

**MULTIPLE CHOICE. Choose the one alternative that best completes the statement or answers the question.**

- 1) The three elements needed to create most contracts are best described as 1) \_\_\_\_\_
- A) *quid pro quo*, *volenti non fit injuria*, and *consensus ad idem*.
  - B) offer and acceptance, consideration, and a written agreement.
  - C) an intention to create legal relations, offer and acceptance, and consideration.
  - D) offer and acceptance, an invitation to treat, and communication of the offer.
  - E) an intention to create legal relations, an exchange of value, and consideration.
- 2) Jose and Mei entered into what appeared to be a contract for the sale of an antique automobile. Jose agreed to pay the purchase price and Mei agreed to deliver the car to Jose's garage. Secretly, however, Mei planned to keep the car for herself. Will a court enforce the agreement? 2) \_\_\_\_\_
- A) A court will not enforce the agreement because Mei expected to keep the automobile and contract law tries to protect reasonable expectations.
  - B) A court will not enforce the agreement because business people must be able to rely on outward appearances.
  - C) A court will not enforce the agreement because the existence of Mei's secret plan meant that the parties did not really agree to the same thing.
  - D) A court will enforce the agreement because Mei behaved badly and the court wants to punish that type of behaviour.
  - E) A court will enforce the agreement because a reasonable person would have believed that the parties entered into a contract.
- 3) Cindy calls Davin to accept his offer to trim her hedges in exchange for a haircut. Cindy is described as the 3) \_\_\_\_\_
- A) offeree.
  - B) invitee.
  - C) proposer.
  - D) offeror.
  - E) contracting party.
- 4) Henrique posts a notice at the racetrack that says he is willing to sell his old horse for \$5000. When he returns to the track the next day two people arrive at the same time to buy the horse. A court would most likely say that Henrique 4) \_\_\_\_\_
- A) can keep the horse and refuse to sell to either person.
  - B) must sell the horse to one buyer and find another horse to sell to the other buyer.
  - C) must sell the horse to one buyer and pay \$5000 to the other buyer.
  - D) must choose between the buyers and sell the horse for \$5000 to one of them.
  - E) can accept the offer of both buyers.
- 5) Wessam offers to sell Ivan a bicycle for \$100. Ivan asks to think about it for a couple days. The next day, Wessam tells him that she has increased the price to \$150. Wessam has 5) \_\_\_\_\_
- A) rejected the offer.
  - B) allowed a reasonable time to lapse.
  - C) made a counter offer.
  - D) revoked her original offer.
  - E) lost her capacity to enter into a contract.

- 6) Morris posted a notice promising to pay a \$50 reward to anyone who found his lost cat. Morris saw Edna, his neighbour, and drew her attention to the notice. She expressed sympathy, but said that she did not have time to help because she was rushing off to work. When she returned home early that afternoon, however, she went to Morris's house to tell him that she would look for the cat. Although he was not at home, she searched the area, found the animal and returned it to his house. Morris now refuses to pay Edna the \$50. A court would most likely say that Edna can
- 6) \_\_\_\_\_
- A) do nothing because Morris is entitled to revoke his offer at any time.
  - B) do nothing because she rejected Morris's offer when she said she had to rush to work.
  - C) do nothing because she was required to communicate her acceptance in writing.
  - D) demand payment because the offeree decides whether an offer has been open for a reasonable period.
  - E) demand payment because a contract was created through her act of acceptance.
- 7) Joan wants to buy a prime piece of real estate from Guiaumme, but she is waiting to find out whether the bank will give her a loan. In order to make sure that Guiaumme does not sell the land to anyone else, Joan gives him \$5000 in exchange for his promise not to sell the land. This type of agreement is called
- 7) \_\_\_\_\_
- A) a tender.
  - B) a firm offer.
  - C) a proposal.
  - D) a conditional offer.
  - E) an option.
- 8) By submitting a tender, a party normally
- 8) \_\_\_\_\_
- A) accepts an offer to enter into a contract for services.
  - B) creates an invitation to treat.
  - C) accepts an offer to create a fair bidding process.
  - D) prevents the other party from revoking its bid.
  - E) creates an enforceable contract, called an option, to create another contract in the future.
- 9) Lori offers to sell her season pass to the ballet for \$200. Her co-worker, Alan, says that he will buy the pass for \$150. Alan has provided
- 9) \_\_\_\_\_
- A) a tender.
  - B) a firm offer.
  - C) a trust.
  - D) a counter offer.
  - E) an option.
- 10) A battle of the forms usually occurs when
- 10) \_\_\_\_\_
- A) each party insists upon using the offeror's standard form contract for every transaction.
  - B) each party insists upon using the offeree's standard form contract for every transaction.
  - C) each party's standard form contract contains all of the terms of the agreement.
  - D) each party insists on multiple copies of a document.
  - E) each party claims to have entered into a contract on the basis of its own standard form contract.

- 11) Regarding a battle of the forms, which one of the following does a court often consider when deciding which contractual form applies? 11) \_\_\_\_\_
- A) the likelihood of future dealings between parties
  - B) the usual practice in the industry
  - C) the parties' subjective intentions
  - D) the availability of insurance
  - E) the existence of a duty of care in negligence
- 12) Gordon sends a letter to Thomas that says "I will buy your diesel engine for \$7000." At exactly the same time, Thomas sends a letter to Gordon that says "I will sell my diesel engine to you for \$7000." Which of the following statements is TRUE? 12) \_\_\_\_\_
- A) Both letters respond to an offer.
  - B) Each letter contains an offer, but neither contains an acceptance.
  - C) This situation involves a meeting of the minds.
  - D) This situation creates a bilateral contract.
  - E) This situation is described as a "cross-acceptance."
- 13) In early March, Mathilde offered to rent her cottage to Tom for the first two weeks of July at a cost of \$1200. Mathilde did not impose any restrictions on acceptance. Tom did not yet know when his vacation was scheduled, so he did not immediately respond to Mathilde's offer. Tom learned at the end of June that he was entitled to vacation during the first two weeks of July. He therefore arrived at the cottage on July 1st and told Mathilde for the first time that he was accepting her offer. Which of the following statements is most likely TRUE? 13) \_\_\_\_\_
- A) Tom has the right to stay at the cottage because Mathilde should have known, as a reasonable person, that he would want to do so.
  - B) Tom does not have the right to stay at the cottage because he let Mathilde's offer lapse.
  - C) Tom has the right to stay at the cottage because he accepted Mathilde's offer by silence.
  - D) Tom has the right to stay at the cottage because he accepted Mathilde's offer by conduct.
  - E) Tom has the right to stay at the cottage because Mathilde gave a firm offer.
- 14) "Contract law represents the pathology of commerce." Which of the following statements fully explains that quotation? 14) \_\_\_\_\_
- A) A business person should go to court every time that a commercial contract develops a problem.
  - B) Since most contracts are performed without problems, there is no reason for business people to study the rules of contract.
  - C) Legal issues usually arise only if a commercial relationship becomes unhealthy.
  - D) Most contracts eventually develop problems that require a judge's help.
  - E) Most of the problems that affect commercial contracts are unpredictable and unavoidable.
- 15) Which of the following statements is TRUE? 15) \_\_\_\_\_
- A) When dealing with the intention to create legal relations, courts apply presumptions that cannot be rebutted.
  - B) The existence of an intention to create legal relations is usually obvious.
  - C) An intention to create legal relations never exists in a family context.
  - D) The courts use a subjective test when determining whether or not there is an intention to create legal relations.

E) An intention to create legal relations always exists in a commercial context.

16) Which of the following statements best explains why the courts use an objective test to determine whether or not there is an intention to create legal relations? 16) \_\_\_\_\_

- A) It would not be fair to recognize a contract unless both parties actually intended to be bound by that contract.
- B) The law of contracts is intended to protect reasonable expectations.
- C) The courts are confident that people do not lie in court.
- D) An objective test is used if a party is a company, while a subjective test is used if a party is a human being.
- E) The reasonable person test is only useful for determining subjective intentions.

17) ABC Inc and XYZ Ltd entered into a written agreement for the purchase and sale of paper products. That agreement contained a clause that said: "This arrangement is not entered into, nor is this memorandum written, as a formal or legal agreement, and shall not be subject to legal jurisdiction in the Law Courts." ABC Inc wants the paper products, but XYZ Ltd refuses to deliver them. Which of the following statements is most likely TRUE? 17) \_\_\_\_\_

- A) The agreement is legally unenforceable because the clause in question was an invitation to treat, rather than an offer.
- B) The agreement is legally enforceable because the clause in question demonstrates that the parties had a meeting of the minds.
- C) The agreement is legally unenforceable because the parties did not intend to create legal relations.
- D) The agreement is legally enforceable because it was written.
- E) The agreement is legally enforceable because the clause in question is inconsistent with the rules of offer and acceptance.

18) Which of the following statements is TRUE? 18) \_\_\_\_\_

- A) The courts recognize a difference between an offeree's inquiry and a counter offer.
- B) An offer is automatically terminated as soon as it is accepted by one person.
- C) An invitation to treat indicates that the offeror is willing to receive an acceptance.
- D) The courts use a subjective test to determine whether a statement is an offer or an invitation to treat.
- E) An invitation to treat indicates that the offeree is willing to receive an acceptance.

19) Which of the following statements is TRUE? 19) \_\_\_\_\_

- A) A firm offer can only be revoked in writing.
- B) As master of the offer, the offeree can require acceptance to be made in writing.
- C) An offeree can generally communicate a revocation in the same way that it communicated its offer.
- D) An offer that appeared in a newspaper can only be terminated by a revocation that appears in the same newspaper.
- E) none of the above

20) An offer can be revoked 20) \_\_\_\_\_

- A) if it is contained in an option.
- B) if it was made under seal.
- C) within a reasonable time of acceptance.

- D) if it was a firm offer.
- E) as long as the offeror communicates that intention to a judge.

- 21) Simon believed that he might want to buy certain shares from Melinda in the near future. On June 1st, he therefore paid her \$1000 in exchange for an option to purchase 5000 shares in Acme Inc at \$10 each on or before October 1st. Which of the following statements is TRUE? 21) \_\_\_\_\_
- A) If the market value of the shares immediately dropped to \$5 each and stayed there throughout the option period, Simon would be obligated to buy 5000 shares from Melinda at double their actual value.
  - B) The option would create enforceable obligations only if and when Simon agreed to buy the shares.
  - C) If the market value of the shares immediately increased to \$20 each, Melinda could revoke her offer to sell the shares any time before Simon accepted it.
  - D) Simon will be entitled to enforce the option only if Melinda cannot find any other potential buyers.
  - E) If the market value of the shares immediately increased to \$20 each and stayed there throughout the option period, Melinda might be obligated to sell 5000 shares to Simon at half of their market value.
- 22) The Town of Oxbridge wants to build a new arts centre, but it is not sure which construction company it should hire for the job. Which type of statement is the town most likely to make? 22) \_\_\_\_\_
- A) an option
  - B) a request for invitations to treat
  - C) an irrevocable bid
  - D) a tender
  - E) a call for tenders
- 23) Rabby Inc is an oil exploration company that wants a sophisticated piece of equipment to be designed for its operations in northern Alberta. It therefore wants to receive bids from various engineering companies. In the context of a normal tendering process, which of the following statements is TRUE? 23) \_\_\_\_\_
- A) Rabby Inc will provide an offer to enter into a fair bidding process, issue an invitation to treat offers for the design contract, and accept one engineering company's offer to design the equipment.
  - B) The tendering process requires the parties to satisfy a number of statutory requirements.
  - C) An engineering company should carefully check its cost calculations before submitting its bid because that bid will be turned into Contract A if Rabby Inc accepts it.
  - D) Each engineering company that participates will issue an invitation to treat, an offer, and an acceptance.
  - E) The law will recognize Contract B in order to protect the Rabby Inc while it evaluates the bids that it has received.
- 24) Which of the following statements is TRUE? 24) \_\_\_\_\_
- A) The death or insanity of either the offeror or the offeree will always prevent acceptance.
  - B) A firm offer can be accepted any time before it is terminated.
  - C) An option will never come to an end by the mere lapse of time.
  - D) Neither party can revive an offer once a counter offer has been made.
  - E) There cannot be a "meeting of the minds" if the offeror accepts the offeree's counter offer.

- 25) A bilateral contract \_\_\_\_\_
- A) can occur as a result of a tendering process.
  - B) must always be accepted through spoken words, rather than through conduct.
  - C) always imposes obligations on only one party.
  - D) does not require a meeting of the minds.
  - E) always starts with an invitation to treat.
- 26) The "master of the offer" \_\_\_\_\_
- A) can change the terms of an offer after it has been accepted.
  - B) can insist that silence will be treated as acceptance.
  - C) is always the same party that issued the offer.
  - D) is a description of the offeree, who can either accept or reject an offer.
  - E) is a concept that occurs under a bilateral contract, but not under a unilateral contract.
- 27) On March 1st, Janet, who lives in Edmonton, sent a letter to Tad, who lives in Toronto. The letter said: "I want to buy your car. I'll pay \$10 000 for it. If I don't hear anything more from you, I'll assume that I can drive the car away when I'm in Toronto at the beginning of April." When he received that letter on March 5th, Tad phoned Janet. She was not home, but he left a message on her answering machine that said: "I'm willing to sell my car to you, but only if you promise to pay \$15 000. I need your answer within one week." Janet listened to that message on March 6th. That same day, she sent a second letter to Tad that said, "I received your message. I'll pay \$15 000, but not one cent more." On March 10th, Tad decided that he did not want to sell the car after all. He immediately left a message on Janet's answering machine that said: "The deal is off. I'm keeping my car." An hour later, he received Janet's second letter. Which of the following statements is most likely TRUE? \_\_\_\_\_
- A) A contract was created in Toronto on March 10th.
  - B) A contract was created in Edmonton on March 6th.
  - C) Tad successfully revoked his offer before he received Janet's acceptance.
  - D) The parties do not have a contract because an offer that is received by telephone cannot be accepted by mail.
  - E) The parties do not have a contract because Janet was not entitled to say that her initial offer would be accepted through silence.
- 28) Bentley sent a letter to Helene that said: "I'll sell 5000 widgets to you for \$50 000. This offer is open for acceptance until August 10th." As soon as she received that letter on August 1st, Helene replied with a letter that said: "That sounds like a good deal. I will bring the money to your office on August 15th. I'll also collect the widgets at that time." When Helene arrived at Bentley's office on August 15th, however, he refused to accept the money or hand over the widgets. He explained that he had not yet received her letter. He also said that he was no longer willing to do business with her. Helene's letter finally reached Bentley on August 20th. By that time, the market value of the widgets had increased to \$75 000. Applying the general rules, which statement is most likely TRUE? \_\_\_\_\_
- A) A court would refuse to recognize a contract because it would be unfair to require Bentley to sell \$75 000 worth of widgets for \$50 000.
  - B) Bentley revoked his offer on August 15th.
  - C) A contract was created on August 20th.
  - D) A contract was created on August 1st.
  - E) Bentley's offer was terminated by lapse of time.

- 29) Eric bought a house for \$150 000. He paid \$25 000 immediately and promised the seller that he would pay the remainder in monthly instalments over the next ten years. Eric then told his daughter, Naomi, that he would give the house to her if and when she paid all of the monthly payments. Naomi was reluctant to commit herself to that arrangement because she was not sure if she would always have enough money to make the payments. Eric said to her, "Well, let's see how it goes." Naomi made the monthly payments for six years. Unfortunately, she and her father then began to fight. At that point, he told her that the deal was off. Eric has offered to repay Naomi for all of the payments that she had made, but he insists that the house will always belong to him. The market value of the house has recently and unexpectedly increased from \$150 000 to \$400 000. Which of the following statements is most likely TRUE?
- 29) \_\_\_\_\_
- A) A court would not recognize a contract because no reasonable person would ever offer to sell a \$400 000 house for less than half that amount.
  - B) Eric and Naomi never had a contract because they never had an intention to create legal relations.
  - C) Eric and Naomi never had a contract because he revoked his offer before she completed making the payments.
  - D) Eric is required to give Naomi an opportunity to finish completing the payments, and if she does so, she is entitled to the house.
  - E) Since the parties created a unilateral contract, Naomi still has an obligation to make the monthly payments.
- 30) The case of *Carlill v Carbolic Smoke Ball Co* is best known for dealing with the issue of
- 30) \_\_\_\_\_
- A) invitations to treat.
  - B) insanity.
  - C) counter offers.
  - D) unilateral contracts.
  - E) tenders.
- 31) Quality Kitchens Inc operates a store that sells kitchen utensils and gadgets. In an attempt to increase sales, the store ran an advertisement in a newspaper that featured Juicy Brand Blenders for \$49.99. Martha rushed to the store with the intention of buying a blender. When she arrived however, she was told that while there were no such blenders in stock, the store did have several Swirl Brand Blenders to sell for \$99.99 each. After a bit of investigation, Martha discovered that the store knew that it never had any Juicy Brand Blenders, and that it was simply hoping that shoppers would buy the Swirl Brand Blenders once they got inside the store. Which of the following statements is TRUE?
- 31) \_\_\_\_\_
- A) The advertisement contains an offer of a unilateral contract.
  - B) The store is legally obligated to sell a Juicy Brand Blender to Martha for \$49.99.
  - C) The store is guilty of a bait and switch.
  - D) Martha can force the store to acquire a Juicy Brand Blender and sell it to her for \$49.99.
  - E) The store is required to sell a Swirl Brand Blender to Martha for \$49.99.
- 32) The phrase *quid pro quo* means
- 32) \_\_\_\_\_
- A) something for something.
  - B) a thing of value.
  - C) agreement on point.
  - D) professional services.

E) an intention to contract.

33) The phrase *consensus ad idem* means

33) \_\_\_\_\_

- A) value for the agreement.
- B) offer of agreement.
- C) agreement on that previously mentioned.
- D) one idea in two minds.
- E) less than the value of that.

34) In late April, Harper Corp placed an advertisement in a newspaper that said: "We cater parties. Up to 150 people for only \$3000. No hidden fees or costs." The manager of Martin Inc telephoned Harper and left a voice message that said, "We are calling to place an order to have a party for 150 people on the first of June." The next day, the manager of Harper called Martin and explained that, due to a scheduling conflict, it could not stage a party on the first of June. Martin now says that a contract had been created and that Harper has breached that agreement. Which of the following statements is TRUE?

34) \_\_\_\_\_

- A) Because a contract cannot be created between corporations, Harper Corp cannot be held liable to Martin Inc.
- B) If it did not actually have a scheduling conflict, Harper Corp would be obligated to satisfy Harper Inc's order.
- C) Because an advertisement is presumed to be an invitation to treat, Martin's telephone message probably was not a contractual acceptance.
- D) In classifying the nature and effect of Martin's telephone message, a judge would focus exclusively on the intention that Martin had at the time.
- E) A contract was created between the parties as soon as Martin left its message on Harper's answering machine, regardless of when Harper listened to that message.

35) Garfield owns and operates a wholesale business called the Overseas Sporting Goods Store (OSGS). He recently delivered a box of cricket balls to his twenty-year-old son, Imran, and a box of cricket outfits to another sporting goods store called Hit-for-Six. Because Garfield's store went into financial difficulties shortly after making those deliveries to Imran and Hit-for-Six, questions have arisen regarding the nature of those deliveries. Which of the following statements is TRUE?

35) \_\_\_\_\_

- A) Neither transaction can be a contract unless money was exchanged for the balls and outfits.
- B) Depending upon the facts, a court might be persuaded that the delivery to Hit-for-Six was not made with an intention to create legal relations.
- C) As a matter of law, the transaction with Hit-for-Six could not be an enforceable contract unless it was sufficiently evidenced in writing.
- D) Even if it did not request the outfits, and even though it has not had any communication with Garfield, OSGS will be required to pay for the outfits unless it immediately sends them back to Garfield.
- E) As a matter of law, Garfield could not have had an intention to create legal relations when he entered into the transaction with Imran because Imran is his son.

36) An invitation to treat

36) \_\_\_\_\_

- A) is a part of most tenders.
- B) always occurs in response to an offer.
- C) constitutes a significant risk when it occurs in the context of sale



- negotiations.  
D) is a type of offer.  
E) can only occur within the context of a call for tenders.
- 37) A firm offer is 37) \_\_\_\_\_  
A) always placed under seal.  
B) freely revokable.  
C) the same thing as an option.  
D) always supported by consideration.  
E) always found, among other times, in a tender situation.
- 38) Layton Fine Fashions had a shipment of orange ties that it wished to 38) \_\_\_\_\_  
sell. It therefore placed an advertisement, on Monday, in the town  
newspaper that said, "Fine silk orange ties. The season's hottest fashion  
trend. This week only - Come to Layton Fine Fashions and we  
guarantee that you'll pay no more than \$35." The advertisement was  
such a success that the ties were almost entirely sold out within two  
days. Which of the following statements is TRUE?  
A) The advertisement can be properly classified as an option.  
B) because of the wording of the advertisement, the offer must be  
held open for one week, and Layton will be held liable to every  
potential customer who unsuccessfully tries to purchase one of the  
ties  
C) The situation probably is governed by the special rules that apply  
to tenders.  
D) Layton has nothing to worry about because a court certainly  
would find that the advertisement was an invitation to treat rather  
than an offer.  
E) Layton's offer will be revoked if it places a notice in the same  
newspaper that says "Sorry, gentlemen - the orange silk ties are all  
sold out," even if some disappointed customers failed to read that  
notice before they came to the store.
- 39) As Bennie entered The Big Table restaurant, he noticed a sign that said 39) \_\_\_\_\_  
"All-U-Can-Eat - At Our Reasonable Price." Because the restaurant was  
busy, and because the staff were all tied up with other customers,  
Bennie found a table for himself and then began eating from the self-  
serve buffet. After finishing his meal, he paid an appropriate amount to  
the cashier and left the building. Bennie had not spoken, or been spoken  
to, at any point. Which of the following statements is TRUE?  
A) Assuming that the general rules apply, no contract was formed  
until Bennie paid for his meal.  
B) If a court was required to decide how much Bennie had to pay for  
his meal, it would rely on the concept of *quantum meruit*.  
C) The facts of this case provide a clear illustration of the concept of a  
unilateral contract.  
D) While he undoubtedly was required to pay for his meal, the lack  
of communication means that Bennie's obligation to pay could not  
have arisen in the law of contract.  
E) because he ate without first receiving permission to do so from the  
restaurant, Bennie probably committed a crime

- 40) Hiram Brody worked as a research assistant for Rheem Shareef, who was one of his professors. Rheem regularly asked Hiram to proofread documents that she had written. Hiram therefore was not especially excited when he was asked to proofread a research proposal that Rheem had drafted in connection with a major project for which she had recently received generous funding from the government. He did, however, become very excited when he read paragraph 14 of the document: "I will offer Hiram Brody the position of joint-investigator. That position will require him to both resign from his present post as my research assistant and take a leave of absence from his current studies. Given the nature of the project and given his outstanding qualifications, Hiram will be paid \$8000 per month for a period of eighteen months." After Hiram hurriedly finished proofreading the document, he unsuccessfully tried to contact Rheem to talk about his new position. He learned, however, that she had left town, on very short notice, to be with a sick relative who lived outside of Canada. He then wrote a letter to the Chair of his University Department in which he both resigned as Rheem's research assistant and took a two-year leave of absence from school. He also left a message on Rheem's telephone answering machine in which he said, "I accept. I can't wait to begin working as your joint-investigator." Hiram consequently was very angry when Rheem said, after she had returned from abroad, that she had changed her mind and had hired another person to serve as her joint-investigator. Hiram insists that she cannot do so because he had already accepted her offer. A court, however, would say that Hiram could not create a contract by leaving a telephone message for Rheem because
- A) she had communicated her offer to him in writing.
  - B) she had given the document to Hiram as a proofreading assignment, rather than as a contractual offer.
  - C) it is impossible to accept an offer while the offeror is outside of the country.
  - D) the document contained an invitation to treat, rather than an offer.
  - E) he was already contractually required to work for her as a research assistant.

40) \_\_\_\_\_

**TRUE/FALSE. Write 'T' if the statement is true and 'F' if the statement is false.**

- 41) In order to decide whether the parties intended to create a legally enforceable agreement, the courts apply a subjective "reasonable person" test.
- 42) Agreements created between family members or friends are never legally enforceable.
- 43) Anita was required to enter her co-worker's office to get a file. When she was there, she saw the draft of an email message on the screen of her co-worker's computer. The message was addressed to Anita, but it had not yet been sent. In the message, the co-worker offered to sell Anita her leather jacket for \$100. Once Anita saw the email, she was entitled to accept the offer.
- 44) An offer is always automatically revoked if either the offeror or the offeree dies before acceptance.
- 45) On June 1st, Sasha agreed to sell a car to Elaine for \$10 000. Under the terms of that agreement, she was required to pay the price to him on June 10th and he was required to transfer ownership in the car to her on the same day. Once Sasha and Elaine do so, their contractual relationship will be terminated for all purposes.

41) \_\_\_\_\_

42) \_\_\_\_\_

43) \_\_\_\_\_

44) \_\_\_\_\_

45) \_\_\_\_\_

- 46) As a general rule, the courts will not enforce an agreement that is not in writing. 46) \_\_\_\_\_
- 47) Simon owns 10 000 shares in ABC Inc. He wanted to sell half of them in order to raise \$20 000 in cash. He therefore wrote separate letters to Bronwyn and Gwyneth on June 1st. In each case he said, "I will sell 5000 shares in ABC Inc to you for \$20 000. Please respond by any reasonable means within one week." Bronwyn replied on June 3rd with a letter that said: "I accept your offer." Simon received that letter on June 5th. On June 6th, he received a fax from Gwyneth that said, "I accept your offer." Simon then informed Gwyneth by telephone that he had already sold the shares to Bronwyn. In that situation, there is no contract between Simon and Gwyneth. 47) \_\_\_\_\_
- 48) An advertisement in a newspaper is usually considered an offer if it contains a clear description of the product and a specific price. 48) \_\_\_\_\_
- 49) A statute makes it illegal for an unlicensed individual to "offer for sale a switchblade knife." Mack, who does not hold a licence, owns a store that deals in a variety of items. The front window display case, which is visible from the street, contains a switchblade knife that has a price tag on it. Mack has undoubtedly committed a crime because he does not hold a licence. 49) \_\_\_\_\_
- 50) A person may be held liable under a contract even if they did not personally want to enter into an enforceable agreement. 50) \_\_\_\_\_
- 51) A firm offer is binding upon the offeror if it was given in writing. 51) \_\_\_\_\_
- 52) Marissa had 500 shares in XYZ Corp that she was willing to sell at a price of \$10 each. She wrote a letter to Mark that said, "I will sell 500 shares in XYZ Corp to you at a price of \$10 each. You can accept any time within the next month. This is a firm offer." Marissa signed and sealed that document. When he received that letter two days later, Mark decided to accept Marissa's offer. He wrote a letter to that effect, but then forgot to mail it. Two weeks later, the value of the shares increased to \$20 each. Marissa therefore no longer wanted to sell them at the original price. She telephoned Mark and told him that her offer was revoked. She was entitled to do so. 52) \_\_\_\_\_
- 53) An option is valid only if it is placed under seal. 53) \_\_\_\_\_
- 54) Under the normal tendering process, a party that submits a bid may have obligations under both Contract A and Contract B. 54) \_\_\_\_\_
- 55) Mysty offered to sell her car to Tim for \$15 000. Tim faxed a letter to her that said, "Consider it sold. I'll bring the money to you next Monday when I pick up the vehicle. Of course, for that price, I'll want you to install a new stereo in it." Tim did not hear anything more from Mysty, but he arrived at her door the following Monday with \$15 000 in cash. He was delighted to find that a new stereo had been installed in the car, but disappointed when Mysty refused to accept his money or hand over the vehicle. Mysty is required to do so because there was a valid offer and acceptance. 55) \_\_\_\_\_

**ESSAY. Write your answer in the space provided or on a separate sheet of paper.**

- 56) How is the concept of a meeting of the minds related to the concepts of offer and acceptance? Illustrate your answer by reference to the phenomenon of a cross-offer.

- 57) It is presumed that people who create agreements in commercial contexts do intend to create legal relations, while people who create agreement in social or family contexts do not intend to create legal relations. Provide an explanation for each of those presumptions.
- 58) From a risk management perspective, explain why it may be better for a business to use an invitation to treat, rather than an offer, when seeking someone to buy its product.
- 59) If you insert a coin into a vending machine and receive a chocolate bar in exchange, have you entered into a contract? If so, is that contract unilateral or bilateral? Give reasons for your answer.
- 60) In a normal tendering process, is Contract A a unilateral contract or a bilateral contract? Is Contract B a unilateral contract or a bilateral contract? Give reasons for your answer.
- 61) How does the death of either the offeror or the offeree affect an offer? Provide examples to illustrate your answer.
- 62) As a matter of risk management, how can a business avoid becoming involved in a battle of the forms?
- 63) "If a contractual offer is accepted by conduct, rather than words, the parties must have a unilateral contract, rather than a bilateral contract." Discuss that statement. Use examples to prove your answer.
- 64) You have developed a business proposal called the Law Book Club. Your intention is to send books to club members on a monthly basis. Under the proposal, each member would then be charged a price for the book unless he or she specifically indicated, within a one-week period, that he or she did not wish to purchase the selection. Discuss that proposal in terms of the rules regarding the acceptance of offers.
- 65) Acme Corp is a widget manufacturer that carries on business in Edmonton. Until recently, it sold its products only within the province of Alberta. However, it now wants to sell to customers in Manitoba as well. It is concerned, however, about the effect of the *Alberta Contracts Enforcement Act*. That statute says that only specially licenced companies are entitled to sell widgets under "contracts that are made within the province of Alberta." Acme Corp is not specially licenced. The statute does not, however, affect contracts that are created outside of Alberta. Bearing in mind the general rules regarding offers and acceptances, suggest ways in which Acme Corp can go ahead with its proposal without violating the *Contracts Enforcement Act*.
- 66) On June 1st, Maureen sent a letter to Joel that offered to sell 10 000 shares in Tadpole Inc (a computer software company) for \$5 each. Her letter did not require Joel to respond by any particular date. On June 3rd, Tadpole Inc publicly announced that its engineers had perfected a new technology that would revolutionize the electronic commerce industry. By June 4th, the price of a single share in the company had increased to \$100. On June 6th, Joel returned from his cottage and learned of both Maureen's offer and the price of Tadpole Inc shares. He promptly sent a letter to Maureen that said, "I accept your offer. I will pay a total of \$50 000 for 10 000 shares in Tadpole Inc." Maureen obviously no longer wants to sell her shares under the price that she quoted in her offer. Discuss the factors that a court would consider in deciding whether or not she and Joel had created a contract.
- 67) Explain what it means to say that the offeror is the "master of the offer." Provide

examples to support your answer.

- 68) Rosie placed an advertisement in a newspaper that said: "Five purebred Siamese kittens for sale. \$200 each. First come/first served. Respond in person or by email to Rosie@netmail.com." Gig saw the advertisement and immediately sent an email message that said: "I will pay \$1000 for the five kittens." However, when Gig arrived at Rosie's door with the cash in hand, she refused to hand over the kittens. She explained that while Gig's message was the only reply that she had received in response to her advertisement, she had changed her mind and had decided to keep the kittens for herself. Provide an argument on behalf of Gig that would support the creation of a contract with Rosie.
- 69) List five ways in which an offer can be terminated.
- 70) Gigagar Inc manufactures computer components. It wants to develop a new line of product, but realizes that it cannot do so without a complicated device known as a "digital phalange finger." It has tried to design that device itself, but has failed. It therefore sent a letter to Katenben Ltd, another high-tech company, that said: "We are willing to pay \$100 000 for the design of a digital phalange finger." Katenben Ltd responded by saying that it believed that it might be able to design the device. However, it also indicated that it could not guarantee its results and said that it did not want to commit itself to a potentially impossible project. Gigagar Inc then wrote back in a letter that said: "We understand your concerns. We do not require any guarantee of success. We also appreciate that, given the complexity of the project, you may decide to drop the matter after some preliminary investigations. Nevertheless, our offer stands—we will pay \$100 000 if you successfully design a digital phalange finger." Katenben Ltd spent the next six months and a great deal of money trying to design the device. As it neared successful completion, however, Gigagar Inc announced that its own engineers had experienced an unexpected breakthrough and had successfully created a digital phalange finger. Gigagar Inc therefore told Katenben Ltd that its offer of \$100 000 was revoked. Three days later, Katenben Ltd also successfully produced a working digital phalange finger. It now demands payment of \$100 000. Is it entitled to that money? Give reasons for your answer.

- 1) C
- 2) E
- 3) A
- 4) A
- 5) D
- 6) E
- 7) E
- 8) C
- 9) D
- 10) E
- 11) B
- 12) B
- 13) B
- 14) C
- 15) B
- 16) B
- 17) C
- 18) A
- 19) E
- 20) D
- 21) E
- 22) E
- 23) A
- 24) B
- 25) A
- 26) C
- 27) B
- 28) D
- 29) D
- 30) D
- 31) C
- 32) A
- 33) C
- 34) C
- 35) B
- 36) A
- 37) B
- 38) E
- 39) B
- 40) B
- 41) FALSE
- 42) FALSE
- 43) FALSE
- 44) FALSE
- 45) FALSE
- 46) FALSE
- 47) FALSE
- 48) FALSE
- 49) FALSE
- 50) TRUE
- 51) FALSE
- 52) FALSE
- 53) FALSE
- 54) TRUE
- 55) FALSE
- 56) A contract cannot be formed unless there is a meeting of the minds. The parties must have, at least according to the reasonable person test, agreed to enter into a contract on certain terms. That meeting of the minds is achieved through the concepts of offer and acceptance.

The offeror indicates a willingness to enter into legally enforceable agreement on certain terms. The offeree agrees to enter an agreement on those terms by accepting them. A contract is not created on the basis of cross-offers. Cross-offers occur when both parties communicate offers to enter into a contract on the same terms. Although the parties agree on the terms, there is no meeting of the minds because neither party accepted the other's offer. Each party expected its offer to be accepted—not to be mirrored by a corresponding offer.

- 57) This answer does not appear directly in the text, but it should be reasonably apparent to students. (The issue is discussed further in the Additional Teaching Suggestions section of the *Instructor's Manual*.)

Legal presumptions generally reflect actual fact. That appears to be true in the context of intentions to create legal relations. In the commercial context, people expect that their agreements will be enforceable in law. One reason for that expectation stems from the fact that most commercial parties are unrelated and at arm's length. Moreover, their agreements are created in a competitive environment in which each party seeks to advance its own interests. Consequently, one party is normally willing to improve its own position, even at the expense of imposing a burden upon the other party. Furthermore, given the context of their agreement and the nature of their relationship, neither party can confidently rely upon informal forces—such as goodwill or compassion—for the enforcement of an agreement. Business people may not always act selfishly. But nor can they be expected to honour a promise merely on moral grounds.

The situation is much different in a social or family context. First, partially because the courts have not historically enforced agreements in such circumstances, the parties do not normally reasonably expect that their promises are legally enforceable. Second, the social or family context is not marked by the same sort of competitiveness and selfishness that characterizes the business world. Third, informal forces—such as goodwill or compassion—are more often effective in the social or domestic context. Fourth, the courts historically have been concerned that the general recognition of an intention to create legal relations in such circumstances would open the floodgates to petty litigation. A promise to take out the trash or give up drinking might become the subject of a lawsuit. And finally, as discussed in the *Instructor's Manual*, it has occasionally been suggested that the courts traditionally refused to recognize an intention to create legal relations in domestic contexts in an effort (possibly subconscious) to allow men to maintain control over women and children.

- 58) The danger occurs if the business has a limited number of products that it can sell. Before it is revoked or otherwise terminated, an offer can be accepted by any number of offerees. Consequently, there is a danger that a business will receive more acceptances—and be bound to more contracts—than it has products to satisfy. In contrast, an invitation to treat is simply an invitation to receive offers. In that situation, the business remains in control of the process. It can limit the number of contracts that are created by limiting the number of acceptances that it provides in response to the offers that it received from prospective customers.
- 59) A contract has been created. The vending machine display is an offer to enter into a unilateral contract. You accept that offer by performing the stipulated act of acceptance when you insert a coin into the machine. At that point, you no longer have any obligations. There are, however, obligations on the other side of the agreement. You are entitled to receive a chocolate bar.
- 60) Contract A is a bilateral contract. Although it is accepted by an act, that act constitutes acceptance by conduct of an offer of a bilateral contract. Contract A must be bilateral because it imposes obligations on both parties. The tenderer, for instance, is obligated to not revoke its bid while that bid is being considered. Likewise, the party that called for tenders has an obligation to treat all bids fairly. Contract B is also a bilateral contract because, once again, both parties have outstanding obligations. In most situations, one party will be required to build something and the other party will be required to pay a price.

That is the answer that students should provide. Curiously, however, Estey J seemed to

suggest in the leading case of *R v Ron Engineering & Construction (Eastern) Ltd* (1981) 119 DLR (3d) 267 (SCC) that Contract A was "unilateral." Given that Contract A imposes obligations on both parties, however, Estey J was either in error or he was using the phrase "unilateral contract" in an idiosyncratic way.

- 61) An offer is usually automatically revoked, by operation of law, if either the offeror or the offeree dies before it has been accepted. A contract requires a meeting of the minds to be achieved through the process of offer and acceptance. It is generally thought, however, that a dead person cannot participate in that process. On policy grounds, however, there is no reason why death of either party should necessarily preclude the formation of a contract unless the contract required the party to personally perform. For instance, an offer to sell land can easily be performed by either the offeror or the offeror's estate. An offer to star in a Broadway play, however, cannot sensibly be performed by the offeror's estate.
- 62) Standard form contracts serve important purposes. They allow a business to operate more quickly and more efficiently because they obviate the need to repeatedly negotiate contracts that deal with the same subject matter. Furthermore, they provide a form of risk management. Once a business has found a form that avoids legal problems, it can use that form repeatedly in the future. However, the use of standard forms itself can create a risk management problem. A battle of the forms occurs when each party claims to have entered into a contract on the basis of its own standard form document and when those documents actually differ. The danger is heightened when the parties unthinkingly rely upon their standard form documents and simply assume that everything will proceed smoothly. From a risk management perspective, it is critically important for the parties to carefully read all of the documents that pass between them. If either party fails to do so, it may find that it is bound to terms that it did not subjectively agree to or that there is really no contract at all.
- 63) The statement is not correct. A bilateral contract is created when the offeree gives a promise in exchange for the offeror's promise. That exchange of promises usually occurs when the offeree responds to the offeror's offer by saying, either orally or in writing, "I accept" or "We have a deal" or words to that effect. However, it is also possible for the offeree to give its promise, and to thereby accept the offeror's offer, by using conduct rather than words. For instance, if the offeror said, "I will pay \$5000 for your computer," the offeree might respond by nodding agreeably and shaking hands. In such circumstances, the reasonable person would likely interpret the offeree's conduct as providing a promise to sell the computer and, therefore, as acceptance of the offeror's offer.

The opposite is true for unilateral contracts, where the offeror gives a promise in exchange for an act. In most situations, the offeree is required to conduct itself in a certain way (e.g. by finding a lost dog or by inhaling carbolic smoke dust). In some situations, however, the stipulated act of acceptance may take the form of words. That would be true, for instance, if the offeror said, "I will pay \$5000 to anyone who can tell me where I can buy an antique widget."

In either case, students should focus on the nature of the contract (a promise exchanged for a promise or a promise exchanged for an act), rather than on the precise form in which the offeree accepted (e.g. through words or conduct).

- 64) The question raises the issue of silence as acceptance. As a general rule, the offeror cannot say that silence will be construed as acceptance and thereby bind an offeree to a contract on the basis of a simple lack of response. That might seem to suggest that this proposal could not work as a member would be required to purchase a book simply because he or she did not actively reject it. There is, however, an exception of sorts to that rule. While silence alone cannot be acceptance, silence can be acceptance if it is coupled with something else. The proposal therefore would work if members were required to agree, when they joined the Law Book Club, to pay for books that they receive and do not return within the stipulated period. Top students might also be expected to appreciate the policy considerations underlying the rules in this area. As a matter of freedom of choice, an offeree should not be held liable on the basis of mere silence. The offeror should not have the power to force the offeree to either act in a certain way or enter into a contract. That concern is absent, however, if the offeree previously exercised his or her freedom of choice to allow silence to be construed as acceptance.
- 65) There are at least two ways in which Acme Corp can sell its widgets in Manitoba without



violating the *Contracts Enforcement Act*.

First, Acme Corp could ensure that its newspaper and web site advertisements contain offers and not merely invitations to treat. It could then insist that acceptances be communicated by mail. Under the general rule, a posted acceptance is effective when and where it is sent. For customers in Manitoba, that would mean that the contracts would be created in that province rather than in Alberta.

Second, Acme Corp could ensure that its newspaper and web site advertisements contain invitations to treat and not offers. Any communications that it received from customers in Manitoba therefore would be offers that would be open to its own acceptance. It could then communicate its acceptance in an instantaneous manner (*e.g.* by telephone or perhaps fax). Under the general rule, an acceptance communicated by instantaneous communication is effective when and where it is received. With respect to offerors in Manitoba, that would mean that the contracts would be created in that province and not in Alberta.

- 66) This question does not require students to come to a specific substantive answer. Rather, it merely requires them to identify the operative test and to list the relevant factual considerations.

As master of the offer, the offeror is entitled to place a time limit on the life of the offer. Maureen did not do so in this case. Nevertheless, as a matter of law, her offer is only open for a "reasonable period." The length of that period would be decided by using the reasonable person test and by looking at all of the circumstances of the case. On these facts, the court undoubtedly would be influenced by the apparent volatility of the market. That would be especially true if the fluctuation in the price of Tadpole Inc's shares was not entirely unexpected and if similar swings previously had occurred with respect to other companies' shares. The court would also be influenced by general trade practices. It may be that, at least in the high-tech industry, because of the volatility of share prices, offers generally are open only for a short period (*e.g.* two or three days). On the other hand, the court might be influenced by the fact that Maureen communicated her offer by mail. If an offer is intended to be open only for a short period, it normally would not be advisable to send it by post, especially since a posted offer is open to a posted acceptance. The delivery of two letters can sometimes take a considerable amount of time.

- 67) The offeror is the master of the offer in the sense that he or she can generally control the effect of an offer. First, as master of the offer, the offeror most importantly is entitled to determine the contents of the offer. He or she can determine the subject matter of the proposed transaction, the price required from the offeree, and the terms of the proposed contract. Second, as master of the offer, the offeror is not required to issue an offer. And if an offer is issued, the offeror is generally entitled to revoke it any time before acceptance (as long as the offer was not provided under an option). Third, as master of the offer, the offeror can require acceptance to be given in a certain form—*e.g.* through written document. Fourth, the offeror can also vary the general rules regarding acceptance. For instance, while the postal rule states that a mailed acceptance is usually effective when and where it is sent, the offeror can demand that a mailed acceptance will be effective only when and where it is received.
- 68) As a general rule, a newspaper advertisement is merely an invitation to treat, rather than an offer. The policy behind that rule is that an offeror should not be unfairly exposed to a potentially unmanageable number of contracts. That concern arises because an offer generally is open for acceptance unless and until it is terminated—even if the offeror has already sold the subject matter of the proposed contract. For instance, if Rosie had simply placed an advertisement that said, "Purebred siamese kittens for sale—\$200 each," she might have received more valid acceptances than she had kittens to sell. In this case, however, the situation is somewhat different. As master of the offer, Rosie has limited the offeree's ability to accept her offer by saying "First come/first served." That phrase would prevent an offeree from accepting her offer after she had already sold the kittens. For that reason, a court might—but not necessarily would—decide that her advertisement contained an offer, rather than an invitation to treat.
- 69) An offer can be terminated by: (i) revocation of the offer by the offeror before acceptance, (ii) lapse of either a stipulated time or a reasonable time, (iii) death or insanity of either the

offeror or the offeree, (iv) rejection of the offer by the offeree, and (v) counter offer by the offeree to the offer.

- 70) Courts generally prefer bilateral contracts, rather than unilateral contracts, as a way of protecting the expectations of both parties. Nevertheless, it seems clear on these facts that Gigagar Inc gave an offer of a unilateral contract. That interpretation is supported by the fact that Katenben Ltd did not want to be obligated to carrying out the project, as it presumably would be under a bilateral agreement.

Generally speaking, an offer can be revoked any time before it is accepted. Furthermore, an offer for a unilateral contract is accepted only once the offeree has fully completed the stipulated act of acceptance. In this case, the stipulated act of acceptance was the successful creation of a digital phalange finger. It therefore would appear that Gigagar Inc communicated its revocation before Katenben Ltd completed its act of acceptance.

However, a court might try to avoid a result that would deprive Katenben Ltd of any reward for its efforts and, indeed, its success. A court therefore might find that Gigagar Inc implicitly made two offers for two unilateral contracts. The main contract would contain a promise to pay \$100 000 in exchange for the successful design of the device. The second contract would contain a promise to not revoke the offer for the first contract in exchange for work aimed at accepting the first contract. In other words, once Katenben Ltd began to work on the design of the device, Gigagar Inc could not revoke its offer.