

## CONTRACTS QUESTIONS

1. Immediately after his graduation from college in June, Adam announced his plan to begin law school the following September and to marry Jenny in December. Adam's father, Warren, was afraid that marriage during Adam's first year of law school might cause him to fail or drop out of school. He called Adam on the phone and said that if Adam postponed his wedding plans until after the completion of his first year of law, Warren would give him a cash bonus of \$1,000 and would pay Adam's tuition for the second year of law school. Adam agreed, and called Jenny to tell her that he wanted to postpone the wedding. She became so angry at him that she broke off their engagement. Two months later, Jenny married someone else.

Warren died soon after Adam began school but Adam successfully completed his first year. Although Adam earned excellent grades, he decided that he was not really interested enough in the law to want to continue his legal education. After failing to register for a second year of law school, he notified Warren's administrator of his decision. Adam said that although there would be no tuition expense, he expected to be paid the \$1,000 cash bonus, which his father had promised him. The administrator refused to pay anything.

If Adam brought suit against the administrator of Warren's estate for \$1,000, Adam would probably be

- A. Unsuccessful, because his contract with Warren violated public policy.
- B. Unsuccessful, because Adam failed to register for a second year of law school.
- C. Unsuccessful, because Warren's death terminated his offer.
- D. Successful.

2. Faith, a furniture dealer, had 500 barrel chairs for sale. The chairs had a fair market value of \$100 each. The manufacturer had discontinued production of the chairs, however, and they were the last ones Faith had. For that reason, Faith advertised them at \$75 each, even though at that price her profit would only be \$10 per chair. Jason, an interior decorator, was contracted to provide furniture for a new hotel. On May 4, after seeing the barrel chairs advertised, Jason wired Faith, "please ship me 500 barrel chairs as advertised at \$75 per chair COD." On May 5, immediately upon receipt of the telegram, Faith wired Jason, "Accept your offer. Will ship 500 barrel chairs tomorrow." Jason telephoned Faith immediately upon receipt of Faith's telegram on May 6, saying that after discussing the chairs with his client he had decided to cancel the order. On May 7, Faith sold all the chairs to Ellen at \$75 each. If Faith sued Jason for breach of contract, the court should award Faith

- A. \$5,000 (500 chairs at \$10 profit per chair)
- B. \$37,500 (500 chairs at \$75 per chair)
- C. \$12,500 (fair market value of \$100 minus contract price of \$75 times 500 chairs).
- D. Nothing, since Faith sustained no damage.

**Questions 3-4** are based on the following fact situation.

On March 12, Alex hired John to construct a three-car garage on Alex's realty. After negotiation, they entered into a valid written contract, which fixed the price at \$8,000. According to the terms of the contract, Alex was to pay \$4,000 when the work was half completed on or before April 25, and to pay the balance upon completion. All work was to be completed by June 1. On April 10, when the work was one quarter complete, the partial structure was totally destroyed in a fire, which started without fault, by either party. The damage done by the fire made it impossible to complete construction on time. Because he was

committed to begin construction on a hotel on June 1, John notified Alex on April 12 that he would perform no further work for Alex. Alex subsequently hired Terance, another contractor, to build the garage at a price of \$9,000.

3. Assume for the purpose of this question only that Alex instituted an action against John for damages resulting from breach of contract, and that John asserted a defense based on impossibility of performance. The court should find for

- A. John, because the fire was not his fault.
- B. John, because he has not yet received any compensation from Alex.
- C. Alex, because the work was only one-quarter complete when fire destroyed the structure.
- D. Alex, because John's obligation was to work for Alex until June 1.

4. Assume for the purpose of this question only that John institutes an action against Alex on a quasi-contract theory, seeking compensation for the services, which he rendered prior to the fire. John is entitled to receive

- A. the reasonable value of the work performed by John, less the difference between the price which Alex had agreed to pay John and the price which Alex agreed to pay Terance.
- B. the reasonable value of the work performed by John.
- C. one quarter of the price which Alex agreed to pay John for the completed structure.
- D. nothing, since Alex has received no benefit from John's work.

**Questions 5-7** are based on the following fact situation.

Jimmy agreed to purchase 250 2"x4" construction grade wooden studs from Renzo by a written contract which provided that Jimmy would make payment prior to inspection. The studs were delivered to Jimmy by truck, and were covered with a canvas tarpaulin when they arrived at Jimmy's worksite. The driver demanded payment before he would unload or uncover the studs.

5. Assume for the purpose of this question only that Jimmy refused to pay for the studs before inspecting them, and that the driver returned them to Renzo. If Renzo asserts a claim for breach of contract against Jimmy, the court should find for

- A. Renzo, because Jimmy's refusal to pay prior to inspection was a breach.
- B. Renzo, because Jimmy's refusal to pay prior to inspection was an anticipatory repudiation.
- C. Jimmy, because the contract provision calling for payment prior to inspection was unconscionable.
- D. Jimmy, because Renzo failed to deliver the studs.

6. Assume that Jimmy paid the driver before inspecting the studs. Upon subsequent inspection, however, Jimmy discovered that the studs were utility grade instead of construction grade. Assume for the purpose of this question only that he then telephoned Renzo, offering to return the studs and demanding the return of his money, but Renzo refused to take the merchandise back or to return Jimmy's money. Which of the following is most correct about the effect of Jimmy's payment prior to inspection?

- A. The terms of the contract required an unconditional acceptance prior to inspection, and payment constituted unconditional acceptance.
- B. Even if the contract provision calling for payment prior to inspection was invalid, payment resulted in a waiver of the right to inspect prior to acceptance.
- C. Payment did not impair Jimmy's right to inspect the goods prior to acceptance.
- D. Payment constituted acceptance, but Jimmy was entitled to revoke acceptance within a reasonable time thereafter.

7. Assume for the purpose of this question only that after discovering that the studs were utility grade instead of construction grade, Jimmy sent Renzo a letter notifying him that the studs did not conform to the contract. Assume further that Jimmy kept and used the studs. If Jimmy asserts a claim against Renzo for breach of warranty, the court should enter judgment in favor of

- A. Jimmy, for the difference between the value of utility grade studs and the value of construction grade studs.
- B. Jimmy, for return of the price, which he paid.
- C. Renzo, because Jimmy used the studs.
- D. Renzo, because he might have been able to sell the studs elsewhere for a higher price.

**Questions 8-9** are based on the following fact situation.

Dull, a manufacturer of computer hardware and software, was seeking a way to speed up the operation of its R.U. N. Program. On March 1, it posted the following notice in the employees' lounge:

The stockholders of Dull are offering a cash prize of \$200 to any employee who develops a modification of Dull's R.U. N. Program which will double its operating speed. Design modification entries should be submitted to the head of The Basic Program Department prior to June 1. In the event that modifications are submitted by more than one employee, the prize will go to the employee who submits the design which, in the opinion of the Basic Program Department can be used most economically.

Ernie, an engineer employed by Dull, read the notice on March 5, and immediately began working on program modifications in his spare time. On March 8, he wrote and signed a memo, which said, "I accept the stockholders' offer of a two hundred dollar prize for redesigning the R.U. N. Program. I am hard at work on the project and expect to submit my modification design within a week or two." Ernie sent the note to the head of the Basic Program Department by the interoffice correspondence system, but it was somehow diverted and was never received by the department head. On March 15, the notice was removed from the employees' lounge, and replaced by a sign, which said, "The offer of a cash prize for redesigning the R.U. N. Program is hereby withdrawn." On March 17, Ernie submitted a modification design which did double the operating speed and which was eventually adopted for use by the company. No other employees responded to the notice. The company has refused to pay the cash prize to Ernie.

8. The notice, which was posted on March 1, constituted

- A. an offer for a unilateral contract
- B. an offer for a bilateral contract.

- C. an offer for a unilateral contract which ripened into a bilateral contract when Ernie wrote the memo on March 8 and deposited it in the interoffice correspondence system.
- D. a preliminary invitation to deal, analogous to a newspaper advertisement for the sale of goods.

9. If Ernie asserts a claim against Dull for \$200 in a jurisdiction, which accepts the view expressed in the *Restatement of Contracts, Second*, Ernie's most effective argument will be that

- A. a bilateral contract was formed when Ernie submitted the design which the company eventually adopted.
- B. Ernie relied on the offer contained in the first notice by working on the design in his spare time prior to March 15.
- C. the promises contained in the first notice could not be withdrawn until June 1.
- D. the company's attempt to withdraw its offer was unconscionable.

10. Cory was the owner of a condominium, which consisted of an apartment with a patio and a small backyard. When he moved in, he entered into a written contract with Rick. Pursuant to its terms, Rick was to perform certain specified gardening services in the yard of Cory's condominium each week for a period of one year, for which Cory was to pay the sum of \$50 per month. The contract contained a clause, which stated, "Cory hereby agrees not to assign this contract without the written permission of Rick." Three months after entering into the agreement, Cory informed Rick that he was selling the condominium to Adele, and asked Rick to consent to Cory's assignment of the contract to Adele. Because the costs of landscaping materials had increased dramatically in the last three months, Rick was glad for an opportunity to be relieved of his obligations under the contract, and refused to consent to the assignment. Cory assigned the contract to Adele anyway, but Rick refused to perform any further work on the yard. After formally demanding performance from Rick, Adele hired another gardener to do the same work for \$75 per month, which was the best price Adele could negotiate.

In an action by Adele against Rick for breach of contract, the court should find for

- A. Adele, because Rick had no right to unreasonably withhold consent to the assignment.
- B. Adele, because the assignment was valid in spite of Rick's refusal to consent.
- C. Rick, because the contract prohibited assignment by Cory without Rick's consent.
- D. Rick, because the contract was for personal services.

11. On June 1, after arson fires had damaged several city buildings, the City Council of the city of Mayville voted to offer a reward to aid in apprehension of the arsonists. On June 2, by order of the City Council, signs were posted in various locations throughout the city. The posters identified the building which had been burned, and stated: "\$1,000 REWARD is hereby offered by the City of Mayville to any person furnishing information leading to the conviction of persons responsible for setting fire to said buildings." Curtis, a police officer employed by the City of Mayville saw the posters on June 5, and resolved to make a special effort to catch the arsonists. Although he was not officially assigned to the case, he notified his fellow police officers and his usual underworld informants that he was especially interested in the case. As a result, Martin, a police officer, and Paulie, an underworld informant, passed information to Curtis, which they thought, might relate to the arson crimes. The tip, which Curtis received from Martin, proved to be of no assistance, but that which he received from Paulie led him to conduct a further investigation. His efforts eventually resulted in the arrest of two men who pleaded guilty to setting fires in public buildings. Curtis demanded that the City Council pay him \$1,000 but the council refused.

If Curtis institutes a lawsuit against the City of Mayville for the \$1,000 reward offered in the signs posted on June 2, which of the following would be the City's most effective argument in defense?

- A. The reward should go to Paulie, since it was his information, which eventually led to the arrest of the arsonists.
- B. The reward was not accepted, since the arsonists were not convicted but pleaded guilty.
- C. Curtis gave no consideration for the City's promise to pay a reward, since he was already obligated to attempt the apprehension of the arsonists.
- D. There was no enforceable promise by the City, since the offer was for a gratuitous cash award.

12. San Roberto is an English-speaking republic on the continent of Europe. Its unit of currency is the San Roberto dollar, which is worth about 85 U.S. cents. While on a business trip in the United States, Bernice, who owned a glue factory in San Roberto, entered into a written contract with Brandon. According to the contract, Brandon was to purchase thirty tones of liquid glue from Bernice to be delivered on or before July 10. The contract stated the total price of the glue to be "NINE THOUSAND DOLLARS (\$9,000)." After receiving the shipment, Brandon sent Bernice an international money order for 9,000 San Roberto dollars. Bernice wrote to Brandon claiming that the agreement called for the payment of 9,000 U.S. dollars, but Brandon refused to make any further payment. Bernice instituted an action against Brandon in the United States and offered to testify that, prior to executing the written memorandum, she and Brandon agreed that the price expressed in the writing was to be in U.S. dollars.

If Brandon objects to the testimony, the objection should be

- A. sustained, since the oral agreement about which Bernice is offering to testify was made prior to the execution of the written memorandum of sale.
- B. sustained, only if the written memorandum was prepared by Brandon.
- C. overruled, unless the writing is found to be a complete integration of the agreement between Brandon and Bernice.
- D. overruled, because the evidence, which Bernice is offering to present, does not modify or contradict the terms of the writing.

**Questions 13-14** are based on the following fact situation.

Savanna was fishing on her boat in Blue Lake, when she heard a call for help. Looking about her, she saw Ben, who was drowning and flailing his arms over his head. Savanna jumped into the water and swam toward Ben, dropping her fishing gear into the lake and losing it in her effort to aid Ben. She grabbed Ben by the hair and swam to the shore, dragging him out of the water. Ben was unconscious, but she gave him mouth-to-mouth resuscitation until he regained consciousness. When Ben opened his eyes, he said, "I know I can never repay you for saving my life, but I promise to pay you \$100 the first of next month as a token of my gratitude." A few days later, Ben died from causes not related to the incident.

The following month Savanna made demand upon Ben's executor for the \$100 which Ben promised her and for an additional \$100 which was the value of the fishing gear that she lost in her attempt to rescue Ben. The executor rejected both demands.

13. If Savanna institutes an action for the value of her fishing gear against the executor of Ben's estate the court should find for

- A. Savanna, on a theory of quantum meruit.

- B. Savanna, because danger invites rescue.
- C. Savanna, because the reasonable person in Ben's position would have offered to pay for the loss of the fishing fear in exchange for Savanna's attempt to rescue Ben.
- D. The executor of Ben's estates.

14. If Savanna institutes an action against the executor of Ben's estate for the \$100, which Ben promised to pay her, the court should find for

- A. Savanna, if the jurisdiction has a good-Samaritan Statute.
- B. Savanna, because she detrimentally relied on Ben's promise to pay her one hundred dollars.
- C. Ben's executor, because Ben's promise was unsupported by consideration.
- D. Ben's executor, because it is impossible to calculate the value of Savanna's services.

**Questions 15-16** are based on the following fact situation.

Katie's hobby was restoring and collecting antique automobiles. After acquiring a 1919 Bensonhurst Bullet automobile, she contacted Josh's custom Body Shop about having the car repainted. Josh said that he would paint the Bullet for \$700, and would sell Katie a new bumper for an additional \$150. Using a blank order form from a pad, which he purchased, at a stationery store, Josh wrote out all the terms of their agreement. On a printed line marked, "PAYMENT" he wrote, "Paint job--\$700, payable \$300 in advance and \$400 on completion. Bumper--\$150 payable on delivery." Both Josh and Katie signed at the bottom of the form.

15. Which of the following statements most correctly describes the obligations set forth in the writing signed by Katie and Josh?

- A. Payment by Katie of the initial \$300 is a condition precedent to Josh's obligation to paint the car, and Josh's painting of the car is a condition precedent to Katie's obligation to pay the additional \$400.
- B. Payment by Katie of the initial \$300 is a condition precedent in form and substance to Josh's obligation to paint the car, and Josh's painting of the car is a condition precedent in form, but subsequent in substance to Katie's obligation to pay the additional \$400.
- C. Payment by Katie and painting of the car by Josh are concurrent conditions.
- D. Neither party's obligation to perform is conditioned upon performance by the other party.

16. Assume for the purpose of this question only that Josh notified Katie that he would not deliver the new bumper as agreed, and that Katie succeeded in buying one like it in another town for \$130, but that her reasonable travel expenses in finding and purchasing it amounted to \$20. In an action by Katie against Josh, the court should find for

- A. Katie, in the sum of \$20.
- B. Katie, in the sum of \$40.
- C. Katie, in the sum of \$170.
- D. Josh.

17. Ryan was employed by Jane as department manager pursuant to a written contract. The contract was for a five-year term, and fixed Ryan's compensation at \$2,000 per month. Ryan's work was satisfactory, but two years after entering into the contract with him, Jane reorganized the company.

As a result of the reorganization, Ryan's department was eliminated, and Jane terminated Ryan's employment. Ryan advertised in the "jobs wanted" section of the newspaper, but did not find a job until six months after his discharge, when he went to work for Wesley doing the same general sort of work which he had been doing for Jane and earning the same salary. In an action by Ryan against Jane for damages resulting from breach of the employment contract, the court should give judgment to

- A. Jane, since Ryan's position was eliminated.
- B. Ryan, for severance pay in a sum equivalent to two months salary.
- C. Ryan, in a sum equivalent to the salary, which Ryan lost between the time of his discharge and the time, he began working for Wesley, plus the cost of advertising in the "jobs wanted" section of the newspaper.
- D. Ryan, in a sum equivalent to the salary, which Ryan would have received during the balance of the contract term.

18. Cesar was the owner of a fleet of taxis, which he leased to independent drivers in return for sixty percent of the fares, which they collected. All the leases were scheduled to expire on December 31. Because the cars in his fleet were beginning to look shabby, Cesar decided to have them all painted during the first week of January, before negotiating new leases with the drivers. At the beginning of December, he called Steven, the president of Paint-a-Car Auto Painting Company, to inquire about his price for painting all the cars in Cesar's fleet. Steven said that he would do the job for \$150 per car.

Cesar said, "I'm talking about sixty cars. That's a lot of business. I'll give you the job if you'll do it for \$125 per car."

"I'd really like to have your business," replied Steven.

"See you the first week in January," Cesar said.

On January 3, Cesar brought one of his taxis to the Paint-a-Car shop, and offered to make arrangements for bringing in the rest of the cars to be painted. Steven said that he had just obtained a contract to paint some school buses and that he was too busy to do any work for Cesar. Cesar subsequently asserted a claim for damages against Steven.

Which of the following additional facts or inferences, if it were the only one true, would be most helpful to Cesar in his action against Steven?

- A. Steven's statement, "I'd really like to have your business" implied a promise to paint all the cars in Cesar's fleet at \$125 per car.
- B. Cesar relied on Steven's statement by bringing the taxi to the Paint-Car-shop.
- C. Immediately prior to January 3, Cesar could have had the taxis painted at another shop for \$125 each, but immediately after January 3 the lowest price he could find was \$150.
- D. On January 3, when Steven told Cesar that he was too busy to do the work, Cab offered to pay Steven \$150 per car, and tendered payment of that sum.

19. When Esther's uncle died, he left her a ten-story office building, which had a motion picture theater on its ground floor. The offices in the building were all occupied when Esther acquired title to it. The motion picture theater was vacant, however, so she advertised for a tenant. Manny had researched the neighborhood and decided that it was a good location for a pornographic movie theater. When he saw Esther's advertisement, he contacted her and said that he was interested in leasing the theater. He did not tell her what type of films he intended to show because he thought that she might be unwilling to rent it to

him for that purpose. On April 1, they entered into a written rental agreement for the theater, occupancy to begin on May 1. On April 15, the city council passed an ordinance prohibiting the showing of pornographic films in the neighborhood where the theater was located. As a result, Manny advised Esther that he was canceling the rental agreement.

If Esther sues Manny for breach of contract, the court should find for

- A. Manny, under the doctrine of frustration of purpose.
- B. Manny, under the doctrine of impossibility of performance.
- C. Manny, because after the contract had been formed, government action made its subject matter unlawful.
- D. Esther.

20. Aceco contracted to add a room to Henry's house for \$3,000, with the understanding that the materials used by Aceco were to be included in that price. The day before work was to begin, Henry wired Aceco, "The deal is off. Do not begin work, Henry." Aceco subsequently asserted a claim against Henry for breach of contract. Henry raised non-compliance with the Statute of Frauds as a defense. Which of the following statements is most correct about the application of the statute of Frauds to the contract between Henry and Aceco?

- I. The contract was required to be in writing if the materials which would have been required had a price in excess of \$500/
- II. The contract was required to be in writing if, at any time of contracting, the parties intended that the materials required would have a price in excess of \$500.

- (A) I only.
- (B) II only.
- (C) I and II.
- (D) Neither I nor II.

21. After Billy said that Pedro owed him \$3,000, Pedro promised to pay \$2,000, which Billy agreed to accept as payment in full. Subsequently, Pedro refused to make payment, and Billy asserted a claim for \$2,000 based on Pedro's promise. If it was the only one true at the time of Pedro's promise, which of the following additional facts or inferences would be most likely to result in a judgment for Billy?

- A. Pedro honestly believed that he owed Billy \$3,000, but Billy did not believe that Pedro owed him the money.
- B. Billy honestly believed that Pedro owed him \$3,000, but Pedro did not believe that he owed Billy the money.
- C. Billy was threatening to institute a lawsuit against Pedro for \$3,000 plus costs and interest.
- D. Billy had already commenced a lawsuit against Pedro for \$3,000 plus costs and interest.



**Questions 22-23** are based on the following fact situation.

Michael's daughter Heather was about to celebrate her twenty-first birthday, and Michael wanted to give her a gift, which would express his sentiments for her. Michael was a wealthy and successful building contractor, but had begun his career as an assistant bricklayer. Instead of purchasing something for Heather, he decided to give her a gift with the labor of his hands. Michael entered into a written contract with Gabriel. According to its terms, Michael agreed to build a brick fireplace for Gabriel, performing all the labor himself. In return, Gabriel agreed to pay the sum of \$1,000 to Heather on her birthday, February 12, upon completion of the work by Michael to Gabriel's satisfaction. Heather did not learn of the transaction until February 12. Before signing the writing, Gabriel and Michael agreed orally that Gabriel would make a reasonable effort to obtain a loan to pay for the work but that if Gabriel were unsuccessful in doing so by January 1, the agreement between them would be of no effect.

22. For this question only, assume that Gabriel made efforts to obtain the loan, but could not do so. Assume further that on January 1, Gabriel informed Michael that, because he was unable to obtain the loan, he was calling off the deal. In an action for breach of contract brought against Gabriel by the proper party, will Gabriel 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 a modification of a construction contract may be by oral agreement.
- C. No, because Gabriel is estopped from denying the validity of the written agreement.
- D. No, because the agreement concerning the loan is an oral agreement, which was made prior to, the writing and which contradicts the terms of the writing.

23. For this question only, assume that Gabriel obtained the loan, and that Michael completed building the fireplace on February 5. Assume further that because Heather had married a man of whom Michael did not approve, Michael asked Gabriel to pay the \$1,000 to Michael directly, which Gabriel did on February 6. If, on February 12, Heather learns for the first time of the written agreement between Gabriel and Michael, and commences a lawsuit against Gabriel for \$1,000, will Heather's lawsuit succeed?

- A. No, because she gave no consideration for Gabriel's promise to pay her.
- B. No, because the payment by Gabriel to Michael was the result of an effective oral modification of the written contract
- C. Yes, because Heather is an intended donee beneficiary of the contract between Michael and Gabriel.
- D. Yes, because the written contract between Gabriel and Michael operated as an assignment to Heather of Michael's right to payment.

24. Assume that Clement in each of the following fact patterns objects to enforcement of the agreement on the ground that it violates the statute of frauds. In which of the following fact patterns is the agreement between Victor and Clement's objection?

- A. Clement orally agreed to purchase a series of porcelain figurines from Victor to be delivered one per week for fifteen weeks at a price of \$100 per figurine. Prior to the first delivery, Clement advised Victor that he was no longer interested in receiving the figurines.
- B. Clement orally agreed to purchase a hand carved entry door for Clement's home with Clement's coat of arms on it for a price of \$600. After Victor completed the rough carving of Clement's coat of arms, Clement changed her mind and notified Victor that she would not accept delivery of the door.

- C. Clement's pleadings admitted making an oral agreement to purchase a painting from the Victor for \$900, but asserted as an affirmative defense that the agreement was unenforceable under the Statute of Frauds.
- D. Clement orally agreed to a price of \$1,200 for the purchase of 100 lawn-trimmers manufactured by Victor for resale in Clement's store. Victor then sent Clement a memorandum signed by Victor and outlining the terms of their agreement. Clement did not sign the memorandum or respond to it in any way.

25. Jessica, a minor, purchased a used car from Ugly Car Sales for \$1,200. The reasonable rental value of the car was \$150 per month. After she had owned the car for two months, the steering failed while she was driving it, causing it to collide with a tree. Although Jessica was unhurt, the car sustained \$400 worth of damage. Jessica returned the damaged car to Ugly and demanded her money back, but Ugly refused to refund her money. If Jessica asserts a claim against Ugly, the court should award her a judgment in the amount of

- A. \$1,200 (the full purchase price of the car).
- B. \$900 (the purchase price of the car less its reasonable rental value).
- C. \$800 (the purchase price of the car less the damage which it sustained).
- D. Nothing.

26. Calvin and George were neighbors who owned homes on adjoining parcels of realty. They were both in the business of selling art supplies, each operating an art supply store, which engaged in friendly competition with the other. Calvin owned a garden tractor, which he used for cultivating vegetables in the backyard of his home. George, who wanted to plant a garden in his own backyard, sent Calvin a note in which he offered to buy the tractor from Calvin for \$500. Calvin responded on February 15 by sending George a letter, which stated, "I will sell you my garden tractor for six hundred dollars, and not a penny less. To give you time to think it over, I promise to hold this offer open until March 15." On March 5, George noticed a similar garden tractor in the yard of Yoshi, another neighbor. He called Yoshi on the phone and offered to buy it for \$500, but Yoshi said, "Are you kidding? I just bought it from Calvin for \$600." On March 6, George went to Calvin's store with \$600 in cash, and said, "I've decided to buy that tractor from you. Here's the money." Calvin refused the money and told George that he had already sold the tractor to Yoshi. If George asserts a claim against Calvin for damages resulting from Calvin's refusal to sell the tractor on March 6, the court should find for

- A. George, because Calvin's offer of February 15 was irrevocable until March 15.
- B. George, because Calvin did not notify him that he was withdrawing his offer to sell George the garden tractor until after George accepted it.
- C. Calvin, because George learned of the sale to Yoshi on March 5.
- D. Calvin, because his letter of February 15 was a rejection of George's original offer to purchase the garden tractor.

27. Noah and Eddie entered into to a written contract for the sale of 200 electric power drills. Although they orally agreed on a price, they inadvertently failed to include it among the terms of the written agreement. In an action for breach of the contract, the court should

- A. Admit oral testimony to establish the price, which the parties intended.
- B. Refuse to enforce the contract if it is one, which the Statute of Frauds required to be in writing.
- C. Conclude that the contract calls for the payment of a reasonable price.
- D. Disregard the writing since it fails to contain all the essential terms of the agreement.

28. On May 15, after negotiation, Philip and Daniel entered into a written agreement for the painting of Daniel's home. The writing stated that the price was to be \$300 plus the cost of materials, that the work was to begin on June 2 and to be completed by June 12, that stucco portions of the house were to be painted yellow and that wood trim was to be painted brown, and that the written memorandum was a full and final expression of the agreement between Philip and Daniel. During litigation between Philip and Daniel to enforce the contract, Daniel offered to testify to the following additional facts. Which is the LEAST likely to be admitted into evidence over timely objection by Philip?

- A. Prior to signing the memorandum, Philip and Daniel orally agreed that the contract would have no legal effect if Daniel sold his house prior to June 2.
- B. Prior to signing the memorandum, Philip and Daniel orally agreed that Daniel would use no paint without first submitting it for Daniel's approval.
- C. While signing the memorandum, Philip and Daniel orally agreed that any promises made by either of them during negotiations were to be enforceable, even if they were omitted from the memorandum.
- D. While signing the memorandum, Philip and Daniel orally agreed that Philip would spend no more than ten dollars per gallon for paint.

**Questions 29-30** are based on the following fact situation.

On May 20, on a form provided by Freeze, Buck agreed to purchase from Freeze 100 described air conditioning units at a price of \$250 each, FOB Freeze factory. The contract contained a clause, which prohibited either party from assigning its right or obligations under the contract without the consent of the other party. On June 1, Freeze's employees loaded the units on a truck owned and operated by Freight, an independent trucking company. When the loading was complete, Freeze phoned Buck that the shipment was on its way. Later that day, Freeze executed a document which contained the following language: "In consideration of \$20,000 to me in hand paid by Coba this date, I hereby assign to Coba all rights under my contract with Buck dated May 20." On June 2, while en route to Buck's warehouse, the truck containing the air conditioning units overturned, and the entire shipment was destroyed.

29. Assume for the purpose of this question only that Buck did not consent to Freeze's assignment of rights to Coba. In an action by Coba against Buck, Coba will probably recover

- A. The contract price of \$25,000 (100 air conditioning units at \$250 each).
- B. The difference between the contract price and the market value of the air conditioning units.
- C. Nothing, since recovery from Buck would unjustly enrich Coba.
- D. Nothing, since the contract between Buck and Freeze prohibited assignment.

30. Assume for the purpose of this question only that Buck did consent to Freeze's assignment of rights to Coba. In an action by Buck against Freeze for damages resulting from non-delivery of the air conditioning units, which of the following would be Freeze's most effective argument in defense?

- A. There has been a valid assignment to Coba.
- B. The risk of loss passed to Buck when the air conditioning units were loaded onto Freight's truck.
- C. The risk of loss passed to Freight when the air conditioning units were loaded onto Freight's truck.
- D. Performance of the contract was made impossible by the destruction of the air conditioning units.

**Questions 31-32** are based on the following fact situation.

Papo Henning was a world-renowned artist who painted until he died at the age of 87. His will left a collection of 30 of his painting to his niece Ana, who was an art dealer. The paintings inherited by Ana were untitled, but were identified by numbers 1 through 30. Ana had a catalog printed containing photographs and descriptions of each in the collection. On August 1 she sent a copy of the catalog to Delaila, who was also an art dealer, with the following cover letter:

Dear Delaila: I know how much you like my Uncle's work, so I'm giving you an opportunity to buy some of these paintings before I offer them to any other dealers. The price is two thousand dollars per painting, no matter how many you buy.  
Telegraph your order within two weeks or I'll put them on the market.

(signed) Ana.

On August 2, Delaila sent Ana a telegram, which said, "I accept your offer to sell Toro painting number 30 for \$2,000. I will come to your gallery in two days to pick up the painting, and will pay cash at that time. Delaila."

On August 3, after receiving the telegram, Ana telephoned Delaila and said that because of favorable publicity, which the collection had received, she would not sell painting number 30 for less than \$3,000. Delaila agreed on the telephone to pay \$3,000 for painting umber 30.

On August 4, Delaila sent and Ana received a telegram, which said, "I accept your offer to sell Toro paintings 1-29 for \$2,000 each. I will pick up the paintings tomorrow, and will pay for them at that time. Delaila."

On August 5 Delaila presented herself at Ana's gallery and tendered payment of \$2,000 each for all 30 paintings but Ana refused to sell her any of the paintings except number 30, for which Ana insisted the agreed price was \$3,000. Delaila left without buying it, saying that Ana would be hearing from her lawyer.

31. If Ana asserts a claim against Delaila for breach of a contract to purchase painting number 30 for \$3,000, the court should find for

- A. Delaila, because her promise to pay \$3,000 for the painting was not in writing.
- B. Delaila, unless the fair market value of painting number 30 increased by \$1,000 between August 1 and 3.
- C. Ana, because she relied on Delaila's promise to pay \$3,000 for painting number 30.
- D. Ana, because she had not received payment from Delaila prior to their conversation on August 3.

32. Assume for the purpose of this question only that Delaila sued for an order directing Ana to sell Delaila the paintings 1-29 for two thousand dollars each. Which of the following would be Ana's most effective argument in defense against that action?

- A. Since Delaila is an art dealer, there is an adequate remedy at law.
- B. Ana's August 1 promise to keep the offer open for two weeks was unsupported by consideration.
- C. Delaila's telegram of August 2 was a rejection of Ana's offer to sell paintings numbered 1 through 29.
- D. The catalog and Ana's cover letter were mere invitations to negotiate.

33. On March 1, Chad, an aluminum siding contractor, entered into a written contract with Johnny for the installation of aluminum siding on the exterior of Johnny's home. The contract called for completion of the job by April 1, and contained a clause, which prohibited assignment by either party without the other party's written consent. Chad started work immediately upon the signing of the contract. On March 15, Johnny sold his house to Hanks, assigning to Hanks his contract with Chad.

In which of the following fact situations is the plaintiff LEAST likely to succeed in his action against the defendant?

- A. Chad finished the job in a workman-like manner on March 29 and demanded but did not receive payment. Chad instituted action against Johnny for payment.
- B. Chad finished the job in a workman-like manner on March 29 and demanded but did not receive payment. Chad instituted an action against Hanks for payment.
- C. When Chad learned of Johnny's assignment to Hanks, he refused to do any further work. Johnny instituted an action against Chad for breach of contract on April 15.
- D. When Chad learned of Johnny's assignment to Hanks, he refused to do any further work. Hanks instituted an action against Chad for breach of contract on April 15.