until November 12.

B. Unless a contract had already been formed between the widget salesman and the pharmaceutical salesman, the friend's report to the widget salesman operated to terminate the widget salesman's power of accepting the pharmaceutical salesman's offer.

C. This report has no legal effect because the offer had been made by a prospective buyer (the pharmaceutical salesman) rather than a prospective seller.

D. The friend's conversation with the widget salesman on November 11 terminated the pharmaceutical salesman's original offer and operated as an offer by the friend to buy the widget salesman's Sujocki for $950.

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

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

Assume that the owner and the buyer were bound by a contract for the sale of lot 101 for $5,000, that on May 3 the owner telephoned the buyer to explain that because he had just discovered that a shopping center was going to be erected adjacent to the Grove subdivision, he would "have to have $6,000 for each of the lots including lot 101," that the buyer thereupon agreed to pay him $6,000 for lot 101, and that on May 6 the buyer telegraphed, "Accept your offer with respect to the rest of the lots." Assuming that two contracts were formed and that there is no controlling statute, the buyer will most likely be required to pay

A. only $5,000 for each of the fifty lots.

B. only $5,000 for lot 101, but $6,000 for the remaining forty-nine lots.

C. $6,000 for each of the fifty lots.

D. $6,000 for lot 101, but only $5,000 for the remaining forty-nine lots.

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

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

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

A. succeed, because the owner had promised him that the offer would remain open until June 1.

B. succeed, because the owner's attempted revocation was by telephone.

C. not succeed, because the buyer's power of acceptance was terminated by the owner's sale of the lots to another party.

D. not succeed, because the buyer's power of acceptance was terminated by an effective revocation.

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

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

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

A. Impossibility of performance

B. Unilateral mistake as to basic assumption

C. Termination of the offer by the buyer's having first contracted to buy lot 101

D. Excuse by failure of an implied condition precedent.

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

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

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

In an action by the doctor against the victim to recover $1,000, the doctor's best theory of recovery is that the doctor

A. is a creditor beneficiary of the employment contract between the victim and the attorney.

B. is a donee beneficiary of the employment contract between the victim and the attorney.

C. provided services essential to the preservation of victim's health.

D. has a claim based upon an implied-in-fact contract with the victim.

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

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

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

In an action by the doctor against the attorney upon the attorney's employment contract with the victim, the attorney is likely to argue in defense that

A. the anti-assignment clause in the attorney's contract with the victim is void as against public policy.

B. the attorney has relied to his detriment on the victim's letter of release.

C. third parties cannot acquire valid claims under an attorney-client contract.

D. the doctor has not materially changed his position in reliance upon the attorney's employment contract.

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

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

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

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

A. the release was ineffective, because the doctor had impliedly assented to the victim-attorney contract.

B. the release was ineffective, because the victim would thereby be unjustly enriched.

C. there was no consideration for the victim's release of the attorney.

D. the attorney's contract duties were too personal to be effectively delegated to the colleague.

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

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

In an action by the doctor against the colleague, the colleague is most likely to argue on these facts that

A. the colleague made only a gratuitous promise to the attorney.

B. at the time the colleague promised to represent the victim, the doctor was only a member of an unidentified class of beneficiaries.

C. there is insufficient evidence to support a finding that the doctor was either a creditor or donee beneficiary of the colleague's promise to the attorney.

D. there is insufficient evidence to support a finding that the doctor substantially changed his position in reliance on the colleague's promise.

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

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

I. The neighbor-landowner agreement permitting the digging of the channel across the neighbor's lot was not in writing.

II. The landowner-builder agreement was not in writing.

A. I only

B. II only

C. Both I and II

D. Neither I nor II

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

Assume that the landowner paid the $2,500 on March 15, that the builder completed the boathouse, that the landowner paid the second installment of $2,500, and that the builder completed the digging of the channel, but not until July 1. Assume further that the absence of a writing is not raised as a defense. Which of the following is (are) correct?

I. The landowner has a cause of action against the builder for breach of contract.

II. The landowner is excused from paying the $5,000.

A. I only

B. II only

C. Both I and II

D. Neither I or II

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

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

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

Assuming that the contractor committed a total breach on March 1, 2002, what would be the probable measure of the father's damages in an action against the contractor for breach of contract?

A. Restitution of the three monthly installments paid in August, September, and October

B. What it would cost to get the house completed by another contractor, minus installments not yet paid to the contractor

C. The difference between the market value of the partly built house, as of the time of the contractor's breach, and the market value of the house if completed according to specifications

D. In addition to other legally allowable damages, an allowance for the father's mental distress if the house cannot be completed in time for his son's wedding on June 10, 2002

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

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

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

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

A. The son and his bride, married on June 10, 2002, would have to pay storage charges on their wedding gifts and new furniture until the house could be completed.

B. The son's fiancée jilted the son on June 10, 2002, and ran off with another man who had a new house.

C. The father was put to additional expense in providing his son and the son's bride, married on June 10, 2002, with temporary housing.

D. On June 10, 2002, the father paid a $5,000 judgment obtained against him in a suit filed March 15, 2002, by an adjoining landowner on account of the father's negligent excavation, including blasting, in an attempt to finish the house himself after the contractor's repudiation.

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

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

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

What was the probable legal effect of the following?

I. The contractor's failure to object to the father's making no payments on November 1, December 1, January 1, and February 1.

II. The father's making payments in August through October without requiring a certificate from Builders.

A. Estoppel-type waiver as to both I and II

B. Waiver of delay in payment as to I and revocable waiver as to II

C. Mutual rescission of the contract by I combined with II

D. Discharge of the father's duty to make the four payments as to I and estoppel-type waiver as to II

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

Which of the following statements concerning the order of performances is LEAST accurate?

A. The building owner's tendering of good title to the apartment house is a condition precedent to the purchaser's duty to convey good title to the farm.

B. The purchaser's tendering of good title to the farm is a condition precedent to the building owner's duty to convey good title to the apartment house.

C. The purchaser's tendering of good title to the farm is a condition subsequent to the building owner's duty to convey good title to the apartment house.

D. The building owner's tendering of good title to the apartment house and the purchaser's tendering of good title to the farm are concurrent conditions.

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

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

A. a condition subsequent in form but precedent in substance to the purchaser's duty to pay the $1,000.

B. a condition precedent in form but subsequent in substance to the purchaser's duty to pay the $1,000.

C. a condition subsequent to the purchaser's duty to pay the $1,000.

D. not a condition, either precedent or subsequent, to the purchaser's duty to pay the $1,000.

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

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

A. Although the lender honestly believed that $6,000 was owed by the borrower, the borrower knew that it was not owed.

B. Although the lender knew that the debt was not owed, the borrower honestly was in doubt whether it was owed.

C. The original claim was based on an oral agreement, which the Statute of Frauds required to be in writing.

D. The original claim was an action on a contract, which was barred by the applicable Statute of Limitations.

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

"When?" asked the president.

"First chapter next Monday," replied the professor.

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

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

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

A. "When" and "Wouldn't that be nice" implied a promise to type the manuscript.

B. The professor relied on the president's statement by bringing the manuscript to her service's office.

C. The secretarial service had done good work for the professor in the past.

D. The professor had foregone the services of another secretarial service.

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

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1.

A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in a student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn.

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

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

A. preliminary invitation to deal, analogous to newspaper advertisements for the sale of goods by merchants.

B. contractual offer, creating a power of acceptance.

C. preliminary invitation, because no offeree was named therein.

D. promise to make a conditional, future gift of money.

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

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1.

A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in the student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn.

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

As to the student, was the offer effectively revoked?

A. Yes, by the faculty's second notice.

B. No, because it became irrevocable after a reasonable time had elapsed.

C. No, because of the student's reliance, prior to April 1, on the offer.

D. No, unless the student became aware of the April 1 posting and removal before submitting the paper.

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

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1.

A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in the student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

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

The offer proposed a

A. unilateral contract only.

B. bilateral contract only.

C. unilateral contract or bilateral contract at the offeree's option.

D. unilateral contract which ripened into a bilateral contract, binding on both parties, as soon as the student intensified his effort in response to the offer.

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

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1.

A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in the student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn.

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

The promise of the faculty on November 1 was

A. enforceable on principles of promissory estoppel.

B. enforceable by the student's personal representative even if the student had been killed in an accident on April 16.

C. not enforceable on policy grounds because it produced a noncommercial agreement between a student and his teachers, analogous to intramural family agreement and informal social commitments.

D. not enforceable, because the student, after entering the National Competition in October, was already under a duty to perform to the best of his ability.

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

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

A. The cards, objectively viewed, were not satisfactory.

B. The cards, subjectively viewed, were not satisfactory.

C. The cards were not delivered on time.

D. The customer's illness excused him from further obligation under the contract.

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

A. Payment by the customer of the $100 was a condition precedent to the photographer's duty of performance.

B. The performances of the photographer and the customer under the contract were concurrently conditional.

C. Payment by the customer of the $100 was a condition subsequent to the photographer's duty of performance.

D. Performance by the photographer under the contract was a condition precedent to the customer's duty of payment of the $100.

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

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

A. The customer's illness and the related development excused the photographer from his obligations to deliver the cards on or before December 15.

B. Prompt notice by the customer to the photographer of the customer's recovery from illness was an implied condition of the photographer's duty under the circumstances.

C. The photographer was under a duty of immediate performance of his promise to deliver the cards, as of December 15, by reason of the express language of the contract and despite the illness of the customer and the related developments.

D. The customer's conduct after his illness constituted a waiver of the necessity of the photographer's performing on or before December 15.

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

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

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

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

A. Yes, because the husband was thereby morally obligated to the man.

B. Yes, because the husband was thereby materially benefited.

C. No, because the husband had not asked the man to save her.

D. No, because the value of the man's act was too uncertain.

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

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

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

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

A. The man's agreement was made in a writing he signed.

B. The man reasonably believed he had a valid claim when the instrument was signed.

C. The wife had contributed to accumulation of the real property.

D. The man paid the husband $1 when he received the instrument.

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

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

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

On which of the following theories would it be most likely that the man could recover?

A. The husband and the man have made a compromise.

B. The husband must give restitution for benefits it would be unjust to retain.

C. The husband is bound by promissory estoppel.

D. The husband executed a binding unilateral contract.

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

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

A. The carpenter's busy schedule permitted him to work on the homeowner's house only during the month of March.

B. Any delay in making the repairs would not seriously affect the homeowner's use of the property.

C. The cost of making repairs was increasing at the rate of 3 percent a month.

D. The area around the homeowner's property was frequently flooded during the month of March.

73. X-- A woman who is a chemical engineer has no interest in or connection with Chemco. The engineer noticed that Chemco's most recent publicly issued financial statement listed as part of Chemco's assets a large inventory of a certain special chemical compound. This asset was listed at a cost of $100,000, but the engineer knew that the ingredients of the compound were in short supply and that the current market value of the inventory was in excess of $1,000,000. There was no current public quotation of the price of Chemco stock. The book value of Chemco stock, according to the statement, was $5 a share; its actual value was $30 a share.

Knowing these facts, the engineer offered to purchase from a stockholder at $6 a share the 1,000 shares of Chemco stock owned by the stockholder. The stockholder and the engineer had not previously met. The stockholder sold the stock to the engineer for $6 a share.

If the stockholder asserts a claim based on misrepresentation against the engineer, will the stockholder prevail?

A. Yes, because the engineer knew that the value of the stock was greater than the price she offered.

B. Yes, if the engineer did not inform the stockholder of the true value of the inventory.

C. No, unless the engineer told the stockholder that the stock was not worth more than $6 a share.

D. No, if Chemco's financial statement was available to the stockholder.

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

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

A. $10,000, the contract price.

B. the difference between the contract price and the market value of the chairs.

C. nothing, because the chairs had not been delivered.

D. nothing, because the seller-buyer contract forbade an assignment.

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

In an action by the buyer against the seller for breach of contract, the buyer probably will

A. succeed, because the carrier will be deemed to be the seller's agent.

B. succeed, because the risk of loss was on the seller.

C. not succeed, because of impossibility of performance.

D. not succeed, because the risk of loss was on the buyer.

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

A. A contract was formed on March 20 when the plummer posted his letter.

B. A contract was formed on March 22 when the owner received the plummer's letter.

C. A contract was formed on April 5 when the plummer began work.

D. There was no contract between the parties as of April 5.

77. On January 15, in a signed writing, an artist agreed to remodel a building owner's building according to certain specifications, and the owner to pay the agreed price of $5,000 to the artist's niece as a birthday present. The niece did not learn of the agreement until her birthday on May 5. Before they signed the writing, the artist and the owner had orally agreed that their "written agreement will be null and void unless the owner is able to obtain a $5,000 loan from the bank before January 31." The owner was unable to obtain the loan, and, on January 31, phoned the artist and told him, "Don't begin the work. The deal is off." In an action for breach of contract brought against the owner by the proper party, will the owner be successful in asserting as a defense his inability to obtain a loan?

A. Yes, because obtaining a loan was a condition precedent to the existence of an enforceable contract.

B. Yes, because the agreement about obtaining a loan is a modification of a construction contract and is not required to be in writing.

C. No. because the agreement about obtaining a loan contradicts the express and implied terms of the writing.

D. No, because the owner is estopped to deny the validity of the written agreement.

78. On January 15, in a signed writing, an artist agreed to remodel a building owner's building according to certain specifications, and the owner to pay the agreed price of $5,000 to the artist's niece as a birthday present. The niece did not learn of the agreement until her birthday on May 5. Before they signed the writing, the artist and the owner had orally agreed that their "written agreement will be null and void unless the owner is able to obtain a $5,000 loan from the bank before January 31."

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

A. Yes, because she is an intended beneficiary of the written artist-owner contract.

B. Yes, because the written artist-owner contract operated as an assignment to the niece, and the artist thereby lost whatever rights he may have had to the $5,000.

C. No, because the niece had not furnished any consideration to support the owner's promise to pay $5,000 to her.

D. No, because on May 3, the artist and the owner effectively modified their written contract, thereby depriving the niece of whatever right she may have had under that contract.

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

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

A. The parties did not manifestly intend a contract.

B. The woman's death terminated the agreement.

C. The agreement was oral.

D. The agreement was divisible.

80. When a woman's 21-year-old daughter finished college, the woman handed her a signed memorandum stating that if she would go to law school for three academic years, she would pay her tuition, room, and board and would "give her a $1,000 bonus" for each "A" she got in law school. The daughter's uncle who was present on this occasion, read the memorandum and thereupon said to the daughter, "and if she doesn't pay your expenses, I will." The woman paid her tuition, room, and board for her first year but died just before the end of that year. Subsequently, the daughter learned that she had received two "A's" in the second semester. The executor of the woman's estate has refused to pay her anything for the two "A's" and has told her that the estate will no longer pay her tuition, room, and board in law school. In an action against the woman's estate for $2,000 on account of the two "A's" if the only defense raised is lack of consideration, the daughter probably will

A. succeed under the doctrine of promissory estoppel.

B. succeed on a theory of bargained-for exchange for her mother's promise.

C. not succeed, because the $1,000 for each "A" was promised only as a bonus.

D. not succeed, because the daughter was already legally obligated to use her best efforts in law school.

81. A seller contracted in writing to deliver to a buyer 100 bushels of wheat on August 1 at $3.50 a bushel. Because his suppliers had not delivered enough wheat to him by that time, the seller on August 1 had only 95 bushels of wheat with which to fulfill his contract with the buyer. If the seller tenders 95 bushels of wheat to the buyer on August 1, and the buyer refused to accept or pay for any of the wheat, which of the following best states the legal relationship between the seller and the buyer?

A. The seller has a cause of action against the buyer, because the seller has substantially performed his contract.

B. The seller is excused from performing his contract because of impossibility of performance.

C. The buyer has a cause of action against the seller for the seller's failure to deliver 100 bushels of wheat.

D. The buyer is obligated to give the seller a reasonable time to attempt to obtain the other five bushels of wheat.

82. On March 31, a seller and a buyer entered into a written agreement in which the seller agreed to fabricate and sell to the buyer 10,000 specially designed brake linings for a new type of power brake manufactured by the buyer. The contract provided that the buyer would pay half of the purchase price on May 15 in order to give the seller funds to "tool up" for the work; that the seller would deliver 5,000 brake linings on May 31; that the buyer would pay the balance of the purchase price on June 15; and that the seller would deliver the balance of the brake linings on June 30. On May 10, the seller notified the buyer that it was doubtful whether the seller could perform because of problems encountered in modifying its production machines to produce the brake linings. On May 15, however, the seller assured the buyer that the production difficulties had been overcome, and the buyer paid the seller the first 50 percent installment of the purchase price. The seller did not deliver the first 5,000 brake linings on May 31, or at any time thereafter; and on June 10, the seller notified that it would not perform the contract.

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

A. The buyer can treat the notice as an anticipatory repudiation, and has cause of action on May 10 for breach of the entire contract.

B. The buyer can treat the notice as an anticipatory repudiation, and can sue to enjoin an actual breach by the seller on May 31.

C. The buyer has no cause of action for breach of contract, but can suspend its performance and demand assurances that the seller will perform.

D. The buyer has no cause of action for breach of contract, and must pay the installment of the purchase price due on May 15 to preserve its rights under the contract.

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

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

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

A. The buyer has a cause of action for total breach of contract because of the seller's repudiation, but that cause of action will be lost if the seller retracts its repudiation before the buyer changes its position or manifests to the seller that the buyer considers the repudiation final.

B. The buyer can bring suit to rescind the contract even if it elects to await the seller's performance for a commercially reasonable time.

C. The buyer can await performance by the seller for a commercially reasonable time, but if the buyer awaits performance beyond that period, it cannot recover any resulting damages that it reasonably could have avoided.

D. The buyer has a cause of action for breach of contract that it can successfully assert only after it has given the seller a commercially reasonable time to perform.

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

"April 5

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

The corporation

By /s/ the president"

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

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

A. Yes, because the oral agreement was supported by an independent consideration.

B. Yes, because the evidence of the parties' negotiations is relevant to their contractual intent concerning maturity of the debt.

C. No, because such evidence is barred by the preexisting duty rule.

D. No, because such evidence contradicts the writing and is barred by the parol evidence rule.

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

"April 5

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

The corporation

By /s/ the president"

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

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

A. Yes, because the president signed the memorandum.

B. Yes, because, as president of the debtor company, the president is a third-party beneficiary of the loan.

C. No, because there was no separate consideration for the president's promise.

D. No, because such proof is barred by the statute of frauds.

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

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

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

A. grant money damages only to the neighbor.

B. grant specific performance to the neighbor.

C. grant the neighbor only the right to retain the $10,000.

D. require the neighbor to refund the $10,000 to the friend.

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

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

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

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

A. the investor-winery contract did not expressly authorize an assignment of rights.

B. the financier-investor and the winery are partners, not simply debtor and creditor.

C. the bank is not an assignee of the financier-investor's rights under the investor-winery contract.

D. the bank is not an intended third-party beneficiary of the investor-winery contract.

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

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

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

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

A. Yes, because the winery-agricultural corporation transaction created a significant risk of diminishing the profits in which the financier-investor would share under his contract with the winery.

B. Yes, because the investor-winery contract did not contain a provision authorizing a delegation of the winery's duties.

C. No, because the winery remains in a position to perform under the investor-winery contract.

D. No, because the winery, as a corporation, must necessarily perform its contracts by delegating duties to individuals.

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

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

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

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

A. Yes, because the ties were nonconforming goods.

B. Yes, because the manufacturer did not notify the retailer that the ties were shipped as an accommodation to the retailer.

C. No, because the manufacturer could accept the retailer's offer by prompt shipment of either conforming or nonconforming goods.

D. No, because the retailer waived his right to reject the ties by not returning them promptly to the manufacturer.

90. On June 1, a manufacturer of men's neckties received the following order from a retailer: "Ship 500 two-inch ties, assorted stripes, your catalogue No. V34. Delivery by July 1." On June 1, the manufacturer shipped 500 three-inch ties that arrived at the retailer's place of business on June 3. The retailer immediately telegraphed the manufacturer: "Reject your shipment. Order was for two-inch ties." The retailer, however, did not ship the ties back to the manufacturer. The manufacturer replied by telegram: "Will deliver proper ties before July 1." The retailer received this telegram on June 4, but did not reply to it.

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

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

A. Yes, because the manufacturer's shipping the three-inch ties on June 1 was a present breach of contract.

B. Yes, because the manufacturer's shipping the three-inch ties on June 1 was an anticipatory repudiation.

C. No, because the manufacturer cured the June 1 defective delivery by his tender of conforming goods on June 30.

D. No, because a contract for sale of goods can be modified without consideration.

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

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

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

A. Yes, because the stepson was a third-party intended beneficiary of the original widow-bank deposit agreement.

B. Yes, because the stepson was a constructive assignee of the widow's claim, as depositor, to the savings account.

C. No, because the stepson never obtained possession of the passbook.

D. No, because the stepson's right, if any, to the funds on deposit was effectively abrogated by the second widow-bank deposit agreement.

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

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

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

A. The estate prevails, because the widow's gift to the stepson was revocable and was terminated by her death.

B. The estate prevails, because the widow's gift to the stepson was revocable and was terminated by her express revocation.

C. The stepson prevails, because he took the widow's claim to the savings account by a gratuitous but effective and irrevocable assignment from the widow.

D. The stepson prevails, because his failure to reject the gift, even if the assignment was revocable, created an estoppel against the widow and her estate.

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

Statement 1. This car has never been involved in an accident.

Statement 2: This car gets 25 miles to the gallon on the open highway.

Statement 3: This is as smooth-riding a car as you can get.

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

A. Statement 1 only

B. Statement 2 only

C. Statements 1 and 2 only

D. Statements 2 and 3 only

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

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

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

A. sustain the motion, because the factory on October 15 stated its willingness, and gave assurance of its ability, to perform the contract in January.

B. sustain the motion, because the store's lawsuit is premature in any case until after November 15.

C. deny the motion, because the store's complaint alleges an actionable tort by the factory.

D. deny the motion, because the store's complaint alleges an actionable breach of contract by the factory.

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

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

By November 16, the factory, without legal excuse, has delivered no dogs, and the store has brought an action against the factory. In an action brought on November 16 by the store against the finance company on account of the factory's default, the store can recover

A. nothing, because the October 5 assignment by the factory to the finance company of the factory's contract was only an assignment for security.

B. nothing, because no record of the October 5 transaction between the factory and the finance company was publicly filed.

C. $10,000 damages, because the store was a third-party intended beneficiary of the October 5 transaction between the factory and the finance company.

D. $10,000 in damages, because the October 5 transaction between the factory and the finance company effected, with respect to the store as creditor, a novation of debtors.

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

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

A. Nothing

B. $250, the reasonable value of the set

C. $300, the amount the teenager promised to pay in his letter of July 1

D. $400, the original sale price

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

A contract would arise from these communications only if

A. both parties were merchants.

B. the inventor had at least 24 LBVC's in stock when the owner of the retail specialty shop's check and memo were received.

C. the owner of the retail specialty shop's check and memo were mailed within three months after his receipt of the inventor's letter.

D. the owner of the retail specialty shop's check and memo were mailed within a reasonable time after his receipt of the inventor's letters.

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

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

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

A. The inventor, as inventor of the LBVC, was not a merchant.

B. the invoice restriction was a material alteration of the pre-existing terms.

C. the inventor's written reply that quoted $39.99 per LBVC, but did not contain a restriction on retail sales, was not an offer that the owner of the retail specialty shop accepted by ordering 24 LBVC's.

D. the owner of the retail specialty shop was consciously aware when taking delivery of the goods that the television ad had said, "Not available in stores."

99. In a writing signed by both parties, a renowned architect agreed for a fee of $25,000 to design and supervise construction of a new house for a famous sculptor, the fee to be paid upon completion of the house. The architect and sculptor got along poorly, and, when the design plans were about two-thirds complete, they had a heated argument over the proper location of a marble staircase. Hoping to avoid such encounters, the architect, without the sculptor's knowledge, assigned to a newly-licensed architect practicing solo, "all of my rights and duties under my design and construction supervision contract with the sculptor." The newly-licensed architect expressly promised the architect to carry out the work to the best of her ability.

Assume that the sculptor on learning of the assignment refused to allow the newly-licensed architect to proceed as architect and brought an action against the renowned architect to compel him to resume and complete performance of the contract.

Is the sculptor entitled to such relief?

A. Yes, because the renowned architect's services under the contract are unique.

B. Yes, because the renowned architect has personally completed two-thirds of the design work.

C. No, because the architect-sculptor contract is one for personal services by the renowned architect.

D. No, because the renowned architect effectively delegated his remaining duties under the architect-sculptor contract to the newly-licensed architect.

100. In a writing signed by both parties, a renowned architect agreed for a fee of $25,000 to design and supervise construction of a new house for a famous sculptor, the fee to be paid upon completion of the house. The architect and sculptor got along poorly, and, when the design plans were about two-thirds complete, they had a heated argument over the proper location of a marble staircase. Hoping to avoid such encounters, the architect, without the sculptor's knowledge, assigned to a newly-licensed architect practicing solo, "all of my rights and duties under my design and construction supervision contract with the sculptor." The newly-licensed architect expressly promised the renowned architect to carry out the work to the best of her ability.

Assume that the sculptor allowed the newly-licensed architect to proceed with the design work but that the newly-licensed architect, without legal excuse, abandoned the project shortly after construction began.

Which of the following legal conclusions are correct?

I. The renowned architect is liable to the sculptor for legal damages, if any, caused by the newly-licensed architect's default.

II. The newly-licensed architect is liable to the sculptor for legal damages, if any, caused by her default.

III. The sculptor is indebted to the newly-licensed architect, on a divisible contract theory, for a prorated portion of the agreed $25,000 architect's fee promised to the renowned architect.

A. I and II only

B. I and III only

C. II and III only

D. I, II and III

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

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

A. $9,000 minus what it cost the dealer to purchase the car from the manufacturer.

B. $9,000 minus the wholesale price of an identical Doppelpferd in the local wholesale market among dealers.

C. nominal damages only, because the dealer resold the car to the other interested buyer without lowering the retail price.

D. nothing, because the parties' agreement was an adhesion contract and therefore unconscionable.

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

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

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

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

A. The landowner will win, because the builder in legal effect committed a total breach of contract.

B. The landowner will win, because the third-party's contract price was $15,000 lower than the $90,000 demanded by the builder on February 1.

C. The builder will win, because the landowner did not tell him before April 1 about the contract with the third-party

D. The builder will win, because he attempted to perform the contract as originally agreed.

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

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

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

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

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

A. the difference between the fair market value of the completed house and the builder's original contract price.

B. $30,000, the difference between the builder's original contract price and the amount the builder demanded on February 1.

C. $25,000, the difference between the builder's original contract price and the total amount the landowner paid the third-party for building the house.

D. $15,000, the difference between the builder's original contract price and the third-party's contract price.

104. X-- A farmer leased in writing a 100-acre farm from a landowner for five years at $2,000 per year, with an option to purchase "five acres of the land for $10,000 cash" at the end of the lease term. Before the lease was executed, the landowner orally promised to have a five-acre parcel surveyed before the end of the lease term. The farmer took possession of the farm and paid the rent for five years. During the fifth year, having decided that he would exercise the purchase option, the farmer planted several fruit trees and built a large grain silo on the property. At the end of the term, the farmer tendered the landowner $10,000 and demanded a conveyance, but the landowner repudiated the option agreement and retook possession of the farm. He had never had the five-acre parcel surveyed.

In an action by the farmer against the landowner for specific performance of the option agreement, which of the following is the landowner's best defense?

A. The option part of the agreement is unenforceable because it lacked a separate consideration.

B. The description of the property to be sold in the parties' written agreement is too indefinite to permit the remedy sought.

C. The landowner's failure to have the five-acre parcel surveyed was failure of a condition precedent to his own duty of performance.

D. The option part of the agreement is unenforceable under the parol evidence rule.

105. A farmer leased in writing a 100-acre farm from a landowner for five years at $2,000 per year, with an option to purchase "five acres of the land for $10,000 cash" at the end of the lease term. Before the lease was executed, the landowner orally promised to have a five-acre parcel surveyed before the end of the lease term. The farmer took possession of the farm and paid for the rent for five years. During the fifth year, having decided that he would exercise the purchase option, the farmer planted several fruit trees and built a large grain silo on the property. At the end of the term, the farmer tendered the landowner $10,000 and demanded a conveyance, but the landowner repudiated the option agreement and retook possession of the farm. He had never had the five-acre parcel surveyed.

The landowner is not liable to the farmer for breach of land-sale contract. In an action by the farmer against the landowner for the **reasonable value** of the improvements that the farmer added to the farm, which of the following theories would best support the farmer's claim?

A. Quasi-contract, for benefits inofficiously and non-gratuitously conferred upon the landowner by the farmer

B. Tort, for conversion by the landowner in retaking possession of the improvements

C. Breach of trust by the landowner as trustee of a resulting trust of the improvements

D. Breach by the landowner of an implied-in-fact promise (manifested by his retaking possession of the farm and improvements) to compensate the farmer for the improvements

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

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

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

A. The homeowner will recover damages as specified in the contract, i.e., $500 multiplied by fifteen.

B. The homeowner will recover his actual damages, if any, caused by the delay in completion.

C. Having waived the delay by occupying the house and making the final payment, the landowner will recover nothing.

D. The landowner will recover nothing because the contractual completion date was impliedly modified to November 1 when the landowner on January 2 advised the builder about the landowner's prospective trip and return date.

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

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

A. The boater's claim should be denied, because, as the party in default, he is deemed to have lost any right to restitution of a benefit conferred on the retailer.

B. The boater's claim should be denied, because, but for his repudiation, the retailer would have made a profit on two boat sales instead of one.

C. The boater's claim should be upheld in the amount of $4,000 minus the amount of the retailer's lost profit under its contract with the boater.

D. The boater's claims should be upheld in the amount of $3,500 ($4,000 minus $500 as statutory damages under the UCC).

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

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

A. Yes, because the nephew-executor agreement was a bargained for exchange.

B. Yes, because the law encourages the settlement of disputed claims.

C. No, because the nephew did not bring the will contest in good faith.

D. No, because an agreement to oust the court of its jurisdiction to decide a will contest is contrary to public policy.

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

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

A. Yes, because the geriatric company would otherwise be unjustly enriched at the 84-year-old man's expense.

B. Yes, under the doctrine of frustration of purpose.

C. No, because the 84-year-old man's life span and the duration of the geriatric company's commitment to him was a risk assumed by both parties.

D. No, but only if the geriatric company can show that between September 25 and the 84-year-old man's death it rejected, because of its commitment to the 84-year-old man, an application for lifetime care from another elderly person.

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

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

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

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

A. affirmed, because the trial court stated the law correctly.

B. affirmed, because the issue of damages for breach of contract was solely a jury question.

C. reversed, because the test for limiting damages is what the breaching party could reasonably have foreseen at the time of the breach.

D. reversed, because under the prevailing modern view, lost profits of a new business are recoverable if they are established with a reasonable certainty.

111. Under a written agreement, a pastry company promised to sell its entire output of baked buns at a specified unit price to a baked goods retailer for one year. The baked goods retailer promised not to sell any other supplier's baked buns. Shortly after making the contract, and before the pastry company had tendered any buns, the baked goods retailer decided that the contract had become undesirable because of a sudden, sharp decline in its customers' demand for baked buns. It renounced the agreement and the pastry company sues for breach of contract.

Which of the following will the court probably decide?

A. The baked goods retailer wins, because mutuality of obligation was lacking in that the baked goods retailer made no express promise to buy any of the pastry company's baked buns.

B. The baked goods retailer wins, because the agreement was void for indefiniteness of quantity and total price for the year involved.

C. The pastry company wins, because the baked goods retailer's promise to sell at retail the pastry company's baked buns exclusively, if it sold any such buns at all, implied a promise to use its best efforts to sell the pastry company's one-year output of baked buns.

D. The pastry company wins, because under applicable law both parties to a sale-of-goods contract impliedly assume the risk of price and demand fluctuations.

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

The parties' contract included a provision for termination by either party at any time upon reasonable notice. After six months of performance on both sides, the pastry company, claiming that its old bun-baker had become uneconomical and that it could not afford a new one, dismantled the bun-baker and began using the space for making dog biscuits. The pastry company's output of baked buns having ceased, the baked goods retailer sued for breach of contract. The baked goods retailer moves for summary judgment on liability, and the pastry company moves for summary judgment of dismissal.

Which of the following should the court rule?

A. Summary judgment for the baked goods retailer, because as a matter of law the pastry company could not discontinue production of baked buns merely because it was losing money on that product.

B. Summary judgment for the pastry company, because its cessation of baked-bun production and the baked goods retailer's awareness thereof amounted as a matter of law to valid notice of termination as permitted by the contract.

C. Both motions denied, because there are triable issues of fact as to whether the the pastry company gave reasonable notice of termination or whether its losses from continued production of baked buns were sufficiently substantial to justify cessation of production.

D. Both motions denied because the pastry company may legally cease production of baked buns, but under the circumstances it must share with the baked goods retailer its profits from the manufacture of dog biscuits until the end of the first year.

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

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

A. No contract was formed, because of the wholesaler's reservation of the right to cancel.

B. No contract was formed, because the wholesaler's order was only a revocable offer.

C. A contract was formed, but prior to September 1 it was terminable at the will of either party.

D. A contract was formed, but prior to September 1 it was an option contract terminable only at the will of the wholesaler.

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

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

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

A. The wholesaler's order for the shovels, even if initially illusory, became a binding promise to accept and pay for them.

B. The wholesaler's order was an offer that became an option after shipment by the manufacturer.

C. The wholesaler's right to cancel was a condition subsequent, the failure of which resulted in an enforceable contract.

D. In view of the wholesaler's right to cancel its order prior to September 1, the shipment of the shovels on September 15 was only an offer by the manufacturer.

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

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

A. The boater's claim should be denied, because, as the party in default, he is deemed to have lost any right to restitution of a benefit conferred on the retailer.

B. The boater's claim should be denied, because, but for his repudiation, the retailer would have made a profit on two boat-sales instead of one.

C. The boater's claim should be upheld in the amount of $4,000 minus the amount of the retailer's lost profit under its contract with the boater.

D. The boater's claims should be upheld in the amount of $3,500 ($4,000 minus $500 as statutory damages under the UCC).

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

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

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

A. The developer wins, because his signing of the well driller's form constituted an acceptance of an offer by the well driller.

B. The developer wins, because the well driller's commencement of performance constituted an acceptance by the well driller of an offer by the developer and an implied promise by the well driller to complete the well.

C. The well driller wins, because he never signed the proposal as required by its terms.

D. The well driller wins, because his commencement of performance merely prevented the developer from revoking his offer, made on a form supplied by the well driller, and did not obligate the well driller to complete the well.

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

Shortly before the agreement was signed, the owner and landscape architect orally agreed that the writing would not become binding on either party unless the owner's spouse should approve the landscaping design.

If the owner's spouse disapproves of the design and the owner refuses to allow the landscape architect to proceed with the work, is evidence of the oral agreement admissible in the landscape architect's action against the owner for breach of contract?

A. Yes, because the oral agreement required approval by a third party.

B. Yes, because the evidence shows that the writing was intended to take effect only if the approval occurred.

C. No, because the parol evidence rule bars evidence of a prior oral agreement even if the latter is consistent with the terms of a partial integration.

D. No, because the prior oral agreement contradicted the writing by making the parties' duties conditional.

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

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

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

A. Substantial performance.

B. Promissory estoppel.

C. Irrevocable waiver of condition.

D. Unjust enrichment.

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

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

If the builder refuses to accept the man's services, which of the following clauses in the the expert-builder contract will best support the builder's contention that the expert's duties under the contract were not delegable without the builder's consent?

A. The exculpatory clause.

B. The liquidated-damage clause.

C. The "time is of the essence" clause.

D. The extra-work clause.

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

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

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

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

A. Yes, because the builder did not agree to release the expert from liability under the expert-builder contract.

B. Yes, because the builder received no consideration for the substitution of the man for the expert.

C. No, because by accepting the substitution of the man for the expert, the builder effected a novation, and the expert was thereby discharged of his duties under the expert-builder contract.

D. No, because the liquidated-damage clause in the expert-builder contract provided only for damages caused by delay in performance.

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

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

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

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

A. Yes, because the sister's remedy at law is inadequate.

B. Yes, because the sister's burden of supporting her mother will be increased if her brother does not contribute his share.

C. No, because a court will not grant specific performance of a promise to pay money.

D. No, because the brother's breach of contract has caused no economic harm to the sister.

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

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

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

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

A. No contract was formed, because of wholesaler's June 10 sale of the rifles to another merchant revoked the offer to the retailer.

B. If a contract was formed, it is voidable because of mutual mistake.

C. If a contract was formed, it is unenforceable because of supervening impracticability.

D. No contract was formed, because the retailer's June 11 rejection was effective on dispatch.

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

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

A. Yes, because the man's promise to pay interest until December 31 was consideration for the friend's promise not to sue.

B. Yes, because the law creates a presumption that the man relied on his friend's promise not to sue.

C. No, because there was no consideration for the friend's promise not to sue, in that the man was already obligated to pay $1,000 plus interest at 8% until the payment date.

D. No, because the man's April 1 promise is enforceable with or without consideration.

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

Assume that on January 2 of the following year the friend's suit has not come to trial, the man has not paid the note, the friend has retained a lawyer, and the lawyer, with leave of court, amends the complaint to add a second count to enforce the promise the man made in the April 1 agreement.

Does the new count state a claim upon which relief can be granted?

A. Yes, because the man's failure to pay the note, plus interest, on December 31 makes the friend's breach of promise not to sue before that date no longer material.

B. Yes, because the man's April 1 promise is enforceable by reason of his moral obligation to pay the debt.

C. No, because such relief would undermine the policy of the statute of limitations against enforcement of stale claims.

D. No, because the man's April 1 promise was lawfully conditioned upon the friend's forbearing to sue prior to December 31.

125. A father and his adult daughter encountered an old family friend on the street. The daughter said to the family friend, "How about lending me $1,000 to buy a used car? I'll pay you back with interest one year from today." The father added, "And if she doesn't pay it back as promised, I will." The family friend thereupon wrote out and handed to the daughter his personal check, payable to her, for $1,000, and the daughter subsequently used the funds to buy a used car. When the debt became due, both the daughter and the father refused to repay it, or any part of it.

In an action by the family friend against the father to recover $1,000 plus interest, which of the following statements would summarize the father's best defense?

A. He received no consideration for his conditional promise to the family friend.

B. His conditional promise to the family friend was not to be performed in less than a year from the time it was made.

C. His conditional promise to the family friend was not made for the primary purpose of benefiting himself (the father).

D. The loan by the family friend was made without any agreement concerning the applicable interest rate.

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

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

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

A. Nothing, because if he sues before the entire amount is due, he will be splitting his cause of action.

B. $300 plus the accrued interest, because the borrower's breach is only a partial breach.

C. $1,000 plus the accrued interest, because the borrower's unexcused failure to pay three installments is a material breach.

D. $1,000 plus the accrued interest, because the failure to pay her debts as they come due indicates that the borrower is insolvent and the lender is thereby entitled to accelerate payment of the debt.

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

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

Assume that the borrower's entire $1,000 debt is due and that she has failed to repay any part of it.

In an action by the lender against the father's estate for $1,000 plus accrued interest, which of the following, if any, will serve as (an) effective defense(s) for the father's estate?

I. There was no consideration to support the father's promise, because he did not receive any benefit.

II. The father died before the lender accepted his offer.

III. The father died before the lender notified him that his offer had been accepted.

A. I only.

B. II only.

C. I and III only.

D. Neither I nor II nor III.

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

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

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

A. inadmissible, because the evidence is barred by the parol evidence rule.

B. inadmissible, because the express terms of the agreement control when those terms are inconsistent with the course of performance.

C. admissible, because the evidence supports an agreement that is not within the relevant statute of frauds.

D. admissible, because course-of-performance evidence, when available, is considered the best indication of what the parties intended the writing to mean.

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

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

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

Which of the following defenses would best serve the retailer?

A. The manufacturer's deposit of the check and its return to the retailer after payment estopped the manufacturer thereafter from asserting that the retailer owed any additional amount.

B. By depositing the check without protest and with knowledge of its wording, the manufacturer discharged any remaining duty to pay on the part of the retailer.

C. By depositing the check without protest and with knowledge of its wording, the manufacturer entered into a novation discharging any remaining duty to pay on the part of the retailer.

D. The parties' good faith dispute over return of the radios suspended the duty of the retailer, if any, to pay any balance due.

130. A woman entered into a contract with a painter, by the terms of which the painter was to paint the woman's office for $1,000 and was required to do all of the work over the following weekend so as to avoid disruption of the woman's business. Assume the following facts. If the painter had started to paint on the following Saturday morning, he could have finished before Sunday evening. However, he stayed home that Saturday morning to watch the final game of the World Series on TV and did not start to paint until Saturday afternoon. By late Saturday afternoon, the painter realized that he had underestimated the time it would take to finish the work over the weekend unless he hired a helper. He also stated that to do so would require an additional charge of $200 for the work. The woman told the painter that she apparently had no choice but to pay "whatever it takes" to get the work done as scheduled.

The painter hired a friend to help finish the painting and paid the friend $200. The woman has offered to pay the painter $1,000. The painter is demanding $1,200.

How much is the painter likely to recover?

A. $1,000 only, because the woman received no consideration for her promise to pay the additional sum.

B. $1,000 only, because the woman's promise to pay "whatever it takes" is too uncertain to be enforceable.

C. $1,200, in order to prevent the woman's unjust enrichment.

D. $1,200, because the impossibility of the painter's completing the work alone discharged the original contract and a new contract was formed.

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

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

Which of the following is an accurate statement?

A. Both parties' contractual duties are discharged, and the painter can recover nothing from the owner.

B. Both parties' contractual duties are discharged, but the painter can recover in quasi-contract from the owner.

C. Only the painter's contractual duty is discharged, because the owner's performance (payment of the agreed price) is not impossible.

D. Only the painter's contractual duty is discharged, and the painter can recover his reliance damages from the owner.

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

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

A. As later reduced to writing, the agreement by clerical mistake included two acres that are actually beyond the fence.

B. The buyer reasonably thought that two acres beyond the fence were included in the oral agreement but the seller did not. As later reduced to writing, the agreement included the two acres.

C. The buyer reasonably thought that the price orally agreed upon was $4,500, but the seller did not. As later reduced to writing, the agreement said $5,000.

D. The buyer reasonably thought that a dilapidated shed backed up against the fence was to be torn down and removed as part of the agreement, but the seller did not. As later reduced to writing, the agreement said nothing about the shed.

133. A buyer ordered from a seller 500 bushels of No. 1 Royal Fuzz peaches, at a specified price, "for prompt shipment." The seller promptly shipped 500 bushels, but by mistake shipped No. 2 Royal Fuzz peaches instead of No. 1. The error in shipment was caused by the negligence of the seller's shipping clerk.

Which of the following best states the buyer's rights and duties upon delivery of the peaches?

A. The seller's shipment of the peaches was a counteroffer and the buyer can refuse to accept them.

B. The seller's shipment of the peaches was a counteroffer but, since peaches are perishable, the buyer, if it does not want to accept them, must reship the peaches to the seller in order to mitigate the seller's losses.

C. The buyer must accept the peaches because a contract was formed when the seller shipped them.

D. Although a contract was formed when the seller shipped the peaches, the buyer does not have to accept them.

134. X-- A debtor's $1,000 contractual obligation to a creditor was due on July 1. On the preceding June 15, the creditor called her niece and said, "As my birthday gift to you, you may collect on July 1 the $1,000 the debtor owes me." The creditor also called the debtor and told him to pay the $1,000 to the niece on July 1. On July 1, the debtor, saying that he did not like the niece and wouldn't pay anything to her, paid the $1,000 to the creditor, who accepted it without objection.

Will the niece succeed in an action for $1,000 against the debtor?

A. Yes, because the creditor had effectively assigned the $1,000 debt to her.

B. Yes, because the creditor's calls to the niece and the debtor effected a novation.

C. No, because the creditor's acceptance of the $1,000, without objection, was in effect the revocation of a gratuitous assignment.

D. No, because the debtor cannot be compelled to render performance to an assignee whom he finds personally objectionable.

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

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

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

A. admit the evidence as to both the saddle and the option to choose a brown horse.

B. admit the evidence as to the saddle but not the option to choose a brown horse.

C. admit the evidence as to the option to choose a brown horse but not the promise to include the saddle.

D. not admit any of the evidence.

136. X--A landowner contracted in a signed writing to sell Greenacre, a 500-acre tract of farmland, to a farmer. The contract provided for exchange of the deed and purchase price of $500,000 in cash on January 15. Possession was to be given to the farmer on the same date. On January 15, the landowner notified the farmer that because the tenant on Greenacre wrongfully refused to quit the premises until January 30, the landowner would be unable to deliver possession of Greenacre until then, but he assured the farmer that he would tender the deed and possession on that date. When the landowner tendered the deed and possession on January 30, the farmer refused to accept either, and refused to pay the $500,000. Throughout the month of January, the market value of Greenacre was $510,000, and its fair monthly rental value was $5,000.

Will the landowner probably succeed in an action against the farmer for specific performance?

A. Yes, because the court will excuse the delay in tender on the ground that there was a temporary impossibility caused by the tenant's holding over.

B. Yes, because time is ordinarily not of the essence in a land-sale contract.

C. No, because the landowner breached by failing to tender the deed and possession on January 15.

D. No, because the landowner's remedy at law for monetary relief is adequate.

137. A landowner contracted in a signed writing to sell Greenacre, a 500-acre tract of farmland, to a farmer. The contract provided for exchange of the deed and purchase price of $500,000 in cash on January 15. Possession was to be given to the farmer on the same date. On January 15, landowner notified the farmer that because the tenant on Greenacre wrongfully refused to quit the premises until January 30, the landowner would be unable to deliver possession of Greenacre until then, but he assured the farmer that he would tender the deed and possession on that date. Throughout the month of January, the market value of Greenacre was $510,000, and its fair monthly rental value was $5,000.

On January 30, the farmer accepted a conveyance and possession of Greenacre and paid the $500,000 purchase price, but notified the landowner that he was reserving any rights he might have to damages caused by the landowner's breach. The farmer intended to use the land for raising cattle and had entered into a contract for the purchase of 500 head of cattle to be delivered to Greenacre on January 15. Because he did not have possession of Greenacre on that date, he had to rent another pasture at a cost of $2,000 to graze the cattle for 15 days. The landowner had no reason to know that the farmer intended to use Greenacre for raising cattle or that he was purchasing cattle to be grazed on Greenacre.

In an action by the farmer against the landowner for damages, the farmer is entitled to recover

A. nothing, because by paying the purchase price on January 30, he waived whatever cause of action he may have had.

B. nominal damages only, because the market value of the land exceeded the contract price.

C. $2,500 only (the fair rental value of Greenacre for 15 days).

D. $2,500 (the fair rental value of Greenacre for 15 days), plus $2,000 (the cost of grazing the cattle elsewhere for 15 days).

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

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

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

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

A. The broker wins, because the collector, if a beneficiary at all of the broker-hoarder contract, was only an incidental beneficiary.

B. The broker wins, because as of March 1 neither the hoarder nor the collector had sustained any damage from the broker's repudiation of both contracts.

C. The collector wins, because she was an intended beneficiary of the broker-hoarder contract, under which damages for the broker's repudiation became fixed on February 1.

D. The collector wins, because she took an effective assignment of the hoarder's claim for damages against the broker when the hoarder suggested that the collector "get after the so-and-so."

139. X-- For an agreed price of $20 million, a builder contracted with a property owner to design and build on the property owner's commercial plot a 15-story office building. In excavating for the foundation and underground utilities, the builder encountered a massive layer of granite at a depth of 15 feet. By reasonable safety criteria, the building's foundation required a minimum excavation of 25 feet. When the contract was made, neither the property owner nor the builder was aware of the subsurface granite, for the presence of which neither party had hired a qualified expert to test.

Claiming accurately that removal of enough granite to permit the construction as planned would cost him an additional $3 million and a probable net loss on the contract of $2 million, the builder refused to proceed with the work unless the property owner would promise to pay an additional $2.5 million for the completed building.

If the property owner refuses and sues the builder for breach of contract, which of the following will the court probably decide?

A. The builder is excused under the modern doctrine of supervening impossibility, which includes severe impracticability.

B. The builder is excused, because the contract is voidable on account of the parties' mutual mistake concerning an essential underlying fact.

C. The property owner prevails, because the builder assumed the risk of encountering subsurface granite that was unknown to the property owner.

D. The property owner prevails, unless subsurface granite was previously unknown anywhere in the vicinity of the property owner's construction site.

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

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

A. A promise to make a gift in the future is not enforceable.

B. Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless the value of the promised gift is substantially equivalent to the promisee's loss by reliance.

C. Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless that reliance also results in an economic benefit to the promisor.

D. Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless injustice can be avoided only by such enforcement.

141. X-- A wallpaper hanger sent a general contractor, this telegram:

Will do all paperhanging on new Doctors' Building, per owner's specs, for $14,000 if you accept within reasonable time after main contract awarded.

/s/ the wallpaper hanger

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

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

A. After the wallpaper hanger's notice of revocation, the general contractor made a reasonable effort to subcontract with another paperhanger at the lowest possible price.

B. The general contractor had been required by the owner to submit a bid bond and could not have withdrawn or amended her bid on the main contract without forfeiting that bond.

C. The wallpaper hanger was negligent in erroneously calculating the amount of his sub-bid.

D. The general contractor dealt with all of her subcontractors in good faith and without seeking to renegotiate (lower) the prices they had bid.

142. A wallpaper hanger sent a general contractor, this telegram:

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Which of the following, if proved, would best support the wallpaper hanger's defense?

A. The general contractor gave the wallpaper hanger no consideration for an irrevocable sub-bid.

B. The wallpaper hanger's sub-bid expressly requested the general contractor's acceptance after awarding of the main contract.

C. Even after paying $18,000 for the paperhanging, the general contractor would make a net profit of $100,000 on the Doctors' Building contract.

D. Before submitting her own bid, the general contractor had reason to suspect that the wallpaper hanger had made a computational mistake in figuring his sub-bid.

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

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

On May 4, the widow and Nirvana Motors both signed a single document evidencing a contract for the sale by Nirvana to the widow, "as a wedding gift for the widow's son," a new Mark XX Rolls-Royce sedan, under the same terms as previously stated in their correspondence. On May 5, the widow handed the son a carbon copy of this document. In reliance on the prospective gift, the son on May 20, sold his nearly new Cheetah (an expensive sports car) to a dealer at a "bargain" price of $50,000 and immediately informed the widow and Nirvana that he had done so.

On May 25, however, the widow and Nirvana Motors by mutual agreement rescinded in a signed writing "any and all agreements heretofore made between the undersigned parties for the sale-and-purchase of a new Mark XX Rolls-Royce sedan." Later that day, Nirvana sold for $190,000 cash to another buyer the only new Mark XX Rolls-Royce that it had in stock or could readily obtain elsewhere. On June 1, the son tendered $180,000 in cash to Nirvana Motors and demanded delivery to him "within a reasonable time" of new Mark XX Rolls-Royce sedan with all available equipment.

Nirvana rejected the tender and denied any obligation.

If the son sues Nirvana for breach of contract, which of the following will the court probably decide?

A. The son wins, because his rights as an assignee for value of the May 4 Widow-Nirvana contract cannot be cut off by agreement between the original parties.

B. The son wins, because his rights as a third-party intended beneficiary became vested by his prejudicial reliance in selling his Cheetah on May 20.

C. Nirvana wins, because the son, if an intended beneficiary at all of the Widow-Nirvana contract, was only a donee beneficiary.

D. Nirvana wins, because it reasonably and prejudicially relied on its contract of mutual rescission with the widow by selling the only readily available new Mark XX Rolls-Royce sedan to another buyer.

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

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

A. Bargained-for exchange.

B. Promissory estoppel.

C. Modification of contracts without consideration.

D. Unconscionability in the formation of contracts.

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

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

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

A. $500,000, because there was no consideration for warehouse owner's promise to pay the additional $20,000.

B. $500,000, because the warehouse owner's promise to pay the additional $20,000 was exacted under duress.

C. $520,000, because modification was fair and was made in the light of circumstances not anticipated by the parties when the original contract was made.

D. $520,000, provided that the reasonable value of the construction company's total performance was that much or more.

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

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

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

A. $30,000, because the fair market value of the warehouse and driveway "as is" exceeds the contract price by $50,000 (more than the cost of correcting the driveway).

B. $30,000, because the construction company substantially performed and the cost of correcting the driveway would involve economic waste.

C. $30,000, minus whatever amount the construction company saved by not building the driveway at the specified level.

D. Nothing, because the warehouse owner is entitled to damages for the cost of correcting the driveway.

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

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

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

A. Yes, because the provision in the written agreement, "all tires required by this agreement," is ambiguous.

B. Yes, because the advertisement was in writing.

C. No, because of the parol evidence rule.

D. No, because it would make the contract illusory.

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

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

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

A. recover under the contracts clause of the United States Constitution.

B. recover under the provisions of the Uniform Commercial Code.

C. not recover, because the agreement lacks mutuality of obligation.

D. not recover, because the agreement is indefinite as to quantity.

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

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

A. Yes, because the retailer's promise was supported by bargained-for consideration.

B. Yes, because retailer's promise was supported by the moral obligation a father owes his child as to the necessities of modern life.

C. No, because the payment of $3,000 was inadequate consideration to support the retailer's promise.

D. No, because the salesperson's delivery of the car to the customer made it impossible for the retailer to perform.

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

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

A. The business owner wins, because it is a compelling inference that his promise did not induce the employee to run the specified mile.

B. The business owner wins, because the employee's running of the specified mile was beneficial, not detrimental, to her in any event.

C. The employee wins, because running a mile in less than six minutes is a significantly demanding enterprise.

D. The employee wins, because she ran the specified mile as requested, and her motives for doing so are irrelevant.

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

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

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

A. Both parties are in breach, and each is entitled to damages, if any, from the other.

B. Only the builder is in breach and liable for the homeowner's damages, if any.

C. Only the homeowner is in breach and liable for the builder's damages, if any.

D. Both parties took reasonable positions, and neither is in breach.

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

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

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

A. The bank wins, because the builder-homeowner contract was in existence and the builder was not in breach when the bank gave the homeowner notice of the assignment.

B. The bank wins, because the bank as a secured creditor over the builder is entitled to priority over the homeowner's unsecured claim against the builder.

C. The homeowner wins, because his right to recoupment on account of the builder's breach is available against the bank as the builder's assignee.

D. The homeowner wins, because his claim against the builder arose prior to the builder's default on his loan from the bank.

153. On June 1, a wholesale company received a purchase-order form from a retailer, in which the latter ordered 1,000 anti-recoil widgets for delivery no later than August 30 at a delivered total price of $10,000, as quoted in the wholesale company's current catalog. Both parties are merchants with respect to widgets of all types. On June 2, the wholesale company mailed to the retailer its own form, across the top of which the wholesale company's president had written, "We are pleased to accept your order." This form contained the same terms as the retailer's form except for an additional printed clause in the wholesale company's form that provided for a maximum liability of $100 for any breach of contract by the wholesale company.

As of June 5, when the retailer received the wholesale company's acceptance form, which of the following is an accurate statement concerning the legal relationship between the wholesale company and the retailer?

A. There is no contract, because the liability-limitation clause in the wholesale company's form is a material alteration of the retailer's offer.

B. There is no contract, because the retailer did not consent to the liability-limitation clause in the wholesale company's form.

C. There is an enforceable contract whose terms include the liability-limitation clause in the wholesale company's form, because liquidation of damages is expressly authorized by the Uniform Commercial Code.

D. There is an enforceable contract whose terms do not include the liability-limitation clause in the wholesale company's form.

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

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

A. Yes, because by having the building demolished, she accepted the lender's offer to make the loan.

B. Yes, because her reliance on the lender's promise was substantial, reasonable, and foreseeable.

C. No, because there was no bargained-for exchange of consideration for the lender's promise to make the loan.

D. No, because the developer's inability to obtain a loan from any other source demonstrated that the project lacked the financial soundness that was a constructive condition to the lender's performance.

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

Assume that the developer has a cause of action against the lender. If she sues him for monetary relief, what is the probable measure of her recovery?

A. Expectation damages, measured by the difference between the value of the new building and the old building, less the amount of the proposed loan ($100,000).

B. Expectation damages, measured by the estimated profits from operating the proposed sporting goods store for ten years, less the cost of repaying a $100,000 loan at 10% interest over ten years.

C. Reliance damages, measured by the $10,000 expense of removing the old building, adjusted by the decrease or increase in the market value of the developer's land immediately thereafter.

D. Nominal damages only, because both expectation and reliance damages are speculative, and there is no legal or equitable basis for awarding restitution.

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

The man did not give the distributor notice of the resale until January 25, and the distributor received it by mail on January 26. In the meantime, the value of the engine had unexpectedly increased about 75% since December 1, and the distributor renounced the agreement.

If the man sues distributor on February 2 for breach of contract, which of the following is distributor's best defense?

A. The secretarial error in the written delivery-term was a mutual mistake concerning a basic fact, and the agreement is voidable by either party.

B. The man's not giving written notice by January 2 of his resale was a failure of a condition precedent to the existence of a contract.

C. In view of the unexpected 75% increase in value of the engine after December 1, the distributor's performance is excused by the doctrine of commercial frustration.

D. The agreement, if any, is unenforceable because a material term was not included in the writing.

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

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

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

A. Substantial performance.

B. Nonoccurrence of a condition subsequent.

C. Waiver of condition.

D. Novation of buyers.

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

Assume that soon after the sale, the horse won three races and earned $400,000 for the trainer.

Which of the following additional facts, if established by the son, would best support his chance of obtaining rescission of the sale to the trainer?

A. The son did not know until after the sale that the purchaser was an experienced racehorse-trainer.

B. At a pre-sale exercise session of which the trainer knew that the son was not aware, the trainer clocked the horse in record-setting time, far surpassing any previous performance.

C. The horse was the only thoroughbred that the son owned, and the son did not know how to evaluate young and untested racehorses.

D. At the time of the sale, the son was angry and upset over an incident in which the horse had reared and thrown a rider.

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

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

A. In his first race after the sale, the horse galloped to a huge lead but dropped dead 100 yards from the finish line because of a rare congenital heart defect that was undiscoverable except by autopsy.

B. The horse won $5 million for the trainer over a three-year racing career but upon being retired was found to be incurably sterile and useless as a breeder.

C. After the horse had won three races for the trainer, it was discovered that by clerical error, unknown to either party, the horse's official birth registration listed an undistinguished racehorse as the sire rather than the famous racehorse that in fact was the sire.

D. A week after the sale, the horse went berserk and inflicted serious injuries upon the trainer that required his hospitalization for six months and a full year for his recovery.

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

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

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

A. succeed, because she is a third-party beneficiary of the owner-dealer contract.

B. succeed, because the taxi fleet owner was acting as the wife's agent when he contracted with the petroleum dealer.

C. not succeed, because the failure of a constructive condition precedent excused the petroleum dealer's duty to place his advertising with the wife.

D. not succeed, because the wife did not provide any consideration to support the petroleum dealer's promise to place his advertising with her.

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

The wife was an intended beneficiary under the owner-dealer contract. The taxi fleet owner performed his contract with the petroleum dealer for six months, and during that time the petroleum dealer placed his advertising with the wife. At the end of the six months, the taxi fleet owner and the wife were divorced, and the taxi fleet owner then told the petroleum dealer that he had no further obligation to place his advertising with the wife. The petroleum dealer thereupon notified the wife that he would no longer place his advertising with her.

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

A. succeed, because, on the facts of this case, the petroleum dealer and the taxi fleet owner could not, without the wife's consent, modify their contract so as to discharge the petroleum dealer's duties to the wife.

B. succeed, because the taxi fleet owner acted in bad faith in releasing the petroleum dealer from his duty with respect to the wife.

C. not succeed, because, absent a provision in the contract to the contrary, the promisor and promisee of a third-party beneficiary contract retain by law the right to modify or terminate the contract.

D. not succeed, because the agency relationship, if any, between the taxi fleet owner and the wife terminated upon their divorce.

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

At the time of contracting, the woman told the father to be at the dock at 5 a.m. on May 15. The father and his family, however, did not show up on May 15 until noon. In the meantime, the owner of the boat agreed at 10 a.m. to take a woman and her family out fishing for the rest of the day. The woman had happened to come by and inquire about the possibility of such an outing. In view of the late hour, the owner of the boat charged the woman $400 and stayed out two hours beyond the customary return time. The father's failure to appear until noon was due to the fact that he had been trying to charter another boat across the bay at a lower rate and had gotten lost after he was unsuccessful in getting such a charter.

Which of the following is an accurate statement concerning the rights of the parties?

A. The woman can retain the $200 paid by the father, because it would be difficult for the woman to establish her actual damages and the sum appears to have been a reasonable forecast in light of anticipated loss of profit from the charter.

B. The woman is entitled to retain only $50 (10% of the contract price) and must return $150 to the father.

C. The woman must return $100 to the father in order to avoid her own unjust enrichment at the father's expense.

D. The woman must return $100 to the father, because the liquidated-damage clause under the circumstances would operate as a penalty.

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

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

Which of the following is an accurate statement?

A. The contract is discharged because of impossibility, and the father is entitled to return of his deposit.

B. The contract is discharged because of mutual mistake concerning an essential fact, and the father is entitled to return of his deposit.

C. The contract is not discharged, because its performance was possible in view of the exceptional seaworthiness of the woman's boat, and the father is not entitled to return of his deposit.

D. The contract is not discharged and the father is not entitled to return of his deposit because the liquidated-damage clause in effect allocated the risk of bad weather to the father.

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

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

A. Suspend his own performance, demand assurances from the breeder, and treat a failure by the breeder to give them as an actionable repudiation.

B. Suspend his own performance and recover damages from the breeder for breach of contract unless the breeder at once supplies an undiseased hog of exhibition quality as a substitute for the champion animal.

C. Terminate his own performance and treat the animal's illness as discharging all remaining duties under the contract.

D. Terminate the contract, but only if he (the manager) seeks promptly to obtain for the exhibit a suitable substitute for the champion animal from another hog owner.

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

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

Which of the following is accurate?

A. The general had a right to reject the trailer, but the trailer company was entitled to a reasonable opportunity to cure the defect.

B. The general had a right to reject the trailer and terminate the contract under the perfect tender rule.

C. The general was required to accept the trailer, because the defect could be readily cured.

D. The general was required to accept the trailer, because the defect did not substantially impair its value.

166. X-- A buyer faxed the following signed message to his long-time widget supplier: "Urgently need blue widgets. Ship immediately three gross at your current list price of $600." Upon receipt of the fax, the supplier shipped three gross of red widgets to the buyer, and faxed to the buyer the following message: "Temporarily out of blue. In case red will help, am shipping three gross at the same price. Hope you can use them."

Upon the buyer's timely receipt of both the shipment and the supplier's fax, which of the following best describes the rights and duties of the buyer and the supplier?

A. The buyer may accept the shipment, in which case he must pay the supplier the list price, or he must reject the shipment and recover from the supplier for total breach of contract.

B. The buyer may accept the shipment, in which case he must pay the supplier the list price, or he may reject the shipment, in which case he has no further rights against the supplier.

C. The buyer may accept the shipment, in which case he must pay the supplier the list price, less any damages sustained because of the nonconforming shipment, or he may reject the shipment and recover from the supplier for total breach of contract, subject to the supplier's right to cure.

D. The buyer may accept the shipment, in which case he must pay the supplier the list price, less any damages sustained because of the nonconforming shipment, or he may reject the shipment provided that he promptly covers by obtaining conforming widgets from another supplier.

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

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

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

I. Executory requirements contracts are nonassignable.

II. Duties under an executory bilateral contract are assumable only by an express promise to perform on the part of the delegatee.

III. Language of "assignment" in the transfer for value of bilateral sale-of-goods contract affects only a transfer of rights, not a delegation of duties.

A. I only.

B. II and III only.

C. I and II and III.

D. Neither I nor II nor III.

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

Assume that the baked goods producer accepted Miller's delivery of the first installment under the flour wholesaler-baked goods producer contract, but that the baked goods producer paid the contract price for that installment to the flour wholesaler and refused to pay anything to Miller.

In an action by Miller against the baked goods producer for the contractual amount of the first installment, which of the following, if any, will be an effective defense for the baked goods producer?

I. The baked goods producer had not expressly agreed to accept Miller as her flour supplier.

II. The baked goods producer's payment of the contractual installment to the flour wholesaler discharged her obligation.

III. The flour wholesaler remained obligated to the baked goods producer even though the flour wholesaler had assigned the contract to Miller.

A. I only.

B. II only.

C. I and III only.

D. Neither I nor II nor III.

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

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

A. Nothing, because the risk of unexpected title problems in a real-property transaction is properly allocatable to the seller's attorney and thus to the lawyer in this case.

B. Nothing, because the amount of the lawyer's fee was disputed in good faith by the client, and the lawyer impliedly agreed to an accord and satisfaction.

C. $2,500, because the client agreed to an hourly rate for as many hours as the work reasonably required, and the sum of $5,000 was merely an estimate.

D. The reasonable value of the lawyer's services in excess of $5,000, if any, because there was no specific agreement on the total amount of the lawyer's fee.

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

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

The accountant is contractually obligated to deliver the stacks because

A. The lawyer provided a new bargained-for exchange by agreeing to take the stacks.

B. The accountant's letter (received by the lawyer on November 10) and the lawyer's fax-message of November 14 constituted an effective modification of the original sale-of-books contract.

C. The lawyer's fax-message of November 14 operated to rescind unilaterally the original sale-of-books contract.

D. The accountant's letter (received by the lawyer on November 10) waived the bargained-for consideration that would otherwise be required.

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

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

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

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

A. Yes, because the lawyer had a pre-existing obligation to pay $10,000 for the law books.

B. Yes, because the accountant was not a merchant with respect to book stacks.

C. No, because the accountant had given a signed assurance that the offer would be held open until November 15.

D. No, because by delaying his acceptance until November 14, the lawyer detrimentally relied on the accountant's promise not to sell the stacks to anyone else in the meantime.

172. On November 15, a contractor, in a signed writing, contracted with a homeowner for an agreed price to personally remodel the homeowner's kitchen according to specifications provided by the homeowner and to start work on December 1. The contractor agreed to provide all materials for the job in addition to all of the labor required.

Assume that on November 26 the contractor without legal excuse repudiated the contract and that the homeowner, after a reasonable and prolonged effort, could not find anyone to remodel his kitchen for a price approximating the price agreed to by the contractor.

If one year later the homeowner brings an action for specific performance against the contractor, which of the following will provide the contractor with the best defense?

A. An action for equitable relief not brought within a reasonable time is barred by laches.

B. Specific performance is generally not available as a remedy to enforce a contractual duty to perform personal services.

C. Specific performance is generally not available as a remedy in the case of an anticipatory repudiation.

D. Specific performance is not available as a remedy where even nominal damages could have been recovered as a remedy at law.

173. X-- On November 15, a contractor, in a signed writing, contracted with a homeowner for an agreed price to personally remodel the homeowner's kitchen according to specifications provided by the homeowner and to start work on December 1. The contractor agreed to provide all materials for the job in addition to all of the labor required.

On November 26, the homeowner without legal excuse repudiated the contract. Notwithstanding the homeowner's repudiation, however, the contractor subsequently purchased for $5,000 materials that could only be used in remodeling the homeowner's kitchen, and promptly notified the homeowner, "I will hold you to our contract." If allowed to perform, the contractor would have made a profit of $3,000 on the job.

If the homeowner refuses to retract his repudiation, and the contractor sues him for damages, what is the maximum that the contractor is entitled to recover?

A. Nothing, because he failed to mitigate his damages.

B. $3,000, his expectation damages.

C. $5,000, on a restitutionary theory.

D. $5,000, his reliance damages, plus $3,000, his expectation damages.

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

A. A county tax assessor mistakenly bills a man for taxes on his neighbor's property, which the man, in good faith, pays.

B. A physician treated a rider without the rider's knowledge or consent, while the rider was unconscious as the result of a fall from his horse.

C. A contrator, thinking that he was paving the customer's driveway for which the contractor had an express contract, mistakenly paved the neighbor's driveway while the neighbor looked on without saying anything or raising any objection.

D. At her mother's request, an accountant filled out and filed her mother's "E-Z" income-tax form (a simple, short form).

175. X-- A beverage distribution company agreed in writing with Fizzy Cola Company to serve for three years as a distributor in a six-county area of Fizzy Cola, which contains a small amount of caffeine. The distribution company promised in the contract to "promote in good faith the sale of Fizzy Cola" in that area; but the contract said nothing about restrictions on the products that the distribution company could distribute.

Six months later, the distribution company agreed with the Cool Cola Company to distribute its caffeine-free cola beverages in the same six-county area. If Fizzy Cola Company sues the distribution company for breach of their distribution contract, which of the following facts, if established, would most strengthen Fizzy's case?

A. Cool Cola's national advertising campaign disparages the Fizzy Cola product by saying, "You don't need caffeine and neither does your cola."

B. Since the distribution company began to distribute Cool Cola, the sale of Fizzy Cola have dropped 3% in the six-county area.

C. Prior to signing the contract with Fizzy Cola Company, a representative of the distribution company said that the deal with Fizzy would be "an exclusive."

D. For many years in the soft-drink industry, it has been uniform practice for distibutors to handle only one brand of cola.

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

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

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

Is this result likely to be reversed on appeal?

A. Yes, because the contract's no-oral-modification clause was not expressly waived by the corporation.

B. Yes, because the contract's no-oral-modification clause was a material part of the agreed exchange and could not be avoided without new consideration.

C. No, because the contract's no-oral-modification clause was unconscionable as against an amateur designer.

D. No, because the corporation by its conduct waived the annual-quantity term and the computer whiz materially changed his position in reasonable reliance on that waiver.

177. A U.S. manufacturer on the west coast gave a hardware retailer who was relocating to the east coast the following "letter of introduction" to a hardware wholesaler on the east coast.

This will introduce you to my good friend and former customer, a hardware retailer, who will be seeking to arrange the purchase of hardware inventory from you on credit. If you will let him have the goods, I will make good any loss up to $25,000 in the event of his /Signed/ manufacturer.

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

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

A. It was important to enforceability of the manufacturer's promise to the hardware wholesaler that it be embodied in a signed writing.

B. By extending the credit to the hardware retailer, the hardware wholesaler effectively accepted the manufacturer's offer for a unilateral contract.

C. Although the manufacturer received no consideration from the hardware retailer, the manufacturer's promise is enforceable by the hardware wholesaler.

D. The manufacturer's promise is enforceable by the hardware wholesaler whether or not the hardware wholesaler gave the manufacturer seasonable notice of the extension of credit to the hardware retailer.

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

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

Having received the broker's message on October 17, the hoarder sued the broker on November 15 for the market value of a comparable replacement-coin as promised by the broker in February. The trial began on December 1.

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

A. The broker did not repudiate the contract on October 17, and may still perform no later than the contract deadline of December 31.

B. Even if the broker repudiated on October 17, the hoarder's only action would be for specific performance because the coin is a unique chattel.

C. Under the doctrine of impossibility, which includes unusually burdensome and unforseen impracticability, the broker is temporarily excused by the market conditions from timely performance of his coin-replacement obligation.

D. Even if the broker repudiated on October 17, the hoarder has no remedy without first demanding in writing that the broker retract his repudiation.

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

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

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

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

A. The hoarder's implied duty of good faith and fair dealing in enforcement of the contract required her to mitigate her losses on the rising market by suing promptly, as she did, after becoming reasonably apprehensive of a prospective breach by the broker.

B. Although the doctrine of anticipatory breach is not applicable under the prevailing view if, at the time of repudiation, the repudiatee owes the repudiator no remaining duty of performance, the doctrine applies in this case because the hoarder, the repudiatee, remains potentially liable under an implied warranty that the coin advanced to the broker was genuine.

C. When either party to a sale-of-goods contract repudiates with respect to a performance not yet due, the loss of which will substantially impair the value of the contract to the other, the aggrieved party may in good faith resort to any appropriate remedy for breach.

D. Anticipatory repudiation, as a deliberate disruption without legal excuse of an ongoing contractual relationship between the parties, may be treated by the repudiatee at her election as a present tort, actionable at once.

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

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

A. Yes, because the gloves were identified in the contract and tendered to the ski-shop operator.

B. Yes, because the glove manufacturer's faxed memo to the ski-shop operator was sufficient to make the agreement enforceable.

C. No, because the agreed price was $600 and the ski-shop operator never signed a writing evidencing a contract with the glove manufacturer.

D. No, because the ski-shop operator neither paid for nor accepted any of the goods tendered.

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

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

A. The collector wins, because the investigator owed the insurance company a preexisting duty to recover the picture if possible.

B. The collector wins, because the insurance company, the investigator's employer, had a preexisting duty to return the recovered painting to the collector.

C. The investigator wins, because the collector will benefit more from return of the $400,000 painting than from receiving the $300,000 policy proceeds.

D. The investigator wins, because the preexisting duty rule does not apply if the promisee's (the investigator's) duty was owed to a third person.

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

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

A. nothing, because the girl was a minor at the time of the original transaction.

B. nothing, because there was no consideration for the promise made by the girl after reaching majority.

C. $75.

D. $100.

183. X-- A women bought on credit and took delivery of a telescope from a seller for an agreed price of $100. The woman promised to pay the seller, "as soon as I am able." The woman subsequently repudiated this promise and refused to pay the seller anything.

What effect does this quoted language have on enforceability of the promise?

A. None.

B. It makes the promise illusory.

C. It requires the woman to prove her inability to pay.

D. It requires the seller to prove the woman's ability to pay.

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

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

A. As the assignee prior in time, the daughter can recover $25,000 from the patient, who acted at her peril in paying the physician.

B. As the sole assignee for value, the stockbroker can recover $25,000 from the patient, who acted at her peril in paying the physician.

C. Neither the daughter nor the stockbroker can recover from the patient, but the daughter, though not the stockbroker, can recover $25,000 from the physician.

D. Neither the daughter nor the stockbroker can recover from the patient, but the stockbroker, though not the daughter, can recover $25,000 from the physician.

185. On July 15, in a writing signed by both parties, a fixture company agreed to deliver to a druggist on August 15 five storage cabinets from inventory for a total price of $5,000 to be paid on delivery. On August 1, the two parties orally agreed to postpone the delivery date to August 20. On August 20, the fixture company tendered the cabinets to the druggist, who refused to accept or pay for them on the ground that they were not tendered on August 15, even though they otherwise met the contract specifications.

Assuming that all appropriate defenses are seasonably raised, will the fixture company succeed in an action against the druggist for breach of contract?

A. Yes, because neither the July 15 agreement nor the August 1 agreement was required to be in writing.

B. Yes, because the August 1 agreement operated as a waiver of the August 15 delivery term.

C. No, because there was no consideration to support the August 1 agreement.

D. No, because the parol evidence rule will prevent proof of the August 1 agreement.

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

A. nothing, because it received a price on resale equal to the contract price that the customer had agreed to pay.

B. nothing, because the store failed to give the customer proper notice of the store's intention to resell.

C. the store's anticipated profit on the sale to the customer plus incidental damages, if any, because the store lost that sale.

D. $3,000 (the contract price), because the customer intentionally breached the contract by repudiation.

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

Is the farmer obligated to make the $4,000 payment?

A. No, because the farmer has no duty under the contract to pay anything to the painter until all three barns have been painted.

B. No, because the painter waived her right, if any, to payment on a per-barn basis by failing to demand $2,000 upon completion of the first barn.

C. Yes, because the contract is divisible.

D. Yes, because the painter has substantially performed the entire contract.

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

Assume that Farmer rightfully refused Painter's demand for payment. If Painter immediately terminates the contract without painting the third barn, what is Painter entitled to recover from Farmer?

A. Nothing, because payment was expressly conditioned on completion of all three barns.

B. Painter's expenditures plus anticipated "profit" in painting the first two barns, up to a maximum recovery of $4,000.

C. The reasonable value of Painter's services in painting the two barns, less Farmer's damages, if any, for Painter's failure to paint the third barn.

D. The amount that the combined value of the two painted barns has been increased by Painter's work.

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

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

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

A. Yes, because the retailer had not revoked its offer before April 15.

B. Yes, because a one-year option contract had been created by the retailer's offer.

C. No, because under applicable law the irrevocability of the retailer's offer was limited to a period of three months.

D. No, because the lawyer did not accept the retailer's offer within a reasonable time.

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

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

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

A. No, because the retailer's original offer, including the price term, became irrevocable under the doctrine of promissory estoppel.

B. No, because the retailer is a merchant with respect to office supplies; and its original offer, including the price term, was irrevocable throughout the month of February.

C. Yes, because the retailer received no consideration to support its assurance that it would not increase prices.

D. Yes, because the period for which the retailer gave assurance that it would not raise prices was longer than three months.

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

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

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

A. Yes, because the buyer's promise to buy, bargained for and made in exchange for the shareholder's promise to sell, was good consideration even though it was expressly conditioned on an event that was not certain to occur.

B. Yes, because any possible lack of consideration for the shareholder's promise to sell was expressly waived by the shareholder when the agreement was made.

C. No, because mutuality of obligation between parties was lacking when the agreement was made.

D. No, because the condition of the parent company's approval of the contract was an essential part of the agreed exchange and was not in a signed writing.

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

The shareholder subsequently refused to consummate the sale on the ground that the buyer had neglected to request the parent company's approval of the contract, which was true. The parent company's chief executive officer, however, is prepared to testify that the parent company would have routinely approved the contract if requested to do so. The buyer can also prove that he has made a substantial sale of other assets to finance the stock purchase, although he admittedly had not anticipated any such necessity when he entered into the stock purchase agreement.

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

A. Yes, because the condition of the parent company's approval of the contract, being designed to protect only the buyer and the parent company, can be and has been waived by those entities.

B. Yes, because the buyer detrimentally relied on the shareholder's commitment by selling off other assets to finance the stock purchase.

C. No, because the express condition of the parent company's approval had not occurred prior to the lawsuit.

D. No, because obtaining the parent company's approval of the contract was an event within the buyer's control and the buyer's failure to obtain it was itself a material breach of contract.

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

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

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

A. admit the evidence as proof of a collateral agreement.

B. admit the evidence as proof of a condition to the existence of an enforceable obligation, and therefore not within the scope of the parol evidence rule.

C. exclude the evidence on the basis of a finding that the parties' written agreement was a complete integration of their contract.

D. exclude the evidence as contradicting the terms of the parties' written agreement, whether or not the writing was a complete integration of the contract.

194. A tenant rented a commercial building from a landlord, and operated a business in it. The building's large front window was smashed by vandals six months before expiration of the tenant-landlord lease. The tenant, who was obligated thereunder to effect and pay for repairs in such cases, promptly contracted with a window company to replace the window for $2,000, due 30 days after satisfactory completion of work. The landlord was then unaware of the tenant-window company contract. The window company was aware that the building was under lease, but dealt entirely with the tenant.

Sixty days after the window company's satisfactory completion of the window replacement, and prior to the expiration of the tenant's lease, the tenant, then insolvent, ceased doing business and vacated the building. In so doing, the tenant forfeited under the lease provisions its right to the return of a $2,000 security deposit with the landlord. The deposit had been required, however, for the express purpose (as stated in the lease) of covering any damage to the leased property except ordinary wear and tear. The only such damage occurring during the tenant's occupancy was the smashed window. The window company's $2,000 bill for the window replacement is wholly unpaid.

Assuming that the window company has no remedy quasi in rem under the relevant state mechanic's lien statute, which of the following would provide the window company's best chance of an effective remedy in personam against the landlord?

A. An action in quasi contract for the reasonable value of a benefit unofficiously and non-gratuitously conferred on the landlord.

B. An action based on promissory estoppel.

C. An action based on an implied-in-fact contract.

D. An action as third-party intended beneficiary of the tenant-landlord lease.

195. A tenant rented a commercial building from a landlord and operated a business in it. The building's large front window was smashed by vandals six months before expiration of the tenant-landlord lease. The tenant, who was obligated thereunder to effect and pay for repairs in such cases, promptly contracted with a window company to replace the window for $2,000, due 30 days after satisfactory completion of work. The landlord was then unaware of the tenant-window company contract. The window company was aware that the building was under lease, but dealt entirely with the tenant.

Sixty days after the window company's satisfactory completion of the window replacement, and prior to the expiration of the tenant's lease, the tenant, then insolvent, ceased doing business and vacated the building. In so doing, the tenant forfeited under the lease provisions its right to the return of a $2,000 security deposit with the landlord. The deposit had been required, however, for the express purpose (as stated in the lease) of covering any damage to the leased property except ordinary wear and tear. The only such damage occuring during the tenant's occupancy was the smashed window. The window company's $2,000 bill for the window replacement is wholly unpaid.

Upon vacating the building, the tenant mailed a $1,000 check to the window company bearing on its face the following conspicuous notation: "This check is in full and final satisfaction of your $2,000 window replacement bill." Without noticing this notation, the window company cashed the check and now sues the tenant for the $1,000 difference.

If the tenant's only defense is accord and satisfaction, is the tenant likely to prevail?

A. No, because the window company failed to notice the tenant's notation on the check.

B. No, because the amount owed by the tenant to the window company was liquidated and undisputed.

C. Yes, because by cashing the check the window company impliedly agreed to accept the $1,000 as full payment of its claim.

D. Yes, because the window company failed to write a reservation-of-rights notation on the check before cashing it.

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

1. Telegram from the vendor received by the potential buyer on June 2: "You're in luck. We have only 100 QT's, all on clearance at 50% off usual wholesale of $120 per unit, for delivery at our shipping platform on June 12."

2. Letter from the potential buyer received in U.S. mail by the vendor on June 5: "I accept. Would prefer to pay in full 30 days after invoice."

3. Telegram from the vendor received by the potential buyer on June 6: "You must pick up at our platform and pay C.O.D."

4 Letter from the potential buyer received in U.S. mail by the vendor on June 9: "I don't deal with people who can't accommodate our simple requests."

5. Telegram from the potential buyer received by the vendor on June 10, after the vendor has sold and delivered all of the QT's to another buyer earlier that day: "Okay. I'm over a barrel and will pick up the goods on your terms June 12."

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

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

A. The vendor's telegram received on June 2 was merely a price quotation, not an offer.

B. The potential buyer's letter received on June 5 was not an acceptance because it varied the terms of the vendor's initial telegram.

C. The potential buyer's use of the mail in response to the vendor's initial telegram was an ineffective method of acceptance.

D. The potential buyer's letter received on June 9 was an unequivocal refusal to perform that excused the vendor even if the parties had previously formed a contract.

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

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

A. Yes, because the agreement contained no prohibition against assignment or delegation.

B. Yes, because the chef received adequate assurances of Newman's ability to complete the job.

C. No, because the decorator's duties were of a personal nature, involving his reputation, taste, and skill.

D. No, because the decorator's purported delegation to Newman of his obligations to the chef effected a novation.

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

If the chef allows Newman to perform and approves his design plan, but Newman fails without legal excuse to complete the decorating as agreed, against whom does the chef have an enforceable claim for breach of contract?

A. The decorator only, because the decorator's agreement with Newman did not discharge his duty to the chef, and Newman made no express promise to the chef.

B. Newman only, because the decorator's duty to the chef was discharged when the decorator obtained a skilled decorator (Newman) to perform the chef-decorator contract.

C. Newman only, because the chef was an intended beneficiary of the decorator-Newman agreement, and the decorator's duty to the chef was discharged when the chef permitted Newman to do the work and approved Newman's designs.

D. Either the decorator, because his agreement with Newman did not discharge his duty to the chef, or Newman, because the chef was an intended beneficiary of the decorator-Newman agreement.

199. A landholder was land-rich by inheritance but money-poor, having suffered severe losses on bad investments, but still owned several thousand acres of unencumbered timberland. He had a large family, and his normal, fixed personal expenses were high. Pressed for cash, he advertised a proposed sale of standing timber on a choice 2,000-acre tract. The only response was an offer by a logger, the owner of a large, integrated construction enterprise, after inspection of the advertised tract.

The logger offered to buy, sever, and remove the standing timber from the advertised tract at a cash price 70% lower than the regionally prevailing price for comparable timber rights. The landholder, by then in desperate financial straits and knowing little about timber values, signed and delivered to the logger a letter accepting the offer.

If, before the logger commences performance, the landholder's investment fortunes suddenly improve and he wishes to get out of the timber deal with the logger, which of the following legal concepts affords his best prospect of effective cancellation?

A. Bad faith.

B. Equitable estoppel.

C. Unconscionability.

D. Duress.

200. A landholder was land-rich by inheritance but money-poor, having suffered severe losses on bad investments, but still owned several thousand acres of unencumbered timberland. He had a large family, and his normal, fixed personal expenses were high. Pressed for cash, he advertised a proposed sale of standing timber on a choice 2,000-acre tract. The only response was an offer by a logger, the owner of a large, integrated construction enterprise, after inspection of the advertised tract.

The logger offered a fair price for the timber rights in question, and the landholder accepted the offer. The 2,000-acre tract was an abundant wild-game habitat and had been used for many years, with the landholder's permission, by area hunters. The logger's performance of the timber contract would destroy this habitat. Without legal excuse and over the landholder's strong objection, the logger repudiated the contract before commencing performance. The landholder could not afford to hire a lawyer and take legal action, and made no attempt to assign any cause of action he might have had against the logger.

If the logger is sued for breach of the contract by the landholder's next-door neighbor, whose view of a nearby lake is obscured by the standing timber, the neighbor will probably

A. lose, as only an incidental beneficiary, if any, of the logger-landholder contract.

B. lose, as a maintainer of nuisance litigation.

C. prevail, as a third-party intended beneficiary of the logger-landholder contract.

D. prevail, as a surrogate for the landholder in view of his inability to enforce the contract.

201. X-- A written construction contract began with the following recital: "This Agreement, between Land, Inc. (hereafter called 'Owner'), and Builder, Inc., and Boss, its President (hereafter called 'Contractor'), witnesseth: "The signatures to the contract appeared in the following format:

LAND, INC.

By /s/ Oscar Land

President

BUILDER, INC.

By /s/ George Mason

Vice President

/s/ Mary Boss, President

Mary Boss

Builder, Inc., became insolvent and defaulted. Land, Inc., sued Boss individually for the breach, and at the trial Boss proffered evidence from the pre-contract negotiations that only Builder, Inc., was to be legally responsible for performing the contract.

If the court finds the contract to be completely integrated, is Boss's proffered evidence admissible?

A. Yes, because the writing is ambiguous as to whether or not Boss was intended individually to be a contracting party.

B. Yes, because the evidence would contradict neither the recital nor the form of Boss's signature.

C. No, because the legal effect of Boss's signature cannot be altered by evidence of prior understandings.

D. No, because the application of the "four corners" rule, under which the meaning of a completely integrated contract must be ascertained solely from its own terms.

202. X-- A fixtures company, in a signed writing, contracted with an apartment complex for the sale to the apartment complex of 50 identical sets of specified bathroom fixtures, 25 sets to be delivered on March 1, and the remaining 25 sets on April 1. The agreement did not specify the place of delivery, or the time or place of payment.

Which of the following statements is correct?

A. The fixtures company must tender 25 sets to the apartment complex at the apartment complex's place of business on March 1, but does not have to turn them over to the apartment complex until the complex pays the contract price for the 25 sets.

B. The fixtures company has no duty to deliver 25 sets on March 1 at the fixtures company's place of business unless the apartment complex tenders the contract price for the 25 sets on that date.

C. The fixtures company must deliver 25 sets on March 1, and the apartment complex must pay the contract price for the 25 sets within a reasonable time after their delivery.

D. The fixtures company must deliver 25 sets on March 1, but the apartment complex's payment is due only upon the delivery of all 50 sets.

203. X-- A fixtures company, in a signed writing, contracted with an apartment complex for the sale to the apartment complex of 50 identical sets of specified bathroom fixtures, 25 sets to be delivered on March 1, and the remaining 25 sets on April 1. The agreement did not specify the place of delivery, or the time or place of payment.

On March 1, the fixtures company tendered 24 sets to the apartment complex and explained, "One of the 25 sets was damaged in transit from the manufacturer to us, but we will deliver a replacement within 5 days."

Which of the following statements is correct?

A. The apartment complex is entitled to accept any number of the 24 sets, reject the rest, and cancel the contract both as to any rejected sets and the lot due on April 1.

B. The apartment complex is entitled to accept any number of the 24 sets and to reject the rest, but is not entitled to cancel the contract as to any rejected sets or the lot due on April 1.

C. The apartment complex must accept the 24 sets but is entitled to cancel the rest of the contract.

D. The apartment complex must accept the 24 sets and is not entitled to cancel the rest of the contract.

204. X—On March 1, a mechanic contracted to repair a textile company's knitting machine and to complete the job by March 6. On March 2, the textile company contracted to manufacture and deliver specified cloth to a knitwear company on March 15. The textile company knew that it would have to use the machine then under repair to perform this contract. Because the knitwear company order was for a rush job, the knitwear company and the textile company included in their contract a liquidated damages clause, providing that the textile company would pay $5,000 for each day's delay in delivery after March 15.

The mechanic was inexcusably five days late in repairing the machine, and, as a result, the textile company was five days late in delivering the cloth to the knitwear company. The textile company paid $25,000 to the knitwear company as liquidated damages and now sues the mechanic for $25,000. Both the mechanic and the textile company knew when making their contract on March 1 that under ordinary circumstances the textile company would sustain little or no damages of any kind as a result of a five-day delay in the machine repair.

Assuming that the $5,000 liquidated damages clause in the knitwear-textile contract is valid, which of the following arguments will serve as the mechanic's best defense to the textile company's action?

A. Time was not of the essence in the mechanic-textile contract.

B. The mechanic had no reason to foresee on March 1 that the knitwear company would suffer consequential damages in the amount of $25,000.

C. By entering into the knitwear company contract while knowing that its knitting machine was being repaired, the textile company assumed the risk of any delay's loss to the knitwear company.

D. In all probability, the liquidated damages paid by the textile company to the knitwear company are not the same amount as the actual damages sustained by the knitwear company in consequence of the textile company's late delivery of the cloth.

205. X-- A written construction contract, under which a contractor agreed to build a new house for an owner at a fixed price of $200,000, contained the following provision:

Prior to construction or during the course thereof, this contract may be modified by mutual agreement of the parties as to "extras" or other departures from the plans and specifications provided by the owner and attached hereto. Such modifications, however, may be authorized only in writing, signed by both parties.

During construction, the contractor incorporated into the structure overhanging gargoyles and other "extras" orally requested by the owner for orally agreed prices in addition to the contract price. The owner subsequently refused to pay anything for such extras, aggregating $30,000 at the agreed prices, solely on the ground that no written, signed authorization for them was ever effected.

If the contractor sues the owner on account of the "extras," which, if any, of the following will effectively support the owner's defense?

I. The parol evidence rule.

II. The preexisting duty rule.

III. Failure of an express condition.

IV. The statute of frauds.

A. I and III only.

B. I and IV only.

C. II and IV only.

D. Neither I, II, III, nor IV

206. X-- On April 1, an owner and a buyer signed a writing in which the owner, in consideration of $100 to be paid to the owner by the buyer, offered the buyer the right to purchase Greenacre for $100,000 within 30 days. The writing further provided, "This offer will become effective as an option only if and when the $100 consideration is in fact paid." On April 20, the owner, having received no payment or other communication from the buyer, sold and conveyed Greenacre to a citizen for $120,000. On April 21, the owner received a letter from the buyer enclosing a cashier's check for $100 payable to the owner and stating, "I am hereby exercising my option to purchase Greenacre and am prepared to close whenever you're ready."

Which of the following, if proved, best support the buyer's suit against the owner for breach of contract?

A. The buyer was unaware of the sale to the citizen when the owner received the letter and check from the buyer on April 21.

B. On April 15, the buyer decided to purchase Greenacre, and applied for and obtained a commitment from a bank for a $75,000 loan to help finance the purchase.

C. When the April 1 writing was signed, the owner said to the buyer, "Don't worry about the $100; the recital of '$100 to be paid' makes this deal binding."

D. The owner and the buyer are both professional dealers in real estate.

207. On April 1, an owner and a buyer signed a writing in which the owner, in consideration of $100 to be paid to the owner by the buyer, offered the buyer the right to purchase Greenacre for $100,000 within 30 days. The writing further provided, "This offer will become effective as an option only if and when the $100 consideration is in fact paid." On April 20, the owner, having received no payment or other communication from the buyer, sold and conveyed Greenacre to a citizen for $120,000. On April 21, the owner received a letter from the buyer enclosing a cashier's check for $100 payable to the owner and stating, "I am hereby exercising my option to purchase Greenacre and am prepared to close whenever you're ready."

Assume that, for whatever reason, the buyer prevails in the suit against the owner.

Which of the following is the buyer entitled to recover.

A. Nominal damages only, because the remedy of specific performance was not available to the buyer.

B. The fair market value, if any, of an assignable option to purchase Greenacre for $100,000.

C. $20,000, plus the amount, if any, by which the fair market value of Greenacre on the date of the owner's breach exceeded $120,000.

D. The amount, if any, by which the fair market value of Greenacre on the date of the owner's breach exceeded $100,000.

208. X-- On June 1, a seller and a buyer contracted in writing for the sale and purchase of the seller's cattle ranch (a large single tract) and to close the transaction on December 1. On October 1, the buyer told the seller, "I'm increasingly unhappy about our June 1 contract because of the current cattle market, and do not intend to buy your ranch unless I'm legally obligated to do so."

If the seller sues the buyer on October 15 for breach of contract, the seller will probably

A. win, because the buyer committed a total breach by anticipatory repudiation on October 1.

B. win, because the buyer's October 1 statement created reasonable grounds for the seller's insecurity with respect to the buyer's performance.

C. lose, because the parties contracted for the sale and conveyance of a single tract, and the seller cannot bring suit for breach of such a contract prior to the agreed closing date.

D. lose, because the buyer's October 1 statement to the seller was neither a repudiation nor a present breach of the June 1 contract.

209. On June 1, a seller and a buyer contracted in writing for the sale and purchase of the seller's cattle ranch (a large single tract) and to close the transaction on December 1.

The buyer unequivocally repudiated the contract on August 1. On August 15, the seller urged the buyer to change her mind and proceed with the scheduled closing on December 1. On October 1, having heard nothing further from the buyer, the seller sold and conveyed his ranch to a rancher without notice to the buyer. On December 1, the buyer attempted to close under the June 1 contract by tendering the full purchase price to the seller. The seller rejected the tender.

If the buyer sues the seller for breach of contract, the buyer will probably

A. win, because the seller failed to seasonably notify the buyer of any pending sale to the rancher.

B. win, because the seller waived the buyer's August 1 repudiation by urging her to retract it on August 15.

C. lose, because the buyer did not retract her repudiation before the seller materially changed his position in reliance thereon by selling the ranch to the rancher.

D. lose, because acceptance of the purchase price by the seller was a concurrent condition to the seller's obligation to convey the ranch to the buyer on December 1.

210. X-- A contractor agreed to build a power plant for a public utility. A subcontractor agreed with the contractor to lay the foundation for $200,000. The subcontractor supplied goods and services worth $150,000, for which the contractor made progess payments aggregating $100,000 as required by the subcontract. The subcontractor then breached by unjustifiably refusing to perform further. The contractor reasonably spent $120,000 to have the work completed by another subcontractor.

The subcontractor sues the contractor for the reasonable value of benefits conferred, and the contractor counterclaims for breach of contract.

Which of the following should be the court's decision?

A. The subcontractor recovers $50,000, the benefit conferred on the contractor for which the subcontractor has not been paid.

B. The subcontractor recovers $30,000, the benefit the subcontractor conferred on the contractor minus the $20,000 in damages incurred by the contractor.

C. The contractor recovers $20,000, the excess over the contract price that was paid by the contractor for the performance it had bargained to receive from the subcontractor.

D. Neither party recovers anything, because the subcontractor committed a material, unexcused breach and the contractor received a $50,000 benefit from the subcontractor for which the subcontractor has not been paid.

211. A computer company contracted in writing with a bank to sell and deliver to the bank a mainframe computer using a new type of magnetic memory, then under development but not perfected by the computer company, at a price substantially lower than that of a similar computer using current technology. The contract's delivery term was "F.O.B. the bank, on or before July 31."

Assume that the computer company tendered the computer to the bank on August 15, and that the bank rejected it because of delay.

If the computer company sues the bank for breach of contract, which of the following facts, if proved, will best support a recovery by the computer company?

A. The delay did not materially harm the bank.

B. The computer company believed, on the assumption that the bank was getting a "super deal" for its money, that the bank would not reject because of the late tender of delivery.

C. The computer company's delay in tender was caused by a truckers' strike.

D. A usage in the relevant trade allows computer sellers a 30-day leeway in a specified time of delivery, unless the usage is expressly negated by the contract.

212. X-- A computer company contracted in writing with a bank to sell and deliver to the bank a mainframe computer using a new type of magnetic memory, then under development but not perfected by the computer company, at a price substantially lower than that of a similar computer using current technology. The contract's delivery term was "F.O.B. the bank, on or before July 31."

After making the contract with the bank, the computer company discovered that the new technology it intended to use was unreliable and that no computer manufacturer could yet build a reliable computer using that technology. The computer company thereupon notified the bank that it was impossible for the computer company or anyone else to build the contracted-for computer "in the present state of the art."

If the bank sues the computer company for failure to perform its computer contract, the court will probably decide the case in favor of

A. the computer company, because its performance of the contract was objectively impossible.

B. the computer company, because a contract to build a machine using technology under development imposes only a duty on the builder to use its best efforts to achieve the result contracted for.

C. the bank, because the law of impossibility does not apply to merchants under the applicable law.

D. the bank, because the computer company assumed the risk, in the given circumstances, that the projected new technology would not work reliably.

213. A manager, aged 60, who had no plans for early retirement, had worked for an insurance company for 20 years as a managerial employee-at-will when he had a conversation with the company's president about the manager's post-retirement goal of extensive travel around the United States. A month later, the president handed the manager a written, signed resolution of the company's Board of Directors stating that when and if the manager should decide to retire, at his option, the company, in recognition of his past service, would pay him a $2,000-per-month lifetime pension. (The company had no regularized retirement plan for at-will employees.) Shortly thereafter, the manager retired and immediately bought a $30,000 recreational vehicle for his planned travels. After receiving the promised $2,000 monthly pension from the insurance company for six months, the manager, now unemployable elsewhere, received a letter from the insurance company, advising him that the pension would cease immediately because of recessionary budget constraints affecting in varying degrees all managerial salaries and retirement pensions.

In a suit against the insurance company for breach of contract, the manager will probably

A. win, because he retired from the company as bargained-for consideration for the Board's promise to him of a lifetime pension.

B. win, because he timed his decision to retire and to buy the recreational vehicle in reasonable reliance on the Board's promise to him of a lifetime pension.

C. lose, because the Board's promise to him of a lifetime pension was an unenforceable gift promise.

D. lose, because he had been an employee-at-will throughout his active service with the company.

214. In exchange for valid and sufficient consideration, a mother orally promised her son, who had no car and wanted a minivan, "to pay to anyone from whom you buy a minivan within the next six months the full purchase-price thereof." Two months later, the son bought a used minivan on credit from a car dealership for $8,000. At the time, the dealership was unaware of the mother's earlier promise to her son, but learned of it shortly after the sale.

Can the dealership enforce the mother's promise to her son?

A. Yes, under the doctrine of promissory estoppel.

B. Yes, because the dealership is an intended beneficiary of the mother-son contract.

C. No, because the mother's promise to her son is unenforceable under the suretyship clause of the statute of frauds.

D. No, because the dealership was neither identified when the mother's promise was made nor aware of it when the minivan sale was made.

215. X--A breeder bought a two-month-old registered boar at auction from a seller for $800. No express warranty was made. Fifteen months later, tests by experts proved conclusively that the boar had been born incurably sterile. If this had been known at the time of the sale, the boar would have been worth no more than $100.

In an action by the breeder against the seller to avoid the contract and recover the price paid, the parties stipulate that, as both were and had been aware, the minimum age at which the fertility of a boar can be determined is about 12 months.

Which of the following will the court probably decide?

A. The breeder wins, because the parties were mutually mistaken as to the boar's fertility when they made the agreement.

B. The breeder wins, because the seller impliedly warranted that the boar was fit for breeding.

C. The seller wins, because the breeder assumed the risk of the boar's sterility.

D. The seller wins, because any mistake involved was unilateral, not mutual.

216. A chef purchased the front portion of the land needed for a restaurant he desired to build and operate, but the back portion was the subject of a will dispute between a sister and brother. The sister's attorney advised that her claim was doubtful. The chef, knowing only that the unresolved dispute existed, agreed in a signed writing to pay the sister $6,000, payable $1,000 annually, in exchange for a quitclaim deed (a deed containing no warranties) from the sister, who promptly executed such a deed to the chef and received the chef's first annual payment. Shortly thereafter, the probate court handed down a decision in the brother's favor, ruling that the sister had no interest in the land. This decision has become final. The chef subsequently defaulted when his second annual installment came due.

In an action against the chef for breach of contract, the sister will probably

A. lose, because she was aware at the time of the agreement with the chef that her claim to the property quitclaimed was doubtful.

B. lose, because she suffered no legal detriment in executing the quitclaim deed.

C. win, because the chef bargained for, and received in exchange, a quitclaim deed from the sister.

D. win, because the chef, by paying the first $1,000 installment, is estopped to deny that his agreement with the sister is an enforceable contract.

217. A buyer mailed a signed order to a seller that read: "Please ship us 10,000 widgets at your current price." The seller received the order on January 7 and that same day mailed to the buyer a properly stamped, addressed, and signed letter stating that the order was accepted at the seller's current price of $10 per widget. On January 8, before receipt of the seller's letter, the buyer telephoned the seller and said, "I hereby revoke my order." The seller protested to no avail. The buyer received the seller's letter on January 9. Because of the buyer's January 8 telephone message, the seller never shipped the goods.

Under the relevant and prevailing rules, is there a contract between the buyer and the seller as of January 10?

A. No, because the order was an offer that could be accepted only by shipping the goods; and the offer was effectively revoked before shipment.

B. No, because the buyer never effectively agreed to the $10 price term.

C. Yes, because the order was, for a reasonable time, an irrevocable offer.

D. Yes, because the order was an offer that seller effectively accepted before the buyer attempted to revoke it.

218. In January, a teacher contracted with a summer camp to serve as its head counselor at a salary of $10,000 for 10 weeks of service from the first of June to the middle of August. In March, the camp notified the teacher that it had hired someone else to act as head counselor and that the teacher's services would not be needed. In April, the teacher spent $200 traveling to interview at the only other nearby summer camp for a position as its head counselor. The teacher was not chosen for that job. The teacher then took a position teaching in a local summer school at a salary of $6,000 for the same 10-week period as the summer camp.

In a breach-of-contract action against the camp, to which of the following amounts, as damages, is the teacher entitled?

A. $4,000.

B. $4,200.

C. $10,000.

D. $10,200.

219. A lumber supplier agreed to sell and a furniture manufacturer agreed to buy all of the lumber that the manufacturer required over a two-year period. The sales contract provided that payment was due 60 days after delivery, but that a 3% discount would be allowed if the manufacturer paid within 10 days of delivery. During the first year of the contract, the manufacturer regularly paid within the 10-day period and received the 3% discount. Fifteen days after the supplier made its most recent lumber delivery to the manufacturer, the supplier had received no payment from the manufacturer. At this time, the supplier became aware of rumors from a credible source that the manufacturer's financial condition was precarious. The supplier wrote the manufacturer, demanding assurances regarding the manufacturer's financial status. The manufacturer immediately mailed its latest audited financial statements to the supplier, as well as a satisfactory credit report prepared by the manufacturer's banker. The rumors proved to be false. Nevertheless, the supplier refused to resume deliveries. The manufacturer sued the lumber supplier for breach of contract.

Will the manufacturer prevail?

A. No, because the contract was unenforceable, since the manufacturer had not committed to purchase a definite quantity of lumber.

B. No, because the supplier had reasonable grounds for insecurity and was therefore entitled to cancel the contract and refuse to make any future deliveries.

C. Yes, because the credit report and audited financial statements provided adequate assurance of due performance under the contract.

D. Yes, because the supplier was not entitled to condition resumption of deliveries on the receipt of financial status information.

220. A landowner and a contractor entered into a written contract under which the contractor agreed to build a building and pave an adjacent sidewalk for the landowner at a price of $200,000. Later, while construction was proceeding, the landowner and the contractor entered into an oral modification under which the contractor was not obligated to pave the sidewalk but still would be entitled to $200,000 upon completion. The contractor completed the building. The landowner, after discussions with his landscaper, demanded that the contractor pave the adjacent sidewalk. The contractor refused.

Has the contractor breached the contract?

A. No, because the oral modification was in good faith and therefore enforceable.

B. Yes, because a discharge of a contractual obligation must be in writing.

C. Yes, because the parol evidence rule bars proof of the oral modification.

D. Yes, because there was no consideration for the discharge of the contractor's duty to pave the sidewalk.

221. X-- During negotiations to purchase a used car, a buyer asked a dealer whether the car had ever been in an accident. The dealer replied: "It is a fine car and has been thoroughly inspected and comes with a certificate of assured quality. Feel free to have the car inspected by your own mechanic." In actuality, the car had been in an accident and the dealer had repaired and repainted the car, successfully concealing evidence of the accident. The buyer declined to have the car inspected by his own mechanic, explaining that he would rely on the dealer's certificate of assured quality. At no time did the dealer disclose that the car had previously been in an accident. The parties then signed a contract of sale. After the car was delivered and paid for, the buyer learned about the car's involvement in a major accident.

If the buyer sues the dealer to rescind the transaction, is the buyer likely to succeed?

A. No, because the buyer had the opportunity to have the car inspected by his own mechanic and declined to do so.

B. No, because the dealer did not affirmatively assert that the car had not been in an accident.

C. Yes, because the contract was unconscionable.

D. Yes, because the dealer's statement was intentionally misleading and the dealer had concealed evidence of the accident.

222. On January 5, a creditor lent $1,000 to a debtor under a contract calling for the debtor to repay the loan at the rate of $100 per month payable on the first day of each month. On February 1, at the debtor's request, the creditor agreed to permit payment on February 5. On March 1, the debtor requested a similar time extension and the creditor replied, "Don't bother me each month. Just change the date of payment to the fifth of the month. But you must now make the payments by cashier's check." The debtor said, "Okay," and made payments on March 5 and April 5. On April 6, the creditor sold the loan contract to a bank, but did not tell the bank about the agreement permitting payments on the fifth of the month. On April 6, the bank wrote to the debtor: "Your debt to [the creditor] has been assigned to us. We hereby inform you that all payments must be made on the first day of the month."

Can the debtor justifiably insist that the payment date for the rest of the installments is the fifth of each month?

A. No, because a contract modification is not binding on an assignee who had no knowledge of the modification.

B. No, because although the creditor waived the condition of payment on the first of the month, the bank reinstated it.

C. Yes, because although the creditor waived the condition of payment on the first of the month, the creditor could not assign to the bank his right to reinstate that condition.

D. Yes, because the creditor could assign to the bank only those rights the creditor had in the contract at the time of the assignment.

223. X-- A buyer entered into a written contract to purchase from a seller 1,000 sets of specially manufactured ball bearings of a nonstandard dimension for a price of $10 per set. The seller correctly calculated that it would cost $8 to manufacture each set. Delivery was scheduled for 60 days later. Fifty-five days later, after the seller had completed production of the 1,000 sets, the buyer abandoned the project requiring use of the specially manufactured ball bearings and repudiated the contract with the seller. After notifying the buyer of his intention to resell, the seller sold the 1,000 sets of ball bearings to a salvage company for $2 per set. The seller sued the buyer for damages.

What damages should the court award to the seller?

A. $2 per set, representing the difference between the cost of production and the price the buyer agreed to pay.

B. $6 per set, representing the difference between the cost of manufacture and the salvage price.

C. $8 per set, representing the lost profits plus the unrecovered cost of production.

D. Nominal damages, as the seller failed to resell the goods by public auction.

224. X-- A bakery offered a chef a permanent full-time job as a pastry chef at a salary of $2,000 per month. The chef agreed to take the position and to begin work in two weeks. In her employment application, the chef had indicated that she was seeking a permanent job. One week after the chef was hired by the bakery, a hotel offered the chef a position as a restaurant manager at a salary of $2,500 a month. The chef accepted and promptly notified the bakery that she would not report for work at the bakery.

Is the bakery likely to prevail in a lawsuit against the chef for breach of contract?

A. No, because a contract for permanent employment would be interpreted to mean the chef could leave at any time.

B. No, because the position the chef took with the hotel was not substantially comparable to the one she had agreed to take with the bakery.

C. Yes, because the chef's acceptance of a permanent position meant that she agreed to leave the bakery only after a reasonable time.

D. Yes, because the chef's failure to give the bakery a chance to match the salary offered by the hotel breached the implied right of first refusal.

225. X-- A debtor owed a lender $1,500. The statute of limitations barred recovery on the claim. The debtor wrote to the lender, stating, "I promise to pay you $500 if you will extinguish the debt." The lender agreed.

Is the debtor's promise to pay the lender $500 enforceable?

A. No, because the debtor made no promise not to plead the statute of limitations as a defense.

B. No, because there was no consideration for the debtor's promise.

C. Yes, because the debtor's promise provided a benefit to the lender.

D. Yes, because the debtor's promise to pay part of the barred antecedent debt is enforceable.

226. X-- A car dealer owed a bank $10,000, due on June 1. The car dealer subsequently sold an automobile to a buyer at a price of $10,000, payable at $1,000 per month beginning on June 1. The car dealer then asked the bank whether the bank would accept payments of $1,000 per month for 10 months beginning June 1, without interest, in payment of the debt. The bank agreed to that arrangement and the car dealer then directed the buyer to make the payments to the bank. When the buyer tendered the first payment to the bank, the bank refused the payment, asserting that it would accept payment only from the car dealer. On June 2, the bank demanded that the car dealer pay the debt in full immediately. The car dealer refused to pay and the bank sued the car dealer to recover the $10,000.

In this suit, which of the following arguments best supports the bank's claim for immediate payment?

A. The agreement to extend the time for payment was not in writing.

B. The car dealer could not delegate its duty to pay to the buyer.

C. The car dealer gave no consideration for the agreement to extend the time of payment.

D. The car dealer's conduct was an attempted novation that the bank could reject.

227. A bottling company sent a purchase order to a wholesaler that stated, "Ship 100,000 empty plastic bottles at the posted price." Two days after receipt of this purchase order, the wholesaler shipped the bottles and the bottling company accepted delivery of them. A week after the bottles were delivered, the bottling company received the wholesaler's acknowledgement form, which included a provision disclaiming consequential damages. After using the bottles for two months, the bottling company discovered a defect in the bottles that caused its products to leak from them. The bottling company recalled 10,000 of the bottles containing its product, incurring lost profits of $40,000.

Assuming all appropriate defenses are seasonably raised, will the bottling company succeed in recovering $40,000 in consequential damages from the wholesaler?

A. No, because buyers are generally not entitled to recover consequential damages.

B. No, because the bottling company's acceptance of the goods also constituted an acceptance of the terms included in the wholesaler's acknowledgement.

C. Yes, because the disclaimer of consequential damages is unconscionable.

D. Yes, because the wholesaler's acknowledgement did not alter the terms of an existing contract between the parties.

228. X-- A seller and a buyer have dealt with each other in hundreds of separate grain contracts over the last five years. In performing each contract, the seller delivered the grain to the buyer and, upon delivery, the buyer signed an invoice that showed an agreed upon price for that delivery. Each invoice was silent in regard to any discount from the price for prompt payment. The custom of the grain trade is to allow a 2% discount from the invoice price for payment within 10 days of delivery. In all of their prior transactions and without objection from the seller, the buyer took 15 days to pay and deducted 5% from the invoice price. The same delivery procedure and invoice were used in the present contract as had been used previously. The present contract called for a single delivery of wheat at a price of $300,000. The seller delivered the wheat and the buyer then signed the invoice. On the third day after delivery, the buyer received the following note from the seller: "Payment in full in accordance with signed invoice is due immediately. No discounts permitted." s/Seller.

Which of the following statements concerning these facts is most accurate?

A. The custom of the trade controls, and the buyer is entitled to take a 2% discount if he pays within 10 days.

B. The parties' course of dealing controls, and the buyer is entitled to take a 5% discount if he pays within 15 days.

C. The seller's retraction of his prior waiver controls, and the buyer is entitled to no discount.

D. The written contract controls, and the buyer is entitled to no discount because of the parol evidence rule.

229. X-- A mother, whose adult son was a law school graduate, contracted with a tutor to give the son a bar exam preparation course. "If my son passes the bar exam," the mother explained to the tutor, "he has been promised a job with a law firm that will pay $55,000 a year." The tutor agreed to do the work for $5,000, although the going rate was $6,000. Before the instruction was to begin, the tutor repudiated the contract. Although the mother or the son reasonably could have employed, for $6,000, an equally qualified instructor to replace the tutor, neither did so. The son failed the bar exam and the law firm refused to employ him. It can be shown that had the son received the instruction, he would have passed the bar exam.

If the mother and the son join as parties plaintiff and sue the tutor for breach of contract, how much, if anything, are they entitled to recover?

A. $1,000, because all other damages could have been avoided by employing another equally qualified instructor.

B. $55,000, because damages of that amount were within the contemplation of the parties at the time they contracted.

C. Nominal damages only, because the mother was not injured by the breach and the tutor made no promise to the son.

D. Nothing, because neither the mother nor the son took steps to avoid the consequences of the tutor's breach.

230. X-- A landowner entered into a single contract with a builder to have three different structures built on separate pieces of property owned by the landowner. Each structure was distinct from the other two and the parties agreed on a specific price for each. After completing the first structure in accordance with the terms of the contract, the builder demanded payment of the specified price for that structure. At the same time, the builder told the landowner that the builder was "tired of the construction business" and would not even begin the other two structures. The landowner refused to pay anything to the builder.

Is the builder likely to prevail in a suit for the agreed price of the first structure?

A. No, because substantial performance is a constructive condition to the landowner's duty to pay at the contract rate.

B. No, because the builder's cessation of performance without legal excuse is a willful breach of the contract.

C. Yes, because the contract is divisible, and the landowner will be required to bring a separate claim for the builder's failure to complete the other two structures.

D. Yes, because the contract is divisible, but the landowner will be able to deduct any recoverable damages caused by the builder's failure to complete the contract.

231. X-- In financial straits and needing $4,000 immediately, a nephew orally asked his uncle for a $4,000 loan. The uncle replied that he would lend the money to the nephew only if the nephew's mother "guaranteed" the loan. At the nephew's suggestion, the uncle then telephoned the nephew's mother, told her about the loan, and asked if she would "guarantee" it. She replied, "Surely. Lend my son the $4,000 and I'll repay it if he doesn't." The uncle then lent $4,000 to the nephew, an amount the nephew orally agreed to repay in six weeks. The next day, the nephew's mother wrote to him and concluded her letter with the words, "Son, I was happy to do you a favor by promising your uncle I would repay your six-week $4,000 loan if you don't. /s/ Mother." Neither the nephew nor his mother repaid the loan when it came due and the uncle sued the mother for breach of contract. In that action, the mother raised the statute of frauds as her only defense.

Will the mother's statute-of-frauds defense be successful?

A. No, because the amount of the loan was less than $5,000.

B. No, because the mother's letter satisfies the statute-of-frauds requirement.

C. Yes, because the mother's promise to the uncle was oral.

D. Yes, because the nephew's promise to the uncle was oral.

232. X-- On May 1, an uncle mailed a letter to his adult nephew that stated: "I am thinking of selling my pickup truck, which you have seen and ridden in. I would consider taking $7,000 for it." On May 3, the nephew mailed the following response: "I will buy your pickup for $7,000 cash." The uncle received this letter on May 5 and on May 6 mailed a note that stated: "It's a deal." On May 7, before the nephew had received the letter of May 6, he phoned his uncle to report that he no longer wanted to buy the pickup truck because his driver's license had been suspended.

Which of the following statements concerning this exchange is accurate?

A. There is a contract as of May 3.

B. There is a contract as of May 5.

C. There is a contract as of May 6.

D. There is no contract.

233. A seller and a buyer entered into a contract obligating the seller to convey title to a parcel of land to the buyer for $100,000. The agreement provided that the buyer's obligation to purchase the parcel was expressly conditioned upon the buyer's obtaining a loan at an interest rate no higher than 10%. The buyer was unable to do so, but did obtain a loan at an interest rate of 10.5% and timely tendered the purchase price. Because the value of the land had increased since the time of contracting, the seller refused to perform. The buyer sued the seller.

Will the buyer prevail?

A. No, because an express condition will only be excused to avoid forfeiture.

B. No, because the contract called for a loan at an interest rate not to exceed 10% and it could not be modified without the consent of the seller.

C. Yes, because the buyer detrimentally changed position in reliance on the seller's promise to convey.

D. Yes, because the buyer's obtaining a loan at an interest rate no higher than 10% was not a condition to the seller's duty to perform.

234. An innkeeper, who had no previous experience in the motel or commercial laundry business and who knew nothing about the trade usages of either business, bought a motel and signed an agreement with a laundry company for the motel's laundry services. The one-year agreement provided for "daily service at $500 a week." From their conversations during negotiation, the laundry company knew that the innkeeper expected laundry services seven days a week. When the laundry company refused to pick up the motel's laundry on two successive Sundays and indicated that it would not ever do so, the innkeeper canceled the agreement. The laundry company sued the innkeeper for breach of contract. At trial, clear evidence was introduced to show that in the commercial laundry business "daily service" did not include service on Sundays.

Will the laundry company succeed in its action?

A. No, because the laundry company knew the meaning the innkeeper attached to "daily service," and, therefore, the innkeeper's meaning will control.

B. No, because the parties attached materially different meanings to "daily service," and, therefore, no contract was formed.

C. Yes, because the parol evidence rule will not permit the innkeeper to prove the meaning she attached to "daily service."

D. Yes, because the trade usage will control the interpretation of "daily service."

235. A carpenter contracted with a homeowner to remodel the homeowner's home for $10,000, to be paid on completion of the work. On May 29, relying on his expectation that he would finish the work and have the homeowner's payment on June 1, the carpenter contracted to buy a car for "$10,000 in cash, if payment is made on June 1; if payment is made thereafter, the price is $12,000." The carpenter completed the work according to specifications on June 1 and demanded payment from the homeowner on that date. The homeowner, without any excuse, refused to pay. Thereupon, the carpenter became very excited, suffered a minor heart attack, and, as a result, incurred medical expenses of $1,000. The reasonable value of the carpenter's services in remodeling the homeowner's home was $13,000.

In an action by the carpenter against the homeowner, which of the following should be the carpenter's measure of recovery?

A. $10,000, the contract price.

B. $11,000, the contract price plus $1,000 for the medical expenses incurred because the homeowner refused to pay.

C. $12,000, the contract price plus $2,000, the bargain that was lost because the carpenter could not pay cash for the car on June 1.

D. $13,000, the amount the homeowner was enriched by the carpenter's services.

236. X-- A fugitive was wanted for murder. The authorities offered the following reward: "$20,000 to anyone who provides information leading to the arrest and conviction of this fugitive." A private detective knew of the reward, located the fugitive, and brought him to the authorities, who arrested him. The authorities then determined that while the fugitive had, in fact, committed the crime, he had been directed to commit the crime by his boss. The authorities and the fugitive then agreed that in exchange for the fugitive's testimony against his boss, all charges against the fugitive would be dropped. The fugitive testified and was released. The authorities refused to pay the reward to the private detective on the ground that the fugitive was never convicted.

Would the private detective be likely to prevail in a breach of contract action against the authorities?

A. No, because the private detective failed to notify the authorities that he had accepted the reward offer.

B. No, because the express conditions set out in the reward were not met.

C. Yes, because the authorities' agreement with the fugitive was against public policy.

D. Yes, because the authorities themselves prevented the conviction of the fugitive.

237. A buyer and a seller entered into a contract for the sale of 10,000 novelty bracelets. The seller had the bracelets in stock. The contract specified that the seller would ship the bracelets by a third-party carrier. However, the contract did not specify either who was to pay the costs of carriage or the place of tender for the bracelets.

On the above facts, when would the risk of loss of the bracelets pass to the buyer?

A. When the contract was made.

B. When the bracelets were identified to the contract by the seller, assuming the goods conformed to the contract.

C. When the bracelets were delivered to a carrier and a proper contract for their carriage was made.

D. When the bracelets were unloaded on the buyer's premises by the carrier.

238. In a written contract, an architect agreed to draw up the plans for and to supervise construction of a client's new house. In return, the client agreed to pay the architect a fee of $10,000 to be paid upon the house's completion. After completion, the client claimed erroneously but in good faith that the architect's plans were defective. The client orally offered to pay the architect $7,500 in full settlement of the claim for the fee. The architect orally accepted that offer despite the fact that the reasonable value of his services was in fact $10,000. The client paid the architect $7,500 pursuant to their agreement.

The architect subsequently sued the client for the remaining $2,500. In a preliminary finding, the trier of fact found that there were no defects in the architect's plans.

Will the architect be likely to prevail in his action against the client for $2,500?

A. Yes, because payment of $7,500 cannot furnish consideration for the architect's promise to surrender his claim.

B. Yes, because the oral agreement to modify the written contract is not enforceable.

C. No, because the architect's promise to accept $7,500 became binding when the client made the payment.

D. No, because the architect's acceptance of partial payment constituted a novation.

239. On June 1, a seller agreed, in a writing signed by both the seller and the buyer, to sell an antique car to a buyer for $20,000. The car was at the time on display in a museum in a different city and was to be delivered to the buyer on August 1. On July 15, before the risk of loss had passed to the buyer, the car was destroyed by fire without fault of either party. Subsequent to the contract but before the fire, the car had increased in value to $30,000. The seller sued the buyer for the contract price of $20,000, and the buyer counterclaimed for $30,000.

Which of the following will the court conclude?

A. Both claims fail.

B. Only the seller's claim prevails.

C. Only the buyer's claim prevails.

D. Both claims prevail.

240. A homeowner and a contractor entered into a contract for the construction of a home for the price of $300,000. The contractor was to earn a profit of $10,000 for the job. After the contractor had spent $45,000 on labor and materials, including $5,000 on oak flooring not yet installed, the homeowner informed the contractor that the homeowner had lost his job and could not pay for any services. The homeowner told the contractor to stop working immediately. The reasonable market value of the labor and materials provided by the contractor at that point, including the oak flooring, was $40,000. The contractor used the $5,000 worth of oak flooring on another job.

In an action by the contractor against the homeowner for damages, which of the following would be the largest amount of damages recoverable by the contractor?

A. $40,000, the reasonable value of the services the contractor had provided.

B. $40,000, the contractor's construction costs.

C. $50,000, the contractor's construction costs of $45,000 plus the $10,000 profit minus the $5,000 saved by reusing the oak flooring on another job.

D. $55,000, the contractor's construction costs of $45,000 plus the $10,000 profit.

241. While waiting in line to open an account with a bank, a customer read a poster on the bank's wall that said, "New Customers! $25 FOR 5 MINUTES. If you stand in line for more than five minutes, we will pay you $25! We like happy customers! (This offer may be withdrawn at any time.)" The customer started timing his wait and just as five minutes was about to pass, the bank manager tore the poster down and announced, "The $25 stand-in-line promotion is over." The customer waited in line for 10 more minutes before being served.

In the customer's action against the bank for $25, will the customer prevail?

A. No, because the bank withdrew its offer before the customer completed the requested performance.

B. No, because the bank's statement was a nonbinding gift promise.

C. Yes, because the bank could not revoke its offer once the customer had commenced performance.

D. Yes, because the customer's presence in line served as notice to the bank that he had accepted.

242. On June 1, a seller received a mail order from a buyer requesting prompt shipment of a specified computer model at the seller's current catalog price. On June 2, the seller mailed to the buyer a letter accepting the order and assuring the buyer that the computer would be shipped on June 3. On June 3, the seller realized that he was out of that computer model and shipped to the buyer a different computer model and a notice of accommodation. On June 5, the buyer received the seller's June 2 letter and the different computer model, but not the notice of accommodation.

At that juncture, which of the following is a correct statement of the parties' legal rights and duties?

A. The buyer can either accept or reject the different computer model and in either event recover damages, if any, for breach of contract.

B. The buyer can either accept or reject the different computer model, but if he rejects it, he will thereby waive any remedy for breach of contract.

C. The seller's prompt shipment of nonconforming goods constituted an acceptance of the buyer's offer, thereby creating a contract for sale of the replacement computer model.

D. The seller's notice of accommodation was timely mailed and his shipment of the different computer model constituted a counteroffer.

243. On May 1, a seller and a buyer entered into a written contract, signed by both parties, for the sale of a tract of land for $100,000. Delivery of the deed and payment of the purchase price were scheduled for July 1. On June 1, the buyer received a letter from the seller repudiating the contract. On June 5, the buyer bought a second tract of land at a higher price as a substitute for the first tract. On June 10, the seller communicated a retraction of the repudiation to the buyer.

The buyer did not tender the purchase price for the first tract on July 1, but subsequently sued the seller for breach of contract.

Will the buyer likely prevail?

A. No, because the seller retracted the repudiation prior to the agreed time for performance.

B. No, because the buyer's tender of the purchase price on July 1 was a constructive condition to the seller's duty to tender a conveyance.

C. Yes, because the seller's repudiation was nonretractable after it was communicated to the buyer.

D. Yes, because the buyer bought the second tract as a substitute for the first tract prior to the seller's retraction.

244. X--A debtor's liquidated and undisputed $1,000 debt to a creditor was due on March 1. On March 15, the creditor told the debtor that if the debtor promised to pay the $1,000 on or before December 1, then the creditor wouldn't sue to collect the debt. The debtor orally agreed. On April 1, the creditor sued the debtor to collect the debt that had become due on March 1. The debtor moved to dismiss the creditor's complaint.

Should the court grant the debtor's motion?

A. No, because there was no consideration to support the creditor's promise not to sue.

B. No, because there was no consideration to support the debtor's promise to pay $1,000 on December 1.

C. Yes, because a promise to allow a debtor to delay payment on a past debt is enforceable without consideration.

D. Yes, because the debtor was bargaining for the creditor's forbearance.

245. On March 1, a homeowner contacted a builder about constructing an addition to the homeowner's house. The builder orally offered to perform the work for $200,000 if his pending bid on another project was rejected. The homeowner accepted the builder's terms and the builder then prepared a written contract that both parties signed. The contract did not refer to the builder's pending bid. One week later, upon learning that his pending bid on the other project had been accepted, the builder refused to perform any work for the homeowner.

Can the homeowner recover for the builder's nonperformance?

A. No, because efficiency principles justify the builder's services being directed to a higher-valued use.

B. No, because the builder's duty to perform was subject to a condition.

C. Yes, because the builder's attempt to condition his duty to perform rendered the contract illusory.

D. Yes, because the parol evidence rule would bar the builder from presenting evidence of oral understandings not included in the final writing.

246. A buyer ordered a new machine from a manufacturer. The machine arrived on time and conformed in all respects to the contract. The buyer, however, rejected the machine because he no longer needed it in his business and returned the machine to the manufacturer. The manufacturer sold many such machines each year and its factory was not operating at full capacity.

In an action by the manufacturer against the buyer for breach of contract, which of the following is NOT a proper measure of the manufacturer's damages?

A. The contract price of the machine.

B. The difference between the contract price and the market price of the machine.

C. The difference between the contract price and the price obtained from a proper resale of the machine.

D. The profit the manufacturer would have made on the sale of the machine to the buyer.

247. X-- An insurance company issued an insurance policy to a homeowner. The policy failed to contain certain coverage terms required by a state insurance statute. When the homeowner suffered a loss due to a theft that was within the policy's terms, the insurance company refused to pay, claiming that the contract was unenforceable because it violated the statute.

Will the homeowner succeed in an action against the insurance company to recover for the loss?

A. No, because the insurance policy is not a divisible contract.

B. No, because the insurance policy violated the statute.

C. Yes, because the homeowner belongs to the class of persons intended to be protected by the statute.

D. Yes, because the insurance policy would be strictly construed against the insurance company as the drafter.

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

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

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

A. Both parties are in breach, and each is entitled to damages, if any, from the other.

B. Only the builder is in breach and liable for the homeowner's damages, if any.

C. Only the homeowner is in breach and liable for the builder's damages, if any.

D. Both parties took reasonable positions, and neither is in breach.

249. X-- A collector bought from a gallery a painting correctly described in the parties' signed contract as a "one-of-a-kind self-portrait" by a famous artist that had recently died. The contract price was $100,000 in cash, payable one month after a truck carrier delivered the painting to the collector.

The painting was damaged in transit. The collector timely rejected it after inspection and immediately notified the gallery of the rejection. The gallery then sold the painting to a third party. It informed the collector that it would pick up the painting within a couple of weeks. Two weeks later, before the gallery picked up the painting, the collector sold the painting to an art admirer for $120,000 cash, after notifying her about the damage.

If the collector's sale of the painting was NOT an acceptance of the goods, what is the maximum amount that the gallery is entitled to recover from the collector?

A. $120,000 (damages for conversion).

B. $100,000 (the collector-gallery contract price).

C. $20,000 (the excess of the market price over the contract price).

D. Only the allowance of lost profit to the gallery as a volume dealer.

250. X-- On March 1, an excavator entered into a contract with a contractor to perform excavation work on a large project. The contract expressly required that the excavator begin work on June 1 to enable other subcontractors to install utilities. On May 15, the excavator requested a 30-day delay in the start date for the excavation work because he was seriously behind schedule on another project. When the contractor refused to grant the delay, the excavator stated that he would try to begin the work for the contractor on June 1.

Does the contractor have valid legal grounds to cancel the contract with the excavator and hire a replacement?

A. Yes, because the excavator committed an anticipatory repudiation of the contract by causing the contractor to feel insecure about the performance.

B. Yes, because the excavator breached the implied covenant of good faith and fair dealing.

C. No, because the excavator would be entitled to specific performance of the contract if he could begin by June 1.

D. No, because the excavator did not state unequivocally that he would delay the beginning of his work.

251. An accountant and a bookkeeper, as part of a contract dissolving their accounting business, agreed that each would contribute $100,000 to fund an annuity for a clerk who was a longtime employee of the business. The clerk's position would be terminated due to the dissolution, and he did not have a retirement plan. The accountant and the bookkeeper informed the clerk of their plan to fund an annuity for him. The clerk, confident about his financial future because of the promised annuity, purchased a retirement home. The accountant later contributed his $100,000 to fund the annuity, but the bookkeeper stated that he could afford to contribute only $50,000. The accountant agreed that the bookkeeper should contribute only $50,000.

Does the clerk have a valid basis for an action against the bookkeeper for the unpaid $50,000?

A. No, because the clerk was bound by the modification of the agreement made by the accountant and the bookkeeper.

B. No, because the clerk was only a donee beneficiary of the agreement between the accountant and the bookkeeper, and had no vested rights.

C. Yes, because the clerk's reliance on the promised retirement fund prevented the parties from changing the terms.

D. Yes, because the promises to establish the fund were made binding by consideration from the clerk's many years of employment.

252. On March 1, a mechanic contracted to repair a textile company's knitting machine by March 6. On March 2, the textile company contracted to manufacture and deliver specified cloth to a customer on March 15. The textile company knew that it would have to use the machine then under repair to perform this contract. Because the customer's order was for a rush job, the two parties included in their contract a liquidated damages clause, providing that the textile company would pay $5,000 for each day's delay in delivery after March 15.

The mechanic was inexcusably five days late in repairing the machine, and, as a result, the textile company was five days late in delivering the cloth to the customer. The textile company paid $25,000 to the customer as liquidated damages and then sued the mechanic for $25,000. Both the mechanic and the textile company knew when making their contract on March 1 that under ordinary circumstances the textile company would sustain few or no damages of any kind as a result of a five-day delay in the machine repair.

Assuming that the $5,000-per-day liquidated damages clause in the contract between the textile company and the customer is valid, which of the following arguments will serve as the mechanic's best defense to the textile company's action?

A. Time was not of the essence in the contract between the mechanic and the textile company.

B. The mechanic had no reason to foresee on March 1 that the customer would suffer consequential damages in the amount of $25,000.

C. By entering into the contract with the customer while knowing that its knitting machine was being repaired, the textile company assumed the risk of any delay loss to the customer.

D. In all probability, the liquidated damages paid by the textile company to the customer are not the same amount as the actual damages sustained by the customer in consequence of the late delivery of the cloth.

253. X-- A seller and a buyer entered into a written agreement providing that the seller was to deliver 1,000 cases of candy bars to the buyer during the months of May and June. Under the agreement, the buyer was obligated to make a selection by March 1 of the quantities of the various candy bars to be delivered under the contract. The buyer did not make the selection by March 1, and on March 2 the seller notified the buyer that because of the buyer's failure to select, the seller would not deliver the candy bars. The seller had all of the necessary candy bars on hand on March 1 and made no additional sales or purchases on March 1 or March 2. On March 2, after receiving the seller's notice that it would not perform, the buyer notified the seller of its selection and insisted that the seller perform. The seller refused.

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

A. No, because a contract did not exist until selection of the specific candy bars, and the seller withdrew its offer before selection.

B. No, because selection of the candy bars by March 1 was an express condition to the seller's duty to perform.

C. Yes, because a delay of one day in making the selection did not have a material effect on the seller.

D. Yes, because upon the buyer's failure to make a selection by March 1, the seller had a duty to make a reasonable selection.

254. X-- Before putting her home up for sale, a homeowner painted the living room ceiling to conceal major water damage caused by a leaking roof that had not yet been repaired. On the first day the home was offered for sale, the homeowner gave a buyer a personal tour. The homeowner made no statements at all regarding the water damage or the roof. Without discovering the water damage or the leaking roof and without consulting a lawyer, the buyer immediately agreed in writing to buy the home for $200,000.

Before the closing date, the buyer discovered the water damage and the leaking roof. The cost of repair was estimated at $22,000. The buyer has refused to go through with the purchase.

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

A. No, because no contract was formed since the buyer did not have a real opportunity to understand the essential terms of the contract.

B. No, because the homeowner concealed evidence of the water damage and of the leaking roof.

C. Yes, because the homeowner made no affirmative statements of fact about the water damage or the leaking roof.

D. Yes, because the buyer acted unreasonably by failing to employ an inspector to conduct an independent inspection of the home.

255. X-- A wholesaler contracted in a signed writing to sell to a bakery 10,000 pounds of flour each week for 10 weeks, the flour to be delivered to the bakery on Mondays and payment to be made on Wednesdays of each week. The bakery did all of its weekly bread baking on Tuesdays. On Monday morning of the first week, the wholesaler tendered delivery of 8,000 pounds of flour to the bakery, and the bakery accepted it on the wholesaler's assurance that the remaining 2,000 pounds would be delivered later that evening, which it was. The bakery paid for both deliveries on Wednesday. On Monday of the second week, the wholesaler tendered delivery of 5,000 pounds of flour to the bakery and said that the remaining 5,000 pounds could not be delivered on Monday but would be delivered by Wednesday. The bakery rejected the tender.

Was the bakery legally justified in rejecting the tender of the 5,000 pounds of flour?

A. Yes, because the bakery was legally entitled to reject any tender that did not conform perfectly to the contract.

B. Yes, because the tender was a substantial impairment of that installment and could not be cured.

C. No, because the tender was not a substantial impairment of the entire contract, and the wholesaler had given assurance of a cure.

D. No, because by accepting the first 8,000 pounds on Monday of the first week, the bakery had waived the condition of perfect tender and had not reinstated it.

256. X--An engineer entered into a written contract with an owner to serve in the essential position of on-site supervisor for construction of an office building. The day after signing the contract, the engineer was injured while bicycling and was rendered physically incapable of performing as the on-site supervisor. The engineer offered to serve as an off-site consultant for the same pay as originally agreed to by the parties.

Is the owner likely to prevail in an action against the engineer for damages resulting from his failure to perform under the contract?

A. No, because the engineer offered a reasonable substitute by offering to serve as an off-site consultant.

B. No, because the engineer's physical ability to perform as on-site supervisor was a basic assumption of the contract.

C. Yes, because the engineer breached the contract by disappointing the owner's expectations.

D. Yes, because the engineer's duty to perform was personal and absolute.

257. An experienced rancher contracted to harvest his neighbor's wheat crop for $1,000 "when the crop [was] ripe." In early September, the neighbor told the rancher that the crop was ripe. The rancher delayed because he had other customers to attend to. The neighbor was concerned that the delay might cause the crop to be lost, for hailstorms were common in that part of the country in the fall. In fact, in early October, before the crop was harvested, it was destroyed by a hailstorm.

Is the rancher liable for the loss?

A. No, because no time for performance was established in the contract.

B. No, because the neighbor failed to tell the rancher that the crop might be destroyed by a hailstorm.

C. Yes, because at the time the contract was made, the rancher had reason to foresee the loss as a probable result of his breach.

D. Yes, because a party who undertakes a contractual obligation is liable for all the consequences that flow from his breach.

258. A niece had worked in her aunt's bookstore for many years. The bookstore business, which was housed in a building that the aunt leased, was independently appraised at $200,000. The aunt decided to retire. She wrote to the niece, expressing her affection for the niece and offering to sell her the bookstore business for $125,000 if the landlord would agree to a transfer of the lease. The letter also specified when the aunt would transfer the business. The niece wrote back accepting her aunt's offer. In a phone call to the niece, the aunt stated that the landlord had approved the transfer of the lease and that she would now ask her attorney to draft a written contract so that there would be a record of the terms. Before the attorney had finished drafting the document, the aunt changed her mind about selling the business and informed the niece of her decision.

In an action for breach of contract brought by the niece against her aunt, is the niece likely to prevail?

A. No, because the motivation for the transfer of the business was the aunt's affection for her niece, not the price.

B. No, because the promised consideration was inadequate in light of the market value of the business.

C. Yes, because the condition concerning the landlord's assent to the transfer of the lease was beyond the control of either party.

D. Yes, because the document being drafted by the attorney was merely a record of an agreement already made, not a condition to it.

259. An actor straight out of drama school and an agent entered into a one-year written contract that described the services the agent would provide. Because he was eager for work, the actor agreed, in the contract, to pay the agent 15% of his yearly earnings. At the end of the year, the actor was so pleased with his many roles that he gave the agent 20% of his earnings. After the first contract had expired, the actor and the agent decided to continue working together. They photocopied their old contract, changed the date, and signed it. At the end of the year, a dispute arose as to what percentage of earnings the actor owed. It is a trade practice in the acting profession for actors to pay their agents 10% of their yearly earnings, payable at the end of the year.

What percentage of the actor's earnings is a court most likely to award the agent?

A. 20%, because course of dealing is given greater weight than trade usage.

B. 15%, because it was an express term of the contract.

C. 10%, because trade usage is the applicable default rule.

D. Nothing, because the contract is too indefinite.

260. A bank agreed to lend a merchant $10,000 for one year at 8% interest. The loan proceeds were to be disbursed within two weeks. The merchant intended to use the loan proceeds to purchase a specific shipment of carpets for resale at an expected profit of $5,000 but said nothing about these plans to the bank. The bank failed to disburse the proceeds and refused to assure the merchant that it would do so. The merchant was able to secure a loan from another lender at 10% interest for one year. However, by the time the merchant started the application process for a substitute loan, it was too late to pursue the opportunity to buy the shipment of carpets.

In an action against the bank for breach of contract, which of the following amounts is the merchant likely to recover?

A. Nothing, because lost opportunities are not foreseeable.

B. Nothing, because the parties failed to tacitly agree that the merchant would be entitled to damages in the event of a breach by the bank.

C. The difference in cost over time between a loan at 10% and a loan at 8%.

D. $5,000, the merchant's foreseeable loss.

261. A buyer sent a seller an offer to buy 50 tons of cotton of a specified quality. The offer contained no terms except those specifying the amount and quality of the cotton. The seller then sent an acknowledgment by fax. The acknowledgment repeated the terms of the buyer's offer and stated that shipment would occur within five days. Among 12 printed terms on the acknowledgment was a statement that any dispute about the cotton's quality would be submitted to arbitration. Neither the buyer nor the seller said anything further about arbitration. The seller shipped the cotton, and it was accepted by the buyer. A dispute arose between the buyer and the seller as to the quality of the cotton, and the seller asserted that the dispute had to be submitted to arbitration. The buyer instead sued the seller in court.

In that suit, which of the following arguments best supports the seller's position that the buyer must submit the dispute to arbitration?

A. Arbitration is a more efficient method of resolving disputes than resolving them in court.

B. The provision for arbitration did not contradict any term in the buyer's offer.

C. The provision for arbitration did not materially alter the parties' contract.

D. The seller's acknowledgment containing a provision for arbitration constituted a counteroffer that was accepted by the buyer when it accepted delivery of the cotton.

262. A janitorial service contracted in writing with a hospital for a one-year term. Under the terms of the contract, the janitorial service agreed to clean the hospital daily in accordance with the hygiene standards of the city's health code. Because the janitorial service did not clean a patient's room in accordance with the required hygiene standards, the patient contracted an infection that required continued hospitalization. In addition to suing the hospital, the patient sued the janitorial service for breach of contract.

Which of the following statements is most accurate with respect to the breach of contract claim against the janitorial service?

A. The janitorial service is liable to the patient as a matter of public policy, because it violated the city's health code.

B. The patient is an intended third-party beneficiary under the contract, because the janitorial service's promise was intended to benefit all hospital patients.

C. The patient has no claim for breach of contract against the janitorial service, because she is an incidental beneficiary.

D. The patient cannot sue on the contract, because she was not named in the contract.

263. A lawn service company agreed in writing to purchase from a supplier all of its requirements for lawn care products during the next calendar year. In the writing, the supplier agreed to fulfill those requirements and to give the company a 10% discount off its published prices, but it reserved the right to increase the published prices during the year. After the parties had performed under the agreement for three months, the supplier notified the company that it would no longer give the company the 10%discount off the published prices.

Does the company have a viable claim against the supplier for breach of contract?

A. Yes, because part performance of the agreement by both parties made it enforceable for the full year.

B. Yes, because the company's agreement to buy all of its lawn care products from the supplier made the agreement enforceable.

C. No, because the supplier could, and did, revoke its offer with respect to future deliveries.

D. No, because the absence of a minimum quantity term rendered the company's promise illusory.

264. On June 1, a general contractor and a subcontractor entered into a contract under which the subcontractor agreed to deliver all of the steel joists that the general contractor required in the construction of a hospital building. The contract provided that delivery of the steel joists would begin on September 1.

Although the general contractor had no reason to doubt the subcontractor's ability to perform, the general contractor wanted to be sure that the subcontractor was on track for delivery in September. He therefore wrote a letter on July 1 to the subcontractor demanding that the subcontractor provide assurance of its ability to meet the September 1 deadline. The subcontractor refused to provide such assurance.

The general contractor then immediately obtained the steel joists from another supplier.

If the subcontractor sues the general contractor for breach of contract, is the subcontractor likely to prevail?

A. No, because the subcontractor anticipatorily repudiated the contract when it failed to provide adequate assurance.

B. No, because the contract failed to specify a definite quantity.

C. Yes, because a demand for assurance constitutes a breach of contract when the contract does not expressly authorize a party to demand assurance.

D. Yes, because the subcontractor's failure to provide assurance was not a repudiation since there were no reasonable grounds for the general contractor's insecurity.

265. A seller entered into a contract to sell to a buyer a house for a price of $150,000. The contract contained the following clause: "This contract is conditional on the buyer's securing bank financing at an interest rate of 7% or below." The buyer did not make an application for bank financing and therefore did not secure it, and refused to proceed with the purchase. The seller sued the buyer for breach of contract.

Is the seller likely to prevail?

A. No, because the buyer did not secure bank financing.

B. No, because the contract did not expressly impose on the buyer any obligation to apply for bank financing.

C. Yes, because a court will excuse the condition to avoid a disproportionate forfeiture.

D. Yes, because a court will imply a term imposing on the buyer a duty to use reasonable efforts to secure bank financing.

266. A computer retail outlet contracted to service a bank's computer equipment for one year at a fixed monthly fee under a contract that was silent as to assignment or delegation by either party. Three months later, the retail outlet sold the service portion of its business to an experienced and well-financed computer service company. The only provision in the agreement between the retail outlet and the computer service company relating to the outlet's contract with the bank stated that the outlet "hereby assigns all of its computer service contracts to [the computer service company]."

The computer service company performed the monthly maintenance required under the service contract. Its performance was defective, however, and caused damage to the bank's operations.

Whom can the bank sue for damages arising from the computer service company's defective performance?

A. The retail outlet only, because the computer service company made no promises to the bank.

B. Either the retail outlet or the computer service company, because the bank has not released the outlet and the bank is an intended beneficiary of the outlet's agreement with the computer service company.

C. Either the retail outlet or the computer service company, because since each has the right to enforce the bank's performance of its contract with the retail outlet, mutuality of remedy renders either potentially liable for the defective performance.

D. The computer service company only, because it is a qualified and a financially responsible supplier of computer services.

267. X--A farmer contracted to sell 100,000 bushels of wheat to a buyer. When the wheat arrived at the destination, the buyer discovered that the farmer had delivered only 96,000 bushels. The buyer sued the farmer for breach of contract. At the trial of the case, the court found that the written contract was intended as a complete and exclusive statement of the terms of the agreement. The farmer offered to prove that in the wheat business, a promise to deliver a specified quantity is considered to be satisfied if the delivered quantity is within 5% of the specified quantity. The buyer objected to the offered evidence.

Is the court likely to admit the evidence offered by the farmer?

A. No, because the offered evidence is inconsistent with the express language of the agreement.

B. No, because the written contract was totally integrated.

C. Yes, because the offered evidence demonstrates that the farmer substantially performed the contract.

D. Yes, because the offered evidence explains or supplements the agreement by usage of trade.

268. X-- A borrower owed a lender $50,000 due on March 1. On January 10, the lender telephoned the borrower and said that he would discharge the debt if the borrower would promise to pay the lender $45,000 by January 15. The borrower responded, "I will attempt to get the money together." On January 11, the lender again telephoned the borrower and said that he had changed his mind and would expect the borrower to make full payment on March 1. On January 15, the borrower tendered $45,000 as full payment, which the lender refused to accept. On March 1, the borrower refused the lender's demand for $50,000, and the lender sued for that amount.

Which of the following statements best supports the lender's position?

A. The borrower's January 10 statement was not a return promise, and therefore the lender effectively revoked his offer on January 11.

B. The January 10 telephone conversation between the lender and the borrower created an executory accord and therefore did not operate as a discharge of the $50,000 debt.

C. The lender's offer to discharge the debt was a gift promise and therefore was not binding on the lender.

D. The lender's promise to discharge the $50,000 debt was not enforceable because it was not in writing.

269. A seller entered into an agreement to sell a machine to a buyer for $5,000. At the time of the order, the buyer gave the seller a down payment of $1,000. The buyer then built a foundation for the machine at a cost of $250. The seller failed to deliver the machine. The buyer made reasonable efforts to find a similar machine and bought one for $5,500 that did not fit on the foundation. The buyer sued the seller for breach of contract.

Which of these amounts claimed by the buyer, if any, could best be described as restitution?

A. The $250 cost of the foundation.

B. The $500 difference in price.

C. The $1,000 down payment.

D. None of the claimed amounts.

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

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

Sincerely,

[signed] the pharmaceutical salesman

The widget salesman replied by mail the following day:

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

Sincerely,

[signed] the widget salesman

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

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

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

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

A. The letter bound both parties to a unilateral contract as soon as the widget salesman mailed it.

B. Mailing of the letter by the widget salesman did not, of itself, prevent a subsequent, effective revocation by the pharmaceutical salesman of his offer.

C. The letter bound both parties to a bilateral contract, but only when received by the pharmaceutical salesman on November 10.

D. Regardless of whether the pharmaceutical salesman's offer had proposed a unilateral or a bilateral contract, the letter was an effective acceptance upon receipt, if not upon dispatch.

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

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

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

A. Impossibility of performance

B. Unilateral mistake as to basic assumption

C. Termination of the offer by the buyer's having first contracted to buy lot 101

D. Excuse by failure of an implied condition precedent.

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

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

I. The builder has a cause of action against the landowner and his damages will be $2,500.

II. The builder can refuse to dig the channel and not be liable for breach of contract.

A. I only

B. II only

C. Both I and II

D. Neither I nor II

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

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

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

Assuming that the contractor committed a total breach on March 1, 2002, what would be the probable measure of the father's damages in an action against the contractor for breach of contract?

A. Restitution of the three monthly installments paid in August, September, and October

B. What it would cost to get the house completed by another contractor, minus installments not yet paid to the contractor

C. The difference between the market value of the partly built house, as of the time of the contractor's breach, and the market value of the house if completed according to specifications

D. In addition to other legally allowable damages, an allowance for the father's mental distress if the house cannot be completed in time for his son's wedding on June 10, 2002

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

The faculty, seeking to encourage legal research, offers to any student at this school who wins the current National Obscenity Law Competition the additional prize of $500. All competing papers must be submitted to the Dean's office before May 1.

A student read this notice on November 2, and thereupon intensified his effort to make his paper on obscenity law, which he started in October, a winner. The student also left on a counter in the Dean's office a signed note saying, "I accept the faculty's $500 Obscenity Competition offer." This note was inadvertently placed in the student's file and never reached the Dean or any faculty member personally. On the following April 1, the above notice was removed and the following substituted therefore:

The faculty regrets that our offer regarding the National Obscenity Law Competition must be withdrawn.

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

As to the student, was the offer effectively revoked?

A. Yes, by the faculty's second notice.

B. No, because it became irrevocable after a reasonable time had elapsed.

C. No, because of the student's reliance, prior to April 1, on the offer.

D. No, unless the student became aware of the April 1 posting and removal before submitting the paper.

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

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

A. succeed, because the man had assured her that the offer would remain open through March 14.

B. succeed, because the man had not in fact sold the automobile to the friend.

C. not succeed, because the purchaser had not tendered the $3,000 to the man on or before March 14.

D. not succeed, because on March 12 the man had told the purchaser that he had sold the automobile to the friend.

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

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

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

A. grant money damages only to the neighbor.

B. grant specific performance to the neighbor.

C. grant the neighbor only the right to retain the $10,000.

D. require the neighbor to refund the $10,000 to the friend.

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

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

If the winery refuses to distribute the wine through the wholesale distributor and the wholesale distributor then sues the winery for breach of contract, is it likely that the wholesale distributor will prevail?

A. Yes, because the winery's performance was to run to the wholesale distributor rather than to the financier-investor.

B. Yes, because the financier-investor and the winery could reasonably foresee that the wholesale distributor would change his position in reliance on the contract.

C. No, because the financier-investor and the winery did not expressly agree that the wholesale distributor would have enforceable rights under their contract.

D. No, because the financier-investor and the winery, having no apparent motive to benefit the wholesale distributor, appeared in making the contract to have been protecting or serving only their own interests.

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

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

A. Nothing

B. $250, the reasonable value of the set

C. $300, the amount the teenager promised to pay in his letter of July 1

D. $400, the original sale price

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

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

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

A. The builder wins, because nonoccurrence of the condition requiring the architects's certificate of final approval was excused by the architects's bad-faith refusal to issue the certificate.

B. The builder wins, but, because all contractual conditions have not occurred, her recovery is limited to restitution of the benefit conferred on the landowner, minus progress payments already received.

C. The landowner wins, provided he can prove by clear and convincing evidence that the fair-market value of the completed house is $160,000 or less.

D. The landowner wins, provided he can prove by clear and convincing evidence that the total payment to the builder of $160,000 will yield a fair net profit.

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

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

A. Yes, because the geriatric company would otherwise be unjustly enriched at the 84-year-old man's expense.

B. Yes, under the doctrine of frustration of purpose.

C. No, because the 84-year-old man's life span and the duration of the geriatric company's commitment to him was a risk assumed by both parties.

D. No, but only if the geriatric company can show that between September 25 and the 84-year-old man's death it rejected, because of its commitment to the 84-year-old man, an application for lifetime care from another elderly person.

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

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

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

A. Yes, because by making his first three payments, the brother confirmed his intent to contract.

B. Yes, because the mother is an intended beneficiary of a contract between the siblings.

C. No, because a parent cannot sue her child for breach of a promise for support.

D. No, because the siblings intended their payment to their mother to be gifts.

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

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

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

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

A. Yes, because the sister's remedy at law is inadequate.

B. Yes, because the sister's burden of supporting her mother will be increased if her brother does not contribute his share.

C. No, because a court will not grant specific performance of a promise to pay money.

D. No, because the brother's breach of contract has caused no economic harm to the sister.

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

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

A. The telegram revoking the offer was effective upon receipt.

B. The offer was revocable at any time for lack of consideration.

C. The mail was the only authorized means of revocation.

D. Under the terms of the retailer's offer, the apartment complex's attempted acceptance was ineffective.

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

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

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

A. A sale-of-goods contract may be made in any manner sufficient to show agreement, even though the moment of its making is undetermined.

B. A sale-of goods contract does not require that an acceptance be a mirror image of the offer.

C. With respect both to the making of an agreement and the requirement of consideration, identical cross-offers are functionally the same as an offer followed by a responsive acceptance.

D. Since Nirvana was a merchant in the transaction and the widow was not, Nirvana is estopped to deny that the parties' correspondence created a binding contract.

285. A dry goods retailer telephoned a towel manufacturer and offered to buy for $5 each a minimum of 500 and a maximum of 1,000 large bath towels, to be delivered in 30 days. The manufacturer orally accepted this offer and promptly sent the following letter to the retailer, which the retailer received two days later: "This confirms our agreement today by telephone to sell you 500 large bath towels for 30-day delivery. /s/ Manufacturer." Twenty-eight days later, the manufacturer tendered to the retailer 1,000 (not 500) conforming bath towels, all of which the retailer rejected because it had found a better price term from another supplier. Because of a glut in the towel market, the manufacturer cannot resell the towels except at a loss.

In a suit by the manufacturer against the retailer, which of the following will be the probable decision?

A. The manufacturer can enforce a contract for 1,000 towels, because the retailer ordered and the manufacturer tendered that quantity.

B. The manufacturer can enforce a contract for 500 towels, because the manufacturer's letter of confirmation stated that quantity term.

C. There is no enforceable agreement, because the retailer never signed a writing.

D. There is no enforceable agreement, because the manufacturer's letter of confirmation did not state a price term.

286. A developer contracted in writing to sell to a buyer a house on a one-acre lot for $100,000. The developer told the buyer that the lot abutted a national park and that the water for the house came from a natural artesian spring. The developer knew that both of these representations were important to the buyer and that both were false. The buyer moved into the house and eight months later learned that a private golf course was being constructed on the adjacent land and that the water for his house was piped in from the city reservoir. The buyer immediately sued the developer to avoid the contract.

The construction of the golf course will probably increase the market value of the buyer's property, and the water from the city reservoir exceeds all established standards for drinking water.

Is the buyer likely to prevail?

A. No, because eight months exceeds a reasonable time for contract avoidance.

B. No, because the developer's misstatements caused no economic harm to the buyer.

C. Yes, because the contract was void ab initio.

D. Yes, because the buyer retained the power to avoid the contract due to fraud.

287. X-- The mother of a son and a daughter was dying. The daughter visited her mother in a hospice facility and said, "You know that I have always been the good child, and my brother has always been the bad child. Even so, you have left your property in the will to us fifty-fifty. But it would be really nice if you would sell me the family home for $100,000."

"I don't know," said the mother. "It is worth a lot more than that-at least $250,000."

"That is true," said the daughter. "But I have always been good and visited you, and my brother has never visited you, so that ought to be worth something. And besides, if you won't sell me the house for that price, maybe I won' t visit you anymore, either."

"Oh, I wouldn't want that," said the mother, and she signed a contract selling the house to her daughter for $100,000.

Shortly thereafter, the mother died. When her son found out that the house had been sold and was not part of his mother's estate, he sued to have the contract avoided on behalf of the mother.

On what ground would the contract most likely be avoided?

A. Duress.

B. Inadequate consideration.

C. Mistake.

D. Undue influence.