**CHAPTER 12-PRACTICAL CONTRACTS**

**TRUE/FALSE**

1. If you have an established relationship with a buyer, you can sell small tracts of land without a written contract.

2. In business law, a lawyer’s primary job is to represent the client in contract litigation.

3. Because details can always be added later, it’s better to not overwhelm a contract with specifics in the beginning.

4. Ricardo has agreed to sell his family farm to Walter for a price of $450,000. Even though both sides agree on the terms, it is still worth the money for Ricardo to hire a lawyer to write the contract.

5. It is unethical to use your lawyer as an excuse for a provision of a contract, such as, “My lawyer insists that I have a liquidated damages clause...”

6. You should always hire a lawyer to review any legal papers you have to sign, including such papers as lease agreements or telephone contracts.

7. Lucky, a contractor, enters into a contract with Penny, a homeowner, to remodel her kitchen. The contract provides a specific completion date, but does not specify what will happen if Lucky does not have the job finished by the date. So, Penny may deduct $100 per day from the contract price until the job is finished, because this is the industry norm.

8. Emily runs a children’s clothing boutique which takes in local homemade items on a consignment basis. Her standard form contract indicates that Emily has the right to put items on sale without prior approval, but does not specify what effect the sale has on the consignor’s payment percentage. Her intent is to keep the same profit she would have had without the sale. She is using ambiguity in her contract to increase her sales and profit.

9. Some contracting parties are intentionally vague in contract terms.

10. Ambiguities in contracts are always interpreted in favor of the side that wrote the contract, since they are the ones who know what the provision is supposed to mean.

11. Typos are almost always detrimental to the validity of a contract because they cause the contract to not reflect the true agreement of the parties.

12. “Scrivener’s error” is another (fancier) name for a typo.

13. Contracts must begin with the word, “whereas” in order to be legal.

14. A contract should have a descriptive title, which is generally in all capital letters, underlined and centered at the top of the page.

15. The legal term for a promise in a contract is “provision.”

**MULTIPLE CHOICE**

1. One reason you may not need a written contract is:

|  |  |
| --- | --- |
| a. | you are dealing with a party you do not know well, so you need to remain flexible. |
| b. | you are buying land from a member of your family. |
| c. | the terms of the agreement are simple and the value of the transaction is small. |
| d. | you have negotiated enough that you both know what the other person intends. |

2. What is a choice of law provision:

|  |  |
| --- | --- |
| a. | determine which state’s laws will be used to interpret the contract |
| b. | determines the state in which any litigation would take place |
| c. | prohibits the parties from suing in court |
| d. | none of the above |

3. When a party to a contract intentionally makes the terms of a contract unclear, it is called:

|  |  |
| --- | --- |
| a. | vagueness. |
| b. | duress. |
| c. | ambiguity. |
| d. | mistake. |

4. In determining whether parties intended to reduce their agreement to writing, which of the following factors would normally NOT be considered:

|  |  |
| --- | --- |
| a. | whether the type of agreement is one that is normally put into writing. |
| b. | the complexity of the agreement. |
| c. | whether or not the terms are complete. |
| d. | the amount of money involved in the agreement*.* |

5. In the case of scrivener’s errors (commonly known as typos), a court will usually:

|  |  |
| --- | --- |
| a. | reform the contract if it is clear that the mistake is not what the parties intended. |
| b. | instruct the parties to rewrite the contract without the errors. |
| c. | enforce the contract as written. |
| d. | throw out the contract completely. |

6. If the subject of the contract includes issues that may be controversial, it is best to:

|  |  |
| --- | --- |
| a. | keep lawyers out of the negotiation, so relationships are not strained. |
| b. | deal with them up front before the relationship is strained. |
| c. | deal with them one at a time, as the problems arise. |
| d. | state your position up front and stand firm when the other party objects. |

7. The title of a contract should be:

|  |  |
| --- | --- |
| a. | general, like “Memorandum of Agreement.”. |
| b. | written like a sentence, with only the first letter capitalized. |
| c. | short -- no more than five words. |
| d. | descriptive of the agreement, and typed in all capital letters. |

8. When one party to a contract fails to perform as promised, it is called:

|  |  |
| --- | --- |
| a. | litigation. |
| b. | breach. |
| c. | liquidated damages. |
| d. | bad faith. |

9. If each party’s promises are listed separately in the contract, the are probably:

|  |  |
| --- | --- |
| a. | covenantal promises. |
| b. | conditional promises. |
| c. | reciprocal promises. |
| d. | material promises. |

10. Statements of facts about the past and present are called:

|  |  |
| --- | --- |
| a. | provisions and terms. |
| b. | promises and covenants. |
| c. | representations and warranties. |
| d. | damages and remedies. |

11. Standard provisions in a contract that are often listed under the heading “Miscellaneous” are called:

|  |  |
| --- | --- |
| a. | boilerroom. |
| b. | boilerplate. |
| c. | boilerpot. |
| d. | boilerplate. |

12. Which of the following is NOT a standard provision frequently found in contracts?

|  |  |
| --- | --- |
| a. | choice of forum. |
| b. | choice of law. |
| c. | choice of compensation.. |
| d. | arbitration. |

13. In a contract modification, the phrase, “charged with such amendment” means:

|  |  |
| --- | --- |
| a. | the party who suggested the change. |
| b. | the party who will benefit from the change. |
| c. | the party who will be adversely affected by the change. |
| d. | the party who did NOT suggest the change. |

14. Which of the following is NOT one of the three ways to amend a written contract?

|  |  |
| --- | --- |
| a. | write and sign an amendment document. |
| b. | verbally agreeing to the changes and shaking hands on the deal. |
| c. | crossing out the mistakes and writing in the corrections. |
| d. | writing a totally new contract with the correct provisions. |

15. Bob, a house builder, contracts with Ollie to build a house on Ollie's lot. Bob hires Rob to take his place as the builder on this contract. What has Bob done?

|  |  |
| --- | --- |
| a. | Subcontracted Rob. |
| b. | Breached the contract. |
| c. | Delegated his duties. |
| d. | Assigned his rights. |

16. Which of the following statements is incorrect concerning arbitration?

|  |  |
| --- | --- |
| a. | The losing party in an arbitration can file an appeal in a District Appellate Court. |
| b. | Arbitration is almost always cheaper and faster than litigation. |
| c. | Arbitrators may be biased toward the “larger” party who may be a repeat client. |
| d. | Parties to a contract cannot be forced to arbitrate unless the contract specifies it. |

17. Ralph is a professional football player. He signs a valid contract with the Jets. Later, he claims that he was also promised free use of the Jets’ private jet, but this was not in the contract. What type of clause in his contract would prevent him from flying away with this claim?

|  |  |
| --- | --- |
| a. | A complete agreement clause. |
| b. | A “no additional terms” clause. |
| c. | An integration clause. |
| d. | A severability clause. |

18. A force majeure event is:

|  |  |
| --- | --- |
| a. | anything that makes the contract unprofitable for either party. |
| b. | a natural disaster that claims human life or leads to the declaration of a state of emergency. |
| c. | a disruptive, unexpected occurrence for which neither party is to blame that prevents one or both parties from complying with the contract. |
| d. | any happening that fulfills one of the conditions in the contract, making it enforceable. |

19. A+ Modeling Agency signs a contract with Sandi to do a photo shoot for the local used car dealer’s advertising. The contract was probably written by:

|  |  |
| --- | --- |
| a. | The owner of A+ Modeling Agency. |
| b. | Sandi. |
| c. | A+ Modeling Agency’s lawyer. |
| d. | Sandi’s lawyer. |

20. Rich and Archie sign an agreement in which Archie agrees to deliver ten cases of champagne in 5 days. The parties negotiated and meant to say in the written agreement, delivery in 50 days. If the evidence is clear that the two parties intended to agree to 50 days, the courts will probably apply the remedy of:

|  |  |
| --- | --- |
| a. | reformation. |
| b. | rescission. |
| c. | restitution. |
| d. | reliance. |

21. A letter of intent is not likely to be enforceable unless:

|  |  |
| --- | --- |
| a. | there is a clearly stated start date for the contract. |
| b. | both parties agree on compensation. |
| c. | it is clear that both parties intended to be bound by the letter. |
| d. | conditions in the letter are met. |

22. Nate works as a carnival barker. His employment contract specifies that he can be fired if he “loses his voice.” This is an example of:

|  |  |
| --- | --- |
| a. | vagueness. |
| b. | extortion. |
| c. | ambiguity. |
| d. | duress. |

23. Farmer’s Fortune Insurance has a contract with Farmer Fran to insure her crops against insect damage. The contract does not specify which insects are covered or how much damage is necessary to make a claim. The contract will probably be enforced in favor of:

|  |  |
| --- | --- |
| a. | Farmer Fran. |
| b. | Farmer’s Fortune Insurance. |
| c. | Neither side, as it is ridiculous to try to insure against insects. |
| d. | Cannot determine... would have to go through litigation to decide. |

24. Which of the following is generally NOT in the introductory paragraph of a contract?

|  |  |
| --- | --- |
| a. | The date of contracting. |
| b. | The duties of the parties. |
| c. | The parties to the contract. |
| d. | The nature of the contract. |

25. Which statement is true about definitions in a contract?

|  |  |
| --- | --- |
| a. | All ambiguous terms must be defined. |
| b. | Definitions must be grouped together in a separate section of the contract. |
| c. | Definitions must be located on the same page where the term is first used. |
| d. | The parties to the contract may be defined with shorter designations than their actual names. |

**ESSAY**

1. Identify and explain at least four situations where a written contract is either necessary or recommended.

2. Compare and contrast the perspectives of a lawyer and a client when approaching the negotiation of a contract.

3. Outline the focused, multi-step process recommended for reading a contract before you agree to it.

4. Define and compare the terms “vagueness” and “ambiguity.”

5. When a party to a contract fails to fulfill all of her promises, she has breached the contract. What response does a court typically have for a breach?

6. Outline the parts of a typical contract.