

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

- 1) Which of the following statements defines the concept of "discharge of contract"? 1) _____
- A) A contract is treated as if it never existed.
 - B) Each party provides a promise in order to create an enforceable agreement.
 - C) Neither party is held responsible for past actions, but both must perform the contract in the future.
 - D) A contract that is discharged for breach continues to exist for some purposes.
 - E) The parties describe their contract into a written document.
- 2) Which of the following statements is TRUE with respect to a contractual obligation that is discharged through payment by a debit card? 2) _____
- A) Debit cards use the same rules and procedures as credit cards.
 - B) Payment by debit card is final and irrevocable.
 - C) A debit card operates by allowing the card holder to purchase an item by promising to pay the vendor later.
 - D) Because of the need for commercial certainty, the holder of a debit card is liable for all purchases, even if, for example, a criminal uses a gun to force the card holder to use the card.
 - E) Unlike payment by cash, payment by debit card is conditional rather than final.
- 3) Kitten Inc was contractually obliged to pay \$5000 to Mavitten Ltd on June 1, but failed to do so. It is now June 3. Assuming that general contractual rules apply, which of the following statements is TRUE? 3) _____
- A) Mavitten is entitled to discharge the contract for breach.
 - B) Mavitten cannot discharge the contract unless it notified Kitten that the time of payment was very important.
 - C) As a result of Kitten's behaviour, the terms of the contract have been varied.
 - D) Kitten has committed a serious breach of contract because time is of the essence.
 - E) Kitten has breached a condition subsequent by failing to pay even after the scheduled date for payment has passed.
- 4) Miguel filled his shopping cart with groceries and proceeded to the cashier. The total bill came to \$40. Which of the following forms of payment must the cashier accept? 4) _____
- A) a debit card
 - B) forty one-dollar coins
 - C) a cheque
 - D) twenty two-dollar coins
 - E) a credit card
- 5) Sasha owed \$350 to Nicole. Under the terms of their contract, he was required to pay that amount to her at her office on March 31. Which of the following statements is TRUE? 5) _____
- A) If Nicole unjustifiably rejects a payment that satisfies the terms of the contract, Sasha no longer has to pay.
 - B) If it is inconvenient and unreasonable for Sasha to travel to Nicole's office on March 31 because he is sick, he is entitled to pay on April 1 without breaching the contract.
 - C) If Nicole rejects a proper tender, she is still entitled to receive payment with interest calculated from March 31, but she must compensate Sasha for his inconvenience.

- D) If Sasha provides four \$100 bills to Nicole at her office on March 31, she must accept that payment as long as a reasonable person in her circumstances would be willing to make change.
- E) If Nicole rejects a proper tender, she can no longer insist upon receiving payment at her office.

6) Which of the following rules applies with respect to a tender of payment? 6) _____

- A) A creditor generally must accept any reasonable form of payment, such as cash, credit card, or cheque.
- B) A creditor that rejects a proper tender cannot later demand payment of the same debt.
- C) If a debtor pays more than is actually due, the creditor generally must provide "change" for the difference, as long as the "change" does not exceed the limits set by the *Currency Act*.
- D) The creditor must tender payment even if the debtor has not asked for it.
- E) A creditor that rejects a proper tender may be punished by an inability to claim interest.

7) Pavel agreed to build a yacht for Dixie. The yacht was to be delivered to Dixie on July 15 and Pavel was to be paid the total price of \$100 000 on the same day. Which of the following statements is TRUE? 7) _____

- A) If the parties created an entire contract, then, unless and until he completes the project, Pavel will not be entitled to any payment, even if spent \$75 000 trying to perform his obligations.
- B) If Pavel delivers the frame of the yacht, together with the materials that will be required to actually complete construction of the boat, he is entitled to have the contract discharged on the basis of "substantial performance" as long as he compensates Dixie for the price that she will have to pay to have another person finish the project.
- C) If Pavel completes construction of a yacht on July 1, only to see it destroyed by a hurricane the next day, the contract will be certainly discharged on the basis of self-induced impossibility if Pavel does not have enough time to build another yacht for Dixie by July 15.
- D) If Pavel delivers the yacht, and Dixie pays the price, on July 15, she will be required to provide him with a signed document called a "novation" that signifies his proper completion of the agreement.
- E) If Pavel delivers the yacht on July 15, but has not stenciled the name *Sea Bird* on the back of the boat as he had promised to do, Dixie is certainly entitled to refuse delivery and withhold the purchase price.

8) Corrie contractually agreed to build a house for Ed in exchange for \$250 000. After completing about 75 percent of the project, Corrie ran out of resources and informed Ed that she could not continue. She therefore abandoned the job, as well as a substantial amount of materials at the work site. After Corrie left, Ed used the abandoned materials to finish the job himself. Which of the following statements most likely is TRUE? 8) _____

- A) Because Corrie did not complete the project, the parties never actually had a contract.
- B) Because Ed completed the job, Corrie is entitled to have the contract discharged on the basis of performance.
- C) If the court classifies the parties' agreement as an entire contract, then Ed is liable for the materials that he used in completing the project, but he is not liable for the work that Corrie performed.
- D) Although she is not entitled to be paid for her services, Corrie is

entitled to sue on the contract in order to be paid for the materials that Ed used to complete the project.

E) Corrie is entitled to partial payment on the basis of the doctrine of substantial performance.

- 9) As part of a larger business plan, Ronald and Margaret devised an arrangement that would involve the shipment of widgets to the island of Abuc in the Caribbean. They are concerned, however, that their plan might violate the *Trading with Enemy Islands Act*, which prohibits the export of goods to certain Caribbean nations. Ronald and Margaret nevertheless want to immediately draft a document that sets up a structure for the shipment of widgets to Abuc, but that will not expose them to liability if, after seeking government approval for their plan, they learn that widgets cannot legally be sent to Abuc. As a matter of risk management, which of the following statements provides the best advice? Ronald and Margaret should insert
- 9) _____
- A) a condition subsequent into their agreement.
 - B) an exclusion clause into their agreement.
 - C) a condition precedent into their agreement.
 - D) an option to terminate into their agreement.
 - E) a true condition precedent into their agreement.
- 10) Wilf agreed to purchase a business from Celine. The parties' contract stated that the deal was to close on June 1, when Wilf would pay \$250 000 to Celine and she would transfer the appropriate documents to him. The parties' contract also said: "This sale is conditional upon Wilf's ability to arrange suitable financing from a lending institution." On June 1, Celine called for payment of the purchase price, but Wilf explained that he had not been able to received financing. Which of the following statements is most likely TRUE?
- 10) _____
- A) Although the parties' agreement referred to a "condition," a court will find that that agreement was really subject to an option to terminate.
 - B) because the contract was "conditional," the parties never had an enforceable agreement. Consequently, Wilf cannot be held liable even if he did not make any effort to secure financing
 - C) Wilf is liable for breach of the quoted condition if he did not make any attempt to secure financing.
 - D) The result in this case will depend upon whether or not the "condition" that the parties referred to was really a warranty.
 - E) Wilf is liable for breach of a subsidiary obligation if he did not make any attempt to secure financing.
- 11) Which of the following techniques for discharging a contract does not require fresh consideration?
- 11) _____
- A) rescission
 - B) accord and satisfaction
 - C) waiver
 - D) novation
 - E) variation
- 12) Acme Corp entered into a complex agreement with Coyote Inc for the design and delivery of various types of widgets. After several months, however, Acme received an offer to perform a similar service for the government under a more lucrative contract. Acme could not possibly perform both agreements. It therefore conducted some research and discovered that another company, Geococcyx Ltd, was able and eager to complete the deal with Coyote. Which of the following statements is TRUE?
- 12) _____

- A) The contract between Acme and Coyote can be described as "fully executed."
 - B) The parties could use the process of novation to allow Geococcyx to assume Acme's role under the original agreement with Coyote.
 - C) Geococcyx can use the legal process of repudiation in order to discharge the contract between Acme and Coyote.
 - D) because of the circumstances, Acme likely has the right to use the process of waiver to escape its contract with Coyote
 - E) because of the circumstances, the contract between Acme and Coyote is frustrated
- 13) Tippi and Alfred entered into a contract for the sale of birds. Under the terms of that agreement, she was to provide him on a weekly basis with ten lovebirds for his pet store, and he was to pay her \$50 on a weekly basis. The agreement also stated that the contract would be in force for one year. For six weeks, each party performed as promised. At the beginning of the seventh week, however, Tippi telephoned Alfred and said that she wanted to bring their agreement to an immediate end. Which of the following statements is TRUE? 13) _____
- A) The parties can use the process of rescission to discharge the contract, but only if Alfred seals his agreement to Tippi's proposal.
 - B) The parties' contract will automatically be discharged through the process of novation if neither Tippi nor Alfred ever try to enforce it.
 - C) The parties cannot use the process of rescission to discharge the contract because they have already performed part of the agreement.
 - D) The contract can be brought to an end through the process of release only if Tippi provides fresh consideration.
 - E) If the parties agree to immediately discharge their contract, their new agreement will be supported by consideration.
- 14) Kate and Ben entered into a contract. She promised to transfer 1000 shares in XYZ Corp to him and he promised to personally draft architectural plans to certain specifications for her. Kate transferred the shares to Ben as promised, but he later discovered that he simply lacked the ability to uphold his end of the bargain. Which of the following statements is TRUE? 14) _____
- A) A seal is necessary for the purposes of an accord and satisfaction.
 - B) The contract would be unenforceable under the statute of limitations if the parties had originally agreed that Ben would have more than six years to complete the architectural plans.
 - C) If Kate promises to release Ben from his obligation to perform the original contract, that promise can be enforced against her through the process of accord and satisfaction if Ben gives some form of fresh consideration, such as a promise to design a web site, instead of draft architectural plans.
 - D) Since neither party promised to pay money, the original contract is unenforceable because it is not supported by legal tender.
 - E) Rescission provides the simplest way in which the parties can bring their contract to an end.
- 15) Which of the following statements is TRUE? 15) _____
- A) An option to terminate can only be exercised by one party if the other party has breached the contract.
 - B) A contractual obligation is executory if it has been performed.
 - C) A contract will be discharged on the basis of substantial performance only if the recipient of the incomplete performance agrees to accept monetary damages for the shortfall.

- D) A true condition subsequent will prevent a contract from being created unless a certain event occurs.
- E) A contract will be discharged on the basis of anticipatory breach only if the innocent party chooses to relieve the party in breach of the need to perform the contract.

- 16) Ranjit and Samantha, who are both business students, entered into a contract. He promised to tutor her in the law of negotiable instruments, and she promised to type his handwritten notes for him after each class. The contract was to start on September 1 and was to last for one academic year. Before the beginning of September, however, Samantha learned that she was enrolled in a course on mortgages, rather than a course on negotiable instruments. Furthermore, Ranjit received a laptop computer as a present from his parents. Ranjit and Samantha therefore have agreed that the original terms of their contract no longer make much sense. They also agree that it would be preferable if he tutored her in the law of mortgages and she designed a database that will allow him to most effectively use the lectures notes that he types for himself in class. Which of the following processes would best suit the parties' needs? 16) _____
- A) release
 - B) waiver
 - C) rescission
 - D) variation
 - E) accord and satisfaction
- 17) Which of the following situations best demonstrates the concept of self-induced impossibility? 17) _____
- A) On May 15, Alpha agreed to transfer a certain painting to Beta. The transfer was to occur on June 1. In fact, although neither party realized it when they created their agreement, that painting had been destroyed by fire on May 1.
 - B) Seven years ago, Alpha became contractually indebted to pay Beta \$10 000. Since Beta has not yet taken any action against Alpha, Beta probably can no longer collect upon the debt.
 - C) Alpha agreed to transfer a particular vehicle to Beta. The transfer was to occur on June 1. On May 15, however, Alpha transferred the same car to Gamma, who was entirely unaware of the contract between Alpha and Beta.
 - D) Alpha was contractually obliged to pay \$1000 to Beta, at Beta's place of business, on June 1. On June 1, Alpha went to Beta's place of business and tried to discharge the debt by giving ten \$100 bills to Beta. Beta refused to take the money. Because Beta refused a proper tender, Alpha no longer is required to actively repeat its tender.
 - E) On May 1, Alpha agreed to transfer a motorcycle to Beta. The transfer was to occur on June 1. On May 15, Alpha informed Beta that it intended to break the contract and keep the motorcycle for itself.
- 18) Boris purchased confidential information from Natasha for a price of \$100 000. Under the terms of that contract, he was required to pay \$5000 on the first day of each month for twenty consecutive months. He was also required, on the first day of each month, to pay 7.5 percent interest on the total amount of the debt that was outstanding. After paying \$5000 plus interest for the first month, Boris explained to Natasha that he had suffered a financial setback in his other business ventures. He therefore asked if she would be willing to relieve him of the need to pay interest in the future. Which of the following statements is TRUE? 18) _____

- A) Since waiver is an equitable doctrine, it would apply to the facts only if a court found that Natasha had acted inequitably or unfairly.
- B) If Natasha says that she will not insist upon the payment of interest in the future, the doctrine of waiver may later prevent her from changing her mind.
- C) The doctrine of waiver would apply in this case only if Natasha promised under seal that she would relieve Boris of the need to pay interest in the future.
- D) If Boris fails to pay interest in the future, the contract will be frustrated unless Natasha agreed to relieve Boris of the need to pay interest.
- E) If Natasha says that she will not insist upon the payment of interest in the future, but that promise is not supported by fresh consideration, there is no way that Boris can hold Natasha to her promise.

19) Which of the following statements is TRUE?

19) _____

- A) In contrast to the doctrine of promissory estoppel, there is no possibility of retraction and resumption of rights under the doctrine of waiver.
- B) The doctrine of frustration applies in favour of the innocent party if the other party to a contract intentionally makes it impossible to perform the contract.
- C) The lapse of time under a statute of limitation causes a contract to be wiped out altogether.
- D) The breach of an intermediate term sometimes allows the innocent party to discharge the contract.
- E) Bankruptcy always relieves a contractual party from the need to satisfy a debt that arose under a contract.

20) Which of the following statements is TRUE?

20) _____

- A) Bankruptcy always discharges a person from performing a contractual obligation.
- B) The doctrine of waiver may apply in connection with a condition, but not a warranty or an innominate term.
- C) Because of its effect upon the parties, bankruptcy always leads to frustration of a contract.
- D) Limitation periods exist because it is undesirable for courts to rely upon evidence that is old and perhaps unreliable.
- E) The doctrine of frustration applies only if the circumstances have changed so that performance, as originally intended, has become impossible.

21) Zinedine entered into a contract with Sporting Press Inc to write an instructional book about soccer. Under the terms of that agreement, he was required to deliver the manuscript of the book to the company by December 31. On October 1, however, Zinedine telephoned Sporting Press and explained to the editor that, due to other commitments, he would not be able to perform his obligations on schedule. Which of the following statements is TRUE?

21) _____

- A) If Sporting Press does not respond to Zinedine's statement, a court will assume that the contract has been discharged.
- B) Zinedine has committed an anticipatory breach.
- C) Unless the parties agreed otherwise, the time of Zinedine's performance was of the essence.
- D) Sporting Press is entitled to demand performance, but it cannot force Zinedine to pay damages.
- E) Sporting Press must discharge the contract now or never, since it

is not entitled to wait until December 31 before it makes its decision.

- 22) Jonah entered into a contract with Sporting Videos Inc to appear in an instructional video about rugby. Under the terms of that agreement, he was required to participate in a filming session on March 1. Two weeks before that date, however, he telephoned Sporting Videos and explained to the company's president that he no longer was interested in the project. Which of the following statements is TRUE? 22) _____
- A) Jonah has committed an anticipatory breach of a warranty.
 - B) The contract has been frustrated.
 - C) Jonah has rescinded the contract.
 - D) Sporting Videos ultimately will be held liable if it immediately insists upon performance, but finds, on March 1, that it cannot perform even though Jonah has changed his mind and is ready to perform.
 - E) If Sporting Video does not respond to Jonah's statement within six weeks, the contract will be discharged under the statute of limitations.
- 23) Evan owns a business that produces various forms of marketing and promotional materials. Andrea entered into a contract with him. He was required to design a web site for her business by June 1 and she was required to pay \$100 000 on July 1. Because of an administrative error, however, Evan confused Andrea's order with the order of another customer. Consequently, by June 1, he had printed 10 000 copies of a glossy magazine for another customer, but he had not even started work on Andrea's web site. Although it is not yet July 1, Andrea has changed her mind and she no longer wants to pay \$100 000 to Evan in exchange for a web site. Which of the following statements is TRUE? 23) _____
- A) Evan is entitled to discharge the contract because Andrea committed a breach of a contractual warranty that substantially deprived him of the expected benefit of the contract.
 - B) Evan is entitled to discharge the contract because Andrea committed a breach of a contractual condition that substantially deprived him of the expected benefit of the contract.
 - C) Andrea is entitled to discharge the contract because Evan committed a breach of a contractual condition that substantially deprived her of the expected benefit of the contract.
 - D) Andrea is entitled to discharge the contract because Evan committed a breach of a contractual warranty that substantially deprived her of the expected benefit of the contract.
 - E) Because Evan has not performed and because Andrea no longer wants his performance, the contract was been discharged by frustration.
- 24) Which of the following statements is TRUE with respect to the contractual concept of *deviation* that applies when goods are shipped? 24) _____
- A) Deviation is a form of contractual breach.
 - B) The practical consequences of deviation are usually small because the party in breach is protected by insurance.
 - C) Although the concept of deviation applies when goods are placed on board a ship, a different set of rules applies when goods are transported by rail or by road.
 - D) Deviation usually allows a contract to be discharged on the basis of substantial performance.
 - E) Deviation is a type of anticipatory breach.

- 25) AJ contractually agreed to repair Shirley's car within one week. Three days later, however, he informed her that he would not be able to complete the job because he had lost all of his tools in a poker game. The facts most clearly demonstrate the concept of _____
- A) novation.
 - B) bankruptcy.
 - C) breach of a warranty.
 - D) self-induced impossibility.
 - E) deviation.
- 26) Pym had an idea for an invention. Campbell agreed to purchase a share of that invention, but only if it was approved within one week by two specific engineers, who were independent of the parties. One of the engineers gave his approval, but the other, who was on vacation, did not. Pym nevertheless claimed that Campbell was required to proceed with the anticipated purchase. Which of the following statements is most likely TRUE? _____
- A) Pym's argument will fail because the parties' agreement was subject to a true condition subsequent.
 - B) Pym's argument will fail because the contract was subject to a condition precedent that was not satisfied.
 - C) Pym's argument will succeed on the basis of the concept of self-induced impossibility.
 - D) Pym's argument will succeed because Campbell has breached a term of the contract.
 - E) Pym's argument will fail because the parties' agreement was frustrated.
- 27) Svetlana, a carpenter, agreed to make one hundred maple bats for Dexter, a professional baseball player. The total price of \$10 000 was to be paid one week after delivery of the bats. When Svetlana delivered the bats to Dexter, he noticed that they were made out of wood from pine trees, rather than maple trees. Despite being disappointed, he reluctantly agreed to accept the shipment and promised to pay as required by the contract. After using the bats for two days, however, he found that they considerably reduced his ability to hit home runs. He also learned that Jorge, another carpenter, was willing to produce one hundred maple bats at a price of \$5000. There is a common belief among baseball players that maple bats are far superior to pine bats. Which of the following statements is most likely TRUE? _____
- A) Since Svetlana breached a warranty, Dexter never enjoyed the option of discharging the contract.
 - B) Svetlana committed an anticipatory breach of contract.
 - C) Even if Dexter exercises a right of discharge, the contract will continue to exist for some purposes.
 - D) Although Dexter was entitled to discharge the contract and reject Svetlana's bats on the basis of her breach of a warranty, he lost that right when he accepted the delivery and used some of the bats.
 - E) Since the bats can still be used, the facts illustrate the doctrine of substantial performance.
- 28) Depp Designs Inc is a landscaping company. Roger owns a house that is surrounded by various types of shrubbery. He entered into a contract with Depp under which the company was required to sculpt the various shrubs into the shapes of dogs. Because of an error, however, Depp actually sculpted the shrubs into the shapes of cats. Which of the following statements is TRUE? _____
- A) because of its error, Depp has frustrated the contract
 - B) because the parties already had a contract that was in existence

- and that required them to perform, it is impossible to classify Depp's actions as a breach of a "condition"
- C) Roger's performance is clearly defective.
 - D) because of its error, Depp has rescinded the contract
 - E) because of the circumstances, Roger cannot discharge the contract even if there has been a breach of condition
- 29) Part of the law's response to a breach of contract is best explained by the fact that 29) _____
- A) some terms cannot be classified as either a "condition" or a "warranty" at the outset.
 - B) a breach of condition will usually substantially deprive the party in breach of the expected benefit of the contract.
 - C) a breach of a warranty will usually deprive the party in breach of the expected benefit of the contract.
 - D) "an unaccepted repudiation is like a thing writ in water and of no value to anybody," as one judge said.
 - E) a breach of a condition will prevent a contract from being formed.
- 30) The existence of intermediate terms is best explained by the fact that 30) _____
- A) it is sometimes appropriate to wait and see how a breach actually affects the parties before determining whether or not the right to discharge should arise.
 - B) the courts are willing to mediate a dispute between some contractual parties, but not others.
 - C) contractual parties sometimes do not specify whether a term should be considered a condition precedent or a condition subsequent.
 - D) the innocent party sometimes should receive damages for some of its losses, but not others.
 - E) some terms are more difficult to breach than warranties, but easier to breach than conditions.
- 31) Which of the following sets of concepts (as discussed in Chapter 11) all represent ways in which the terms of a contract can be varied without the supply of fresh consideration? 31) _____
- A) release and waiver
 - B) release and novation
 - C) rescission and waiver
 - D) variation, waiver, and novation
 - E) waiver, release, and rescission
- 32) Which of the following statements is TRUE with respect to various uses of the word "condition" as that word was used in Chapter 11? 32) _____
- A) A contract cannot involve both a condition subsequent and a true condition precedent.
 - B) If a condition subsequent is not satisfied, then the contract is rescinded.
 - C) A party who fails to perform a condition may be held liable for damages.
 - D) A true condition precedent usually leads to the existence of secondary obligations.
 - E) A condition subsequent suspends the creation of a contract until a certain event has occurred.
- 33) Which of the following statements is TRUE with respect to the word "rescission"? 33) _____
- A) Rescission always arises as a result of a contractual defect.
 - B) Rescission always requires the supply of fresh consideration.

- C) Depending upon the circumstances, rescission may involve either a bilateral agreement to discharge a contract or a unilateral decision to terminate a contract.
- D) Rescission is the name of the process that allows a contract to be discharged after one party has breached a serious term of the contract.
- E) Rescission eliminates the need to perform outstanding primary obligations, but it does not affect secondary obligations.
- 34) The phrase "innominate term" is defined as a term that 34) _____
- A) is unnamed because it is not called either a condition or a warranty.
- B) leads to nominal damages if it is breached.
- C) was not numbered, or included, with conditions and warranties among the types of terms that courts traditionally recognized.
- D) is unimportant and, if breached, leads only to damages.
- E) one party has nominated, or chosen, to sue upon as either a condition or a warranty.
- 35) Pina contractually agreed to purchase a shipment of beans from Jerry. 35) _____
- The beans were to be delivered on June 15. A court recently held that Pina is entitled to discharge the contract because Jerry did not perform as required by the agreement. Assuming that the general rules of contract are all applicable in this case, which of the following statements is most likely TRUE?
- A) Jerry breached the contract by delivering the beans on June 17.
- B) While Pina initially decided to carry on with the contract after Jerry's breach, she changed her mind after the price of beans dropped and she was able to obtain the same quantity of beans from another supplier at a lower cost.
- C) Jerry breached a term that the court classified as a warranty.
- D) Pina will rely upon the remedy of rescission.
- E) Although Jerry was able to deliver the beans on June 15, he had announced on May 30 that he would not be able to perform on time.
- 36) Rande contractually agreed to purchase his electricity, for two years, 36) _____
- from Metro Power Inc. Six months after that contract was signed, Metro Power increased its prices by ten per cent, as it was permitted to do under the agreement. It then insisted that Rande pay at the new rate for the remaining time under the contract. Although Rande realized that Metro Power had acted in accordance with the law, he is very upset about the price hike. Assuming that the default rules of contract apply,
- A) Rande is entitled to protest by paying his monthly bills with foreign currency.
- B) Rande is entitled to protest by paying his monthly bill with a dozen or more cheques which add up to the correct amount.
- C) Rande is entitled to protest by paying only when a representative from Metro Power has come to his house to collect payment on his monthly bills.
- D) Rande is entitled to protest by paying his monthly bill with any number of bills and coins he happens to have on hand.
- E) Rande must pay as promised, even though he is unhappy with Metro Power's actions.
- 37) Brock contractually agreed to build a deck on the back of Moira's house 37) _____
- in exchange for \$20 000. It is now two years later and that contract has been brought to court. The judge applied the doctrine of substantial performance. That means that

- A) neither party is entitled to damages.
- B) the contract has been discharged for performance.
- C) Moira must pay \$20 000 to Brock.
- D) Brock performed all of the conditions, but not all of the warranties, in the contract.
- E) Brock remains obligated to perform the remainder of the contract.

- 38) Madeleine entered into a contract with Blue Water Inc. That contract required the company to install a swimming pool at a price of \$15 000, and to then landscape the rest of Madeleine's backyard at a cost of \$3000. The parties' transaction has now been brought into court. The judge has applied the entire contract doctrine. That means that 38) _____
- A) in order to reach a fair result, the judge ignored the parties' intentions and split the single contract into two distinct contracts.
 - B) Madeleine may not be required to pay a cent even though she now has a swimming pool in her backyard.
 - C) the parties rescinded the entire agreement and created a new one in its place.
 - D) the company has not performed any part of the whole agreement.
 - E) in order to reach a fair result, the judge ignored the parties' intentions and joined two distinct contracts into one single contract.
- 39) Green Thumb Inc contractually agreed to provide a "complete lawn care package" to Benjamin. The parties' contract required the company to perform a long list of tasks on a weekly basis during the summer months. While the company performed most of those tasks flawlessly, Benjamin was very upset to discover that one of his seven small flower beds had not been weeded one week. The company explained that the task had been overlooked by an employee during her first week on the job, and offered to extend their services one week into the fall season free of charge. Because he had come to regret entering into the contract in the first place, Benjamin rejected the company's explanation and offer. He announced instead that he was "terminating" the contract and that he no longer would allow company employees on his property. Which of the following statements is most likely to be TRUE? 39) _____
- A) The company is entitled to discharge the contract.
 - B) Benjamin breached a warranty of the contract.
 - C) Only one party has a right to sue for breach of contract.
 - D) Both parties have breached conditions of the contract.
 - E) The company breached a condition of the contract.
- 40) Samuel entered into a contract with AE Lukey Inc. That contract required both parties to perform services. It is now six months later. The contract is executed on one side and executory on the other. Which of the following statements may be TRUE? 40) _____
- A) One party must be entitled to receive damages.
 - B) If the parties wish to modify the terms of their contract, they may effectively do so by using the processes of variation or novation.
 - C) If the parties wish to modify the terms of their contract, they may effectively do so by using the process of accord and satisfaction, but not the process of rescission.
 - D) One party is entitled to discharge the contract.
 - E) One party has signed the contractual documents, but the other party has not done so.

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

- 41) Alpha Corp breached its contract with Beta Inc. If Beta discharges the contract on the basis of that breach, the contract no longer will be at all relevant to the relationship between the parties. 41) _____
- 42) It is possible for a contract to be discharged by performance even though one party breached the contract. 42) _____
- 43) Jasper owed \$5000 to Miranda under the terms of a contract. He brought that amount of cash to her office during regular business hours. Because she was in a bad mood at the time, however, Miranda slammed the door in his face. As a result, Jasper no longer has to make payment under the contract. 43) _____
- 44) Hector agreed to apply three coats of paint to the exterior of Ruth's house. Although he only applied two, the evidence indicates that a third coat was really unnecessary. Hector nevertheless has breached the contract. 44) _____
- 45) Halle was required to pay \$100 to Barry under the terms of a contract. She arrived at his door and gave him fifty \$2 coins. Barry was entitled to reject that money. 45) _____
- 46) Casey purchased a 12-month cable television package from CanVid Inc. Under the terms of that contract, Casey received an option to terminate the agreement immediately if he found another cable provider who offered a better price. Three months later, Casey discovered that Videotech Ltd offered the same cable package at a price that was 10 percent less than CanVid's. Casey's contract with CanVid therefore is automatically terminated. 46) _____
- 47) The difference between a condition precedent and a true condition precedent is that a condition precedent is really a condition subsequent. 47) _____
- 48) ABC Corp and XYZ Inc entered into a contract that is subject to a condition subsequent. In order to determine whether or not the parties' agreement will come to an end as a result of that condition, it is necessary to determine whether or not either party has been substantially deprived of the expected benefit of the contract. 48) _____
- 49) A contract existed between David and Tawny. Although the agreement was fully executed from his perspective, it was still partially executory from her perspective. The parties nevertheless agreed that the agreement should be brought to an end. That new agreement is enforceable as long as David puts his seal on it, even if Tawny does not do likewise. 49) _____
- 50) An accord and satisfaction is effective only if both parties provide consideration. 50) _____
- 51) Because consideration is not received in return, a waiver of contractual rights is effective only if it is placed under seal. 51) _____
- 52) Chan was contractually obliged to pay \$10 000 to Olivia, but failed to do so. For the next eight years, she pestered him for payment on a monthly basis, and he consistently and silently ignored her. Olivia is not barred by the statute of limitations because she has continually pressed her claim on Chan. 52) _____

- 53) The word "warranty" comes from the Latin word for "wait-and-see." As a result, it is necessary to consider all of the circumstances of a case before determining whether or not an innocent party is entitled to discharge a contract on the basis of a breach of warranty. 53) _____
- 54) Birinder contractually promised to sell 10 000 tons of steel to Maria. Because he honestly believed that he had a total of 25 000 tons of steel in stock, he sold 15 000 tons of steel to Boris under a separate contract. After doing so, however, he discovered that he originally had only 20 000 tons of steel in stock. Because he has only 5000 tons of steel remaining, and because he had acted honestly throughout, his contract with Maria is discharged on the basis of frustration. 54) _____
- 55) In some circumstances, the innocent party will not be able to discharge a contract, regardless of whether the other party breached a condition, a warranty, or an intermediate term. 55) _____

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

- 56) "If a contract is discharged for breach, it no longer has any effect." Is that statement correct? Explain your answer.
- 57) Thelonius agreed to purchase an antique piano from Ruby. He was required to pay the purchase price of \$100 000 by cheque on June 1, and she was required to deliver the instrument on June 15. On June 1, Thelonius appeared at Ruby's place of business with a cheque for \$100 000. However, because she was having second thoughts about actually delivering the piano to Thelonius, Ruby refused to accept his cheque. Explain the consequences of that refusal in terms of Thelonius's obligation to make payment.
- 58) Harlan received a bill for \$500 from Oxford Power Inc, with which he had a contract for the supply of electricity. The amount of the bill, which was much larger than Harlan expected, was attributable to the fact that Oxford's own costs had recently increased. Although Harlan initially refused to pay anything, he was eventually convinced by Oxford's representative that he was contractually liable for the entire \$5000. As a sign of protest, he collected \$500 in pennies, placed them in a large wheelbarrow, and proceeded to Oxford's main office to make payment. Oxford, however, refused payment. Was it entitled to do so? Explain your answer.
- 59) Identify a situation in which a party is entitled to have a contract discharged on the basis of performance, even though that performance constitutes a breach of the contract.
- 60) Explain the difference between a "condition," a "condition subsequent," a "condition precedent," and a "true condition precedent" as those terms have been used in this chapter. Which of those types of conditions can be breached? Explain your answer.
- 61) Ichiro and Emily discussed the possibility that he might buy a painting from her at a price of \$100 000. Both parties wanted the sale to occur, and both were confident that Ichiro would be able to secure bank financing for the transaction. However, the parties also agreed that neither should have *any* obligations unless and until such financing was arranged. Explain how Ichiro and Emily can best achieve that result.
- 62) "Even if the parties did not agree to such an arrangement when they created their contract, they may agree to bring their contract to an early end without relying upon consideration." Identify two situations in which is true.
- 63) Briefly describe three ways in which a contract may be discharged by operation of law.

- 64) Pierette entered into a contract with Hugo. She agreed to deliver a shipment of gold to his jewelry store each week for a year. He agreed to pay a specific price. The contract also said: "The buyer shall have the right to terminate this contract in the event of a substantial change in the market price of gold." After delivering gold to Hugo for several months, Pierette refused to go on with the contract. Her decision to do so was based on the fact that while her contract with Hugo contained a specific price, the market value of gold had suddenly increased a substantial amount. Consequently, she realized that her contract with Hugo no longer made good financial sense from her perspective. Would a court accept that argument from Pierette? Explain your answer.
- 65) Woogles Inc manufactured widgets in Winnipeg. It contractually agreed to sell 5000 widgets to Peja in Halifax for a price of \$100 000. Because the Province of Manitoba is concerned about the export of widgets, it requires all such sales to be licenced. Such licences are easily obtained if the seller fills out a simple application form. Because of that requirement, the contract between Woogles and Peja contained a clause that said: "Performance of this agreement is conditional upon the acquisition of an export licence." Shortly after entering into its contract with Peja, Woogles received an offer from another buyer, who was located within Manitoba, to pay \$125 000 for 5000 widgets. Woogles accepted that offer, even though it only had a total of 5000 widgets to sell. It then simply refused to apply for the export licence that was necessary for its contract with Peja. Can Woogles escape all responsibility to Peja in that way? Explain your answer.
- 66) Gretchen, who lived in Calgary, entered into a contract with Matt, who lives in Edmonton. He paid \$2500 to her at the outset and she promised that she would edit a book that he was in the process of writing. After completing slightly more than half of the job, however, Gretchen received an offer to act in a play on Broadway. Since acting had always been her dream, she pleaded with Matt to let her go to New York without finishing her project with him. She also pleaded with him to retain the \$2500 that she had received from him because she needed a great deal of money to make the move. Since he was fond of Gretchen, Matt agreed. She then sold almost all of her belongings, including her computer, and moved to New York. A week later, however, Matt changed his mind when he learned that Gretchen was acting in *Cats*, a Broadway production that he disliked very much. He therefore now insists that she must fulfill the rest of her contractual obligations. Is he correct? Explain your answer.
- 67) Describe the process of novation. Explain whether or not the process requires consideration. If so, explain how consideration is provided.
- 68) Explain why a breach of contract supports the right of discharge in some situations, but not others.
- 69) As a result of her independent work as a research scientist, Zoe had confidential information concerning a new process for manufacturing light bulbs. She entered into a contract under which she promised to sell her information exclusively to Lampadina Inc, a light bulb manufacturer. Under the terms of that agreement, she was to provide the information on June 1 and Lampadina was to pay \$250 000 within six weeks after that. On March 31, however, Zoe fell in love with Hans, the president of Gluhlampe Inc, another light bulb manufacturer. Two weeks later, she disclosed her confidential information to Hans. She then told Lampadina that since she could no longer provide "confidential information," their contract was at an end and she no longer owed any obligations to them. Is she correct? Explain your answer.
- 70) Identify two policy reasons why contractual rights may become unenforceable under a statute of limitation.

- 1) D
- 2) B
- 3) B
- 4) D
- 5) E
- 6) E
- 7) A
- 8) C
- 9) E
- 10) E
- 11) C
- 12) B
- 13) E
- 14) C
- 15) E
- 16) D
- 17) C
- 18) B
- 19) D
- 20) D
- 21) B
- 22) D
- 23) C
- 24) A
- 25) D
- 26) B
- 27) C
- 28) E
- 29) A
- 30) A
- 31) A
- 32) C
- 33) C
- 34) A
- 35) E
- 36) E
- 37) B
- 38) B
- 39) A
- 40) C
- 41) FALSE
- 42) TRUE
- 43) FALSE
- 44) TRUE
- 45) TRUE
- 46) FALSE
- 47) FALSE
- 48) FALSE
- 49) TRUE
- 50) TRUE
- 51) FALSE
- 52) FALSE
- 53) FALSE
- 54) FALSE
- 55) TRUE
- 56) A contract that has been discharged for breach is not void. Discharge simply relieves the parties of the need to perform their primary obligations under the agreement. Discharge does not terminate the parties' agreement for other purposes. For instance, even though a

contract has been discharged for breach, it is still capable of supporting the innocent party's right to claim relief (usually in the form of expectation damages). Likewise, even if a contract is discharged for breach, the innocent party will normally still be entitled to enforce an exclusion clause or limitation clause that is contained in it. In other words, a contract that has been discharged for breach continues to exist for remedial purposes because it continues to govern the parties' secondary rights.

- 57) As a general rule, a party that is obliged to pay money under a contract has the duty to tender payment. In other words, that party has the obligation to seek out and properly pay the other party. Thelonus has done so in this case. (Although the party to whom payment is to be made generally has the right to insist upon cash, Thelonus and Ruby specifically agreed that payment was to be made by way of cheque.) Because Ruby improperly rejected Thelonus's tender of payment, he is relieved of the need to actively repeat his effort. He is, of course, still required to make the payment, but the obligation is now on Ruby to seek him out. Furthermore, because she improperly rejected Thelonus's tender, Ruby is not entitled to interest in the outstanding payment. Finally, although this point lies outside the precise scope of the question, a court might award costs against Ruby based on her improper rejection of Thelonus's tender.
- 58) As a contractual debtor, Harlan is required to tender payment. Under the *Currency Act*, however, there are limits on the number of coins that can be provided by way of legal tender. More specifically, a contractual creditor, like Oxford, is not obliged to accept more than twenty-five pennies.
- 59) The question refers to the idea of substantial performance. Substantial performance occurs when a party provides most, but not all, of what it was expected to provide. The shortfall may be a defect in performance (as when a fence is painted one shade of white, when a slightly different shade was actually expected under the agreement) or a lack of performance (as when a home builder completes almost all of the structure, but fails to hang a few doors on their hinges). The contract will be discharged on the basis of that performance, even if the recipient of the substantial performance would prefer to insist upon complete performance. However, the innocent party is also entitled to damages for any loss that it suffers as a result of the breach.
- 60) A "condition" is a term of a contract which, if breached, will substantially deprive the innocent party of the expected benefit of the contract. If a condition is breached, the innocent party generally has the option of either continuing on with the contract and claiming damages *or* discharging the contract and claiming damages. A "condition subsequent" is an event which, if it transpires, will automatically cause an existing contract to come to an end. Under a condition subsequent, the parties have a contract unless and until the event occurs. A "condition precedent" is an event which, if it transpires, will cause a contract to come into existence. Under a condition precedent, the parties do not have a contract unless and until the event occurs. A "true condition precedent" is an event which, if it transpires, will require the parties to perform the primary obligations that they have under an existing contract. A true condition precedent does not directly affect the existence of a contract, but it does suspend the parties' obligations to perform under that existing agreement.

It is only possible to breach the first type of condition. The other types of conditions cannot be breached because they do not themselves place any obligations on the parties. A breach, of course, assumes that a party was required to do one thing, but actually did something else. Significantly, however, a breach may arise *in connection with* a true condition precedent. While a true condition precedent suspends the parties' duty to immediately perform their primary obligations, it may also support the existence of a subsidiary obligation. A subsidiary obligation requires one of the parties to do something to help bring about the event contained in the true condition precedent. For instance, a contract for the sale of a house that is subject to a true condition precedent pertaining to the buyer's ability to secure financing likely entails a subsidiary obligation that requires the buyer to attempt to satisfy the condition.

- 61) The question requires students to recognize the difference between a condition precedent and a true condition precedent. If the parties used a true condition precedent, a contract would immediately be created. Furthermore, by its very nature, a contract imposes obligations upon the parties even if, as in this situation, the need to perform the primary

obligations would be suspended pending satisfaction of the condition. Consequently, while Ichiro would not have to pay the price, and Emily would not have to transfer the painting, unless and until financing was arranged, the obligations would exist. Furthermore, unless the parties clearly excluded such a possibility, a court might imply a subsidiary obligation that required Ichiro to immediately attempt to secure financing.

The parties therefore should use a condition precedent. In that situation, there would be no contract, and hence no obligations at all, unless and until the condition was satisfied. Once the condition was satisfied, however, a contract would automatically arise.

- 62) This question requires students to recognize that a contract may be brought to an end in a variety of ways: some involve prior agreement, some involve breach, some involve factors that operate by law and without regard to their agreement (such as frustration). Quite often, the parties may agree to bring their agreement to an end. When they do so, they usually rely upon consideration. That is true in cases of rescission, accord and satisfaction, variation, and novation. However, it is also possible for a contract to be brought to an end through agreement of the parties, but without consideration. That is possible if a promise to release contractual rights is placed under seal. A seal is not consideration, but it can act as a substitute for consideration. It is also possible to bring a contract to an end without consideration through the process of waiver. One party may be held to a representation that it would not enforce its contractual rights. (Often, however, waiver is subject to retraction upon reasonable notice, so long as the representee would not be unfairly prejudiced.)
- 63) A contract is said to be discharged by law when it is automatically brought to an end for reasons that do not arise directly from the parties' intentions. First, a frustrated contract is automatically discharged. That is true when a contract becomes impossible to perform or when performance would be something much different than what the parties expected. Second, it is commonly said that a contract will be discharged under a statute of limitation by the lapse of time. Technically, that is not quite correct. Upon the expiration of a limitation period, the party that suffered a breach is usually prevented from successfully suing that party in breach. However, the contract does continue to exist and the right to sue may be revived, even after the expiration of the limitation period, if the party in breach acknowledges the outstanding debt. Third, a contract may be discharged by reason of bankruptcy, but only if the bankruptcy arose by misfortune, rather than misconduct by the debtor.
- 64) Pierette's argument would not be successful. The contract contained an option to terminate, but that option was available only to Hugo (the buyer). Pierette therefore did not have the right to discharge the contract when the market value of gold increased. Furthermore, this is not a case of frustration. Although performance has become much more expensive for Pierette, she is still capable of performing. She simply entered into a very bad bargain.
- 65) The contract between Woogles and Peja is subject to a true condition precedent. As a result, while their contract immediately came into existence, neither party was required to perform their primary obligation (*ie* either pay \$100 000 or deliver the widgets) unless and until an export licence was obtained. Since the licence was not obtained, the duty to perform does not arise.

However, in such circumstances, while Woogles would not be required to perform its primary obligation under the contract (*ie* deliver the widgets), it almost certainly was subject to a subsidiary obligation that it was required to immediately perform. That subsidiary obligation would require it to attempt to obtain an export licence. Since it failed to do so, it could be held liable to Peja. Peja therefore probably would not be entitled to the widgets, but he would be entitled to damages.

- 66) Matt is not correct. Generally speaking, a promise to relieve a party from the need to perform a contract is enforceable only if it is supported by consideration. Gretchen, however, gave no consideration for Matt's promise. (Since he had already paid the full price of \$2500, she could not provide consideration by relieving him of the need to perform part of the agreement.)

Matt nevertheless is bound by his promise due to the doctrine of waiver. He represented that he would not enforce his rights. Moreover, Gretchen relied upon that promise by

selling her computer (which she would need to perform the contract) and moving to New York. Finally, although waiver is sometimes retractable upon reasonable notice, retraction is not available in this case because it would create an intolerable hardship for Gretchen, given the extent of her reliance upon Matt's promise.

- 67) Novation is a process in which an existing contract is discharged and another contract is introduced in its place. The new contract may contain substantially different terms than the original contract, or it may introduce a new party in the place of an original party. In any event, novation can only happen with the consent of all of the affected parties. Furthermore, novation requires consideration. Consideration is provided, however, by the fact that the original parties agree that they will not enforce their rights under that agreement (as discussed in Chapter 3, consideration can consist of a detriment to oneself) and often by the fact that they agree to assume new obligations under the new agreement. In a three-party situation, the new party also provides consideration by agreeing to assume obligations under the new agreement.
- 68) For present purposes, there are three types of contractual terms. A "condition" is a term which, if breached, will substantially deprive the innocent party of the expected benefit of the contract. A "warranty" is a term which, if breached, will not substantially deprive the innocent party of the expected benefit of the contract. An "intermediate term" is a term which, if breached, may or may not substantially deprive the innocent party of the expected benefit of the contract. With respect to an intermediate term, a court will wait-and-see how breach affects the innocent party. On the basis of those consequences, it will be treated as either a condition or a warranty.

A breach of a warranty (or a breach of an intermediate term that, in the circumstances is treated as a warranty) does not support the option of discharge (although it does support the right to damages). Since the innocent party has not been substantially deprived of the expected benefit of the contract, it is not unfair for the law to require that party to carry on with the contract.

A breach of a condition (or a breach of an intermediate term that, in the circumstances is treated as a condition) generally does support the option of discharge (in addition to the right to damages). Since the innocent party has been substantially deprived of the expected benefit of the contract, it is unfair for the law to require that party to carry on with the contract.

However, even if there is a breach of a condition, the innocent party may not be entitled to discharge the contract. That is true if the innocent party either has chosen to carry on with the agreement or has received a benefit that cannot be returned to the party in breach.

- 69) Zoe's position is not correct. Although her contract with Lampadina can no longer be performed as expected (because the information is no longer confidential), she cannot simply walk away from that agreement. The contract was not frustrated. Instead, Zoe is guilty of self-induced impossibility. Consequently, she will be liable for breach of contract. (Depending upon the circumstances, she, Hans, and Gluhlampe may also be liable for infringing upon Lampadina's intellectual property rights in the information that it had already purchased, though not received, from Zoe.)
- 70) First, after a considerable lapse of time, evidence is apt to be lost and witnesses' memories are apt to falter. Consequently, the courts do not want to deal with stale claims. Second, even if reliable evidence is available, a party should, at some point, be free of the fear of liability.