**CHAPTER 11-CONCLUSION TO CONTRACTS**

**TRUE/FALSE**

1. An assignment is effective against the obligor from the moment it is made, regardless of whether the assignor notifies the obligor.

2. A party may make either an assignment or a delegation, but cannot make both an assignment and a delegation simultaneously.

3. If Casey assigns her rights to receive income from rental property to Errol, then Errol will legally acquire any rights held by Casey to the income.

4. If Ray agrees to rake leaves for Michelle in exchange for Michelle's promise to pay off the debt Ray owes to Dean, then Dean is a donee beneficiary of the agreement between Ray and Michelle.

5. Norm and Frank have a legal contract that is silent with regard to an assignment of the contract. In order for Norm to assign all or part of his rights under a contract, Frank must grant permission to Norm to make the assignment legally effective.

6. Generally, the assignment of the obligation to perform personal services is invalid.

7. If Velma, as a birthday present, assigns to Jim her contractual right to collect $50 from Wood Co., this would be a gratuitous assignment.

8. First Bank has agreed to loan Teresa $100,000 for use in her cosmetics business. If Teresa sells the business to Melissa before the loan is consummated, Teresa can assign her right to the loan to Melissa.

9. Amanda buys a vacuum cleaner to use in her home from retailer Andy. Amanda promises to pay for it in six monthly installment of $50 each. Andy assigns the contract to Big Finance Co. who paid value and took without notice of any defense. Big Finance Co. sues Amanda for nonpayment. Amanda has stopped making payments because the vacuum stopped working and Andy refuses to honor the express warranty he made to her at the time of the sale. Generally, any defense that Amanda may have against Andy is good against Big Finance Co.

10. Assume that Jessie and Whole Foods have formed a contract whereby Jessie agrees to deliver 10,000 dozen "Grade A Large Eggs" to be shipped in recycled paper cartons that conform with Whole Foods’ green policy.. A shortage of paper makes paper cartons much more expensive, so Jessie uses styrofoam cartons and ships the eggs. Whole Foods is entitled to cancel the contract based on this deviation of terms in the contract.

11. Most contracts are discharged by mutual agreement.

12. Injunctions are commonly used by courts to force employees to complete their contractual obligations with their employers.

13. A statute of limitations begins to run at the time of injury and will limit the time within which the injured party may file suit.

14. Specific performance is available when the subject matter of the contract is unique.

15. Expectation interest can best be described as money spent in reliance upon the agreement.

**MULTIPLE CHOICE**

1. Brandon orally assigned his right to $100 to Will as a gift. This assignment is:

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| a. | not valid because it was not in writing. |
| b. | valid even though it was oral and there was no consideration from Will. |
| c. | irrevocable once Brandon has told Will about the gift. |
| d. | not valid because Will gave no consideration for the assignment. |

2. A third party beneficiary's status occurs:

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| a. | after an assignment and delegation. |
| b. | when the third party is informed of the contract. |
| c. | when the third party beneficiary agrees to the contract terms. |
| d. | when the contract is created. |

3. The beneficiary of a life insurance policy paid for by the insured would ordinarily be:

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| a. | a creditor beneficiary. |
| b. | an incidental beneficiary. |
| c. | a donee beneficiary. |
| d. | a debtor beneficiary. |

4. The status of a third party is determined by:

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| a. | the type of contract. |
| b. | whether the third party gave consideration. |
| c. | the reasonable expectations of the third party. |
| d. | the intent of the contracting parties. |

5. A nonparty to a contract may enforce the contract if the person is:

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| a. | a donee beneficiary. |
| b. | an incidental beneficiary. |
| c. | a creditor beneficiary. |
| d. | Both a and c. |

6. Johann, a well-known musician, agrees to give ten guitar lessons to Elton for $2,000. Nothing in the contract itself prohibits a delegation. If Johann delegates his obligation to Eugene, a second-year musical student and enthusiastic guitar player, then the delegation will probably be:

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| a. | permitted because contracts may be freely delegated. |
| b. | permitted because the contract is just for music lessons. |
| c. | prohibited because Johann and Eugene have very different skill levels. |
| d. | prohibited by the UCC. |

7. Linda assigns to Ben a right to receive rent payments. The law implies the following warranty on Linda’s part:

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| a. | the tenant is solvent. |
| b. | Linda actually has a right to the rental payments. |
| c. | the tenant will actually pay. |
| d. | No warranties are implied by law in an assignment. |

8. Molly and Craig are the original parties to a contract. Craig is obligated to design a Website for Molly. They subsequently make an agreement with Eric that Eric should take the place of Craig and assume all of Craig's rights and duties under the contract. The agreement releases Craig from his obligations under the contract. This agreement is:

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| a. | a novation. |
| b. | an accord and satisfaction. |
| c. | an assignment. |
| d. | a nullification. |

9. A donee beneficiary:

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| a. | is not entitled to enforce a contract against either party. |
| b. | usually does not give consideration in return for the gift. |
| c. | will generally become a creditor beneficiary after his or her rights vest. |
| d. | is an incidental beneficiary. |

10. Which statement most accurately describes third party beneficiary rights?

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| a. | A beneficiary may enforce a contract if the parties intended to benefit him and if enforcing the promise will satisfy a duty of the promisee to the beneficiary. |
| b. | If a promisee intended to make a gift to the beneficiary, the beneficiary may not enforce the contract. |
| c. | An intended third party beneficiary has no enforceable rights in a contract. |
| d. | Incidental beneficiaries have enforceable rights against both contracting parties. |

11. Wright Company contracted with the city of St. Louis to train and employ disadvantaged youths. If Wright fails to fulfill the contract and is sued by one of the disadvantaged youths, the youth would:

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| a. | win, as he is an intended beneficiary. |
| b. | win, as he is a donor beneficiary. |
| c. | lose, as he is a creditor beneficiary. |
| d. | lose, as he is an incidental beneficiary. |

12. Tyron purchased a vacant lot and entered into a contract with BZ Inc. to construct a shopping center on the site. Douglas heard about this contract and built a restaurant on an adjoining piece of property because of the planned shopping center. Tyron was unable to raise the necessary capital and was unable to perform the contract with BZ, Inc. Douglas sued Tyron for breach of contract as a third party beneficiary. Douglas will probably:

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| a. | win as a third party creditor beneficiary. |
| b. | win as a third party donee beneficiary. |
| c. | lose as a third party incidental beneficiary. |
| d. | lose as a third party creditor beneficiary. |

13. Which of the following duties can probably be delegated?

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| a. | An agreement to perform an operation. |
| b. | A contract to paint a picture. |
| c. | An agreement by an attorney to draft a contract. |
| d. | An agreement to paint a house. |

14. An assignment:

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| a. | is generally revocable if it is gratuitous and is either oral or written. |
| b. | for consideration is irrevocable. |
| c. | becomes valid when the obligor receives notice of the assignment. |
| d. | must follow formalities. |

15. An assignment is valid and enforceable against all parties::

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| a. | from the moment it is made. |
| b. | from the moment the assignor notifies the obligor. |
| c. | from the moment the assignee notifies the obligor. |
| d. | from the moment the obligor is notified from any source. |

16. Jerry purchased a state-of-the-art computer for his personal use from Computer City on an installment loan contract thinking he would make monthly payments directly to Computer City. The sales contract stated that in the event the contract is assigned to a third party, the purchaser (Jerry) promises he will not assert any claim or defense against the assignee which he might have against Computer City. Computer City immediately assigns the contract rights to Finance USA. The computer stops working within two weeks of the purchase.

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| a. | This is a valid waiver of defense clause. Jerry signed the contract, so he can't raise a defense to Finance USA. |
| b. | Finance USA is an intended third party beneficiary and may therefore enforce the contract. |
| c. | In general, this type of waiver is not permitted in consumer contracts, so Jerry can raise his claim against Finance USA. |
| d. | This is a delegation of Jerry's duties and the delegator remains liable on the contract unless a novation agreement is made. |

17. Cheryl enters into a contract with Gabe. In this contract, Cheryl asks Gabe to pay the money he owes her from the contract to her friend Leah because Leah is having financial troubles. Leah is:

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| a. | a third party creditor beneficiary. |
| b. | a third party donee beneficiary. |
| c. | a third party incidental beneficiary. |
| d. | the promisee in the contract. |

18. Susan took out a life insurance policy on herself, paying all of the premium payments. She named her daughter, Jessica, as the beneficiary under the policy. Jessica has not given anything in consideration for the policy. Jessica is:

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| a. | a donee beneficiary who has rights to enforce the policy once Susan dies. |
| b. | a creditor beneficiary who has rights to enforce the policy once Susan dies. |
| c. | an incidental beneficiary because Jessica did not give any consideration for the policy and therefore cannot enforce the policy even when Susan dies. |
| d. | None of the above. |

19. Ted and Alice own their recreational vehicle subject to a security agreement to Third U.S. Bank to secure the repayment of the purchase money loan. Ted and Alice sell their RV to Bob and Carol, who agree to take over the loan payments to the bank. There is no novation with the bank. Under these facts, if Bob and Carol do not make the loan payments, Third U.S. Bank:

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| a. | can sue Bob and Carol only. |
| b. | can sue Ted and Alice only. |
| c. | can sue Bob, Carol, Ted, and Alice. |
| d. | cannot sue anyone but can repossess the RV. |

20. A rock group assigns its payment under a performance contract to the Costume Shop, a business that has supplied the group with outrageous stage outfits, and to which the group owes a great sum of money. Under this arrangement the rock group is the:

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| a. | assignor. |
| b. | assignee. |
| c. | delegator. |
| d. | delegatee. |

21. A rock group assigns its payment under a performance contract to the Costume Shop, a business that has supplied the group with outrageous stage outfits, and to which the group owes a great sum of money. This is:

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| a. | a valid assignment because of the rule of freedom to contract. |
| b. | a valid assignment because this is a simple transfer of the right to receive money. |
| c. | an invalid assignment because it increases the burden of the payor. |
| d. | an invalid assignment because this is a personal service contract. |

22. Garth's Imports sold a car to Wally on credit for $30,000. Garth assigned to Cassandra all of his rights to receive money from Wally. Cassandra did not inform Wally of the assignment. Therefore, Wally continued to make the next three payments directly to Garth. Shortly thereafter, Garth left the country with the money. If Cassandra sues Wally for the missing three payments:

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| a. | Cassandra will not be able to collect the money from Wally. |
| b. | Wally is not liable for the three payments because an assignment is not valid unless the obligor is notified. |
| c. | Wally is liable for the three payments because Cassandra paid consideration for the assignment rights. |
| d. | Wally cannot raise the defense of previous payment. |

23. M & E contracted to sell 500 music stands to Coda, Inc. M & E shipped the stands in accordance with the agreement. Coda paid for the stands as promised. The contract between M & E and Coda is discharged by:

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| a. | full performance. |
| b. | agreement. |
| c. | rescission. |
| d. | accord and satisfaction. |

24. As set forth in the Restatement Second of Contracts, which of the following duties are imposed on the parties in the performance and enforcement of a contract?

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| a. | perfect performance; honesty |
| b. | strict performance; team work |
| c. | good faith; fair dealing |
| d. | negotiation; arbitration |

25. The first step a court takes in choosing a remedy is to determine:

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| a. | what interest it is trying to protect. |
| b. | if the damages can be quantified with reasonable certainty. |
| c. | if punitive damages should be awarded. |
| d. | whether the injured party mitigated its damages. |

**ESSAY**

1. Briefly discuss the enforceability of contracts by third parties.

2. Discuss the potential liability differences between a delegation and a novation.

3. Shirley is an actress under contract with Twentieth Century. Shirley agreed to perform the lead role in a musical to be filmed in Hollywood by Twentieth Century. At the last minute, Twentieth Century decided to scrap the musical and assigned its rights in Shirley to MGM. MGM was planning to film a western in Australia requiring Shirley to spend six months filming in Australia. Can Shirley successfully prevent this assignment?

4. Andrew Durham was injured in a job-related accident that resulted in a workers' compensation settlement agreement with the employer's insurance carrier, Traveler's Indemnity Company. The settlement agreement required Traveler's to pay Durham $2500 per month for the rest of his life. To finance its obligation, Traveler's purchased an annuity in its name. The settlement agreement required Traveler's approval or consent prior to an assignment of the annuity payments. Durham later decided to open a business and went to a credit union for a $214,000 loan. The credit union loaned the money, taking a security interest in Durham's monthly annuity payments. Traveler's consent was never secured. Was this a valid assignment?

5. What does the term "substantial performance" mean? What factors are generally considered when determining whether one of the parties has substantially performed?

6. In a construction contract, there is a $1000 per day estimate of damages for each day that the contract runs over the completion date. The contractor is 30 days late when the job is completed, resulting in a prospective damage award of $30,000. What is this type of clause, and when will it be enforced?