**CHAPTER 10-CONTRACT IMPEDIMENTS**

**TRUE/FALSE**

1. Agreeing not to open a competing business could be consideration.

2. Raul agrees to paint Mike's house for $1,000. Before finishing, Raul states it is too hot to finish, and Mike offers to pay $1,200 if Raul finishes. Mike's statement that he will pay $1,200 is unenforceable.

3. Generally an agreement not to compete ancillary to a legitimate bargain is not valid.

4. When a noncompete agreement is ancillary to the sale of a business, it is enforceable

if reasonable in time, geographic area, and scope of activity.

5. Consideration can be a promise or an act.

6. According to the UCC, one or more open terms will not cause a sales contract to fail for indefiniteness as long as the parties intended to make a contract and there is a reasonably certain basis for the court to grant an appropriate remedy.

7. An exculpatory clause is generally enforceable when it attempts to exclude an intentional

tort or gross negligence.

8. Barbara, a skilled welder, was hired at Mainco Enterprises for a welding position. She was asked to sign noncompete clauses limiting future employment if she left Mainco. A court would be very likely to enforce the noncompete clause unless the time or geographic restriction is unreasonable.

9. If a court finds as a matter of law that a clause of a contract was unconscionable at the time the contract was made, the court must refuse to enforce the contract.

10. Contract rescission can sometimes be based upon a unilateral mistake.

11. Roger parked his car at a garage that has a large sign at the entrance saying, "This garage is not liable for items stolen from a car." This type of notice is referred to as an exculpatory clause.

12. Roger, a minor, buys a stereo from Tuneland, Inc. Roger uses the stereo for a few months, returns it to Tuneland, and demands his money back. In a majority of states, Roger may return the stereo and he does not have to pay for the use of the stereo or the damages.

13. Fraudulent, but not innocent, misrepresentation permits the injured party to rescind a contract.

14. Vernon suffers from a mental impairment due to a brain injury from a motorcycle accident. He contracts with Glena to purchase her dining room furniture. A month later, he tries to void the contract. If he is unable to return the furniture, a court will not rescind the agreement unless Vernon can show that Glena acted in bad faith.

15. Raymond agrees to transfer an easement right to Sandra for $1,000. This contract is within the statute of frauds and therefore needs to be in writing to be enforceable.

16. Any contract involving a sale of goods of $100 or more must be in writing.

17. Bry, Inc. and Gangl Co. entered into an oral agreement for the sale of 3,000 sweaters. Both parties performed as required under the contract. Bry delivered the sweaters and Gangl accepted and paid for them. Since the contract is fully executed, it makes no difference that it was oral.

18. Under the statute of frauds, the writing must: be signed by the defendant; and must state with reasonable certainty the name of each party, the subject matter of the agreement, and all of the essential terms and promises.

**MULTIPLE CHOICE**

1. Noncompetition agreements are:

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| a. | more common today than they were in the past, although policy issues they raised in the 1700s have never gone away. |
| b. | now illegal, as they violate antitrust laws. |
| c. | infrequently litigated. |
| d. | relatively recent developments, first used following the Great Depression in the United States. |

2. In January, Alex promised to pay Y-K Inc. $5,000 if it would refrain from filing suit against him on a breach of contract action. Y-K agreed and accepted a $5,000 check from Alex. Which of the following statements is correct?

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| --- | --- |
| a. | Y-K's promise to refrain from suing Alex was not supported by legal consideration. |
| b. | Y-K's promise to refrain from suing Alex was supported by legal consideration and is enforceable. |
| c. | This is an accord and satisfaction, and Y-K cannot sue. |
| d. | The courts would apply promissory estoppel in this situation. |

3. The intent of the offeror to extend an offer to the offeree is generally determined by reference to:

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| a. | the beliefs of the offeror. |
| b. | the subjective intention of the offeror. |
| c. | the assumptions of the offeror. |
| d. | the words and conduct of the offeror. |

4. If Rudy offers Oscar $200 for his laptop valued at $600 and Oscar agrees, a court will probably:

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| a. | set aside the agreement as being unfair. |
| b. | set aside the agreement because the consideration is inadequate. |
| c. | not set aside the agreement based on the adequacy of the consideration. |
| d. | not set aside the agreement because of the UCC. |

5. Zero, Inc. agreed to build Millie a storage building for $8,000. After beginning the project, Zero realized that it could not complete the job and make a profit. Zero demanded $9,500 to complete the building. Millie agreed to pay the $9,500. When the project was complete, Millie tendered $8,000 to Zero for the job. If Zero sues Millie for the remaining $1,500:

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| a. | Zero will win because there was consideration for the additional $1,500. |
| b. | Zero will win because Millie had a pre-existing duty to pay any additional amounts. |
| c. | Zero will lose because there was no legal consideration to support the additional $1,500. |
| d. | Zero will lose because the UCC does not require consideration to modify an existing contract. |

6. Barb has been a children's day care provider for several years in the small town of Sallton. She has decided to give it all up and move to the big city for excitement and adventure. She sells her business to Ken, agreeing not to open a competing business within five miles of Sallton for a period of nine months. After five months of the big city life, Barb is broke and moves back to Sallton. She opens a small day care business. Ken sues on the noncompete clause. What is the most likely result?

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| a. | Ken wins. The agreement is enforceable. |
| b. | Barb wins. The agreement is denying her the right to do the only thing she knows how to do. |
| c. | Barb wins. The agreement is not enforceable because it is not ancillary to a legitimate bargain. |
| d. | Barb wins. The agreement is not reasonable as to time. |

7. Which of the following is an example of an exculpatory clause?

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| a. | Creditor charges 38% interest on a loan. |
| b. | Seller is not responsible for property damage regardless of the cause of the injury. |
| c. | Buyer agrees to pay any costs of litigation. |
| d. | Employee agrees to never work for a competing company. |

8. When Mohammed was hired by Pomico, Inc., he signed the following agreement, "Upon termination of my employment with Pomico, I agree not to work for a competing company within 30 miles of Pomico's headquarters for one year." This agreement, important to protecting secret information developed in the employer's business, is:

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| a. | an unenforceable exculpatory agreement. |
| b. | an unenforceable usurious agreement. |
| c. | an enforceable bailment agreement. |
| d. | an enforceable agreement not to compete. |

9. Marty, a 16-year-old, contracts with Cream-of-the-Crop Cycles to buy an $8,000 motorcycle. Marty agrees to make monthly payments until the purchase price plus interest are paid in full. Which of the following is correct?

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| a. | The contract is voidable by Marty. |
| b. | The contract is void as soon as it is made. |
| c. | The contract is voidable by Cream-of-the-Crop Cycles. |
| d. | The contract is voidable by either Marty or Cream-of-the-Crop Cycles. |

10. Marty, a 16-year-old, contracted with Cream-of-the-Crop Cycles to buy an $8,000 motorcycle. He agreed to make monthly payments until the purchase price plus interest were paid in full. It is three years later and Marty has not disaffirmed the contract and has made regular payments on the cycle since turning 18. Which of the following is correct?

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| a. | The contract is void and Marty has no obligation. |
| b. | The contract is now voidable by Cream-of-the-Crop Cycles. |
| c. | Marty has ratified the contract and is now bound by its terms. |
| d. | Marty has ratified the contract but can still get a return of the payments made while he was a minor. |

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| a. | Y-K's promise to refrain from suing Alex was not supported by legal consideration. |
| b. | Y-K's promise to refrain from suing Alex was supported by legal consideration and is enforceable. |
| c. | This is an accord and satisfaction, and Y-K cannot sue. |
| d. | The courts would apply promissory estoppel in this situation. |

12. Deborah purchased a boat from Sun ‘N Surf Marine. She later learned that the salesman had made misrepresentations to induce her to make the purchase. Under UCC Section 2-721, Deborah can rescind the contract:

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| a. | only if the misrepresentation was fraudulent. |
| b. | and sue for damages whether the misrepresentation was fraudulent or innocent. |
| c. | but cannot sue for damages if the misrepresentation was innocent. |
| d. | but must forego all other remedies. |

13. Ryan, a minor, contracted to sell his auto to Ed, a 28-year-old. Ryan later refused to complete the sale. If Ed sues to enforce the contract, Ed will:

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| a. | win because Ryan was the seller. |
| b. | win because minors can only avoid contracts for the sale of land. |
| c. | lose, as the contract is void. |
| d. | lose, because the contract is voidable by Ryan. |

14. Mentally infirmed Sasha contracts to purchase a piano for $2,500 in 60 monthly installment payments. Six months later she tries to void the contract on grounds of mental impairment. A court will:

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| a. | normally void the contract without requiring anything further on Sasha’s part. |
| b. | normally void the contract but will require Sasha to return the piano. |
| c. | ordinarily not void the contract unless Sasha had a court-appointed guardian at the time she entered into the contract. |
| d. | not void the contract unless Sasha agrees to have the court appoint a guardian for her. |

15. If Becky promises not to drink alcohol until she becomes a legal adult in exchange for Ben's promise of $1,000, the agreement is:

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| a. | enforceable because Becky is giving up the right to do something she would otherwise be entitled to do. |
| b. | enforceable because the agreement accomplishes Ben's goal of keeping Becky from drinking. |
| c. | not enforceable because Becky does not have a legal right to drink alcohol. |
| d. | not enforceable because Becky is a minor and could disaffirm the contract. |

16. Claude agrees to lease his house to Irvin for nine months, the lease to begin six months from the signing of the contract. Under the statute of frauds:

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| a. | the lease is not required to be in writing. |
| b. | the lease is required to be in writing because of the one-year rule. |
| c. | the parol evidence rule renders the lease voidable. |
| d. | the lease is a collateral promise which must be in writing. |

17. Under a contract for the sale of land, the statute of frauds:

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| a. | does not apply if the purchase price for the land is less than $500. |
| b. | requires that the entire agreement be in one single document. |
| c. | requires the defendant to sign the agreement. |
| d. | does not apply if the total price of the land is to be paid in less than one year.. |

18. Which of the following promises ordinarily must be in writing to be enforceable?

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| a. | Promises made as a part of a prenuptial agreement. |
| b. | The agreement to sell a car for $1500. |
| c. | The promise by an executor of an estate to pay a debt of the decedent. |
| d. | All of the above. |

19. Wally owns 200 acres of land. Wally offers to sell the land to Robert for $1,500 per acre. Robert replies that he does not need 200 acres of land but would like to buy 40 acres at $1,500 per acre. Wally agrees to sell but does not identify which 40 acres. Later, Wally refuses to sell any land to Robert. What is the result?

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| a. | Robert wins; this is an enforceable contract with complete and definite terms. |
| b. | Robert wins; the UCC will decide which 40 acres are to be sold. |
| c. | Wally wins; the original offer was not intended to be an offer but merely an invitation to negotiate. |
| d. | Wally wins; this agreement is too indefinite since it does not identify which 40 acres are to be sold. |

20. Willis and Leslie orally agree to the sale of a parcel of land for $50,000: one-half payable now as a down payment; one-half payable in 30 days at the time of closing when the title will be transferred. The buyer, Willis, is to have possession immediately. Willis pays Leslie $25,000, takes possession of the land, and starts building a house. At the time of closing, Willis has made a substantial beginning on the house. However, Leslie refuses to transfer the title, claiming the oral contract is not enforceable. This contract is:

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| a. | enforceable, because the statute of frauds does not apply to this interest in land. |
| b. | unenforceable, because there is no writing signed by Leslie. |
| c. | enforceable, because Willis has partially performed the oral contract and made improvements on the land. |
| d. | unenforceable, because the parol evidence rule applies. |

21. In order to satisfy the statute of frauds, a writing must:

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| a. | be a formal written document drafted by an attorney. |
| b. | be signed by the defendant and contain the name of each party, the subject matter of the agreement, and the essential terms and promises. |
| c. | be notarized. |
| d. | All of the above. |

22. Which of the following is most likely to constitute fraud?

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| a. | A false prediction that a painting's value will rise. |
| b. | A false statement that a used car is "the best deal in town." |
| c. | A false statement that a $30,000 car attracts members of the opposite sex. |
| d. | Silence as to a toxic waste problem on real property that the buyer would not reasonably find. |

23. When a party to a contract makes a unilateral mistake, the contract:

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| a. | generally can be rescinded by the mistaken party. |
| b. | is void. |
| c. | can be rescinded by either party. |
| d. | generally cannot be rescinded by the mistaken party unless the contract is unconscionable or it is proven that the nonmistaken party knew of the error. |

24. For the purposes of the statute of frauds, an interest in land includes:

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| a. | a house. |
| b. | a real estate mortgage. |
| c. | an easement. |
| d. | All of the above. |

25. Which of the following promises ordinarily must be in writing to be enforceable?

|  |  |
| --- | --- |
| a. | Promises made as a part of a prenuptial agreement. |
| b. | The agreement to sell a car for $1500. |
| c. | The promise by an executor of an estate to pay a debt of the decedent. |
| d. | All of the above. |

**ESSAY**

1. Spangel Fashions sends out its spring and summer catalog to Cindy. Cindy falls in love with the cute dress featured on the front cover of the catalog. When Cindy calls to order the dress, she is informed that the company has sold out of the dress. Cindy is upset and claims that the store is in breach of contract. She argues that the catalog presented an offer, which she accepted when she called to order the dress. Is Cindy correct? Why/why not?

2. Briefly discuss how an offer can be accepted. Include offers for both bilateral and unilateral contracts.

3. What elements are necessary for an offer to be valid? Give two examples of nonoffers.

4. Discuss the effect of the Uniform Commercial Code on the law of sales contracts in the area of open terms.

5. Douros Realty & Construction Co. had a lead on a "prime" piece of real estate. Although Douros did not have a listing agreement with the seller of the property, he contacted Kelley Properties. Douros knew that Kelley was looking for a location for a commercial development. Douros contacted Kelley stating only that he had the "finest, most outstanding, viable location in the county and it just came on the market." Douros said he would reveal the location of the property and the owner's name if Kelley would sign an agreement which would require Kelley to pay a 10% commission if a sale of the property resulted. The agreement was signed. Four months later, Kelley bought the property after negotiating the deal himself. Kelley claims he does not owe a commission to Douros because there was insufficient consideration to support the payment of commission so large. Kelley claims that all Douros did in the entire transaction was to reveal the location of the property and the owner's name. Was there sufficient consideration to make this promise enforceable?

6. Discuss two types of misrepresentation and how they differ. List the three things a party must show to rescind a contract based on misrepresentation.