

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

- 1) The concept of capacity 1) \_\_\_\_\_
  - A) can be used to protect those who are not capable of understanding the nature and consequences of their acts.
  - B) means the legal power to avoid any contract.
  - C) can be used to ensure equal bargaining power between parties.
  - D) applies to people and not to organizations.
  - E) all of the above
  
- 2) Which of the following contracts will be enforced whether or not the purchaser has reached the age of majority? 2) \_\_\_\_\_
  - A) purchase of groceries
  - B) purchase of a ski jacket
  - C) retainer for legal services
  - D) registration for community college
  - E) all of the above
  
- 3) Which of the following groups is never able to avoid contractual liability? 3) \_\_\_\_\_
  - A) minors
  - B) adults who have been declared mentally incompetent by the courts
  - C) intoxicated persons
  - D) First Nations (Indian) Bands
  - E) all of the above
  
- 4) Lawrence and Jane were hammering out a deal over cocktails. Jane thought that Lawrence was totally plastered and was hoping to take advantage of this in their negotiation of the terms. However, Lawrence knew exactly what he was doing. Although quite tipsy, he pretended to be staggering drunk. His plan was to make two deals: one deal that was good for him, the other a bad one. This way he could complete the deal that was to his advantage and, later, walk away from his obligations on the second deal. Which of the following is TRUE? 4) \_\_\_\_\_
  - A) Both deals are enforceable since Lawrence was only pretending to be drunk.
  - B) Only the second deal is enforceable.
  - C) Neither deal is enforceable since Jane believed Lawrence to be intoxicated when she entered into them.
  - D) Only the first deal is enforceable.
  - E) none of the above
  
- 5) Which of the following distinguishes a chartered corporation from a statutory corporation? 5) \_\_\_\_\_
  - A) Statutory corporations are indistinguishable from chartered corporations as both have the same legal effect.
  - B) Statutory corporations cannot be said to act *ultra vires* whereas chartered corporations can.
  - C) Chartered corporations have a limited contractual capacity whereas statutory corporations do not.
  - D) Statutory corporations are treated the same as individuals of a majority age whereas chartered corporations are not.
  - E) none of the above
  
- 6) Unincorporated associations 6) \_\_\_\_\_
  - A) are always treated the same way as corporations.
  - B) are independent legal entities.

- C) generally have the capacity to contract.
- D) can be given the capacity to contract through the enactment of legislation.
- E) all of the above.

- 7) Joe is an aboriginal person, born and raised on a native reserve. After reaching the age of majority, Joe decides to move to Calgary to continue his work as an artist. After abandoning the reserve and living in Calgary for several years, Joe is asked to participate in a major art opening. Much of his art depicts life on his reserve. Which of the following is TRUE? 7) \_\_\_\_\_
- A) Joe lacks the capacity to contract.
  - B) Joe is unable to sell his art anywhere other than the reserve.
  - C) The profits from Joe's sales will be held by the Crown.
  - D) Joe has only a limited capacity to contract.
  - E) Joe's art could be used as security for a credit transaction.
- 8) Matt just made a fortune inventing a new piece of software and has generously agreed to support his friend's application for a bank loan. Matt tells his friend he is willing to cover the debt no matter what happens. In order for this promise to be enforceable, 8) \_\_\_\_\_
- A) the bank needs to get it in writing.
  - B) Matt's friend needs to get Matt to make that same promise to the bank.
  - C) Matt's friend needs to get Matt to fax the bank.
  - D) the bank needs do nothing.
  - E) Matt's friend needs to have the promise notarized and sent to the bank by registered mail.
- 9) The difference between a guarantee and an indemnity is that 9) \_\_\_\_\_
- A) indemnities need to be in writing to be enforceable.
  - B) a guarantee is a promise to assume another's debt.
  - C) a guarantee is a conditional promise whereas an indemnity is not.
  - D) the *Statute of Frauds* applied only to indemnities.
  - E) none of the above
- 10) Which of the following is LEAST LIKELY to be understood by a court as a contract for the sale of an interest in land? 10) \_\_\_\_\_
- A) the lease of mineral rights in an oilfield
  - B) the lease of an apartment
  - C) the purchase of a home
  - D) the lease of a farm
  - E) the purchase of lakefront property
- 11) Which of the following is sufficient written evidence to satisfy the *Statute of Frauds* in most Canadian jurisdictions? 11) \_\_\_\_\_
- A) a signed IOU written on a napkin
  - B) a signed standard form agreement
  - C) a signed letter confirming a severance arrangement
  - D) a notation on a signed cheque indicating what was purchased
  - E) all of the above
- 12) Ariel pays Newton a \$17 000 deposit as part of an oral contract for the sale of land. According to the terms of their agreement, Ariel is to pay the balance on the day of the closing, failing which Newton is allowed to keep the deposit. Suppose that the deal never closes. Which of the following is TRUE? 12) \_\_\_\_\_
- A) Newton can enforce the contract of sale against Ariel.
  - B) Newton does not have a contractual defence if Ariel seeks to get

- her deposit back.
- C) Ariel has a contractual defence if Newton seeks to enforce the contract of sale.
- D) Ariel can enforce the contract of sale against Newton.
- E) Newton has a contractual defence if Ariel seeks to get her deposit back.
- 13) Which of the following lists would the *Statute of Fraud* require ALL THREE contracts to be evidenced in writing pursuant? 13) \_\_\_\_\_
- A) a guarantee to assume someone's debt upon default; an indemnity agreement; the sale of a \$2000 leather sofa
- B) a two-year commercial property lease agreement; the sale of a house; a two-year landscaping agreement
- C) A four-year financing agreement; purchase of a \$2000 leather sofa; the sale of a house
- D) An agreement to rake a neighbour's leaves; the sale of a house; an indemnity agreement
- E) none of the above
- 14) Raja set up a web site selling tee shirts decorated with original artwork. The web site was marketed under a name very similar to a well-known professional basketball team. Raja had never heard of the team nor had he meant to fool anyone or to infringe anyone's trademark. One day, Liz went to Raja's site and bought a number of tee shirts with her credit card. Thinking that she was getting fan apparel from her favorite ball team, Liz was quite surprised and disappointed when she saw the merchandise that she received in the mail. What should she claim in order to get her money back? 14) \_\_\_\_\_
- A) mistaken identity
- B) undue influence
- C) frustration
- D) *non est factum*
- E) duress
- 15) Which of the following mistakes is most likely to prevent the creation of a contract? 15) \_\_\_\_\_
- A) A stockbroker is mistaken about the future value of a technology company and buys stock on that basis.
- B) A grocery supplier fills an order for 5000 cans of beans but mistakenly sends only 500 cans.
- C) A bean wholesaler ships 5000 cans of golden wax beans to a customer who thought that he was ordering 5000 cans of corn.
- D) A house deal closes, money and keys are exchanged, then both parties find out that the house had been completely destroyed by fire.
- E) none of the above
- 16) Which of the following mistakes will most likely render impossible the purpose of the contract? 16) \_\_\_\_\_
- A) buying a car, only to later find out that it was re-sold to you by some rogue
- B) buying a piece of art on the basis of its aesthetic appeal, only to later find out that it was painted by a famous artiste
- C) thinking that you ordered one copy of a software program when, in fact, you ordered ten copies
- D) thinking that the property you bought for your business is zoned commercial but it is, in fact, residential
- E) none of the above

- 17) The doctrine of frustration is invoked when 17) \_\_\_\_\_
- A) the contracting parties are unable to reach an agreement and are forced to abandon negotiations.
  - B) the contracting parties are both mistaken about some previously known fact in a manner that prevents them from carrying out their obligations pursuant to the contract.
  - C) the court makes a declaration to that effect.
  - D) the contracting parties agree on a purchase price for a particular good and the purchasing party fails to pay.
  - E) the contracting parties are both mistaken about some future set of circumstances that prevents them from carrying out their obligations pursuant to their contract.
- 18) When may the defence of *non est factum* be raised? 18) \_\_\_\_\_
- A) when there is no written evidence of the contract
  - B) when a person signs a document but his attention has not been drawn to a particularly onerous term
  - C) when a person signs a document but fails to read it first
  - D) when the defendant forgot to have the plaintiff sign the contract
  - E) when there is a radical difference between what a person signed and what the person thought he was signing
- 19) Common law illegality 19) \_\_\_\_\_
- A) renders unenforceable agreements that are contrary to public policy.
  - B) is an attempt to regulate conduct through an administrative regime.
  - C) aims to punish individuals who make agreements contrary to public policy.
  - D) requires a determination of legislative intent.
  - E) all of the above
- 20) Shelly hires James to steal her neighbour's dog (because it barks a lot and the owners do nothing about it). Shelley paid James according to the terms of the contract, but James did not follow through with his end of the bargain. Can Shelly get her money back? 20) \_\_\_\_\_
- A) No. The contract is defective because it is a restraint on trade.
  - B) No. The contract is defective because it was not in writing.
  - C) Yes. The lawsuit can be brought in Small Claims Court.
  - D) Yes. The parties will be returned to their pre-contractual position.
  - E) No. The contract is defective because it is illegal.
- 21) Which of the following examples of a covenant in restraint of trade is most likely to be against public policy? 21) \_\_\_\_\_
- A) The sellers of a dot.com sign an agreement that they will not compete directly with their former company for a period of two years.
  - B) An entrepreneur sells his successful home baking business to a supermarket chain. He signs an agreement that bars him from setting up a bakery business in the future.
  - C) Partners in an advertising agency sign an agreement that they will engage in advertising sales exclusively for the agency for the duration of their employment.
  - D) A high-tech firm has its engineers sign a contract promising not to reveal any information about patents to any other high-tech, communications, or pharmaceutical companies during their employment tenure.
  - E) all of the above

- 22) How do courts regard restrictive covenants? 22) \_\_\_\_\_
- A) Courts will assume that unless there was unfairness during the bargaining process, restrictive covenants should be upheld because the parties have freedom to contract.
  - B) Courts will presume restrictive covenants to be against public policy unless the party seeking to enforce the covenant demonstrates that the restriction is reasonable.
  - C) Courts will find all restrictive covenants to be against public policy.
  - D) Courts will presume restrictive covenants to be reasonable unless the party seeking to avoid the covenant demonstrates that the restriction is against public policy.
  - E) none of the above
- 23) Economic duress 23) \_\_\_\_\_
- A) is automatically proved as soon as the victim of duress commences legal proceedings against the party exerting duress.
  - B) is impossible to prove unless the victim of duress protested at the time the duress was exerted.
  - C) results from any exertion of financial pressure.
  - D) occurs when a victim of duress seeks independent legal advice.
  - E) occurs when the victim of duress could not reasonably resist.
- 24) Duress is distinguishable from undue influence in that 24) \_\_\_\_\_
- A) duress and undue influence are indistinguishable
  - B) duress refers to the use of some kind of pressure whereas undue influence involves improvident bargains.
  - C) duress refers to the use of some kind of pressure whereas undue influence does not.
  - D) duress is never defined in terms of the parties' relationship whereas undue influence always is.
  - E) duress is never defined in terms of the parties' relationship whereas undue influence sometimes is.
- 25) Constance and Rosemary are in a fiduciary relationship. This fact is relevant to a claim of unfairness during bargaining because 25) \_\_\_\_\_
- A) the court will presume that a contract between them was founded on the basis of undue influence.
  - B) it means that Connie could never enforce her contract with Rosemary.
  - C) the court will presume that a contract between them was founded on the basis of duress.
  - D) the court will presume that a contract between them was founded on the basis of an unconscionable transaction.
  - E) it means that the two of them will never be allowed to contract with each other as a result of the conflict of interest.
- 26) Whether actual pressure has been exerted is 26) \_\_\_\_\_
- A) never relevant in a claim of unfairness during bargaining.
  - B) relevant in a claim of undue influence only if there is not a fiduciary relationship.
  - C) never relevant in a claim of undue influence.
  - D) relevant in a claim of undue influence only if there is a fiduciary relationship.
  - E) none of the above
- 27) A fiduciary relationship 27) \_\_\_\_\_
- A) is exclusive to the law of employment.
  - B) is exclusive to the law of corporations.

- C) exists whenever there is an inequality in the bargaining power of contracting parties.
- D) must be established in order to prove undue influence.
- E) none of the above

- 28) An unconscionable transaction is \_\_\_\_\_
- A) an agreement no right-minded person would ever offer.
  - B) an agreement that is induced only by fraud.
  - C) an agreement that is induced only by pressure.
  - D) an agreement no fair-minded person would ever accept.
  - E) unenforceable.
- 29) Which of the following is most likely an improvident bargain? \_\_\_\_\_
- A) when granny assigns all of her assets to a powerful business in exchange for the promise to take care of her in the future
  - B) when granny assigns all of her assets to a powerful business in exchange for the promise to take care of her grandson in the future
  - C) when granny trades her farm for blue chip stocks
  - D) when granny trades her farm for a condo in Florida
  - E) none of the above
- 30) Which of the following is TRUE? \_\_\_\_\_
- A) A transaction can be unconscionable only if the presumption of unconscionability is rebutted.
  - B) A transaction can be unconscionable only if the contract is enforceable.
  - C) A transaction can be unconscionable only if the bargain is not improvident.
  - D) A transaction can be unconscionable only if there is an inequality of bargaining power between the parties.
  - E) all of the above
- 31) Which of the following have limited capacity to contract for the necessities of life? \_\_\_\_\_
- A) public authorities and Indian bands
  - B) corporations and alcoholics
  - C) minors and people who have been declared mentally incompetent by the courts
  - D) Aboriginals and the elderly
  - E) none of the above
- 32) Which of the following agreements must be evidenced in writing in order to be enforceable? \_\_\_\_\_
- A) contracts with the government and contracts for the sale of interests in land
  - B) loans and guarantees
  - C) contracts of employment and contracts for the sale of interests in land
  - D) guarantees and contracts that may require more than one year to perform
  - E) none of the above
- 33) Which of the following contracts may be set aside for mistake or frustration? \_\_\_\_\_
- A) Pam sold a computer for cash to a person she mistakenly thought she had known in high school.
  - B) Pam enters into a contract to sell a colt to Dave, but neither party realizes that Pam has already sold the same colt to Donna.
  - C) Pam said nothing about the quality and history of a painting that

- she sold to Dave, despite knowing that he incorrectly believed the painting was worth more than its purchase price.
- D) Pam rented a cottage to Dave for a summer for \$5000, and Pam later learns that because of winter storms, it will unexpectedly cost her \$30 000 to repair the cottage so that it meets the needs of the rental contract.
- E) none of the above
- 34) A *force majeure* clause 34) \_\_\_\_\_
- A) means that if there is a dispute regarding the effect of a contract, and there are more than two parties to the contract, the majority view will prevail.
- B) overrides the effect of an event that normally would constitute frustration.
- C) provides protection against the possibility of unconscionable conduct.
- D) is important primarily because of the possibility of duress or undue influence.
- E) allows a contract that has been frustrated to be rescinded.
- 35) Salvatore created a contract with Acme Corp. Although the parties initially performed their obligations without complaint or difficulty, a dispute has now arisen. Acme Corp claims the protection of a *force majeure* clause. Which of the following statements is most likely to be TRUE? 35) \_\_\_\_\_
- A) The company has discovered that Salvatore is under the age of majority.
- B) Salvatore claims that he made some mistake when he entered into the agreement.
- C) Salvatore has argued that the contract is unenforceable because it is not evidenced in writing.
- D) Salvatore has argued that he entered into the contract as a result of undue influence.
- E) The company wants to escape from the contract on the grounds of frustration.
- 36) Adrian and Darah entered into a contract. After the agreement was partially performed, Adrian successfully claimed that the contract is voidable. Which of the following statements may be TRUE? 36) \_\_\_\_\_
- A) Adrian, who is an Aboriginal living on reserve land, had created a contract to sell that land to Darah.
- B) Adrian, who has been declared mentally incompetent by a judge, created a contract to purchase food and shelter from Darah.
- C) Adrian, who is an Aboriginal living in Toronto, created a contract to purchase recreational sporting goods from Darah.
- D) Adrian, who is 17 years old, had created a contract to purchase a set of computer games from Darah.
- E) Adrian, who is 17 years old, created a contract to obtain life-saving medical services from Darah.
- 37) Tajeash and Faye entered into a contract. Before either party began to perform under that agreement, Tajesh successfully claimed that the contract is void. Which of the following statements is most likely to be TRUE? 37) \_\_\_\_\_
- A) Tajesh, who is 82 years old, suffers from a mental incapacity, which Faye knew at the time of the contract.
- B) Faye was drunk when the contract was created.
- C) Tajesh is the name of a chartered corporation, and the contract dealt with non-essential goods.

- D) Tajesh is not a citizen of Canada, and the contract was made in this country.
- E) Tajesh is a minor, and Faye sold shotguns even though she lacked the necessary licence to do so.

- 38) Malkit sold a house to Amanda. The evidence indicates that Amanda owed fiduciary obligations to Malkit both before and after the agreement was signed. Which of the following statements is TRUE? 38) \_\_\_\_\_
- A) The court will presume that Malkit entered into the contract as a result of Amanda's undue influence.
  - B) The contract will be set aside unless Amanda proves that she was unaware of her fiduciary obligations.
  - C) In order to set aside the contract, Malkit must prove that the agreement is unfair to him.
  - D) Amanda has an absolute right to have the contract set aside.
  - E) Malkit is entitled to receive Amanda's performance even though he is not required to perform his obligations under the agreement.
- 39) Maeve entered into a contract with Tyler. Although she does not suffer from a mental illness or intellectual disability, and although she is an adult, Maeve is easily victimized in commercial dealings. She is naive, immature, and not very bright. As a recent immigrant to Canada, she speaks English reasonably well, but she cannot read or write it. She now wants to set aside her contract with Tyler on the basis that it is an unconscionable transaction. Which of the following statements is most likely to be TRUE? 39) \_\_\_\_\_
- A) The contract cannot be enforced unless Maeve received independent legal advice.
  - B) A judge may enforce the contract even if it does not provide any benefit to Maeve.
  - C) A court will presume that the transaction is unconscionable as soon as it hears evidence of Maeve's disadvantages.
  - D) The contract will be set aside unless Tyler proves that the agreement actually favours Maeve over himself.
  - E) The contract will be set aside only if Maeve proves that Tyler exercised undue influence over her.
- 40) Napoleon wanted to borrow money from the Bank of Winnipeg. The bank was not, however, fully convinced that Napoleon would be able to repay the debt. It therefore wanted some assurance from Napoleon's mother, Josephine, that she would repay the loan if necessary. Which of the following statements is most likely to be TRUE? 40) \_\_\_\_\_
- A) If Josephine's promise must be evidenced in writing in order to be enforceable, then the contract will be unenforceable unless both Josephine and the bank sign the relevant document.
  - B) If Josephine's promise must be evidenced in writing in order to be enforceable, the bank may be able to satisfy that requirement by combining several documents even if those documents do not refer to each other.
  - C) If it was not evidenced in writing, Josephine's promise will certainly be enforceable if it was a guarantee, but it may not be enforceable if it was an indemnity.
  - D) If Josephine's promise is properly classified as an indemnity, then the bank cannot demand payment from her unless Napoleon has first refused to pay.
  - E) If Josephine's promise is not evidenced in writing, and if such writing is required by statute, then neither Josephine nor Napoleon needs to repay the loan.



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

- 41) Across Canada, the age of majority is 19. 41) \_\_\_\_\_
- 42) The reason contracts for necessities are enforceable is to ensure that minors do not avoid contracts with suppliers for perishable goods. 42) \_\_\_\_\_
- 43) Sina employs Joe who is 16. The terms of the employment contract are to Joe's benefit. Still, Joe wants to walk away from his obligations. Joe can do so because the contract is voidable. 43) \_\_\_\_\_
- 44) A minor's contract for necessities is never voidable on the grounds of capacity. 44) \_\_\_\_\_
- 45) The *Statute of Frauds* eliminates the writing requirements of the common law. 45) \_\_\_\_\_
- 46) Sarah bought a stereo system in Vancouver under a payment plan that must be completed within two years. Technically speaking, the contract is enforceable only if it is evidenced in writing. 46) \_\_\_\_\_
- 47) The form and content requirements of the *Statute of Frauds* requires a signature from each of the parties. 47) \_\_\_\_\_
- 48) Cy and Kelly negotiate the sale of "Indian Art" over the Internet. Because of an electronic miscommunication, Cy thinks he is buying art from Calcutta. But it turns out upon delivery that Kelly was selling Inuit art all along. Because there was no misrepresentation, the sale is final. 48) \_\_\_\_\_
- 49) Cy and Kelly negotiate the sale of "Indian Art" over the Internet. Because of an electronic miscommunication, Cy thinks he is buying art from Calcutta. But it turns out upon delivery that Kelly was selling Inuit art all along. Because the mistake was material and prevented the creation of a shared contractual intent, Cy will be able to claim the contract was defective. 49) \_\_\_\_\_
- 50) Svetlana paid an advance under a contract of sale for a unique antique in Ontario, but the performance of the contract was rendered impossible because of a terrible accident that happened during delivery. Because the seller incurred expenses while trying to deliver the antique, the court is permitted to allow the seller to keep some of the advance. 50) \_\_\_\_\_
- 51) The plea of *non est factum* allows a person to avoid a signed contract whenever they are mistaken by several degrees about a key term or condition. 51) \_\_\_\_\_
- 52) The notion of public policy is notoriously vague. 52) \_\_\_\_\_
- 53) Tandindar was holding a shipment of goods that belonged to Todd and threatened not to release them unless he agreed to sign a contract to buy two more shipments over five years. This is an instance of economic duress. 53) \_\_\_\_\_
- 54) Whenever parties of unequal bargaining powers transact, undue influence is always presumed but can be rebutted. 54) \_\_\_\_\_
- 55) Unconscionable transactions can be characterized as one-sided. 55) \_\_\_\_\_

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

- 56) What is the difference between voidable and enforceable contracts? Provide an example of each in the context of whether a minor has the capacity to contract.
- 57) Charlie has bi-polar disorder (also known as manic-depression). Usually, medication helps to control her disorder. Lately, Charlie stopped taking her medication and started drinking heavily. During a manic (up) phase, she dressed in an elegant suit, went to a BMW dealership and signed a contract for the purchase of a new sports car. She financed the transaction by putting a large deposit on her credit card, and drove the car off the lot that same day. Charlie's family became very concerned. Describe the law as it pertains to Charlie's capacity to contract. What should Charlie do? What should the car dealer do?
- 58) Elsa is a member of an active neighbourhood association. The association runs frequent community events, issues a monthly newsletter to residents, lobbies municipal government, and engages in fundraising. Recently, they have decided to create a staff position to coordinate their efforts. Their advisory committee has been discussing whether or not to incorporate. Outline how the association's ability to enter contracts in conducting its activities might impact its decision about incorporation.
- 59) How should your business manage risk when contracting with an unincorporated association?
- 60) List three types of contracts that must be evidenced in writing. Provide one example of each.
- 61) Ling is about to enter into a contract that will be carried out over the next year and a half. Is it safe for her to assume that the contract will not be enforced if it is not evidenced in writing in a jurisdiction where the *Statute of Frauds* applies?
- 62) Tinh agrees to purchase a block of land that Ed plans to sever from his property. Tinh pays a large cash deposit to Ed, the closing date is set for six months away, and they shake hands on the deal. Ed falls on hard times and he realizes he cannot subdivide his land since he cannot afford to lose any equity or the bank will foreclose on his mortgage. On the agreed closing date, he sends Tinh an email to back out of the deal. Worse still, Ed reallocated the cash deposit and cannot afford to pay Tinh back. Ed feels terrible and avoids Tinh's calls. Tinh sues Ed for breach of contract and specific performance. How will the *Statute of Frauds* be applied in this case? What is the legal effect of Tinh and Ed's deal?
- 63) From the perspective of risk management, what practices should be adopted by businesses transacting in jurisdictions that have a *Statute of Frauds*?
- 64) Explain the distinction between the effects of a mistake that prevents the creation of a contract and a mistake that renders the purpose of a contract impossible. Provide an example of each.
- 65) Rosa immigrated to Canada as a teenager. She worked her whole life to support her family and never received a formal education. While her spoken English is good, her ability to read English is limited. An elderly woman now, Rosa lives in a care facility. A representative of the facility presented her with several pieces of paper to sign. He said that they were simply standard forms that every resident had to sign. She took the forms and returned them signed the following week. Later, she mentioned to her son, Paulo, that she had signed some forms, but had been too ashamed to admit that she could not read them. The forms required Rosa to give permission to the facility, evidenced by her signature, to make automatic withdrawals from Rosa's bank accounts. Rosa is not comfortable with this. Will Rosa be bound to her signature? Why? Describe the defence she is most likely to raise and

explain whether it is likely to succeed.

- 66) In 1824 Justice Burrough said, "Public policy ... is a very unruly horse and once you get astride it you never know where it will carry you." In 1971, Lord Denning MR said that with a good judge "in the saddle, the unruly horse can be kept in control. It can jump over obstacles. It can leap the fences put up by fictions and come up on the side of justice." Explain what each judge meant in the above quote. State which judge, in your opinion, is correct. Substantiate your answer with a brief discussion of the relevant concepts from the text.
- 67) As part of a large multi-national corporation, you are working on a deal to buy a small dot.com company from a group of young upstarts who will all benefit handsomely. It is your custom to include a restrictive covenant in such deals to prevent such young upstarts from directly competing with the company they just sold. Explain the approach taken by courts to covenants in restraint of trade and then provide an example of a restrictive covenant that is likely to be upheld if challenged in court, and an example of one that is likely to be struck down if challenged in court.
- 68) Define "fiduciary relationship" and provide an example. How would a business person who has a fiduciary relationship best conduct a transaction so as to avoid legal problems?
- 69) Outline three situations where a court might set aside a contract because of unfairness during bargaining. What are the requirements to prove each, and who has the onus to prove what in court?
- 70) Contracts are part of private law. A key concept of private law is that parties are at liberty to create and define the legal obligations they owe to one another. Discuss whether you agree that judges should be able to step in and set aside certain transactions on the basis that they think an agreement is unjust. Does this interfere with the core concept of private law? Explain your answer.

- 1) A
- 2) E
- 3) B
- 4) A
- 5) E
- 6) D
- 7) E
- 8) B
- 9) C
- 10) B
- 11) E
- 12) E
- 13) B
- 14) A
- 15) C
- 16) D
- 17) E
- 18) E
- 19) A
- 20) E
- 21) B
- 22) B
- 23) E
- 24) E
- 25) A
- 26) B
- 27) E
- 28) E
- 29) B
- 30) D
- 31) E
- 32) E
- 33) E
- 34) B
- 35) B
- 36) D
- 37) E
- 38) A
- 39) B
- 40) B
- 41) FALSE
- 42) FALSE
- 43) FALSE
- 44) TRUE
- 45) FALSE
- 46) FALSE
- 47) FALSE
- 48) FALSE
- 49) TRUE
- 50) TRUE
- 51) FALSE
- 52) TRUE
- 53) FALSE
- 54) FALSE
- 55) TRUE
- 56) Many contracts are voidable if the minor so elects within a reasonable period of time. This means that, upon election, the minor is able to avoid contractual obligations. An example of a voidable contract is a contract for the sale of land. There are, however, some kinds of

contracts that a minor cannot elect to avoid. These are enforceable contracts. Courts will enforce contracts made by minors for "necessaries," so long as the contract is to the minor's benefit. Necessaries are items such as food, clothing, and education that are necessary to the minor's station in life. Minors' contracts of employment are also enforceable. Examples of enforceable contracts are a contract for sale of groceries or an agreement to provide instruction in a trade.

- 57) Mentally disabled adults who are unable to appreciate the nature and consequences of their acts do not have capacity to contract. Courts will consider whether the other party was aware of the mental deficiency at the time that the agreement was struck, or whether the other party willfully disregarded the disabled person's condition. Persons who enter contracts while intoxicated will only be able to avoid liability if they prove that the state of inebriation rendered that person incapable of knowing or appreciating what they were doing, and that the other party was aware of this incapacity but entered into the contract anyway. The party seeking to avoid the transaction must make a prompt election to avoid it once sober. Charlie (with the help of her family) should attempt to return the car and repudiate the deal right away, explaining that Charlie lacked the capacity to contract because of her manic state, exacerbated by the alcohol. If the car dealer does not allow her to avoid the deal and sues for breach of contract when Charlie is unable to pay, Charlie can raise her mental illness and intoxication in an attempt to avoid the contract. She may also try to demonstrate that the transaction was unconscionable if she can show that the dealer took advantage of her condition. From a business perspective, the car dealer should allow Charlie to avoid the deal, accept the return of the car, return her money, and release her from further liability. If the dealership does not release her but instead treats her as in default of payment, it will find subsequent collections and litigation to be expensive, not to mention risky (in that the court may be sympathetic to Charlie). As well, with a long litigation cycle, the market value of the car will continue to decline.
- 58) The community association's regular activities demand the capacity to contract with many parties for things such as venues for their events, printers for their newsletter, donors to their funding campaign, and staff. An unincorporated association must have someone who is willing to enter contracts on its behalf and to accept all liability. Parties they contract with may be wary about extending credit in these circumstances because of the possibility that the person contracting is not able to make good on the contractual obligations. If they incorporate, the association will have the capacity to enter into contracts on its own behalf (with signing authorities) and there is less risk involved for members of the board of directors, as well as other parties with whom they may contract.
- 59) First, we should see whether there exists legislation in the relevant jurisdiction that provides the association a capacity to contract. If so, then risk management is identical to contracting with a statutory corporation. If not, it is important to determine whether the person contracting on behalf of the association is in a financial position to assume personal responsibility and is willing to perform the obligations under the contract on the organization's behalf.
- 60) (i) Guarantees to assume another person's debt if they default. For example, guaranteeing a mortgage for a family member if s/he is unable to pay. (ii) Contracts for the sale of an interest in land. For example, selling a house, or assigning the right to take crops or minerals from land. (iii) Contracts that are not executed within one year. For example, a long-term agreement to supply a hospital with linens.
- 61) This is not a safe assumption for Ling to make. Because the *Statute of Frauds* has been applied so broadly, it can catch parties by surprise. For example, the court might very well say that the contract is not caught by the *Statute* if, on the facts, the contract could possibly be performed within one year.
- 62) Under the *Statute of Frauds*, any contract for the sale of an interest in land must be evidenced in writing in order to be enforceable. Since there is no written evidence of their deal, Tinh will not be able to force Ed to sell him the land, nor will a court force Ed to give back the cash Tinh paid him since there is no written evidence of it having changed hands. Although Tinh will not be able to enforce the deal, their contract may still have some legal effect. For example, if prior to the sale agreement, Tinh had leased the parcel of land from Ed, and if Ed sued Tinh for non-payment of rent, Tinh could raise the sale agreement in order to show that his obligation to pay rent had been discharged.
- 63) First, risk managers will need to know precisely which kinds of contracts must be

evidenced in writing, what the writing requirements are and what are the legal consequences of non-compliance. Second, they should adopt the general habit of reducing all contracts to writing whenever possible. This will help to avoid uncertainty and will prevent unnecessary debate between the parties about the terms and conditions in their contracts.

- 64) A mistake that prevents the creation of a contract is a mistake that fundamentally undermines the contract formation process by rendering a meeting of the minds impossible. For example, a grocer agrees to buy a shipment of canned corn, but finds out when it arrives that he has bought several boxes of compact disks by a band called Korn.

Some mistakes, such as mistake as to the existence of the subject matter, will render the purpose of a contract impossible. For example, a person accepts an offer to buy a business in order to obtain its databases. Unbeknownst to either party, a computer virus had deleted the entire business' information system, making the business worthless to the buyer.

- 65) The general rule is that, absent fraud or misrepresentation, people are bound by the documents that they sign. More recently, courts overlook this rule where the signor is not afforded proper time to read the document, and it contains an onerous or unusual term that has not been brought to the attention of the signor. In this case, Rosa is likely to be bound by her signature as she had ample time to review the documents or get help. By signing, she indicated her intention to be bound. Rosa may try to plead the defence of *non est factum*. *Non est factum* is applicable only when there is a radical difference between what a person signed and what she thought she was signing. Rosa knew that she was signing forms to do with administration and fees for her stay at the facility. Although the plea of *non est factum* originated as a way to protect illiterate people from being taken advantage of, Rosa could speak English perfectly well and read it to an extent. It is likely that the people at the facility had no idea that she hadn't known what she was signing. Given that she had spent most of her life in Canada, Rosa would have had the resources, including asking Paulo, to ensure that she knew what she was signing. For these reasons it is unlikely that the plea will succeed.
- 66) Burrough J is providing a warning to judges who render decisions outside the confines of the law. In his view, courts are not the best organizations to be making decisions on public policy. This is best left to the legislatures so that judges are not tempted to create their own brand of justice. Denning MR, on the other hand, recognizes that legal rules, if strictly adhered to, can lead to injustice. Denning MR sees public policy as a flexible instrument that can be used by judges to modernize the law.

Some students will side with Burrough J. The basic point they will try to make is that what is against public policy is often subjective and difficult to apply. The restraint on trade doctrine provides a useful example. If both parties agree to restrict their ability to trade or compete—so long as they both consent and neither party is exerting undue pressure—then it should be up to the parties to make their own bargains. Students in this camp will champion the idea of freedom to contract and a free market.

Other students will side with Denning MR, arguing that the subjectivity of the public policy doctrine is what is required to achieve justice in particular instances. Without the doctrine, people would be able to enter into all sorts of agreements that undermine the very principles the State sanctions through the law of contract. Students who support this view might use a broadly drafted restraint on trade clause, e.g. a clause that prevents a person for working for anyone else, as coming dangerously close to slavery.

Some students might take a moderate position recognizing some merit in both positions.

- 67) Any covenant in restraint of trade will be presumed contrary to public policy unless the party seeking to enforce it can prove that it is reasonable. An example of a covenant that is likely to be upheld will merely restrict the dot.com upstarts, individually or as a group, from using their knowledge in the field to develop a new company that is identical or almost identical to the one they have sold for a period of two years. An example of a covenant that is likely to be struck down will restrict the members of the dot.com group from obtaining work in a related field ever again, in any part of the world.
- 68) In a fiduciary relationship, one person is in a position of dominance over the other. Such

relationships are usually based on trust or confidence, for example, parent/child; lawyer/client; doctor/patient; financial advisor/client; and trustee/beneficiary. Fiduciaries owe a duty to act in the best interests of the trusting party. Business persons would best avoid legal problems by not entering into business deals with those to whom they owe fiduciary duties. If business transactions cannot be avoided, fiduciaries must ensure a fair bargaining process (including putting the other parties' interests ahead of their own), and provide plenty of opportunity for independent legal advice.

69) (i) **Economic Duress**: Courts will sometimes set aside contracts where a person enters into a contract after being threatened with financial harm. The party alleging economic duress must prove that it was coerced into a contract by someone who acted on its fear of impending financial injury. To succeed, it should be able to demonstrate that: a) the pressure was exerted in bad faith; b) that the pressure to agree could not reasonably have been resisted; c) legal proceedings were commenced as soon as possible; d) it protested when pressured into the agreement; and e) that it was not afforded independent legal advice.

(ii) **Undue Influence**: Courts will set aside a contract when one party uses pressure to overpower the will of a weaker party and thereby induce an agreement. The victim can prove undue influence in two ways. First, the victim can prove that the parties were in a fiduciary relationship. Where this can be proved, the court will presume undue influence in any transaction between them. Then, the fiduciary must rebut the presumption by showing that the deal was fair, and that there was an opportunity for the other party to seek independent legal advice. Second, if there is no fiduciary relationship, there is no presumption of undue influence. In such a case, the party seeking to avoid the contract must prove that undue pressure was in fact applied.

(iii) **Unconscionable Transactions**: Courts will set aside a contract where parties make an agreement that no right-minded person would ever offer and no fair-minded person would ever accept. The weaker party must prove that there was an improvident bargain (one made without any regard to one's future) and an inequality of bargaining power between the parties. If this can be demonstrated, the court will presume the transaction to be unconscionable. It is then up to the stronger party to rebut the presumption by proving that the bargaining process was fair.

70) **Agree**: Those who agree will argue that judges should continue to set aside transactions where there has been a material mistake, fraud, or unfairness during bargaining. To hold parties to their contracts one hundred percent of the time is not practical in these situations. Judges should not interfere with "unwise" or "imprudent" bargains, but if the bargaining process is so flawed that it cannot plausibly be said that the parties truly consented to the arrangement, courts should strike down such deals. The purpose of freedom to contract is to ensure that people are making voluntary undertakings.

**Disagree**: Those who disagree will argue that anyone who enters into a contract does so because they perceive it to their advantage to do so. Because each person can choose whether to enter into the agreement or not, the law should not be compromised just because things do not go their way. This view, they will argue, is crucial for commercial stability. Business cannot succeed unless parties are able to count on their contracts being enforced by the courts.