1 .**Answer C is the best answer**. This is a satisfaction contract. A court is likely to apply the subjective satisfaction test, because aesthetics are likely to play a significant role in deciding whether the interior wallpapering of someone's residence is satisfactory. Therefore, Answers (B) and (D) are incorrect because they apply the wrong test. As between Answers (A) and (C), the facts strongly suggest that Sally was not honestly dissatisfied with the quality of Wally's performance; she was, instead, dissatisfied with her choice of wallpaper. She is simply trying to use her "right" to "satisfaction" as a means to remedy her own error in judgment. That is not how satisfaction contracts are meant to work. Therefore, Answer (A) is not the best answer.

2. **A is correct**. Under Restatement (Second) of Torts § 402A provides that "one who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is strictly liable for the physical harm caused ... if the seller is engaged in the business of selling such a product. Based on the stated rule, Cummings Motors will be subject to strict liability if the car was defective at the time it left the seller's hands.

3**. C is correct**. Strict liability in tort applies to any person engaged in the business of selling products for use or consumption. It therefore applies to any manufacturer of such a product, to any wholesale or retail dealer or distributor, and to the operator of a restaurant. The rule does not, however, apply to the occasional seller of food or other products who is not engaged in that activity as a part of his (or her) business. Since Tresh was not engaged in the business of selling automobiles, choice (C) is the best answer.

4. **Answer C is correct**. In order to repudiate his promise, Shaggy must have definitely and unconditionally manifested to Fred his inability to, or his intent not to, perform as and when promised. Only in Answer (C) did Shaggy definitely and unconditionally manifest to Fred that he could not, or would not, perform as and when promised.

(A) is incorrect because the statement to Fred ("I am not sure ... ") was equivocal. Answer (B) is incorrect because, while Shaggy's statement was clear, unequivocal, and unconditional, he did not make it to Fred or to anyone acting as Fred's agent so as to give Fred constructive notice of Shaggy's repudiation. Answer (C) is incorrect because merely requesting more favorable terms or suggesting a modification to the terms of a contract does not repudiate the contract.

5. **The correct answer is C**. The Supreme Court held, in Robinson v. California, 370 U.S. 660 (1962), that it would violate the Constitution for the government to criminalize a status or disease such as narcotics addiction. Under a more traditional analysis, **answer A** is incorrect because it is not at all clear that the officer's observation alone would be sufficient evidence upon which to convict with the standard of proof beyond a reasonable doubt. The standard is whether reasonable jurors could find sufficient evidence to conclude, beyond a reasonable doubt, that the government has proved each element of the crime. While the officer's observations, taken with Dawn's statements, could well be enough to convict, **answer B** is incorrect because the statute would be found to be invalid for constitutional grounds, as noted above. **Answer D** is wrong, too. Apart from other

problems with the prosecution, Dawn's statements could otherwise be admissible against her. Under the facts here, the statement would not involve serious questions under either the Fourth Amendment (unreasonable searches and seizures) or the Fifth Amendment (privilege against self-incrimination.

6. **B is correct**. Prosser states that "the storage in quantity of explosives or inflammable liquids, or blasting, or the accumulation of sewage, or the emission of creosote fumes, or pile driving which sets up excessive vibration, all have been considered "non natural" uses, leading to strict liability when they result in harm to another. Note that choice (C) is incorrect because Restatement (Second) of Torts states "One carrying on an abnormally dangerous activity is subject to strict liability for the resulting harm although it is caused by the unexpectable operation of a force of nature:' The rationale for imposing strict liability upon those who carryon abnormally dangerous activities is that they have for their own purposes created a risk that is not a usual incident of the ordinary life of the community.

7. **Answer B is the best answer**, although Answer (A) is correct, as well. Under the contract, Romeo was obliged to make a $2,500 down payment, so one could argue that Romeo anticipatorily breached the contract by writing a check on an account with insufficient funds to cover the check. That argument should fail, however, because (1) Old Will promised to hold the check until the next day, (2) the funds would have been in the account and the bank would have honored the check if Old Will had waited as promised, and (3) Romeo neither (a) clearly and unequivocally communicated to Old Will his intention not to perform when performance was due nor (b) performed some act that (i) made it impossible for him to perform when performance was due or (ii) demonstrated his clear determination not to perform when performance was due. Answers (A) and (B) are both correct, but Answer (B) is more compelling and factually true. While Old Will's investigation of Romeo's checking balance may have given him reasonable grounds for insecurity, Romeo neither clearly and unequivocally communicated to Old Will his intention not to perform when performance was due nor performed some act that made it impossible for him to perform when performance was due or demonstrated his clear determination not to perform when performance was due. As such, Romeo did not repudiate. Therefore, Answer (C) is incorrect, though it provides a nice lead-in to the next Question. Being arrested and imprisoned for writing a bad check may be repudiation, but just writing the check was not. Therefore, Answer (D) is incorrect.

8. **B is correct**. Prosser tells us that freedom from intentional and unpermitted contacts with the plaintiff's person is protected by an action for the tort of battery. The protection extends to any part of the body, or to anything that is attached to it and practically identified with it. Thus, contact with the plaintiff's clothing, or with a cane, a paper, or any other object held in his hand, will be sufficient; and the same is true of the chair in which he sits, the horse or the car that he is riding or driving, or the person against whom he is leaning. Therefore, where defendant acts, intending to offend plaintiff's sense of dignity, as by pulling out the chair in which plaintiff is about to sit, he (defendant) is liable for battery.

9. **The correct answer is D**. Generally, the criminal law imposes no duty to act to help others. This general rule remains true even in situations in which a failure to act seems morally reprehensible. The law remains clear in refusing to impose an obligation to act. Hence **answers A and B are incorrect**. Because the "no duty" rule usually applies even to those with great skills or expertise, **answer C is incorrect**.

10. **Answer D is the best answer**. A "material breach" deprives the non-breaching party of its reasonable contractual expectations. It "is so dominant or pervasive as ... to frustrate the purpose of the contract." Factors to consider in determining whether a breach is material include (1) the extent to which the non-breaching party can be adequately compensated for the part of the benefit of which she is deprived; (2) the extent to which the breaching party will suffer forfeiture if the non-breaching party is excused from her contractual obligations due to the breach; (3) the likelihood that the breaching party will cure, taking into account all of the circumstances, including any reasonable assurances by the breaching party; and (4) the extent to which the breaching party's behavior comports with standards of good faith and fair dealing. No amount of money from Russell plus two tickets to the wrong show would adequately compensate Gwyneth for what she expected but did not receive. Russell would suffer no more forfeiture by excusing Gwyneth's performance than he already has suffered. And, given that Russell knew which tickets Gwyneth wanted, and he bought tickets to a different show anyway, it is difficult to cast his actions as comporting with good faith and fair dealing. Therefore, Russell's breach was material. A total breach is a material breach that the breaching party fails to cure (1) within a reasonable time or (2) within the time during which performance is possible. A total breach discharges the non-breaching party's remaining duties under the contract, R2 § 237, unless (1) the non-breaching party has already performed, or (2) the non-breaching party elects to perform and then sue for damages.

Substantial performance is performance that, while not completely in compliance with the terms of the contract, is sufficient to not deprive the non-breaching party of her reasonable expectations. If Russell had told Gwyneth on March 14th that he had arranged to have two tickets to the movie premiere awaiting her at the Musik Hall's "will call" window, Russell would have substantially performed. Gwyneth would have received substantially what she bargained for: two tickets to the movie premiere, available to her before the premiere, for the price she agreed to pay. Russell's provision of two tickets to a completely different show, on the other hand, was not substantial performance. Therefore, Answer (C) is incorrect. Receiving something she did not want, and that was of no value to her, could not unjustly enrich Gwyneth. Therefore, Answer (B) is incorrect. And, while Answer (A) might merit serious consideration had Russell not known, as the facts of this Question tell us he did, which The Orange Pumpernickel Gwyneth meant, under these facts Answer (A) is incorrect.

11. **D is correct**. Students should be aware that an actor is subject to liability to another for battery if he acts intending to cause a harmful or offensive contact with the person of another. In the present hypothetical, Granny did not act intending to cause a harmful or offensive contact, and therefore, liability for battery would not attach.

12. **B is correct**. Note that an actor is subject to liability for battery if he acts intending to cause a harmful or offensive contact with the person of another. Since the essence of the plaintiff's grievance consists in the offense to the dignity involved in the unpermitted and intentional invasion of the inviolability of his person and not in any physical harm done to his body, it is not necessary that the plaintiff's actual body be disturbed.

13. **Answer C is the best answer**. While performing only part of a contract is generally a breach of the entire contract, if the language of the contract and the actions of the parties suggest that the parties considered the contract to be divisible, then performance of one part by the breaching party should entitle him to payment for the part fully performed. In order for a non-installment contract to be divisible, it must (1) be possible to apportion the performances of the parties into corresponding pairs of part performances, and be proper to treat these pairs of part performances as "agreed equivalents. Wallace's agreement with Bruce is, in many respects, a series of three contracts (or segments) masquerading as a single contract. Wallace fully performed the first of the three segments, and Bruce paid him $40,000 plus 5% of net ticket sales per show for his July 1-7 run. If Wallace could not perform the August 26-September 1 segment, Bruce was entitled to treat that as a divisible contract and take whatever actions were appropriate to mitigate the losses he would otherwise have suffered due to Wallace's cancellation.

Wallace, in essence, anticipatorily repudiated the August 26-September 1 segment. There was an Anticipatory Repudiation simply because Wallace's health might have improved faster than expected. Therefore, Answer (A) is incorrect.

In this context, substantial performance is a bit of a red herring, unless the issue is substantial performance of a divisible segment of the whole contract. Here, Wallace fully performed the first segment and was expected to be able to fully perform the third segment; but he was unable, due to his health, to perform the second segment at all. Therefore, Answers (B) and (D) are not the best answers.

14. **The best answer is A**. The law can only punish those who act consciously and voluntarily. Because the cause of the accident was the unknown brain disorder, Betty will not be found guilty of any crime. Thus, **Answer C is wrong**. While offering to drive her friends was a conscious and voluntary act, the specific cause of the accident was her disorder, not her offer, so **answer D is also wrong. Answer B does not apply** to this situation. Once the offer of the ride was made, Betty would be responsible generally for her friends, though not here where she was unaware of her medical problem**.**

15. **B is correct**. Since Ellen did not imminently apprehend being hit by the tennis ball, Patsy would not be subject to liability for assault. However, Patsy would be liable of battery for operating the tennis machine intending to "hit" Ellen with the balls.

16. **Answer D is the best answer**. A "promise" is "a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made." A "condition" is "an event, not certain to occur,

which must occur, unless its nonoccurrence is excused, before performance under a contract becomes due. The parties to a contract can agree to specifically condition one or both parties' performance on the occurrence of some event.

Conditions may be either express or constructive. An express condition is set forth explicitly in the parties' agreement. A constructive condition is implied into the agreement as a matter of fact, law, or equity. Tiffani and Colt having expressed the condition in their agreement, the condition must have occurred before Colt could enforce Tiffani's obligation to pay rent. The non-occurrence of the condition, unless Tiffani is responsible for it failing to occur, deprives Colt of the expected performance, but does not give him a remedy against Tiffani. Colt, having been willing to make his contract with Tiffani conditional on her (hopefully early) release from the LexCentre lease, could not treat the contract as unconditional and begin charging rent. Therefore, Answer (A) is incorrect. The facts do not indicate that Tiffani promised to induce LexCentre to let her out of their lease agreement. She may have promised to try. But, having tried and (apparently, at least) failed, she is not liable for the non-occurrence of the condition. Therefore, Answer (B) is incorrect.

While the law generally abhors forfeiture, any forfeiture Colt suffered between September 1st and December 31st, 2002 was pursuant to the terms of the agreement into which he freely entered. Therefore, Answer (C) is incorrect.

17. **A is correct**. In answering this question, it is necessary to know that elephants are classified as wild animals. According to Restatement (Second) of Torts a possessor of a wild animal is subject to strict liability for trespass to another for harm done," even though the possessor has exercised the utmost care to confine the animal. As a result, choice (A) is the best answer. Be advised that the rule involving strict liability for trespass should not be confused with strict liability for harm done by wild animals that result from the dangerous propensities that are characteristic of that particular class of animals.

18**. The correct answer is C**. The required state of mind for the statute is knowledge. This is interpreted to mean that an actor can be held responsible for injuries to his child, under the statute, if he was subjectively aware that his child was at risk. Fabritz v. Traurig, 583 F.2d 697 (4th Cir. 1978). The prior similar episode, along with Tamika's known violent temper, would likely be enough to find Rick guilty of the crime. **Answers A and D are wrong** because Rick did have the opportunity to realize the threat to his children. If, however, there were no prior incidents to create this knowledge on Rick's part, and Tamika did not have an especially violent temper, **answer B would be correct**. In cases such as this, Rick would be held culpable because, among other reasons, his knowledge of the situation put him in the best position to prevent the harm to his children.

19. **Answer D is the best answer**. ATG's acceptance of prior late deliveries without protest may have waived ATG's right to complain about the tardiness of those deliveries.

UCC § 2-209(4) provides that an attempt to modify contract terms can, if not objected to, operate as a waiver, even though it may not satisfy the writing requirements of the contract, UCC § 2-209(2), or UCC § 2-209(3). Here, Basin attempted to modify the performance schedule of the contract. ATG's failure to object and its acceptance of the tardy goods appear to be a waiver under UCC § 2-209(4).

While correct in the absence of waiver, Answer (C) is not the best answer because it overlooks UCC § 2-209(4). Likewise, Answers (A) and (B) are neither the best answer because, while correct statements of UCC § 2-209(2) and UCC § 2-209(3), respectively, they fail to take into account UCC § 2-209(4).

20. **C is correct**. This question presents a very difficult interplay between the torts of negligence and battery, and it must be answered by process of elimination. Choice (D) is the easiest response to eliminate because it is inconclusive. The fact that a firearm, a dangerous instrumentality, is used in the commission of a tort does not by itself impose either strict liability, negligence, or an intentional tort. Choice (A) is also incorrect. According to Prosser, a "servant's conduct is within the scope of his employment if it is of the kind which he is employed to perform, occurs substantially within the authorized limits of time and space, and is actuated, at least in part, by a purpose to serve the master. Silver's conduct in shooting at Dugan, although forbidden by Conroy, was undertaken during the time of employment to protect Conroy interests, and would likely be deemed "within the scope", due to the nature of employment in that Silver was a security guard. Choices (B) and (C) are very close, the former basing Howser's claim on negligence only, and the latter basing the claim on the intentional tort of battery. Choice (B) is incorrect because it is too narrow since it disallows the possibility of battery and is based solely on a claim of negligence. Conversely, choice (C) is the correct answer because it is merely stating that plaintiff will prevail if a battery occurred-if any of the shattered glass touched Howser-but it does not preclude the existence of a possible negligence claim.

21**. The correct answer is D**. Drunken driving in many states is considered a strict liability crime. These crimes require no showing of a particular mental state. Strict liability crimes are highly unusual in the criminal law because the question of culpable mental state is central to our society's determinations of appropriate criminal sanctions. Other than answer D, each of the other responses contends that Ellie did not have the requisite state of mind to be convicted of driving while intoxicated. The mere act of drinking and driving has been determined to be of such significance that the act alone can permit culpability. Thus, **answers A, B, and C are incorrect** because none of the claims would further Ellie's defense that the act alone can permit culpability.

22**. The correct answer is C**. In proving the mental state of know ledge, the key issue is whether the defendant herself knew the true nature of her activity. The issue is not whether a reasonable person would have known the activity was criminal (an objective standard) because knowledge requires a subjective determination. Therefore, **answer B is incorrect. Answer A is also incorrect**, as the government has conceded that Holly did not know of the criminal activities. **Answer D is wrong** because the statute requires a showing of knowledge, not intent.

23. **Answer D is the best answer**. The inability of Gromit's to perform due to commercial impracticability - that is, the occurrence of a contingency the non-occurrence of which was a basic assumption on which ATG and Gromit's made the contract - will excuse Gromit's from performing for the duration of the occurrence, UCC § 2-615(a), or until ATG cancels the contract, see UCC § 2-616(1)(a), provided that Gromit's seasonably notifies ATG of the delay, UCC § 2-615(c). Elsewhere the UCC defines commercial impracticability as "supervening circumstances not within the contemplation of the parties at the time of contracting," UCC § 2-615 cmt. 1, and "some unforeseen contingency which alters the essential nature of the performance," such as "a severe shortage of raw materials or of supplies due to a contingency such as war, embargo ... ,"

If Gromit's fails to seasonably give ATG notice, it cannot avoid liability due to the impracticability. UCC § 2-615(c). Therefore, Answer (C) is incomplete. If Gromit's seasonably notifies ATG, and the impracticability will "substantially impair the value of the whole contract" to ATG, then ATG may terminate the contract, thereby discharging Gromit's. UCC § 2-616. Until ATG does so, however, the impracticability will only suspend Gromit's performance, not excuse it. Therefore, Answer (B) is not the best answer. Answer (A) is incorrect. Unless the parties expressly excluded the UCC when they choose the law of a jurisdiction that has adopted the UCC to govern their transaction.

24. **B is correct.** One who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress and, if bodily harm to the other results from it, for such bodily harm. See Restatement (Second) of Torts. In short, the rule stated in this section imposes liability for intentionally causing severe emotional distress in those situations, as in the present illustration, in which the actor's conduct had gone beyond all reasonable bounds of decency. Generally, the cause is one in which the recitation of the facts to an average member of the community would arouse his resentment against the actor and lead him to exclaim, "Outrageous:' Students should know that choice (A), though a correct statement, is the less preferred alternative because defendant's actions must, in addition to being the cause in fact, also be the proximate, or legal, cause of plaintiff's harm in order for defendant to incur civil liability.

25. **C is correct.** Under the Restatement (Second) of Torts an actor is subject to liability to another for false imprisonment if (a) he acts intending to confine the other or a third person within the boundaries fixed by the actor, and (b) his act directly or indirectly results in such a confinement of the other, and (c) the other is conscious of the confinement or is harmed by it. NOTE: An act that is not done with the intention stated in subsection (a) does not make the actor liable. Here, since Mr. Reel's intention was to have Tillie leave her home and return to the group, he did not possess the requisite intent to seek Tillie's confinement to her home. Although choices (B) and (D) are also correct, alternative (C) is the best answer since there is no false imprisonment unless the defendant intends to cause a confinement.

26. **Answer C is the best answer**. Due to circumstances beyond his control or contemplation, Russell was unable to purchase any tickets to the movie premiere. As such, absent contrary language in the contract, Russell's duty to perform would be discharged as a matter of law.

The availability of tickets could be viewed as a condition precedent to Russell's performance, just as waking up alive could be viewed as a condition precedent to every employment contract that does not have an "until death" clause in it. However, because neither Russell nor Gwyneth expressly conditioned their own or the other's performance on the availability of tickets, Answer (A) is not the best answer. A court might imply such a condition, if doing so was necessary to insulate Russell from liability; but, as long as Russell pleads impracticability, the court need not do so. Frustration of purpose does not apply to Russell's part of the contract. Therefore, Answer (B) is not the best answer. Given that Russell has an impracticability defense and, perhaps, a failure of condition defense, Answer (D) is incorrect.

27**. The correct answer is C**. Most jurisdictions require that the defendant must have been personally aware of the risk involved in order to be convicted of criminal recklessness. People v. Eckert, 138 N.E.2d 794 (N.Y. 1956). This subjective requirement is much more stringent than the usual tort negligence standard, which speaks of only a substantial deviation from the standard of care. Therefore, answer B is not the best answer. Answer A refers to that standard of negligence, which allows the finder of fact to conclude that a defendant should have been aware of the substantial, unjustifiable risk, and finds him responsible for his acts or omissions. Recklessness, as noted above, means a personal, subjective awareness of the risk. Because this criminal statute does not adopt a negligence standard, answer A is wrong. Answer D is also incorrect. If Randy's behavior is found to be reckless, he will likely be determined to have caused the child's injury despite the troop leader's inattentiveness.

28. **B is correct**. Under Restatement (Second) of Torts § 46 one who by extreme and outrageous conduct intentionally or recklessly causes severe emotional distress to another is subject to liability for such emotional distress. Moreover, where such conduct is directed at a third person, the actor is subject to liability if he intentionally or recklessly causes severe emotional distress to a member of such person's immediate family who is present at the time.

29. **The best answer is D**. The act requirement for solicitation is that a person request or encourages another to commit a crime. The crime also contains a mental state requirement - intent that the crime be committed. The difference between casual conversation and true solicitation to commit a crime is often one of degree, and therefore a conviction for solicitation may fail for a lack of intent even if a sufficient act might be shown. On these facts, it appears unlikely that the government could prove that Steven truly intended that Miguel commit this crime. Therefore, answer B is incorrect. Answer A is wrong because it does not appear that Steven suggested that Miguel carry out the crime. Answer C is incorrect because solicitation does not require a significant or

affirmative act toward the crime by the solicitor, only a statement or action manifesting encouragement or support for another committing that crime.

30**. A is correct**. As a general rule either an officer or a private citizen may arrest without a warrant to prevent a felony or breach of peace, which is being committed, or reasonably appears about to be committed, in his presence. Once the crime has been committed, however, the private person may still arrest but his authority depends upon the fact of the crime, and he must take the full risk that none has been committed. In the present case, the killing of the Riverdale police officers did not occur in Nelson's presence. As a result, he must take the full risk for falsely arresting Jones. Therefore, by pointing the pistol at Jones, Nelson would be liable for assault.

31. **The correct answer is A**. Regardless of whether or not the person solicited to commit the crime would accept the request or encouragement, if the elements are otherwise shown; the crime of solicitation has taken place. Here, Samantha demonstrated the requisite intent to acquire drugs and requested that another person provide them, allowing her to be found guilty of solicitation. Answer C is therefore incorrect. Answer B is wrong because the officer's status is irrelevant; the proof element goes to Samantha's state of mind. A payment of money could establish true intent for the solicitation, so answer D is also incorrect.

32. **Answer C is the best answer**. Because the second paragraph of the contract quoted above appears to be a valid liquidated damages clause, the contract clearly provides Wally the choice between (1) repairing any defective wallpaper, which would cost Wally $250; (2) removing the wallpaper and repainting, which would cost Wally $800; and (3) refunding the contract price, less the cost of any nondefective wallpaper and materials, which would cost Wally $350. Alternatively, Sally can demand payment of $500. While Wally's best choice might appear to be repairing the defective wallpaper, it is easy to imagine that saving that $100 (as compared to refunding the contract price, less the cost of any nondetective wallpaper and materials) might lead to an endless cycle of dissatisfaction claims from Sally that would require additional responses from Wally. Therefore, Answer (A) is not the best answer. If Wally wants to be able to walk away from Sally, his best choice will be to refund the contract price ($1,000), less the cost of any nondefective wallpaper and materials ($650), however, if Sally is rational, she will not accept Wally's tender of $350 when she can demand $500 as liquidated damages. Therefore, Answer (B) is not the best answer. Wally would only be on the hook for $1,250 if he has to pay Sally to hire WaliCo to remove the "nymph and satyrs" wallpaper and install replacement wallpaper. Because that is not one of the four remedies (three at Wally's option and one at Sally's) set forth in the contract, Answer (D) is incorrect.

33. **C is correct.** The consent of the person damaged will ordinarily avoid liability for intentional interference with person or property. Consent to an act is simply willingness that it shall occur. Actual willingness, established by competent evidence, will prevent liability. Since Carlos consented to being punched in the chest, Hymie is not liable for

battery. As explained above, consent to the act bars recovery for the consequences of the act as well. Note that choice (B) is incorrect because Prosser points out that a "minor acquires capacity to consent to different kinds of invasions and conduct at different stages in his/her development." In other words, a 14-year- old boy who plays a tackle football game consents to physical contact. By the same token, teenage youngsters may consent to engage in fistfights or similar physical encounters.

34. **The best answer is B**. The attempt offense requires both the intent to commit the crime and, in most states, some sort of substantial act in furtherance of the crime. Although Sally's intent to murder her husband and Kate may be clear from her enrollment in the auto class and her confessed plan, Sally had not yet tried to implement this plan. Action toward the crime is required for attempt because the law does not penalize bad thoughts alone. It could be argued that enrolling in the auto class was sufficient action towards implementation of the crime, but this is unlikely to be found a substantial enough step for criminal liability. Sally still had many more acts remaining before completing her plan and thus time to reconsider and perhaps decide not to ever follow through. Answer C is not correct because enrollment in the auto class would not to be a substantial enough act in furtherance of the crime. While jurisdictions vary as to the act requirement, virtually all states require more than the merest preparation toward the commission of the murder. Sally's enrollment would be too minor an act to qualify for an attempt conviction in most states. Therefore, Answer D is also incorrect, because the only relevant inquiry is whether the act taken is mere preparation. Answer A is wrong because Sally's confession demonstrated her intent. The problem here relates to whether the act would be considered beyond mere preparation, not whether she had the requisite mental state.

35. **Answer A is the correct answer**. Chandler's cover damages would be (CP -KP) + ID + CD -ES, where CP = the price of the replacement mangoes, KP = the contract price between Monica and Chandler, ID = incidental damages under UCC § 2-715(1), CD = consequential damages permitted by UCC § 2-715(2), and ES = expenses saves as a result of Monica's repudiation. Here, Chandler had no consequential damages because Ross could provide Chandler with the mangoes he needed by the date he needed them. Likewise, Chandler does not appear to have incurred any expenses mitigating the effects of, or to have saved any expenses due to, Monica's repudiation. So, Chandler's cover damages = $700 -$600 + $0 + $0 -$0 = $100.

Chandler's contract-market differential damages would be (MP -KP) + ID + CD -ES, where MP = the market price of mangoes when Chandler learned of Monica's repudiation, and the other variables are the same as in UCC § 2-712. So, Chandler's contract-market differential damages = $650 -S600 + SO + SO -SO = S50. Therefore, Answer (B) is not the best answer.

Because Monica failed to deliver the goods under the contract, UCC § 2-711 governs. Chandler may: (1) cancel the contract; (2) recover any money already paid to Monica; (3) purchase replacement mangoes from another supplier, per UCC § 2- 712, and recover the difference between the cover price and the contract price, plus any incidental and consequential damages; (4) recover the difference between the market price when

Chandler learned of the breach and the contract price, per UCC § 2-713, plus any incidental and consequential damages, less any expenses saved by Monica's breach; (5) seek specific performance, per UCC § 2-716; or (6) agree to modify the contract and allow Monica to deliver the contract quantity at the contract price on or before September 8th. The one buyer's remedy unavailable to Chandler is UCC § 2-714, which only applies to accepted, noncon-forming goods. Therefore, Answer (C) is incorrect.

Chandler is unlikely to convince a court to award him specific performance under UCC § 2-716, because there is no evidence that Monica's mangoes are unique and other suppliers, no doubt, exist. Therefore, Answer (D) is not the best answer.
Revised Article 2 expands the availability of specific performance as an agreed remedy, unless the breaching party's sole remaining duty is to pay money or the contract is for consumer goods would permit a jury to conclude that suggest that Dix failed to act reasonably, (A) is correct.

36. **The correct answer is A**. In a majority of states and in the federal system, a conspiracy to commit an offense does not merge with the substantive crime. Pinkerton v. United States, 328 U.S. 640 (1946). This means that Sybil and John can be convicted of both kidnapping and conspiracy to commit the kidnapping. The merger rule for conspiracy differs from attempt and solicitation, which generally do merge with the completed offenses. Thus answer C is wrong. This difference for conspiracy I is based on the view that groups are more dangerous than individuals in terms of planning crimes. Moreover, merger is not mandated, as the very separate element of agreement needed for conspiracy is not present for the completed offense. Answer B accurately reflects the rule in a minority of states, which dictates that the charges for conspiracy and the substantive crime be merged. Most states, though, do not follow this principle. Answer D incorrectly invokes the double jeopardy protections of the 5th and 14th Amendments. Punishment for the conspiracy charge and a charge of a substantive crime does not violate the Constitution in that each of the charges involves a distinct crime with separate elements. Conspiracy requires an agreement while the substantive offense requires the completed act of kidnapping.

37. **A is correct.** This question, which deals with burden of proof, requires a two-step analysis. First, it is necessary to recognize that Iorg is bringing a negligence action against Dix. Certainly, Iorg cannot be suing Dix for strict liability because Dix was the purchaser not the seller of the automobile. Thus, the plaintiff has the burden of proving that Dix was negligent. In the absence of a statute imposing the duty to maintain his brakes in proper working order, choice (C) is wrong. Because, there is no evidence that the brakes were serviced.

38. **Answer D is the correct answer**. Noah is an intended beneficiary because Methuselah formed his contract with Keynes for Noah's benefit. See R2 § 302(1). On the other hand, if Methuselah had formed his contract with Keynes for someone else's benefit, but Noah benefited as well, Noah would be an incidental beneficiary. Therefore, Answers (A) and (C) are incorrect. When it is unclear whether a third party is an intended or incidental beneficiary, courts typically ask whether a reasonable person in the

promisor's (Methuselah's) position would have intended to confer on the third party (Noah) the right to bring suit to enforce the contract. In so doing, courts consider whether: (1) performance was rendered directly to the third party, (2) the third party has the right to control details of the performance, and (3) the third party is expressly designated in the contract. Here, the first and third prongs are clearly met at the outset, and the second prong will be met when Noah assumes control of the ranch, if not sooner.

Noah is a donee beneficiary, rather than a creditor beneficiary, because Methuselah made his contract with Keynes as a gift to Noah (and the rest of the family, present and future, who are "incidental beneficiaries" under these facts rather than to satisfy some obligation Keynes owed to Noah. Therefore Answer (B) is incorrect.

39**. B is correct**. Under Restatement (Second) of Torts § 876 (year), dealing with persons acting in concert, "For harm resulting to a third person from the tortious conduct of another, one is subject to liability if he (a) does a tortious act in concert with the other or pursuant to a common design with him; or (b) knows that the other's con- duct constitutes a breach of duty and gives substantial assistance or encouragement to the other so to conduct himself, or (c) gives substantial assistance to the other in accomplishing a tortious result and his own conduct separately considered, constitutes a breach of duty to the third person:' Whenever two or more persons commit tortious acts in concert, each becomes subject to liability for the acts of the others, as well as for his own acts. If Tripuka and the three other men were acting in con- cert, Tripuka would be liable even though he himself did not strike Flores with the bottle. Based on this analysis, choices (C) and (D) are incorrect statements (since Tripuka could still be liable). Thus, choice (B) is the best answer.

40. **The best answer is D**. While Karry 's action in this transaction may lend itself to aiding and abetting more than a conspiracy charge, an agreement could be inferred from Karry's repeated sales to Reggie with the teenagers present. Unlike a one-time purchase, which may not allow such an inference to be drawn, under these circumstances, a fact-finder might conclude that Karry knew Reggie's intent. As she knew that he was to use the alcohol illegally, her tacit agreement to sell to him repeatedly could demonstrate her intent to make the sale. Therefore, answer A is incorrect. Moreover, answer C is not the best answer because intent can be found from circumstantial evidence. The facts here suggest that Karry might have wished to sell her merchandise to the teens, as long as the sale itself could be viewed as legitimate. Unless Karry can demonstrate she had no knowledge of Reggie's actions or intentions, it appears a jury could find she intended the crime Reggie committed. Answer B is not entirely true, for if Karry did possess the knowledge that the crime be carried out, or intended that underage individuals could purchase alcohol from her through some means, she can be held criminally responsible.

41**. Answer C is the best answer**. GHI's promise to pay $500,000 to Susanna and her children on Methuselah's death was conditioned on Methuselah making all premium payments due prior to his death (barring policy language to the contrary). Methuselah's non-performance relieved GHI of its duty to perform for the benefit of Susanna and her children to the extent of the breach. If this were a whole life policy, it would have

accumulated some cash value prior to the time Methuselah stopped paying the premiums, and GHI would be liable for that cash value. However, the facts of this Question were that the policies were term life policies. Term life policies, unless they explicitly provide a "cash surrender value," pay no benefit unless the insured dies during the term and premiums were current at the time of the insured's death.

Answer (A) is not the best answer. R2 § 308 allows beneficiaries who are not identified when a contract is made to benefit from it, nonetheless, if they can be identified when the time comes for GHI to pay the death benefit. Answer (B) is not the best answer because the facts do not indicate an agreement between Methuselah and GHI to cancel the policy in favor of Susanna and her children. This was not an agreed modification, subject to R2 § 311(2); this was a breach by non-performance, subject to R2 § 309(2). Answer (D) is incorrect. While a policy on Susanna's life might reduce or eliminate benefits if she committed suicide, absent some bizarre language in Methuselah's policy, how Adam and Eve came to be the primary beneficiaries of 100% of the policy on Methuselah's life, rather than 50%, is irrelevant (unless, perhaps, they were responsible for Susanna's death).

42. **The best answer is answer A**. Bill met all of the requirements of larceny, including intent to steal. This intent could be demonstrated by all of his actions. The taking element is satisfied by the slightest movement away from the premises. People v. Davis, 965 P.2d 1165 (Cal, 1998). Answer B is wrong because while there was not a successful actual theft of the jacket, the taking element has been shown. Removing the goods at all from the owner's control whatsoever satisfies the offense requirement. As such, answer D is incorrect. Answer C is also incorrect because although Bill had the store's consent in entering the store, that consent did not extend to theft. The trespass requirement does not allow those who have falsely gained consent of the owner for entrance to escape liability.

43. **B is correct**. As a patron in a restaurant, Liz should be classified as an invitee. "A possessor of land is subject to liability to his invitees for physical harm caused to them by his failure to carryon his activities with reasonable care for their safety if, but only if, he should expect that they will not discover or realize the danger, or will fail to protect themselves against it:' This obligation of reasonable care extends to everything that threatens the invitee with an unreasonable risk of harm-care against negligent activities, warning of known latent dangers, as well as inspection of the premises to discover possible dangerous conditions that are not known, and precautions against foreseeable dangers. Choice (B) is correct because Wong's duty to inspect implies "reasonable" inspection as to time. An inviter cannot be expected to know of every unsafe condition-or every banana peel on the floor-immediately, but such inspection must be made within a reasonable time. Therefore, if the egg roll has been on the floor for a substantial period of time, Wong, the restaurant owner, would be liable. Note that choice (C) is incorrect because the duty to warn of known dangerous conditions applies to licensees, whereas the duty to an invitee is expanded to inspect and make the premises safe. Choice (D) is incorrect because the act of a third person will not relieve the defendant's negligent conduct unless it is unforeseeable (I.e., supervening).

44. **Answer B is the best answer**, unless Jared benefits from Yubotah's warranty disclaimer, in which case Answer (B) is the best answer.

Because Methuselah purchased the Yubotah mower from Jared (as opposed to buying it used), to whom Yubotah sold or consigned it for resale, vertical privity should not bar Keynes' claim against Yubotah, and vertical privity is a non-issue against Jared because he was the direct seller. Horizontal privity is also easy for Keynes to establish, because UCC § 2-318 (Alternative C) extends all Article 2 quality warranties to "any person who may reasonably be expected to use, consume or be affected by the goods and who is injured by breach of the warranty." Keynes was a "person who may reasonably be expected to . . . be affected by" Methuse- lah's riding mower, because riding mowers are often used in relative proximity to people other than the mower operator and to things other than the mower itself, and Keynes was "injured by the breach of the warranty" when the defective mower sent a rock hurtling through his windshield, his rear view mirror, and the upholstery of his driver's seat. The trick for Keynes would be overcoming the last sentence of UCC § 2-318 (Alternative C), which reads: "A seller may not exclude or limit the operation of this section with respect to injury to the person of an individual to whom the warranty extends." Yubotah's warranty disclaims liability to anyone other than the purchaser (Methuselah) for anything other than personal injury. In other words, it disclaims everything the last sentence of UCC § 2-318 (Alternative C) allows it to disclaim, and nothing more. As such, Keynes does not have a colorable claim against Yubotah. Therefore, Answers (A) and (C) are incorrect.

Merchant sellers, like Jared, make the implied warranty of merchantability to their purchasers whether or not they manufacture the goods they are selling. Therefore, Answer (B) appears to be the correct answer. However, we need to know whether Jared receives the benefit of Yubotah's warranty disclaimer. The facts do not indicate whether Jared sold the mower to Methuselah making "no warranty other than the manufacturer's express warranty" or "as is." If he did, then he should be shielded from liability for anything other than personal injury to anyone other than Methuselah, as is Yubotah. In that case, Answer (D) would be the best answer. But, because the facts do not indicate one way or another whether Jared disclaimed his implied warranty of merchantability, the more prudent course would be to not assume facts not in evidence and conclude that Jared is liable, under UCC § 2-318 (Alternative C), for the property damage Keynes suffered due to the defective riding mower Jared sold to Methuselah, making Answer (B) the best answer.

45. **The best answer is A**. Juanita was in "possession" of the plant, meaning that she had authority regarding the legitimate use and maintenance of the good, a key requirement for embezzlement. State v. Frasher, 265 S.E.2d 43 (W. Va. 1980). Answer B is wrong, as larceny involves a theft committed by someone not in possession, but only in mere custody, of the goods. Answer C is also wrong as title did not pass here (the rightful owner was not giving the plant to Juanita), an essential element of the crime of false pretenses. Although Juanita was the manager, she was not authorized to sell goods for her personal use. Answer D is not correct, as a robbery is defined as the taking of property by force or threat of force, not present here.

46. **B is correct**. In accordance with the Restatement (Second) of Torts § 435 (year), an actor's conduct may be held not to be the legal cause (i.e., the proximate cause) of harm of another where after the event, and looking back from the harm to the actor's negligent conduct, it appears to the court highly extraordinary that it should have brought about the harm. For example, in the present case, Nancy's injection of the morphine overdose would constitute a superseding force, or an independent intervening cause, which would serve to break the causal connection between the initial wrongful act (I.e., Bob's serving of the liquor to Rudy) and the ultimate injury (i.e., Rudy's death). Thus, the superseding force becomes the proximate cause of such injury, and, hence, the first actor, Bob, would be relieved of liability for the consequences of his antecedent conduct. It is important to point out that Nurse Nancy's conduct was grossly negligent (not ordinarily negligent) because she should have been aware of the excessive dosage

47. **D is the correct answer**. The mayor has detrimentally relied. This satisfies the requirement of vesting. A is incorrect (although this answer could possibly make sense if the subcontractor was suing for the loss of use of some gift arguably donated to him). B is incorrect because to be a creditor beneficiary, there must be detrimental reliance or a suit brought on the contract. An advancement of salary is not necessarily detrimental reliance- it is consideration. C is incorrect because it is not the best answer.

48. **C is the best answer.** Intent forms one of the elements of embezzlement, but the intent to take or fraudulently convert property to one's own use (the state of mind needed for embezzlement) could be established by the circumstances. Eric knew he was not authorized to give these special favors to his friends rather than his clients. By giving favors to his friends, he intended to take profits and property from his employer. As such, answer A is incorrect. Answer B is similarly flawed in that embezzlement often covers not only money but property as well. Moreover, while the phones were property, the discounted service resulted in less profit to the company and the courts could consider this as lost money. For these reasons, answer C is the best answer. While the statute in the jurisdiction will determine whether such action is considered embezzlement, property is almost always included as well as money in embezzlement actions. Answer D is incorrect in that it suggests that the company decides whether a particular action is embezzlement. While the company will have some role in the prosecution, once the employee misconduct is brought to the attention of the authorities, it is the government that must decide whether to bring criminal charges.

49. **Answer B** is correct. Battery requires an unlawful harmful or offensive touching. If Lecter had passed along the virus through contact with Starling, that would constitute a harmful touching. In addition, it would be unlawful because it is wrong for a person to infect another with a disease by means of intentionally touching another person. But here, although Lecter did touch Starling, he only did so as part of a surgery to which she had consented. To the extent her consent was not fully informed, courts tend to treat the matter as one for the law of negligence, not the law of battery. Answer (A) is incorrect because the mere fact that Starling consented to surgery does not resolve the problem.

Had Lecter passed along the virus, Starling's consent to surgery would not defeat her battery claim against him.

Answer (C) is incorrect because, while it is true that Lecter has privacy rights, those rights do not trump Starling's entitlement to freedom from harmful or offensive contact. Had the contact been harmful, she would have a valid battery claim.

Answer (D) is incorrect because, as noted above, courts treat informed consent cases under the law of negligence rather than that of battery. Of course, sometimes the line between less-than-fully-informed consent and unconsented contact is rather thin; in these cases, either claim might be viable.

50. **B is the correct answer**. Ped received medical treatment from the doctor, which implies a promise by Ped to pay for the services received. Answers C and D are incorrect because the status of Doctor as a beneficiary would give him the right to sue Axel, not Ped. C is incorrect because quasi-contractual recovery is not the best recovery, and also is not the best theory of recovery because an implied-in-fact contract exists.

51. **The best answer is answer A**. Under the common law definition of burglary, six elements must be met: (1) breaking, (2) entering, (3) at night, (4) in the dwelling house, (5) of another, (6) with intent to commit a felony inside. State v. Bray, 365 S.E.2d 571 (N.C. 1988). Answer D is not correct, as the law does not distinguish between early and late night break-ins. Burglary involves more than a mere robbery in the home, so answer B is not the best answer. The breaking requirement demands the creation of some opening to gain entry, and in this case the perpetrator gained access with the homeowner's unwilling assistance. Courts have long recognized entry by threat to be a breaking, hence all the elements of the crime have been met making A the correct answer. Answer C, then, is incorrect.

52. **A is the best answer**. Ed made an express warranty to Joe, regarding specific attributes of the boat that were not true. B is incorrect because A is the better answer. C and D are incorrect for the reasons stated in the explanation to answer A.

53**. Answer B is correct**. A jury is likely to find that, although Sam impliedly consented to being "tagged" in the game, he did not consent to being slugged. True, Rebecca did not mean to hurt Sam, but most courts do not require this in order to make out a battery claim. Answer (A) is incorrect because Rebecca was not exercising her right of self-defense. That is not the way the game of "tag" works. One seeks to avoid any contact with the person who is "it." Answer (C) is incorrect because, as indicated above, a jury is likely to find that Sam consented to light touches, not being slugged. Answer (D) is incorrect because most courts hold that a defendant in a battery case need not intend injury; it is sufficient if she intended a contact that the law deems inappropriate under the circumstances.

54**. The best answer is B**. Under the common law, a death must occur within one year and a day of the underlying event for the perpetrator to be found guilty of murder. The

"year and a day" rule originally existed because of problems in showing causation between an act and a death when a long period of time had elapsed. This rule creates an artificial limit on the ability to prove causation and assumes that a causal connection cannot be proven if the death occurs over one year and one day after the act. In some jurisdictions, the "year and a day" common law rule is still valid. Because Keesha died about one year and one month after Sam fired the shot, he cannot be convicted of murder under the common law. Given the ability of modern technology to prolong life, some states have eliminated the common law rule. In those states, the causal relationship between an act and a death must still be proven, which often will become more difficult as time passes. Nonetheless, the mere number of days that elapsed between the dates Keesha was shot and the day she died would not preclude Sam from being convicted of murder in states that have rejected the common law rule. Although Sam intended to kill Keesha and she died as a direct result of his actions, answer A is not correct. Under the common law "year and a day" rule, a death must occur within 366 days of the act. Murder does not necessarily require the intent to kill. Murder is the unlawful killing of another person with malice. Malice is established by: (1) the intent to kill; (2) the intent to inflict great bodily harm; (3) gross recklessness (implied malice); or, (4) the waiver of malice because the death occurred during the commission of a felony (felony murder). Sam intended to inflict great bodily harm. On this basis, Sam could be found to have malice sufficient for him to be found guilty of murder. However, as with answer A, answer C is incorrect because the "year and a day" rule cuts off liability even where the requisite mental state and causation exist. Answer D is not right. Criminal law operates under the assumption that sane people can commit heinous acts. The mere fact that Sam shot Keesha is insufficient to establish an insanity defense.

55. **A is the correct answer**. Under UCC section 2-206, an offer may be accepted by any reasonable medium. An offer may be accepted by either a return promise or by specific acts. Marine's act of shipping the motors constituted acceptance of Bill's offer. B and C are incorrect because they are incorrect statements of law. D is incorrect because Marine failed to give notice that the shipment was an accommodation.

56. **Answer C is correct**. Trespass to chattels, unlike trespass to land, usually requires actual damages. There are two kinds of trespass to chattels - "intermeddling," where the defendant does harm to the chattel, and "dispossession," where the defendant does something to interfere with the plaintiff's right of possession. Francine's behavior would fall within the "intermeddling" category. Were there no "World's Greatest Clunker" competition, Cindy would probably have no remedy against Francine. But because the computer might well have been a prizewinner in its original state, Francine has harmed the chattel. Answer (A) is incorrect because the roommate is not a possessor of the chattel and so her consent to the intermeddling is of no significance. Answer (B) is incorrect because under the facts Cindy experienced detriment as well as benefit from the intermeddling. Answer (D) is incorrect because the roommate had authority to admit a visitor to her dormitory room. The injury is to a chattel, not to the possession of land.

57**. Answer D is the best answer.** According to the common law, a baby must be born alive to be considered a person under the law of homicide. Because the crime of murder

involves the killing of a person, William cannot be convicted of the baby's death if it was not born alive. This rule, which evolved during a period when it was difficult to discern the cause of a fetus's death, stated that a person could not be found guilty of murdering a fetus. Although William's intentions and actions would have been enough for him to be convicted of murder if the baby was born alive, those same actions and intentions would not be sufficient to convict William of murder if the baby was born dead, Although William had the intent to kill, he did not commit the act of killing under the common law. Life does not begin until birth under the common law, so William killed a fetus, not a person. Therefore, answer A is incorrect. Answer B is not right because the timing of the act in relation to the birth is irrelevant. In the scenario in which the baby is born alive and then dies a short time after, the important inquiry is whether a causal connection can be made between the act and the death, even if that act occurred before the baby's birth. Answer C is not correct because it does not distinguish between the two fact patterns. A causal connection must always be established between an act and a death to establish the crime of murder. The common law rule assumes that the death of a fetus was not the result of the act. For this reason, if a baby is born dead, any act that occurred prior to the child's birth cannot be an element of the crime of murder. If, however, the baby is born alive and dies later, William may be convicted of murder if that prior act caused the baby's death.

58. **A is the correct answer**. Under UCC section 2-205, an offer by a merchant, in a signed writing which by its terms gives assurances to keep the offer open, is not revocable for a period not to exceed three months. B, C and D are incorrect statements of law.

59. **Answer B is correct**. Normally, words that negate a party's aggressive actions make the actions non-tortious. But this is not a categorical rule. In some situations, it is perfectly reasonable for a victim to believe that despite the aggressor's words to the contrary, the aggressor is going to strike her. It is also permissible for the jury to infer that the aggressor intends the victim to have that belief. A jury question exists in such cases, and this appears to be that type of case. Answer (A) is incorrect because, as indicated above, the defendant's choice of words that negate her actions does not always make the conduct benign. Answer (C) is incorrect because the tort of assault not only violates one's interest in freedom from harmful contact. It also violates one's interests in freedom from offensive contact. If the jury concludes that Emily's punch was not an excessively violent means of terminating the attack, Emily will have acted in reasonable self-defense, and will not be liable. Answer (D) is incorrect because, as indicated above, sometimes it is reasonable to harm a person to prevent an attack.

60**. Answer C is the best answer**. At common law, death was defined as the cessation of respiratory and cardiac function. Thus, under the common law, James would not have been considered dead when the doctors removed his life support. Under many modern statutes, however, death is defined as the loss of all reflexes or brain activity. State v. Fierro, 603 P.2d 74 (Az. 1979). Because James was legally dead at the time his life support was removed, the doctors could not be considered an intervening cause of his

death. Under modern statutes, James's death would be the result of the act that caused the trauma, which was the car accident.

Although answer A would be the best answer under the common law, death has been statutorily redefined in the modern statutes as noted above. While it may be tempting to say that the doctors hastened James's death, modern statutes define death as brain death. Because James was legally dead when the doctors disconnected the life support. Answer B is not correct. Answer D is not the best answer. If a car accident is caused by truly reckless behavior it may well be the basis of an involuntary manslaughter.

61. **C is the correct answer**. UCC 2-601 provides where goods or tender of delivery fails in any respect to conform to the contract, the buyer may reject tender (perfect tender rule). A is incorrect because substantial performance does not apply under the UCC. B is incorrect for the same reasons that answer A is incorrect. D is incorrect because of the perfect tender rule.

62. **Answer A is correct**. As a public official, Bumpkin must show that the Succotash Times acted either with a desire to lie or with reckless disregard for the truth of the statement it published. If its reporter should have been able to tell that Magoo was mentally incompetent, publishing Magoo's comments may satisfy the "actual malice" requirement of this tort. Answer (B) is incorrect because any "right to privacy" that Bumpkin asserts, or holds, does not affect his status as a defamation plaintiff. Answer (C) is incorrect, even though it may appear to show "actual malice." The requirement of "actual malice" is not fulfilled by proving animus, however. Rather, the defendant must have either intended to tell a lie or been reckless about the truth. Answer (D) is incorrect because media defendants do not become more liable, or less liable, when they choose to employ fact-checkers or print Corrections notices.

63. **The best answer is B**. For the crime of murder, the government must show an intent to kill, an intent to commit serious bodily injury, gross recklessness, or that a killing occurred during the commission of a felony. Under this definition, it is unlikely that a jury could find that Abdul committed murder. Because it would be possible for Abdul to be convicted of murder, even if he did not intend to kill Eric, answer A is not the best answer. As explained above, if a jury found that Abdul had the intent to commit serious bodily injury, he could be convicted of murder. Answer "C" is incorrect because, based on the facts; it does not appear that Abdul intended to commit serious bodily injury to Eric. Instead, Abdul was just caught up in the excitement. He did not intend to seriously injure anyone, just give a few black eyes. A finding of malice based upon the intent to commit serious bodily injury must be more that an intent to inflict some injury. An intent to simply injure that unexpectedly results in death would result in a conviction for involuntary manslaughter, not murder. The gross recklessness element is also called a "depraved heart" or "malignant heart" murder. Gross recklessness is behavior so dangerous that it demonstrates a disregard for life; however, it does not have to be behavior that is almost certain to cause death. Merely reckless behavior is insufficient to establish the malice element required for murder. Because answer D misstates the recklessness requirement for murder, it is not the correct answer.

64. **B is the best answer**. The Statute of Frauds requires contracts be in writing: (1) for the transfer of an interest in land or, (2) which cannot be completed within one year of the date of contracting. While Terry will argue that her payments and improvements are part performance of the contract, thereby taking it out of the Statute of Frauds, her actions are also consistent with her prior relationship with Oliver, as a month-to-month tenant. A and D are incorrect for this reason. C is an incorrect statement of law.

65**. B is the correct answer**, since a private nuisance action will protect Stan's right to use and enjoy his property. A is incorrect because the facts show that the gas is harmless. C is incorrect, since the facts do not state that other members of the public are affected by the gas. D is incorrect because there is no statement that Oil Company was careless.

66. **Answer B is the best answer**. Murder is the unlawful killing of another person with malice. Intent to kill, intent to commit great bodily harm, gross recklessness (implied malice), and felony murder are the four ways to establish the malice mental state for murder. The man did not intend to kill or to commit great bodily harm, and he was not being reckless. The only remaining way to establish murder would be felony murder. Felony murder is an unlawful killing that occurs during the commission of a violent felony. Because larceny of a backpack is not a violent felony, the man cannot be found guilty of felony murder. Although the man did not intend to hit and kill the student, intent to kill is only one of four ways to establish the requisite mental state for murder. Because answer A only addresses this one possibility, answer A is not the best answer. In most jurisdictions, a crime is not complete until the criminal has reached a place of safety. In these circumstances, most jurisdictions would consider the school's parking lot to be part of the crime scene. The man would not be considered to be in a place of safety. If the man had committed a violent felony in the school, hitting a pedestrian in the parking lot might have been viewed as a killing during the commission of a violent felony, which would be a felony murder. Larceny of a backpack is not a violent felony, however, so answer C is not correct. Hitting the student while driving at a slow speed does not constitute gross

67. **Answer C is the best answer**. A killing committed during the commission of a violent felony is felony murder. The definition of a violent, or inherently dangerous felony varies by jurisdiction. Some statutes list the specific felonies that can be used to establish felony murder. Other statutes simply use language such as "inherently dangerous offences," "forcible felonies," or "violent crimes." Under either approach, armed robbery would certainly be considered sufficient. Therefore, a killing committed during the commission of armed robbery would be a felony murder. Because malice is assumed, it does not matter that the man hit the student accidentally. Therefore**, answer A is not correct**. A crime is not completed until the criminal has reached a place of safety. The thief in this circumstance was not out of danger at the point in which he was driving from the school's parking lot. Because the armed robbery was still being committed as he fled, the man hit the student during the commission of the felony, not after. People v. Johnson, 7 CaI. Rptr. 2d 33 (Cal, App. 1992). For this reason, **answer B**

is wrong. Although the student died as a result of being hit by the thief's car, that fact alone is not sufficient to establish murder. As a consequence, **answer D is not the best answer**. A person who is hit and killed by a carefully driven vehicle, an accident that occurred in the absence of a dangerous crime or felony, would ordinarily not be a victim of murder because the defendant's *mens rea* would be lacking.

68. **B is the correct answer**. Where parties enter into a transaction under a mistake regarding a fact assumed by each party which is the basis of the bargain for which they enter into the contact, it is voidable by either party, if enforcement would materially alter that which was bargained for. Here, Denny bargained for a 1916 "D" dime that turned out to be counterfeit. Thus, the contract can be rescinded. A, C and D are incorrect for the reasons stated in correct answer B

69. **B is the correct answer**, since Account- ant's carelessness in preparing the audit was a negligent misrepresentation to one relying on it. A is incorrect because Accountant did not intend to deceive anyone. C is incorrect because Accountant was negligent according to the facts. D is incorrect because B is correct.

70. **A is the correct answer**. A contract entered into by a minor, except for necessities, are voidable at the election of the minor, and may be disaffirmed by the minor during minority or within a reasonable time after reaching majority. The continuing payments and use of the car by Rodgers after reaching the age of majority constituted affirmation of the contract. B is incorrect for the reasons stated in correct answer A. e is incorrect because not all contracts entered into by minors are voidable (e.g., necessities). D is incorrect because, under the majority rule, a minor does not have to return the merchandise to have a valid disaffirmance.

71. **Answer C is the best answer**. At common law, and in most statutes today, the crime of rape consists of sexual intercourse by force or threat of force with no consent by the victim. The forced entry of Arnold inside Tina's body, without any indication of approval by Tina would be sufficient to show no consent by her to the act. Answer D is wrong, because the consent need not be express so long as some indication is given that the consent is voluntary and understood by both parties. In a situation such as this, silence of the victim typically is insufficient to show consent and some indication of assent must be demonstrated. Thus, answer B is incorrect. Answer A is also incorrect as it is not enough for the defendant to show that he did not realize there was a lack of approval of the act. The prosecution will succeed if the government shows that the victim did not consent, as is the case here.

72. **C is the correct answer.** One cannot justifiably rely on statements of opinion of quality and value when entering into a contract. A is incorrect, since Harry did not commit fraud, Clay's Cars cannot be vicariously liable. B is an incorrect statement of law. D is also a plainly incorrect statement of law, as deceit is a tort action and is not based on contract. Any contractual waiver of fraud liability would violate public policy.

73. **A is the correct answer**. Kemper's omission of the $301,769 price from the company's bid was a material, unilateral mistake. A unilateral mistake is grounds for rescission. B is incorrect because it is an incorrect statement of law. C is incorrect because it assumes facts not given in the question. D is incorrect because a submitted bid can be withdrawn- prior to its acceptance, as here.

74**. Answer A is the best answer**. Under the common law, and still in most states, rape requires the use of physical force or threat of force resulting in serious bodily harm to compel the victim to have sex. Courts and legislatures still generally find that threats other than those likely to result in serious bodily harm are insufficient for the crime. The threat of losing a job, a contract, or a scholarship, would be insufficient to show force or lack of consent. Although the government would argue that Ginny was compelled by Bill's threat, most, though not all, courts would find his actions to fall outside the statutory prohibition. For this reason, answer C is wrong. While rape is viewed as a violent crime, the threatened use of actual force would be a sufficient basis for the successful prosecution of the offense even without an expression of protest, as noted above. Hence, answer B is not the best answer. Answer D is wrong because Ginny seemed not to consent. The problem here is not one of consent, but rather no showing of use of force.

75. **B is the correct answer,** since when one disparages the product of another through false statements of fact; a cause of action for trade libel arises. A is incorrect, since the honesty and ethical integrity of Stopco has not been challenged. C is incorrect, since this tort· does not exist. D is incorrect, as Stopco has not been injured by relying on any misrepresentation made to it.

76. **C is the correct answer.** As a general rule, advertisements, circular letters, price lists, and price tags are construed as proposals inviting offers. However, if the advertisement is definite in its terms, leaves nothing to negotiate, seems objectively reasonable, and is unlikely to be over accepted, a court may find the advertisement is an enforce- able offer. Here, the advertisement appears to meet these requirements.

77**. Answer C is the best answer**. Under the general rule of self-defense, a person can use whatever non-lethal force appears to be reasonably necessary to prevent immediate harm to herself. With limited exceptions, an individual cannot use deadly force in self-defense. However, a killing committed by a defendant in self-defense is justified under the law if she reasonably believed that: (1) she was in imminent danger at the time she took an action; and (2) deadly force was necessary in response to the perceived danger. Under the circumstances, Maggie could have reasonably believed that she was in imminent danger of serious bodily injury and that she swung the baseball bat because it was necessary to respond to the threat posed. Thus, she can argue that her actions should be protected as made in self-defense. The jury should receive instructions on self-defense in this case. Answer A is not the right answer because an endangered person does not have to wait until an aggressor has already acted in any specific aggressive manner before the person is entitled to defend herself. So long as Maggie reasonably believed both that she was in imminent danger at the time she hit the man and that the potentially deadly

force was necessary in response to this danger, the jury should be able to consider whether Maggie's actions should be deemed self-defense. With the facts presented, it is not clear that Maggie could have safely escaped in her car. Under the law, a person only has a duty to retreat before using deadly force in one's own defense if it is clear that such an escape can be made without incurring bodily harm. Therefore, answer B is incorrect. Answer D is also incorrect. Maggie's subjective belief that she was in imminent danger would not be sufficient for her actions to be deemed self-defense. In presenting a self-defense claim, the defendant's belief is based principally upon an objective, rather than a subjective, standard. In order to get the benefit of this defense, a reasonable person in her circumstances must have believed that she was in imminent danger and that her actions were necessary to respond to this apparent danger.

78. **C is the correct answer**. The tort of intentional interference with contractual relations requires intentional, purposeful conduct. A is incorrect because it misstates contract law. B is incorrect, since the suit is based on tort, not on tort, not on breach of any agreement between the colleges. D is incorrect in that it indicates a tort action would lie if the conduct was not intentional.

79**. B is the correct answer.** An express promise by a debtor to pay a debt barred by the statute of limitations or by a decree in bankruptcy is legally enforceable without new consideration. However, most jurisdictions require either writing or a part payment be made before such an agreement can be enforced.

80. **Answer A is the best answer**. Although resistance to unlawful arrests was once considered acceptable, over half of the states have now made it illegal to resist an arrest, whether lawful or unlawful. People v. Valentine, 935 P.2d 1294 (Wash. 1997). Underlying this trend is the notion that violence, particularly against peace officers, is not the best way to resolve conflicts and citizens should rely on the modern criminal justice system to protect their rights. Thus answer C is incorrect. Answer B is not right because it does not comport with the facts described. In these circumstances, the officers initiated the conflict when they confronted Jen. Thus, if the two individuals were not police officers, Jen could perhaps have relied upon self-defense as a justification for her action. This conflict, however, arose from an attempted arrest by police officers. Answer D is not the best answer because it fails to take into account the fact that the individuals Jen encountered were police officers who were trying to question and then arrest her. Of course, the fact that Jen was outnumbered would normally be relevant to a claim of self-defense (e.g., to examine whether Jen could have reasonably retreated from the situation and the extent of the threat posed).

81. **B is the correct answer**. Professor Smith committed an assault. An actor is liable for assault if he intends to cause a harmful or offensive contact, or creates a reasonable apprehension of contact, and the victim believes that the contact is imminent. A is incorrect because the facts do not show that Logan and Adam suffered any emotional distress. C is incorrect because contact is a requirement for battery, not assault.
D is incorrect because Professor Smith should have known that his act was substantially certain to cause an apprehension of an imminent harmful or offensive contact.

82**. D is the correct answer.** A unilateral offer can only be accepted by performance, not by a return promise. Additionally, mere preparation for performance, no matter how detrimental to the offeree, is not enough to count as an acceptance. Here, Orlando asked for Juan to change the oil, replace the oil filter, and adjust the carburetors. By get- ting supplies from Pep Boys, Juan has only prepared to perform.

83. **Answer B is the best answer**. The person who starts a fight by acting as the aggressor cannot claim self-defense. In addition, a person is barred from the justification of self- defense if he escalates the amount of force being used. In this scenario, Jared began a shoving match. Brad's use of a knife increased the amount of harm that was likely to result from the altercation. Thus, he escalated the conflict and as such Brad is barred from a claim of self-defense. People v. Marks, 602 P.2d 1344 (Kan. 1979). Answer A is therefore incorrect. Although Jared started the fight, Brad became the aggressor when he pulled a knife. A defendant may only use a lawful amount of force in self- defense. Such a lawful amount of force is that level of force that reasonably appears necessary to prevent harm to one's person. Any force beyond that level is deemed unlawful force. In using unlawful force, a person (even a person who was initially a victim) becomes the aggressor. In this case, Brad's use of the knife was an unlawful response to Jared's shove because that level of force was not required to avoid the harm Jared might have caused. As a result, answer C is wrong. In a fight between two individuals, in which neither is using a weapon, the introduction of a deadly weapon generally constitutes an unlawful escalation. Although the knife in this case did not cause any serious injuries to Jared, Brad's use of the knife was unlawful. Brad's unlawful use of force transformed him into the fight's aggressor. As such, he was unable to claim self-defense, regardless of how much harm he actually caused with the knife. Because the actual level of harm caused to Jared is irrelevant to whether Brad can claim self- defense, answer D is not correct.

84. **C is the best answer**. Irresistible impulse and substantial capacity both recognize a defense where the defendant was unable to control her actions as the result of a mental disease or defect. (A) is incorrect because the *M'Naughten* test only allows the defense where the defendant cannot determine right from wrong. (B) is incorrect because the "irresistible impulse" and "substantial capacity" tests both recognize a defense where the defendant was unable to control her actions as the result of a mental disease or defect. (D) is incorrect because the *M'Naughten* test only allows the defense where the defendant cannot determine right from wrong.

85**. C is the correct answer.** In all unilateral mistake situations, if the offeree knows or has reason to know of the offeror's mistake when he or she accepts, then the offeror is not bound. In other words, if the nonmistaken party is or should have been aware of the mistake, he or she cannot "snap up" the offer. Here, since Kirby neither knew nor should have known of Kat's error, the contract was enforceable.

86. **Answer C is the best answer**. Richard could attack the man if Richard used a necessary amount of force based upon a reasonable belief that the man posed a serious

threat to the child. The approach used in most states today allows defenders to use reasonable force to defend someone whom they reasonably believe is being unlawfully attacked. In this case, Richard need only reasonably believe that force is necessary to protect the child in order to rely upon a claim of defense of others. Answer A is not right because it reflects the approach embodied in an old rule that is no longer used in most states. The old rule restricted the use of force in defense of others to those with whom the defender had a special relationship (e.g., parent and child, employer and employee). Unlike that old approach, the modem, majority view encourages strangers and friends to assist one another when they are threatened with harm.

Answer B is not correct because bystanders are not required to wait and gather all of the facts before assisting someone who appears to be in immediate danger of bodily harm. Instead, one may act on behalf of another so long as he has a reasonable belief that the person being assisted is in immediate danger of unlawful, bodily harm. Answer D is wrong because it reflects an approach no longer incorporated into most modern statutes. The older rule, known as the "alter ego" view, discouraged strangers from interfering with one another by punishing those who acted based upon a misunderstanding of the situation. Under the old law, Richard would only be justified to act on the child's behalf if the child would be permitted to use the same amount of force in self-defense. The test today, however, is whether the individual acted reasonably under the circumstances.

87. **C is the correct answer**. The Restatement Second of Torts establishes that one who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm. Here, in these facts Gasco, through the escaping gas, causes harm to repairman. Even though the escaping gas was not caused by any fault on Gasco's part, they will be subject to liability. A is incorrect as there was no intentional touching (a requirement of battery). B is incorrect because there was no invasion of the repairman's use and enjoyment of his land. D is incorrect because Gasco was not negligent.

88**. D is the correct answer.** A condition is any fact or event other than lapse of time that must occur before the parties have a duty to perform. Here, Homeowner conditioned the creation of the contract on his ability to get a loan.

89**. Answer B is the best answer**. Deadly force is never justified merely to protect personal property. A reasonable amount of force may be used to prevent the theft of property. However, the law provides that deadly force used simply to stop the theft of property is not reasonable. People v. Quesada, 113 Cal. App. 3d 533 (Cal. App. 1st Dist. 1980). Almost any other type of force, short of deadly force, used to prevent the theft of property might be reasonable. As human life is valued higher than any amount of property. including a fancy car, answer D is not right. Answer A is the wrong answer. As explained above, the use of deadly force is not a reasonable amount of force to use in defense of property. The use of a firearm is considered deadly force, even in circumstances in which the person targeted does not die. Moreover, Melissa's actions

could not be defended as self-defense where deadly force might be allowed. Although answer C contains a correct statement of the law, this statement is incomplete. The use of force is permitted to prevent or stop the imminent theft of property, provided that the amount of force is reasonable. Because the use of deadly force to protect personal property alone is not reasonable, answer C is incorrect.

90. **B is the best answer**. The Doctrine of Respondeat Superior would cause Otis to be liable for the negligence of his employee, which occurred during the course and scope of employment. A is not the best answer because Otis was not negligent - his employee was. Martha would have a better chance of recovery against Otis (deep pocket theory) than the employee. C is incorrect, as strict liability is not applicable to this fact pattern involving non-inherently-dangerous-activity. D is in- correct because, although Otis was not negligent, he can still be held liable under Respondeat Superior.

91**. D is the correct answer.** Under UCC 2-609, if one party has reasonable grounds for insecurity, that party can demand adequate assurances of due performance. These assurances must be provided within a reasonable time not to exceed 30 days, and if they are not, the buyer can cancel the contract, cover, and sue for damages.

92. **Answer D is the best answer**. Most states provide that one may use deadly force in a home invasion situation if he believes that the criminal is attempting to commit a serious crime, such force is necessary to prevent the offense, and the use of non-deadly force to prevent the crime would expose the defendant or another innocent person to substantial risk of serious bodily injury. New York Penal Law § 35.20. Seeing the man at the foot of the stairs, Santiago could reasonably have thought that the man was a danger. As a result, Santiago could have believed that force was necessary to stop the man, and that the use of non-deadly force would have put Santiago or his family at great risk. Most states allow the use of deadly force to prevent crimes in one's home. Under this approach, one does not have to permit a thief to take violent action in order to avoid a killing.
For this reason, **answer A is not the best answer. Answer B is not the correct answer**. Santiago did not have to attempt non-deadly means to stop the man if Santiago believed reasonably that to do so would endanger his family. If Santiago thought that the use of non-deadly force would endanger him or his family, he was not under an obligation to use such force as an alternative to deadly force. **Answer C is wrong** because it is too general. The law in most states [though not all] does not permit one to use deadly force whenever a dwelling is burglarized. The defendant must actually believe that the use of such force is necessary to prevent serious harm to himself or to another innocent person before the use of deadly force can be justified.

93. **B is the best answer**. Under Restatement Second of Torts, "a bodily contact is offensive if it offends a reasonable sense of personal dignity." Here, Jogger's conduct would be acceptable under the circumstances. A is incorrect because whether harm was caused to Brunette or not is not at issue. C is incorrect because, under the circumstances, the touching would not be considered harmful, or offensive. D is incorrect because the facts do not indicate that Brunette felt any apprehension by Jogger's conduct.

94. **D is the correct answer.** The Foodtown-Citrus contract expressly provided that "any modifications must be in writing:' any attempt at oral modification would be invalid. Such clauses are specifically allowed under UCC 2-209 (2).

95**. Answer B is the best answer**. In Tennessee v. Garner, 471 U.S. 1 (1985), the Supreme Court held that an officer may only use deadly force when she has "probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others." Because Mike was fleeing and did not appear armed, and because the officer had no reason to think that Mike had committed or would commit "a crime involving the infliction or threatened infliction of serious physical harm," the officer was not entitled under the law to use deadly force. Therefore, the officer may not rely upon the defense of crime prevention or law enforcement for the use of deadly force. Under the common law, police officers had a great deal more discretion to use deadly force to stop crimes or effectuate arrests. However, in Garner, the Court imposed a constitutional limit on the police power to use deadly force. A police officer may use deadly force to effectuate an arrest of a fleeing felon only if the officer has probable cause to believe that the suspect poses a threat of serious bodily harm to the officers or others. Answer A is not the right answer as there are times when deadly force is appropriate. Answer C is not correct because it predicates the use of deadly force on the commission of a serious crime rather than on the danger Mike posed to the officer or others. Garner prohibits an officer from using deadly force unless the felon poses an apparent danger of serious bodily harm either to the officer or to innocent bystanders. Therefore, answer D is wrong; the officer may not use deadly force in the prevention of crime or to prevent a felon from escaping when the suspect posed no apparent danger of serious bodily harm.

96**. D is the correct answer**. The security guard had no reasonable grounds for suspicion. Shopkeepers' privilege would not apply in this situation. A is incorrect, since the store had no privilege to detain the girls. No reasonable suspicion existed. B is incorrect because, under the facts, the girls were not free to leave. C is incorrect because the suspicion need not be correct -it need only be reasonable. Therefore, although C's conclusion is correct, its reasoning is incorrect.

97**. A is the correct answer.** A purported assignment of a right expected to arise under a contract not in existence operates only as a promise to assign the right when it arises.

98. **Answer D is the best answer**. Reasonable force may be used to prevent the commission of crimes. United States v. Brodhead, 714 F. Supp. 593, 598 (D. Mass. 1989). Gus could rely upon the defense of crime prevention for the use of force so long as he reasonably believed that the woman was about to commit a crime, and that the use of force was necessary to prevent that crime. Answer A is not correct. The standard is reasonable force. Tackling a robbery suspect would not be extreme under the circumstances. Answer B is also not correct. Officers may use force either to prevent a crime or to make an arrest. The officer's belief that the force was necessary and that the crime was being (or had been) committed must be reasonable. Moderate force may be used even when there is no danger of bodily harm in order to prevent the commission of a

crime. Answer C is not the best answer because at the time he used such force to prevent a crime Gus did not need to fear for his personal safety.

99. **The correct answer is B**. In order to meet the requirements for a robbery, the defendant must take another's property from that person by violence or intimidation. State v. Felix. 737 P.2d 393 (Az. App. 1986). Regardless of whether the defendant would have been able to harm the victim, that element has been met if the victim in fact reasonably believed harm was likely. Therefore, answers C and D are incorrect. Robbery requires more than a larceny (i.e., simply taking property) and is punishable by a lengthier sentence. Answer A is incorrect for this reason. Robbery is considered more serious than larceny because it is a crime against both property and person, as it involves the use or threat of violence against a victim.

100**. B is the correct answer**. The measure of damages available to an aggrieved buyer for a seller's nondelivery or repudiation is the difference between the contract price and the market cover price as of the time the buyer learned of the breach. [UCC 2-712 and 2.-13] (A) is incorrect because the damages and the difference between the contract price and market price (cover) at the time of the breach. (C) is incorrect because while the non-breaching party is entitled to seek adequate assurance of performance this does not affect the computation of damages. [UCC 2-09] (D) is incorrect because if the buyer does not immediately cover upon receiving an unequivocal repudiation and the price increases before cover is made, a buyer will collect only the difference between the contract price and the cover price as of the repudiation date.