

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

- 1) A contractual term _____
 - A) is a promissory statement.
 - B) does not impose a contractual obligation.
 - C) is made with the intention to induce a contract.
 - D) is a form of misrepresentation.
 - E) all of the above

- 2) A pre-contractual representation _____
 - A) will always induce a contract.
 - B) is a voluntary agreement to do something in the future.
 - C) creates a legally enforceable obligation.
 - D) is a promissory statement.
 - E) can be made by words or conduct.

- 3) A misrepresentation is _____
 - A) a kind of mistake.
 - B) actionable if it induces a contract by falsely characterizing the consequences of a law.
 - C) actionable whenever it turns out to be false.
 - D) an opinion that turns out to be untrue.
 - E) actionable if it induces a contract by misdescribing another's future action.

- 4) Reeni was interested in purchasing a car. After searching the classified ads, she found a car in which she was interested, being sold by Ethan whom she had never met. Ethan knew that his car was in need of new tires, a new muffler, and would soon need a new clutch and a brake job. Consequently, he was hoping that, when they met, Reeni wouldn't ask too many questions. When she wanted to go for a test drive, Ethan gave her the keys and said that he trusted her to go alone and that doing so would allow her to test it in a less inhibited fashion. Really, he just didn't want her to ask about any of the car's problems. Reeni took the car by herself and, on the basis of its performance, bought it at Ethan's listed price, no questions asked. Which of the following statements is most likely TRUE?
 - A) By failing to accompany Reeni in the test drive, Ethan breached a duty of utmost good faith.
 - B) Ethan owed Reeni a special duty to disclose the problems with his car.
 - C) Silence can never amount to a misrepresentation.
 - D) Ethan is not required to disclose the car's problems during pre-contractual negotiations.
 - E) Reeni would succeed in an action against Ethan for misrepresentation.

- 5) When will silence distort a previous assertion? _____
 - A) when a statutory provision requires disclosure
 - B) when a half-truth is told
 - C) whenever a change in circumstances occurs
 - D) whenever a change in circumstances does not affect the accuracy of a representation
 - E) when a contract requires a duty of utmost good faith

- 6) The possible consequences of actionable misrepresentation include _____
 - A) a damage award for breach of contract.
 - B) the remedy of an injunction.

- C) the remedy of rescission.
- D) the remedy of an incision.
- E) none of the above

7) In order to get Susannah to buy his cottage, Paul tells her that he has recently spent \$100 000 in repairs that make its foundations flawless. In love with the cottage and in reliance on Paul's representation, Susannah impulsively trades her condo in the city for the cottage without asking for a home inspection. Two months after she moves into the cottage, Susannah hears a creaking noise during a windy evening. The next morning, she has a home inspector over to take a look. He tells her that there have been no repairs on the house in the last twenty years and that the foundation is in a dangerous state of disrepair. She calls Paul to try to get her condo back but finds out that he has sold the unit and has moved to Bermuda with all of his assets. In seeking an order for restitution,

7) _____

- A) Susannah will most likely fail because her living in the cottage for two months is an affirmation of Paul's misrepresentation.
- B) Susannah will most likely succeed, and the court will therefore award damages for breach of contract.
- C) Susannah will most likely fail, as Paul's misrepresentation is clearly not actionable.
- D) Susannah will most likely fail because courts are unlikely to grant rescission when the rights of third parties are affected.
- E) Susannah will most likely succeed, as Paul's misrepresentation is clearly actionable.

8) Which of the following cannot result in a damage award?

8) _____

- A) fraudulent misrepresentation
- B) innocent misrepresentation
- C) negligent misrepresentation
- D) silence that distorts a previous assertion
- E) breach of contract

9) Samuel and Ben are negotiating the sale of a sailboat. Samuel expresses an interest in the boat but emails Ben a list of five questions that he wants answered before agreeing to purchase it. Ben responds with full answers to four of the questions. Samuel emails back and says he will buy the boat on Saturday as long as his remaining question (about the state of its hull) checks out okay. Ben promises to check with his boat mechanic and respond before they are scheduled to meet on Saturday. Both men get busy. Ben checks with his mechanic but innocently forgets to report back to Samuel that there is a crack in the hull. Samuel forgets that there was one question outstanding. Saturday comes and the transaction takes place. If it turns out that there is a significant problem with the hull of the boat, which of the following is TRUE?

9) _____

- A) Samuel is stuck with the boat.
- B) If he sues, Samuel will likely obtain a damage award.
- C) Ben may seek to get his boat back even if Samuel wants to keep it.
- D) If he sues, Samuel will likely succeed in a tort action.
- E) Ben may have to take the boat back and return Samuel's money.

- 10) Diamond Dave decides to sell his donut franchise to Fast Freddie. Freddie has a number of questions about the receivables. Diamond Dave says that all of the answers to his questions can be found in the corporate ledger. Instead of inspecting the ledger, Fast Freddie hires an accounting firm to do a forensic audit of the business. Relying on the audit, Freddie buys the business. Which of the following explains why Freddie would fail to obtain rescission if he later decided he did not like the transaction? 10) _____
- A) Diamond Dave was not reckless with his ledger.
 - B) Diamond Dave's corporate ledger was not relied upon by Freddie.
 - C) Diamond Dave did not make any false statements.
 - D) Diamond Dave was not careless with his ledger.
 - E) all of the above
- 11) Contracts of utmost good faith 11) _____
- A) do not require notification of any changes to previously supplied information.
 - B) are the only contracts that do not require any kind of disclosure.
 - C) arise when one party is uniquely situated to know the material facts.
 - D) have no bearing on the law of misrepresentation.
 - E) none of the above
- 12) Which of the following is NOT an example of a disclosure required by statute? 12) _____
- A) disclosure of material facts pertaining to the sale of securities
 - B) disclosure of a serious medical condition when obtaining life insurance
 - C) disclosure of material facts by a financial officer of a corporation
 - D) disclosure of material facts by an accountant when she sells her car to a client
 - E) disclosure of significant liabilities that exist when making a domestic contract
- 13) Suppose that a term is not the result of a statement expressed by either of two negotiating parties. Which of the following is TRUE? 13) _____
- A) It could never be a term of any contract between them.
 - B) It could only be a term of a contract between them if it is an implied term.
 - C) It could only be a term of a contract between them if it is implied by a court.
 - D) It could only be a term of a contract between them if both parties subsequently affirm the term.
 - E) It could only be a term of a contract between them if one party subsequently affirms the term.
- 14) An express term 14) _____
- A) sometimes arises as a result of an operation of law.
 - B) is a statement made by one of the parties that a reasonable person would believe was intended to create an enforceable obligation.
 - C) is only enforceable if one of the parties agrees to it in writing.
 - D) is a statement made by one party to induce the other party to enter into an agreement.
 - E) all of the above
- 15) Business people often sign written agreements on the assurance that some of the terms will not be enforced. To sign under these conditions is imprudent because of 15) _____
- A) the absurdity rule.

- B) the parole evidence rule.
- C) the golden rule.
- D) the *contra proferentum* rule.
- E) all of the above

- 16) Ejay wants a court to consider oral evidence about a written contract in order to resolve a dispute about an ambiguous term in one of her client's contracts. She decides that she will characterize the facts as giving rise to a collateral contract. Which of the following is TRUE? 16) _____
- A) Ejay is a bad lawyer because a collateral contract can never circumvent the rule preventing oral evidence from being used to prove the terms of a written contract.
 - B) Ejay is a good lawyer because the collateral contract doctrine is the only way to have her oral evidence heard.
 - C) Ejay is an inefficient lawyer because there is a more direct way of having the court consider her oral evidence under the circumstances.
 - D) Ejay is a bad lawyer because the collateral contract doctrine was overturned years ago.
 - E) none of the above
- 17) An ambiguous contractual term 17) _____
- A) never results in litigation.
 - B) will always have more than one plausible meaning.
 - C) always results in litigation.
 - D) will always have only one plausible meaning.
 - E) none of the above
- 18) Which of the following approaches to contractual interpretation will ONLY SOMETIMES give words their plain, ordinary meaning? 18) _____
- A) the contextual approach
 - B) the golden rule
 - C) the *contra proferentum* rule
 - D) the literal approach
 - E) none of the above
- 19) Which of the following is NOT true of the *contra proferentum* rule? 19) _____
- A) It provides an incentive for the author of a term to draft it in clear and unambiguous language.
 - B) It attributes to a term the meaning least favourable to its author.
 - C) It is always the best means of resolving an ambiguous term.
 - D) It is a rule of contractual interpretation.
 - E) none of the above statements are true.
- 20) Which of the following best describes an implied term? 20) _____
- A) It is sometimes inserted into a contract by a court.
 - B) It is a statement expressed by one of the parties.
 - C) It cannot create an enforceable legal obligation.
 - D) It can be used to rectify a mistake in a contractual document.
 - E) none of the above
- 21) Even if a lease does not expressly say that the item leased must come back in the same condition in which it went out (subject to reasonable wear and tear), a court will imply such a term. Courts will do so on the basis that such a term 21) _____
- A) is in line with industry standards.
 - B) was clearly desirable.
 - C) was clearly intended by both parties.
 - D) would improve the contract.

E) all of the above

- 22) A court will find an implied term 22) _____
- A) in order to rewrite the contract so that it is a better deal.
 - B) only if the parties had expressed it but forgot to write it down.
 - C) only if a statute tells it to.
 - D) when it is necessary to bring the contract in line with the presumed intentions of the parties.
 - E) whenever it wants.
- 23) Denise is a farmer in Prince Edward Island. Recently she purchased a new tractor from her local dealer. Although her contract of sale contained a large number of standard terms and conditions, it did not guarantee that the tractor would function properly. Assume that the tractor malfunctions and Denise tries to sue for breach of contract. Which of the following is most likely TRUE? 23) _____
- A) Denise would fail no matter what.
 - B) Denise would fail unless the court was willing to imply a term.
 - C) Denise would fail unless she was able to prove a collateral contract.
 - D) Denise would fail because no term in the contract was breached.
 - E) none of the above
- 24) Consumer protection laws in several jurisdiction including Manitoba, Northwest Territories, and the Yukon 24) _____
- A) has been repealed.
 - B) makes it a crime to sell used goods.
 - C) implies a term that goods being sold are new unless otherwise described.
 - D) makes it a tort to sell used goods.
 - E) implies a term that goods being sold are used unless otherwise described.
- 25) Standard form agreements 25) _____
- A) always balance the interests of both parties.
 - B) often contain language that has been refined and tested over the years.
 - C) often are more time-consuming than negotiating the terms of a new contract.
 - D) are rarely offered on a take-it-or-leave-it basis.
 - E) all of the above
- 26) Asha sells bottled spring water. Unlike other water vendors who purify their water, Asha is marketing her product to those who want to drink spring water in its natural state. Although her water source is pure and clean, she is concerned that some consumers might have allergic reactions to trace elements in the unpurified water, so she designs a clause to exclude her company from liability. The clause indicates that, by opening and drinking the water, consumers are indicating that they have read and understood the warning that the water has not been purified and, as such, waive all liability for any allergic reactions resulting from drinking the water. Which of the following is most likely TRUE of Asha's strategy? 26) _____
- A) It will fail because it is never possible to exclude tort liability by way of contract.
 - B) It will succeed as long as the label on the bottle constitutes reasonable notice of the exclusion clause.
 - C) It will only succeed if the distributor personally points out to the consumer that by drinking the water they are waiving their right

- to sue.
- D) Reasonable notice by itself is insufficient. The exclusion clause must also be written in clear and unambiguous language.
- E) none of the above
- 27) A contract requires reasonable notice of its terms 27) _____
- A) whenever a signature is required.
- B) only when its terms are on the back of a ticket.
- C) only when its terms are onerous or unusual.
- D) only in the case of exclusion clauses.
- E) none of the above
- 28) A ticket contract is 28) _____
- A) enforceable only if the terms on the back of the ticket are initialed by the customer.
- B) enforceable only if the customer knew about the terms on the back of the ticket.
- C) enforceable only if the terms on the back of the ticket have actually been read by the customer.
- D) enforceable only if the terms are clear and reasonable notice of the terms was given when the contract was made.
- E) never enforceable.
- 29) Molly decides to sell her house by way of a private sale. After advertising and showing the house, she receives a written offer from an interested purchaser using a standard form document assembled from a do-it-yourself legal kit. Molly studied the offer and wished to change two of its terms. The interested purchaser agreed to the changes and reflected those changes in the document. Molly signed the document and cashed the down payment cheque. Two days later, Molly spotted an extremely onerous and somewhat unusual term that was not brought to her attention when reading the document. As a result, Molly wishes to cancel the contract. Which of the following is most likely TRUE? 29) _____
- A) Molly will fail but only because she cashed the cheque.
- B) Molly will succeed because she was not given reasonable notice of the onerous and unusual term.
- C) Molly will succeed because the term was onerous and unusual.
- D) Molly will fail because she is bound by her signature.
- E) none of the above
- 30) Which of the following statements is FALSE? The use of plain language instead of legalese 30) _____
- A) is always detrimental to companies that use standard form contracts because it raises customer awareness of unfavourable clauses.
- B) was strategically avoided in the past.
- C) can be mandated by law.
- D) is required by the official *Communications Policy of the Government of Canada*.
- E) can reduce the amount of time a company spends answering questions from customers about confusing terminology.
- 31) The BEST way for a company to manage the risk associated with standard form agreements is to 31) _____
- A) conceal ambiguous language at the end of the agreement to avoid customer confusion.
- B) require customers to clearly indicate their agreement to be bound by any onerous or unusual terms.
- C) frequently redesign the standard form agreement to ensure that

- customers must read through the form each time they sign it.
- D) teach employees the meaning of onerous and ambiguous contract terms.
- E) all of the above

32) Which of the following statements is TRUE with respect to misrepresentations? 32) _____

- A) A fraudulent misrepresentation may trigger rescission but not damages.
- B) A negligent misrepresentation may trigger damages but not rescission.
- C) An innocent misrepresentation may trigger an award of damages.
- D) A pre-contractual misrepresentation may trigger relief in contract but not relief in tort.
- E) An innocent misrepresentation may be rescinded.

33) An exception to the parol evidence rule may arise if 33) _____

- A) the plaintiff will not be able to successfully claim damages otherwise.
- B) both parties want to rescind the contract.
- C) the judge is convinced that the contract would be more effective if it contained additional terms.
- D) additional information is required in order to rectify a mistake.
- E) none of the above.

34) Which of the following statements is TRUE with respect to a contractual clause that protects one party from the consequences of breach? 34) _____

- A) Such clauses are enforced only if they are the product of equal bargaining power.
- B) Such clauses are enforced only if they appear in written and signed contracts.
- C) Such clauses may reduce or limit liability, but they cannot entirely exclude liability.
- D) Such clauses are invalid if they are written in ambiguous language.
- E) Depending upon the circumstances, such clauses may be enforced even if the party who wants to sue for breach did not read the clause.

35) Jacqui purchased a business from Dickie. During the pre-contractual negotiations, Dickie said, based on past experience, he expected that the business would earn approximately \$1 000 000 per year. After that statement was made, but before the contract was signed, Dickie learned that the manufacturer that supplied his business with the materials that it needed was going out of business. Dickie realized that, because of the need to purchase materials from another manufacturer, his business could only be expected to earn \$700 000 per year, regardless of whether it was run by himself or by Jacqui. Afraid that that news would scare off Jacqui, Dickie decided to keep the new information to himself. Jacqui completed the purchase of Dickie's business, but was very disappointed when it earned only \$700 000 in its first year. She now wants to sue Dickie. Which of the following statements is TRUE? 35) _____

- A) Jacqui cannot successfully sue unless she can prove that Dickie's statements regarding the business's profits became a term of their contract.
- B) Dickie cannot be held liable because his statement was an opinion about the future.
- C) Dickie cannot be held liable because Jacqui ought to have independently confirmed his statements.

- D) While Jacqui probably is entitled to damages, she cannot possibly receive rescission because the contract has already been completed.
- E) none of the above

- 36) Leilani purchased a business from Troy. She is now interested in the possibility of taking legal action on the basis of an alleged misrepresentation that occurred during the negotiations leading up to the contract. Which of the following statements is TRUE? 36) _____
- A) The contract can be rescinded only if Troy made a fraudulent misrepresentation.
 - B) because the courts will not punish a person who did not breach an obligation, rescission is not available if Troy merely made an innocent misrepresentation
 - C) because the purpose of rescission is to reverse the effects of a transaction, Leilani will not be able to receive court costs if she rescinds the agreement
 - D) If Troy made a negligent misrepresentation, Leilani may choose to sue in tort rather than rescind the contract.
 - E) Leilani cannot get rescission because she can only sue in tort.
- 37) Asif purchased a business from Olga. During negotiations leading up to the contract, Olga made an innocent misrepresentation. As a result of that statement, Asif has discovered that the business is far less valuable than he expected. Which of the following statements is TRUE? 37) _____
- A) Asif is not entitled to rescission unless he can prove that Olga's innocent misrepresentation was the only, or at least the most important, reason for him entering into the contract.
 - B) Rescission is not available for an innocent misrepresentation.
 - C) Asif is not entitled to rescind the contract if, before entering into the contract, he carelessly failed to discover the error contained in Olga's innocent misrepresentation.
 - D) Asif is entitled to rescission even if, before entering into the contract, he investigated the true state of affairs that Olga addressed in her innocent misrepresentation.
 - E) none of the above
- 38) Ranjit purchased a complex computer system from Compu-Less. Although Compu-Less had specially manufactured the computer to Ranjit's personal specifications, the sale was created on the basis of a standard form agreement that the company uses when customers buy mass-produced computer units. A dispute has now arisen between Ranjit and Compu-Less. Which of the following statements is TRUE? 38) _____
- A) because of the parol evidence rule, the parties' contract will not include the warranties contained in the *Sale of Goods Act* unless the contract either repeats those warranties or at least refers to them
 - B) The golden rule of interpretation states that an ambiguous term must be interpreted in the way that most benefits the party that did not draft the contract.
 - C) The court may refuse to add an implied term to the contract even if that term would make the contract much better.
 - D) As long as the language of the contract is sufficiently clear, the parties may have excluded all possible statutory conditions and warranties.
 - E) The strict terms of the contract will not be enforced if, before Ranjit signed the agreement, the company's sales manager said, "Don't worry about the legal mumbo-jumbo. We stand behind our products."

- 39) Preetpal purchased a ticket to ride on a train from Toronto to Ottawa. After she had boarded the train, she was asked if she wished to place her outerwear and backpack into a storage unit on the train. Because she did not want to be encumbered during her journey, she accepted the offer. She was given a "small baggage claims" ticket before handing over her coat and belongings. When the train arrived in Ottawa, and Preetpal tried to collect her coat, she was told that it could not be found. When she threatened to sue, the person who was representing the train told Preetpal that the back of the "small baggage claims" ticket she received excluded liability for lost or stolen goods. Regardless of any other facts, Preetpal can be bound by the exclusion clause only if
- A) it was explained to her when she first bought her train ticket.
 - B) was written in a font that was larger than the font that otherwise appeared on the ticket.
 - C) the clause was written in a language that she can read.
 - D) she actually read it.
 - E) none of the above.
- 40) Justice Howe, a member of the Supreme Court of Canada, is deciding a case that deals with a complicated commercial agreement between two sophisticated and experienced companies. The resolution of the case depends upon the interpretation of several clauses in that agreement. Which of the following statements is TRUE?
- A) The general rules governing the interpretation of contracts do not apply in the Supreme Court of Canada because that court is expected to arrive at the fairest result regardless of the rules.
 - B) The golden rule of interpretation, which says "do unto others as you would have others do unto you," requires the judge to adopt whichever interpretation of the contract that favours both parties equally.
 - C) Given the nature of the parties and the contract, Justice Howe cannot decide that their agreement contains implied terms.
 - D) The contextual approach to interpretation requires a particular clause to be interpreted exclusively by reference to its own terms and the terms of the other clauses within the contract.
 - E) In order to decide the case, the judge may need to know which party drafted the agreement.

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

- 41) Pre-contractual representations can result in an action for breach of contract. 41) _____
- 42) A contractual promise cannot be false at the time it is uttered. 42) _____
- 43) A misstatement of law is identical to a misstatement about the consequences of that law. 43) _____
- 44) Cavell is selling his CD burner to an acquaintance. Cavell knows that the CD burner has a defect, generating CDs that skip. The acquaintance asks Cavell for his opinion of the machine just before the purchase is to take place. All Cavell says is "I think it is totally awesome." Cavell has made a misrepresentation. 44) _____

- 45) Steve, Sheryl's doctor, is selling some of the artwork from his office. Sheryl says she has always been interested in his Thomson piece and asks how much he wants for it. Although the painting is not actually a Thomson original, Steve knows which one she means and tells her that he paid \$3000 but will take \$1000. (That much is true, but he doesn't say anything at all to indicate that it is NOT a Thomson original). By his silence, Steve has engaged in actionable misrepresentation. 45) _____
- 46) Damages for actionable misrepresentation are not available in the domain of contract law. 46) _____
- 47) A person who investigates rather than relying on a pre-contractual statement will usually succeed in an action for misrepresentation whenever the statement turns out to be untrue. 47) _____
- 48) If Vasaliki is induced to enter into a contract as a consequence of a statement made by Lampros with reckless indifference as to its truth, Vasaliki has an automatic right to rescission and may also get damages if the statement is fraudulent. 48) _____
- 49) Restitution requires a giving back and a taking back on both sides. 49) _____
- 50) Restitution is always possible. 50) _____
- 51) Negligent misrepresentation occurs when a person is reckless. 51) _____
- 52) Parol evidence cannot be used to resolve ambiguous terms. 52) _____
- 53) Entering into a collateral contract is sometimes done for evidentiary reasons (reasons of proof). 53) _____
- 54) The golden rule always requires an adoption of the contextual approach to contractual interpretation. 54) _____
- 55) Someone who signs a document when in a hurry is never bound by his signature. 55) _____

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

- 56) What does it mean to say that a pre-contractual representation is NOT promissory in nature?
- 57) Personal opinions are not usually treated as misrepresentations. Very briefly explain why they are not and describe a situation where it is risky to offer a personal opinion.
- 58) A purchaser explains to his real estate agent that he wants to buy a house containing a suite that would generate rental income. The agent showed and sold to him a house with a basement suite. After taking possession of the house, the purchaser discovered that the previous owner had been renting the basement unlawfully. No permit to build the suite had been obtained, nor could it have been obtained because the ceiling was too low and the lot too small. It turned out that the agent knew about these legal requirements and knew that they had not been met. She said nothing. Is the law of misrepresentation actionable? Explain your reasoning.
- 59) Zhou listed a commercial lot for sale, describing the land as being zoned for commercial/residential occupation. Dalvi, who was looking to build a funky billiards bar with condos above, inquired about Zhou's lot. Throughout their negotiations Zhou maintained that the law would allow the purchaser to use the lot for both commercial and residential purposes, and understood that the

consequences of the zoning law were critical to Dalvi's business plan. Induced by this, Dalvi subsequently decided to buy the property. After buying the property, Dalvi learned that the land was not zoned as residential and that he was not permitted to build condos above the billiards bar. He sued Zhou, arguing that the inducing statement was actionable as misrepresentation. Will Dalvi succeed in his action? Why?

- 60) Why do insurance contracts require a duty of utmost good faith?
- 61) A purchaser bought an oil painting from a private collector who promised that it was painted by one of the members of the Group of Seven, a promise that was held to be one of the terms of the contract. The painting quickly became the purchasers very favorite. He took it home and built a special room for its viewing, with an expensive lighting system. Five years later, after having grown somewhat tired of the room, the purchaser decided to sell the painting. In so doing, he discovered much to his chagrin that the painting was worth much less than he had thought as it was, in fact, done by a less famous American painter, who worked in a style similar to the Group of Seven. The purchaser decided to try to get his money back. He sued the private collector who sold it to him, asking the court to rescind the contract on the ground that there had been an innocent misrepresentation. What are the most plausible grounds upon which the court might decide *not* to rescind?
- 62) "It is imperative that all business contracts be in writing." Assess this statement. Is it accurate from a legal perspective? It is accurate from the perspective of risk management? Explain your reasoning.
- 63) Name a shortcoming of the literal approach to contractual interpretation. Provide an example to illustrate your point. How might this difficulty be overcome?
- 64) Can an express term ever be overridden by an implied term? Explain your reasoning and provide an example.
- 65) In what sense might a standard form agreement be beneficial to consumers? Briefly explain the downside of standard forms.
- 66) What is an exclusion clause? Why would a business want one included in a contract?
- 67) What does it mean to say that an exclusion clause is always read *contra proferentum*? Why do you think that this is a consistent judicial practice?
- 68) What is the rationale for holding people to their signatures even when they have not read or understood the contract?
- 69) Jane was at the international terminal of the airport when she realized that she had forgotten to purchase travel insurance for her trip. After checking-in early, Jane was browsing at some of the shops and happened upon a vending machine selling travel insurance. On the outside of the machine was a sign that indicated "Full coverage for \$2 per day." Jane plugged in three toonies to cover herself for the weekend. Out from the machine dropped a standard form agreement. After boarding the plane, Jane examined the fine print and noticed that the coverage was limited to travel within Canada. Like every other potential customer in the international terminal of the airport, Jane was not traveling within Canada. Concerned that she would not be covered, as soon as the plane landed Jane used her cell phone to dial the 1-800 number on the back of the printed form. All she got was a recorded message. If Jane got injured while traveling in the US, will the exclusion clause prevent her from making a successful claim?

70) Why are boilerplate provisions of potential value to businesses generating standard form agreements?

- 1) A
- 2) E
- 3) B
- 4) D
- 5) B
- 6) C
- 7) D
- 8) B
- 9) E
- 10) E
- 11) C
- 12) D
- 13) B
- 14) B
- 15) B
- 16) C
- 17) B
- 18) B
- 19) C
- 20) A
- 21) A
- 22) D
- 23) E
- 24) C
- 25) B
- 26) D
- 27) E
- 28) D
- 29) D
- 30) A
- 31) B
- 32) E
- 33) D
- 34) E
- 35) E
- 36) D
- 37) E
- 38) C
- 39) E
- 40) E
- 41) FALSE
- 42) TRUE
- 43) FALSE
- 44) TRUE
- 45) TRUE
- 46) TRUE
- 47) FALSE
- 48) FALSE
- 49) TRUE
- 50) FALSE
- 51) FALSE
- 52) FALSE
- 53) TRUE
- 54) FALSE
- 55) FALSE
- 56) A statement that *is* promissory in nature describes an undertaking in the future.
Promissory statements limit one's future freedom of action. A pre-contractual representation, by definition, is non-promissory. It describes a present or future state of

affairs. It is a statement of fact and, as such, is either true or false. The purpose of a pre-contractual statement is not to make a future undertaking but to induce another person to enter into a contract. In this sense, a pre-contractual statement is non-promissory.

- 57) In order for a statement to be considered a misrepresentation it must be capable of being false. Personal opinions are statements of judgment or belief and are therefore not usually thought of as true or false. However, some statements that are couched as opinions run the risk of being considered misrepresentations. For example, if I have certain expertise in a subject (say I know a lot about cars) and you have none, and I offer my opinion about the car in a way that induces you to buy it, my opinion, if clearly false, will be treated as a misrepresentation. This is even more likely the case if I offer it in a way that leads you to think that it *must* be true. Likewise, if a court determines that I could not possibly have believed the statement myself, they will treat it as a misrepresentation.
- 58) Because the agent knew that the purchaser intended to use the basement to generate income and also knew that it was impossible to get a permit because of the low ceiling, the failure to disclose would likely be seen as a fraudulent misrepresentation. In this instance, the deceit arises not only as a result of the special knowledge that the agent had but also because the real estate agent had a special relationship with her client. A purchaser who uses an agent enters into a trust relationship. The agent in this case exploited that trust.
- 59) Because everyone is presumed to know the law, the issue in this case turns on whether Zhou simply misstated the law or whether he made representations about the consequences of the law. On the facts, Zhou did not merely list the property as commercial/residential. He also made representations saying what the zoning bylaw would allow the purchaser to do with the lot. As such, there is a plausible argument that the statement misrepresented the consequences of the law. Such statements are actionable because they relate to a matter of fact, rather than a matter of law. There is no presumption that people know the consequences of the law. On this basis, Dalvi is likely to succeed.
- 60) The duty of utmost good faith arises because the person seeking insurance is the only one in a position to know the material facts. The insurance industry can only function if insurers are able to determine the likelihood of a specific kind of loss occurring. In order to be able to assess the risk of insuring against the happening of that event, insurance companies need to know a lot about the party seeking insurance. This can only be assured if those persons owe a duty to disclose those facts even if they are not regularly asked about any changes in their situation.
- 61) The court would likely hold that after five years of enjoying the painting and building a special room for it, the buyer had lost the right to reject the sale. The significant lapse of time between a delivery and its rejection would be understood as an affirmation of the original contract. Because the buyer was willing to sell the painting before he discovered that it was painted by an American, it is not clear that the innocent misrepresentation was sufficiently material to undermine the original contract.
- 62) Strictly speaking, it is not legally accurate to say that all business contracts must be in writing. In many circumstances, oral contracts are perfectly enforceable. The above statement was likely made with difficulties of proof in mind. When it comes to proving the terms of a contract, it is much easier to do so if those terms are expressed in writing and signed by both parties. From the perspective of risk management, setting the terms in writing also ensures that the other party will not be in a position to incorporate statements made orally during negotiations: the parole evidence rule only works in favour of parties with written contracts. In addition to issues of proof, the process of putting an agreement into writing is also useful in terms of clarifying the agreement between the parties. When forced to write down the terms, parties tend to contemplate the terms more carefully.
- 63) The most obvious shortcoming of the literal approach is that attributing to words their plain, ordinary meaning can, on occasion, lead to absurd results. Because language is open textured and words are often subject to more than one interpretation, it is often necessary to look beyond the ordinary meaning of a word or phrase. To take a famous example, the ordinance "No vehicles in the park" would, if taken literally, exclude bicycles, skateboards, wheelchairs, etc. Given that it is unlikely that all of these vehicles were meant to be excluded from the park, a literal interpretation of the ordinance could yield absurd results if followed to the letter. The way that this difficulty can be overcome is by applying a contextual approach, *ie* considering the intentions of those who drafted the words from

within the circumstances of what they were trying to achieve. To continue the example from above, the drafter probably intended to exclude motorized vehicles, vehicles that interfere with others' enjoyment of the park, or vehicles that otherwise pose a safety risk in a park setting. This contextual approach allows interpreters to go beyond the plain ordinary meaning and achieve an understanding more closely in line with the intentions of those who created the words.

- 64) Express terms can be overridden by terms implied by a court or a statute. The fact that two parties agree to something doesn't always result in the enforceability of those terms. For example, you and I might agree to a contract where I provide you money in exchange for some illegal act. Even if we express the term in writing, it will not be enforceable. More typical examples are where the legal characteristic of a particular contract will result in an implied term by the court. Reasonable notice before dismissal in the employment law context is one example. Likewise, a statute might override terms expressed by the parties. You and I might agree to the sale for a particular piece of farming equipment without any guarantee but statutes in some provinces [*Farm Implement Acts*, SA 1982, cF-4-1 (Alta)] will imply such a guarantee in any event.
- 65) The economic strategy of a standard form agreement is to offer the sale of goods or services at the lowest possible price by reducing the transactions costs associated with negotiating specific terms. By setting out the terms of a contract in advance, a business using a standard form is able to pass savings on to consumers. The downside is that goods or services are offered on a take-it-or-leave-it basis with no opportunity for customers to negotiate specialized terms. For this reason, few customers actually bother reading standard form documents and often do not know all of their rights and obligations. This puts customers at the mercy of the businesses using standard forms.
- 66) An exclusion clause is a contractual term that seeks to protect one party from various sorts of legal liability. Often a business offering goods or services will incur certain risks in doing so. The idea of an exclusion clause is to eliminate or limit that risk. Without the exclusion clause, that business would have to factor the cost of the risk into the price of the goods or services. Thus exclusion clauses are one way to lower prices. Of course, this comes at a certain expense to the end user, who is forced to suffer the risk if they agree to exclude or limit liability.
- 67) It means that ambiguous aspects of an exclusion clause will always be interpreted in the manner least favourable to the person seeking to use the clause. Exclusion clauses are powerful legal instruments in that their insertion nullifies rights that parties would otherwise have. Given the potential harm that can result from the misapplication of an exclusion clause, courts will only enforce them when their purpose and effect are clear and when it is equally clear that both parties intended the exclusion clause to have such an effect. By invoking a rule that is least favourable to the person seeking to adopt the exclusion clause, courts are able to protect the interests of those who didn't mean to have their rights affected in such a dramatic way. It is the business of the courts to enforce bargains only when they are freely entered into by both parties. The *contra proferentum* rule seeks to ensure that this is the case and is therefore consistently applied by the courts.
- 68) By signing a document the customer indicates a willingness to be bound by the terms. And the act of signing is often relied upon by those who have asked for the signature. Where it is reasonable for people to rely on a signature, for example, where the terms are clear and the signor has had a sufficient opportunity to study the terms, the signatures are binding. This is because businesses often alter their financial positions on reliance of the signature. The signature is understood as a kind of promise to abide by the terms of the document.
- 69) As the machine represented that the policy provided "full coverage," the term on the actual policy limiting coverage to Canada was onerous and unusual. This term was even more of a surprise when one considers that the vending machine was situated in a terminal where no one was traveling within Canada. Following the *Tilden* case, a party that seeks to enforce onerous and unusual terms must bring such terms to the attention of the party at the time the contract is created. A failure to do so will render such terms unenforceable. In this case, there was no one to bring the terms to Jane's attention. Because the transaction was automated, the contract was completed long before Jane ever had a chance to read the terms and conditions. Given that the only term Jane was given notice of at the time she entered into the contract was that she would be provided with full coverage, it is unlikely that a court would enforce the exclusion clause. The exclusion clause therefore will not

prevent Jane from making a successful claim.

- 70) Boilerplate provisions often allocate the legal risk incurred by people doing business and therefore play a crucial role in determining the nature of the relationship between contracting parties, including their potential liabilities to each other and to third parties.