

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

- 1) Which of the following statements is TRUE? 1) _____
- A) Consideration must be adequate but it does not have to be sufficient.
 - B) A party seeking to receive the benefit of a promise does not have to provide consideration if it placed its seal upon a document in which the promise is contained.
 - C) To place a contract under seal, a person may either apply a seal or write the word "seal" on a document.
 - D) A person can provide consideration by making a promise that will either create a benefit for itself or impose a detriment upon the other party.
 - E) Love and affection can serve as consideration if a contract is created between family members.
- 2) A gratuitous promise 2) _____
- A) occurs when one party promises to provide two benefits in exchange for the receipt of one benefit.
 - B) is a promise that is not given in exchange for consideration.
 - C) is usually enforceable even though it is not given in exchange for consideration.
 - D) is enforceable as long as it is supported by love and affection.
 - E) is not enforceable even if it is placed under seal.
- 3) Patricia and Charlie entered into a written agreement. Patricia promised to pay \$5000 to Haden, who is Charlie's brother. Charlie placed his seal on the document, but Patricia did not do so. Three days later, Charlie promised that he would design a new computer program for Bethany, Patricia's sister, in exchange for Patricia's promise. Which of the following statements is the most accurate? 3) _____
- A) Patricia's promise is enforceable because Charlie placed his seal on his agreement with her.
 - B) Patricia must pay \$5000 to Haden if Charlie actually does design a new computer program for Bethany.
 - C) Patricia's promise is not enforceable because it was not given in exchange for consideration.
 - D) Patricia's promise is not enforceable because each party to a contract must provide a benefit to the other party.
 - E) Charlie's promise is enforceable because it was given in exchange for Patricia's promise to pay \$5000.
- 4) Because he was in love with her, Noriel promised to sell his car to Marina for \$500. At the time of that agreement, Marina stressed that the deal was purely commercial and made it clear that she did not share Noriel's hopes for an intimate relationship. Before the sale was performed, Noriel fell in love with another woman, Valerie. He therefore now refuses to transfer the car to Marina. The actual market value of the car is \$7500. Which of the following statements is TRUE? 4) _____
- A) Marina can enforce Noriel's promise to transfer the car, but only if she pays the actual market value of the car.
 - B) Marina cannot enforce Noriel's promise because her promise did not provide adequate consideration.
 - C) Marina cannot enforce Noriel's promise to transfer the car because that promise was only supported by past consideration—it was based on the fact that Noriel was previously in love with Marina.
 - D) Marina cannot enforce Noriel's promise because love and affection are not good consideration.

E) Noriel and Marina exchanged consideration even though he has not transferred the car to her and she has not paid the money to him.

5) In exchange for Miles' promise to pay \$10 000 to the Society for Prevention of Cruelty to Animals, Fran promised to give up eating meat for one year. Which of the following statements is TRUE?

5) _____

- A) The facts demonstrate the doctrine of promissory estoppel.
- B) Fran has not given consideration because she has only suffered a detriment.
- C) Fran's promise is gratuitous because Miles does not receive anything of value from her.
- D) because neither party will receive a direct benefit, a contract was created only if the parties' agreement was placed under seal
- E) The facts demonstrate a mutual exchange of value.

6) Which of the following statements is TRUE?

6) _____

- A) The courts generally do not require adequate consideration because they believe that each person can look after their own interests by deciding how much to demand under a contract.
- B) Consideration is unnecessary as long as the word "seal" was printed on a form that a contractual party read.
- C) because of the significance of the privity of contract doctrine, exceptions can only be created by the legislature, and not by the courts
- D) Consideration can never consist of a promise to perform a pre-existing obligation.
- E) Promissory estoppel can be used as a sword, but not as a shield.

7) Mohana promised Ian that she would pay \$10 000 to him on his birthday. Ian gave nothing in exchange for that promise and neither party placed their seal on the document containing Mohana's promise. Ian demanded payment on his birthday. Mohana refused, primarily on the basis that she had recently become quite annoyed with him. Ian then threatened to start a lawsuit. However, he also offered to settle that lawsuit in exchange for payment of \$7500. Mohana accepted that offer in an attempt to avoid paying the full \$10 000. Several weeks after paying \$7500, however, she learned that her initial promise was not actually legally enforceable. She also learned that Ian, who was a lawyer, was aware of that fact all along. Which of the following statements is the most accurate?

7) _____

- A) Mohana can recover \$7500 from Ian because his threat to sue her for payment of \$10 000 was not made honestly.
- B) Mohana cannot recover \$7500 from Ian because she paid that money in exchange for his forbearance to sue.
- C) Mohana would have been required to pay \$10 000 to Ian if he had placed his seal on the document that contained her promise.
- D) Mohana can recover her \$7500 because Ian did not give consideration in exchange for her initial promise to pay \$10 000.
- E) Mohana can recover only the difference between the sum that she paid (\$7500) and the sum that she originally promised to pay (\$10 000).

- 8) Fred owed a debt of \$10 000 to Regina. Because he had lost his job and was experiencing financial difficulties, he hoped that she would take pity on him and would not insist upon payment. Fred therefore said to Tyra, who was Regina's colleague, "If you can get her to drop the matter, I'll make it worth your while." Tyra felt sorry for Fred and said that she would do her best. A week later, she called Fred and explained that Regina had agreed under seal to forgive the \$10 000 debt. Fred replied by saying, "Many thanks. Come by my house and I'll pay you \$500 for your effort." Which of the following statements is TRUE?
- 8) _____
- A) Although Regina is no longer entitled to receive \$10 000 from Fred, she can still recover a reasonable amount from him.
 - B) The agreement between Tyra and Fred is enforceable because Fred's promise to pay \$500 is past consideration.
 - C) Tyra would not be entitled to any payment from Fred if he did not state the specific amount of \$500.
 - D) Regina can still recover \$10 000 from Fred because he did not use his own seal.
 - E) Regina cannot sue under the agreement that was created between Tyra and Fred.
- 9) Which of the following situations most likely illustrates the concept of gratuitous consideration?
- 9) _____
- A) Pam has threatened to sue Dave for \$10 000. She is quite sure that she would win the case in court. However, because she is very fond of him, she has also generously offered to settle the matter for \$6000.
 - B) Pam, who is a fire fighter employed by the city, agreed to extinguish a fire that was destroying Dave's house, which is located in the city, only after he promised to pay \$10 000 to her in exchange for her services.
 - C) In exchange for his promise to pay \$5, Pam promised Dave that she would guard a parking lot in which his car was located during a sporting event. Several minutes later, she promised Earl, who had also parked there, that she would guard the same parking lot during the same sporting event if he promised to pay her \$7.
 - D) Pam asked Dave, who is a real estate agent, to locate a house in which she could operate a small accounting business. After he directed her attention to such a house, she promised to pay \$10 000 to him.
 - E) Pam placed an advertisement in a newspaper that promised to pay \$10 000 to anyone who returned her lost cat to her.
- 10) Parker Inc promised to pay \$100 000 cash to Coltrane Ltd in exchange for a shipment of widgets. The widgets were actually delivered on October 1st and the price was to be paid on October 15th. On October 13th, Parker informed Coltrane that it would not be able to afford to pay any more than \$75 000. Which of the following statements is TRUE?
- 10) _____
- A) Coltrane will not be able to recover the full contract price if it agrees accept \$75 000 from Parker on October 14th in complete satisfaction of the \$100 000 debt.
 - B) Coltrane will be able to recover the full contract price even if it accepts Parker's offer to satisfy the \$100 000 debt by both paying \$75 000 in cash and delivering a used truck to Rollins Corp, which is another company with which Coltrane has close ties.
 - C) Coltrane will be able to recover the full contract price even if it promises under seal to accept \$75 000 in complete satisfaction of Parker's debt.

- D) If the parties are located in Alberta, Ontario, British Columbia, Manitoba, the Northwest Territories, Nunavut, Saskatchewan, or the Yukon, Coltrane will not be able to recover the full contract price as long as it has accepted Parker's offer to pay \$75 000 in complete satisfaction of the \$100 000 debt.
- E) There is no mutuality of consideration, and therefore the contract is invalid, because Coltrane actually delivered the widgets before Parker was required to pay the purchase price.
- 11) Sarah was an orphan. Her uncle Rocco agreed to act as her guardian until she became an adult. In that role, he borrowed money to pay for her education. She promised to repay him when she became an adult. Sarah later became an adult and married Stepan. Stepan also promised to repay Rocco for the money that he had spent on Sarah's education. Sarah and Stepan, however, now refuse to pay the money. Rocco has sued Stepan on his promise. Which of the following statements is most likely TRUE? 11) _____
- A) Stepan is liable to Rocco.
 - B) Stepan has privity to the contract that was created between Sarah and Rocco.
 - C) Stepan's promise to Rocco involves the concept of past consideration.
 - D) Sarah and Stepan are jointly and severally liable to Rocco.
 - E) Sarah became liable to Rocco only after Stepan made his promise to Rocco.
- 12) Maria went on vacation in May. She expected that her garden would be fine because May is normally a very rainy month. In fact, it did not rain at all during May. Her neighbour, Hector, therefore watered her garden because he knew that she would not want her plants to die. When she returned from her vacation in early June, she thanked Hector and promised to pay him \$200 for his time and effort. Select the best answer. 12) _____
- A) Maria is contractually liable as long as a reasonable person in her circumstances would have agreed to pay for Hector's services.
 - B) Maria's promise is unenforceable because there was no mutuality between her promise and Hector's work.
 - C) Maria's promise would be unenforceable even if it was placed under seal.
 - D) Maria is contractually liable, but if the market value of her services is less than \$200, then Hector is entitled to collect only the lesser amount.
 - E) The concept of past consideration does not apply because Hector never gave any sort of promise.
- 13) Which of the following situations illustrates a contractually enforceable promise? 13) _____
- A) Suneeta owed \$25 000 to Bryce as a result of committing a tort against him. Because she did not want to pay the full amount, she persuaded Bryce to accept a document upon which she had placed her seal and the following words: "I, Suneeta, hereby promise to pay \$10 000 in full satisfaction of the \$25 000 debt that I owe to you as a tortfeasor."
 - B) Suneeta promised to pay \$500 to her father for a birthday present that she had received from her parents two weeks earlier.

- C) Suneeta had a contract with a construction company to build a deck in her backyard. Halfway through the project, the cost of materials suddenly increased. Although the original agreement did not require her to do so, Suneeta agreed to pay an additional \$2000 to the construction company to off-set the additional expenses that it would encounter in the remainder of the project.
- D) Suneeta borrowed money from a bank. Under the terms of that agreement, she was required to pay the bank \$10 000 cash on June 1st. On May 28th, she explained to the bank that she would not be able to pay the full amount on schedule. On the same day, she also persuaded the bank to accept a cheque for \$7500 in satisfaction of the full debt.
- E) Suneeta promised to pay \$5000 to a firefighter who responded to a routine call to extinguish a fire at her house.

- 14) Which of the following explains why the courts will not enforce an agreement that was created on the basis of a pre-existing public duty?
- A) The performance of a public duty does not confer a benefit upon anyone.
 - B) A promise by a public official is binding only if it is placed under seal.
 - C) Because public duties usually concern very serious matters, such as police investigations and firefighting, there is nothing that a citizen could give that would provide adequate consideration for a promise to perform a pre-existing public duty.
 - D) Citizens should not have to pay for services that public officials, like police officers and firefighters, perform while they are off-duty.
 - E) As a matter of public policy, it would be undesirable if a public official with a pre-existing public duty was motivated to perform for wealthy citizens, but not poor citizens.

14) _____

- 15) Rande promised to provide a series of lectures on tort law to a group of professional athletes in exchange for payment of \$10 000. Shortly before the lectures were scheduled to take place, Rande promised to provide a publishing company with a recorded set of lectures on tort law in exchange for \$15 000. The publishing company agreed that Rande's planned lecture for the group of professional athletes would be the subject of the recording. Which of the following statements is TRUE?
- A) Rande does not have a contract with the publishing company because a pre-existing contractual obligation cannot be re-used for the purpose of supporting a new contract.
 - B) Rande's promise to the publishing company would be enforceable only if it was made under seal.
 - C) If Rande fails to provide the lecture as promised, he may be held liable for breach of contract to both the group of professional and the publishing company.
 - D) Rande does not have a contract with the group of professional athletes because he re-used his promise to provide a lecture in order to support his contract with the publishing company.
 - E) Although Rande has contracts with both the group of professional athletes and the publishing company, he can only demand payment from one of them.

15) _____

- 16) Which of the following statements is TRUE?
- A) As a general rule, a promise to perform a pre-existing contractual duty to one party cannot provide consideration for a new contract with a different party.

16) _____

- B) As a general rule, a creditor's promise to accept a lesser sum in complete discharge of a larger debt is unenforceable.
- C) As a general rule, a promise to perform a pre-existing contractual duty to one party can provide consideration for a new contract with that same party.
- D) As a general rule, a promise that is not supported by valuable consideration is enforceable only if both parties have applied their seals.
- E) As a general rule, a promise to perform a pre-existing public duty can provide consideration for a new contract.

17) Which of the following propositions is TRUE in the context of the doctrine of promissory estoppel? 17) _____

- A) Promissory estoppel can be used as a sword but not as a shield.
- B) Promissory estoppel can only be based on representations of existing or past facts.
- C) The doctrine of promissory estoppel is effective only if the representee relied upon a statement by the representor.
- D) Once legal rights are affected by the doctrine of promissory estoppel, they can never be revived.
- E) The representee cannot rely on the representor's gratuitous promise if the representor was guilty of inequitable behaviour.

18) JB Inc sold a piece of equipment to SubSurf Ltd for a total price of \$240 000. Under the terms of their contract, SubSurf was required to pay \$10 000 on the first day of each month for twenty-four months. The contract also stated that if SubSurf was late on any single payment, JB was entitled to demand immediate payment of the entire outstanding amount. SubSurf made the first four payments on time. For the next six months, however, it was habitually late by at least one week. JB did not object to receiving those late payments. However, when SubSurf did not pay the eighth instalment on the first day of the next month, JB demanded immediate payment of the entire outstanding amount. Which of the following statements is TRUE? 18) _____

- A) SubSurf must immediately make a lump sum payment of \$240 000 to JB.
- B) The doctrine of promissory estoppel is inapplicable because JB did not make an effective representation.
- C) JB is estopped from complaining about the late payments as long as SubSurf can prove that it relied upon the fact that the first ten payments were accepted without objection.
- D) The parties' contract is invalid because SubSurf's promise to immediately pay the entire outstanding amount if it failed to perfectly comply with the repayment schedule was a gratuitous promise.
- E) The doctrine of promissory estoppel is inapplicable because it can only be used as a sword.

19) Deecey renovated Reece's shop in exchange for the promise of \$75 000. Reece had enough money to pay the entire bill, but simply did not want to do so. Reece also knew that Deecey's financial situation was very weak and that it might be forced into bankruptcy if it did not receive at least \$25 000 for its work. Reece therefore offered to pay \$25 000 in full satisfaction of the outstanding debt. Because of the circumstances, Deecey accepted that offer and promised that it would not demand payment of the additional \$50 000. Reece paid \$25 000 to Deecey. However, Deecey now claims that it is entitled to the additional \$50 000. Which of the following statements is TRUE? 19) _____

- A) The doctrine of promissory estoppel is inapplicable because Deecey's representation concerned a past fact (the value of the work that it performed for Reece).
- B) Deecey will want to rely on the principle of promissory estoppel because Reece's behaviour was inequitable.
- C) The doctrine of promissory estoppel is inapplicable because Reece is trying to use a gratuitous promise as a sword, rather than a shield.
- D) Reece cannot rely on the principle of promissory estoppel because its own behaviour was inequitable.
- E) The doctrine of promissory estoppel is not applicable because Deecey is trying to use a gratuitous promise as a sword, rather than a shield.
- 20) Bruce and Rosie entered into an agreement. He promised to transfer a necklace to her mother and she promised to deliver a computer to his father. Which of the following statements is most likely to be TRUE? 20) _____
- A) Even if neither Bruce nor Rosie have yet performed, a valid contract exists on the basis of their promises to perform.
- B) There is no contract between Bruce and Rosie because there was no mutuality of consideration.
- C) There is no contract between Rosie and Bruce because neither her mother nor his father are parties to the agreement.
- D) As long as Bruce transfers the necklace to Rosie's mother, Bruce's father can demand delivery of the computer from Rosie.
- E) As long as Bruce's father relies upon the terms of the existing contract, and as long as he does not act inequitably, he can compel Rosie to transfer the computer to him on the basis of the doctrine of promissory estoppel.
- 21) Dunlop sold tires to Mew. The parties' contract prohibited Mew from re-selling the tires unless its sub-buyer agreed to abide by Dunlop's list price for the tires. Mew re-sold the tires to Selfridge. Under its contract with Mew, Selfridge agreed to (1) abide by Dunlop's list price, and (2) pay \$50 to Dunlop for each tire that it sold in violation of that list price. Selfridge re-sold ten of the tires to its own customers for less than Dunlop's list price. Which of the following statements is most likely TRUE? 21) _____
- A) As a result of the contract between Mew and Selfridge, privity of contract exists between Dunlop and Selfridge.
- B) Selfridge is required to pay \$500 to Dunlop.
- C) Even though it promised to pay \$50 to Dunlop for each tire sold in violation of the list price, and even though it sold ten tires at less than the list price, Selfridge is not liable to Dunlop.
- D) Selfridge is required to pay \$500 to Mew.
- E) Selfridge is required to pay \$500 to Dunlop only if Selfridge's contract with Mew is under seal.
- 22) Which of the following statements is TRUE? 22) _____
- A) An equitable assignment is valid only if it is unconditional and complete.
- B) If the parties have tried, but failed, to create a statutory assignment, they cannot rely on an equitable assignment.
- C) An assignment of contractual rights sometimes is created by operation of law and without regard to the assignor's intention.
- D) The doctrine of vicarious performance is a type of assignment.
- E) An assignee under an equitable assignment acquires its rights "subject to the equities," but an assignee under a statutory assignment does not.

- 23) ABC Construction agreed to build a pool for Miranda in exchange for \$100 000. The pool was to be built during the month of May, but payment was not due until the end of August. The pool was completed on schedule. However, because it was experiencing financial difficulties, ABC orally assigned its contractual rights against Miranda to Mirth Enterprises in early June. In July, Miranda discovered that the pool leaked. Because ABC denied responsibility, Miranda had the problem fixed by another company at a cost of \$20 000. The evidence now indicates that the problem was in fact caused by ABC's breach of contract. ABC failed to use appropriate materials when it constructed the pool. Which of the following statements is TRUE? 23) _____
- A) ABC can collect \$100 000 from Miranda regardless of when she received notice of the assignment.
 - B) The assignment may be equitable, but it cannot be statutory.
 - C) The assignment may be statutory, but it cannot be equitable.
 - D) Mirth can collect \$100 000 from Miranda only if it notified her of the assignment before the pool began to leak in July.
 - E) Because of the assignment, Miranda can sue Mirth on the basis of ABC's breach of contract.
- 24) Bentley Inc operates a sporting goods store. In January, it purchased a shipment of baseball bats from Tadpole Manufacturing Ltd for \$20 000. In February, Tadpole orally assigned its rights under that contract to J&H Collections. In May, Bentley purchased a shipment of footballs from Tadpole for \$15 000 under a separate contract. Immediately after delivery, Bentley discovered that the footballs were defective. They had been improperly treated with a chemical that completely destroyed their leather exterior. The footballs consequently are completely worthless. Both contracts between Bentley and Tadpole required payment to be made by the end of June. Which of the following statements is TRUE? 24) _____
- A) Because the assignment is statutory, J&H can sue Bentley without joining Tadpole as a party to that action.
 - B) Even if Bentley paid for the baseball bats as soon as they were delivered (even though payment was not required until the end of June), it will have to pay the price a second time to J&H, if J&H provides written notice of the assignment before the end of June.
 - C) The assignment may be equitable, but it cannot possibly be statutory.
 - D) J&H can collect \$20 000 from Bentley as long as it notified Bentley of its assignment before the end of June.
 - E) Because the assignment is equitable, J&H can collect \$20 000 from Bentley regardless of when it notified Bentley of the assignment.
- 25) Which of the following rules applies to an equitable assignment? 25) _____
- A) The assignee takes the assignor's rights subject to the equities.
 - B) The assignment must be written.
 - C) The assignment is valid only once the debtor is given written notice.
 - D) The assignment must be placed under seal.
 - E) The assignment must be unconditional.
- 26) Which of the following statements is TRUE? 26) _____
- A) An assignee acquires rights against the debtor only if it provides new consideration to the debtor.
 - B) All common law provinces and territories allow statutory assignments, but only some of them allow equitable assignments.

- C) If there are two assignees of the same debt, a court will always favour the assignee that received its assignment first.
- D) Even if the parties satisfy all of the usual requirements, rights under some types of contracts cannot be assigned.
- E) As long as the required formalities are satisfied, a contractual obligation can generally be assigned by using either a statutory assignment or an equitable assignment.
- 27) Carlos entered into a contract with Keisha. He promised to design a computer system for her business and she promised to pay \$50 000 to his brother, Mikey. When that contract was created, Keisha agreed that Carlos would receive her promise on trust for Mikey. Which of the following statements is TRUE? 27) _____
- A) The facts illustrate the concept of vicarious performance.
- B) Keisha is the trustee of a trust.
- C) Mikey is entitled to enforce Keisha's promise even though he did not provide any consideration.
- D) because Carlos and Keisha agreed to create a trust, their contract is valid even without consideration
- E) Carlos is the beneficiary of a trust.
- 28) The employment exception to the privity doctrine 28) _____
- A) allows an employer to acquire rights in a contract that was created between a customer and an employee.
- B) can be applied in a case the involves vicarious performance.
- C) was created by statute.
- D) is usually necessary because the employer did not provide consideration to the customer.
- E) is a form of equitable assignment.
- 29) Sentinel Safety Inc entered into a contract with Glengarry Shopping Mall to provide security. The parties' contract contained a clause that said: "Neither Sentinel nor its employees or agents shall be held liable in an amount that exceeds \$10 000 for any loss or damage that may be caused in the performance of this agreement." In effect, Glengarry promised that it would not sue the named parties for more than \$10 000. Elaine works as a security guard for Sentinel. As part of her job, she regularly patrols the Glengarry Shopping Mall. Which of the following statements is TRUE? 29) _____
- A) Elaine could not be held liable for more than \$10 000 if she caused property damage to Glengarry Shopping while shopping there on her day off.
- B) The facts involve the contractual concepts of a stranger, vicarious performance, and sufficient consideration.
- C) The facts involve the contractual concepts of privity of contract and promissory estoppel and mutuality of consideration.
- D) because she was not a party to the contract between Sentinel and Glengarry, Elaine would not be entitled to limited liability if she carelessly damaged part of the mall's property while on a regular patrol
- E) If Elaine carelessly damaged part of the mall's property while on patrol, she would be protected by a statutory exception to the privity of contract doctrine.
- 30) The decision in *London Drugs Ltd v Kuehne & Nagel International Ltd* is primarily authority for which of the following propositions? 30) _____
- A) In certain circumstances, an employee is entitled to enforce an exclusion clause that is contained in a contract that was created between an employer and a customer.

- B) Sufficient consideration may consist of either a benefit provided to another person or a detriment to oneself.
- C) A promise to perform a pre-existing contractual obligation that is owed to one party may provide consideration under a new contract with a different party.
- D) Forbearance to sue may be sufficient consideration even if the underlying claim was not actually valid.
- E) A trust can be used to avoid the consequences of the privity of contract doctrine only if the parties actually intended to create a trust.

- 31) Which of the following refers to a TRUE exception to the privity doctrine, in the sense that a person is entitled to sue on a contract despite the fact that he or she is not a party to that contract? 31) _____
- A) equitable assignment
 - B) legal assignment
 - C) Himalaya clause
 - D) trust
 - E) employment
- 32) The word "estop" means 32) _____
- A) "to prevent."
 - B) "to prove."
 - C) "to guess."
 - D) "to deny."
 - E) "to promise."
- 33) The traditional doctrine of estoppel, rather than promissory estoppel, requires proof 33) _____
- A) of a representation regarding a past or present fact.
 - B) that one of the parties acted inequitably.
 - C) of detrimental reliance by the representor.
 - D) of an intention to create a new contract.
 - E) of either consideration or seals from both parties.
- 34) The contractual rule that requires an exchange of value 34) _____
- A) is best explained through the doctrine of privity.
 - B) can be satisfied by the use of a seal because a seal is itself a form of valuable consideration.
 - C) is based on the need for clear evidence of an agreement and therefore does not apply if the parties' agreement is written, rather than oral.
 - D) cannot be satisfied by the provision of love and affection because that rule requires each party to provide a physical benefit, rather than services or actions.
 - E) generally requires proof that each party provided sufficient consideration, but it does not also require proof that each party provided adequate consideration.

- 35) Lewis is a wealthy entertainer. While watching a telethon that was aimed at raising money for medical research, he was overwhelmed by a sense of grief and sorrow. He consequently picked up the telephone, dialed the number on the screen, and promised to donate \$5 000 000 within one month. The volunteer on the other end of the line thanked Lewis and assured him that "the money will be put to good use." Two days later, before Lewis had sent in a cheque, the telethon organizers announced that, because of the public's overwhelmingly positive response, and in particular because of Lewis's generous promise, their organization would be able to build a research facility that they previously believed was beyond their budget. They also announced that they would name the facility the Jerry Medical Research Park, after Thomas Jerry, a local surgeon who recently had died. Lewis became very angry. He had long hated Jerry and he was horrified at the thought of paying for a building named in his enemy's honour. He therefore informed the telethon organizers that he had changed his mind and that he would not be sending any money. The telethon organizers have now sued for breach of contract. Which of the following statements is TRUE?
- A) Lewis is not required to pay because his promise was a gratuitous promise.
 - B) There is no contract in this case because Lewis merely promised to pay, and did not actually pay any money, and therefore did not provide consideration.
 - C) Lewis is required to honour his promise as a result of the doctrine of promissory estoppel.
 - D) Lewis is contractually obliged to honour his promise if the telethon organizers can prove that, in reliance upon his promise, they already have hired architects and contractors to build the new facility.
 - E) Lewis will be contractually obliged to honour his promise as long as the telethon organizers agree to drop Thomas Jerry's name from the new research park.

35) _____

- 36) As a result of her participation in a telemarketing scheme, Susan was charged with several counts of fraud. Because she knew that the courts had recently started to take a much harsher approach to such crimes, and because she already had been convicted for similar offences in the past, she was anxious to "beat the rap." She therefore called Anqwaan, her brother-in-law, who was also a lawyer, and begged for his help. Anqwaan initially hesitated. Anqwaan already was very busy with his practice. Furthermore, although they were related, Anqwaan had met Susan only a few times and he did not know her much at all. He did, nevertheless, eventually agree to take on the case. As a result of his excellent service, Susan was acquitted on all charges. A few days after the trial ended, Anqwaan sent Susan a bill for his legal services: \$15 000. As a family courtesy, Anqwaan had, in fact, charged Susan only half of his usual hourly rate. Susan nevertheless was very upset. As she correctly notes, she and Anqwaan had never discussed his fee and she had never actually promised to pay him anything. Which of the following statements is TRUE?
- A) If Susan had promised to pay \$15 000 immediately after the trial ended, and before Anqwaan raised the subject of his fee, Susan's promise necessarily would be seen by a judge as past consideration.
 - B) Even though the parties never discussed Anqwaan's fee, the court may find that Susan implicitly promised to pay for Anqwaan's services and that, by taking the case, Anqwaan implicitly accepted that offer.
 - C) because the parties never discussed Anqwaan's fee, they could not

36) _____

- have created a contract
- D) There cannot be a contract on these facts because, given his relationship to Susan, Anqwaan already had a moral, family obligation to act on her behalf.
- E) Because Susan had requested Anqwaan's services, she would have to pay his entire bill even if he doubled his hourly rate.
- 37) Laetitia agreed to provide certain services to Hans in exchange for a payment of \$10 000. Although Laetitia fully performed her side of the agreement, Hans refuses to pay anything. He insists that Laetitia does not have a right to sue for breach of contract because, in performing the services, she was merely doing something that she had become obliged to do even before she entered into her agreement with Hans. Hans' position is correct if Laetitia's pre-existing obligation was 37) _____
- A) for some reason enforceable.
- B) some type of public duty.
- C) a private obligation owed to a third party.
- D) supported by a seal, rather than by consideration.
- E) for some reason unenforceable.
- 38) Gabriel entered into a contract with Paradise Equestrian Services. (PES) 38) _____
The purpose of the contract was to allow Gabriel's son, Archie, to learn to ride horses. The situation was somewhat complicated by the fact that while Gabriel lived in Prince Edward Island, Archie was starting college in British Columbia, where PES was also located. In an attempt to make it easier for Archie to take action on the contract, if any problems arose, Gabriel made sure that the agreement contained Paragraph 13, which says, "The promise given by PES is hereby acquired legally by Gabriel and equitably by Archie." Which of the following statements is TRUE?
- A) Archie is a party to the contract by virtue of an assignment.
- B) The facts demonstrate the concept of vicarious performance.
- C) As a result of Paragraph 13 of the contract, Archie can properly be classified as trust beneficiary, rather than as a third party beneficiary.
- D) Archie can sue on the contract only if he personally provided consideration.
- E) The tactic that Gabriel tried to use in this case was abolished by the Privy Council in *Vandepitte v Preferred Accident Insurance Co.*
- 39) Cookie entered into a contract with Muhammad. Muhammad was required to pay \$25 000 to Cookie, and he was entitled to have an engine modified and installed in his speedboat. Jane vicariously performed part of the contract. Which of the following statements is TRUE? 39) _____
- A) Vicarious performance will be recognized by a court of equity, but not by a court of law.
- B) If Jane performed carelessly and caused some sort of loss to the party on the other side of the contract, then the party who suffered the loss must sue Jane rather than the other person who actually signed the contract.
- C) Vicarious performance occurs only under an assignment.
- D) One of the parties undoubtedly breached the contract.
- E) Jane almost certainly vicariously performed on behalf of Cookie.
- 40) Sid and Nancy entered into a contract. Part of that contract was subsequently assigned to Johnny. Which of the following statements may be TRUE? 40) _____
- A) The assignment must have happened by operation of law, rather than in response to a party's intention.

- B) Johnny may be able to collect the same debt twice if the debtor does not provide timely notice of the assignment.
- C) One of the parties assigned the contract to Johnny even though the other party strenuously objected to that development.
- D) As a result of a statutory assignment, Johnny became entitled to receive half of the money that Nancy owed to Sid under the contract.
- E) Johnny is now required to provide personal services to either Sid or Nancy.

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

- 41) A gratuitous promise is never enforceable. 41) _____
- 42) Alpha Corp entered into an agreement with Beta Inc. Alpha promised to transfer certain equipment to Beta and Beta promised to pay \$50 000 to Gamma Ltd. Alpha has provided sufficient consideration but Beta has not. 42) _____
- 43) Epsilon Inc and Delta Ltd entered into an agreement. Epsilon promised to pay \$10 000 to Delta in March. Delta promised to deliver a piece of machinery to Epsilon in June. Epsilon paid the money in March. It is now April. The parties do not yet have a contract because while Delta has given a promise, it has not yet performed that promise. 43) _____
- 44) Dina threatened to sue Chris for \$25 000 unless he immediately paid her \$10 000. Chris paid \$10 000. He will be entitled to recover that money as long as he later proves to Dina that her initial belief was mistaken and that she never did have a right to sue him for \$25 000. 44) _____
- 45) Luke threatened to sue Leia for \$50 000 unless she immediately paid \$30 000 to him. Leia paid \$30 000 as requested. Luke is entitled to keep that money even if Leia later proves that he never honestly believed in the validity of the lawsuit that he threatened. 45) _____
- 46) Past consideration never satisfies the requirement of mutuality of consideration. 46) _____
- 47) Tracey is a police officer. While she was on vacation, she agreed to act as a security guard at a concert in exchange for payment of \$500. She performed the work, but the concert promoter refuses to pay her. He is entitled to do so because the law wants to discourage public servants like Tracey from improperly taking advantage of their special skills for private gains. 47) _____
- 48) A promise to perform a pre-existing contractual obligation cannot provide consideration under a new contract with the same party. That rule always reflects commercial reality. 48) _____
- 49) Zeta Corp was contractually obliged to pay \$25 000 cash to Omega Inc on June 15th. On June 1st, Omega agreed to discharge the entire debt if Zeta immediately gave a cheque worth \$15 000. Zeta did so. Nevertheless, on June 15th, Omega demanded payment of another \$10 000. It is entitled to receive that amount. 49) _____

- 50) The Canadian government announced its plan to create and circulate a new \$100 bill. Because Marta knew that Bernie was an avid collector of currency, she promised to give him the first new \$100 bill that she received from her work at a flea market. The agreement was placed in writing and Bernie applied his seal to the document. Shortly after the government released the new \$100 bills, Marta received one from a customer at the flea market. She is required to deliver it to Bernie. 50) _____
- 51) Hofflehas Architectural Ltd was hoping to persuade the Town of Buchanan to create a new beachfront resort. Buchanan said that it was not yet willing to commit itself to such a project. However, it also said that it would likely agree to any proposal that met certain specifications. On that basis, Hofflehas spent \$150 000 in creating a proposal that met all of the town's specifications. It presented the proposal and further explained that it would charge \$2 000 000 to actually undertake the construction project. The town's officials, however, said that they were no longer interested in a beachfront resort. Although Hofflehas cannot force Buchanan to pay it \$2 000 000 to create the proposed resort, it can use the doctrine of promissory estoppel to recover its expenses of \$150 000. 51) _____
- 52) The doctrine of promissory estoppel operates only if the representee relies upon a statement made by the representor. 52) _____
- 53) A statutory assignment involves three parties: the assignor, the assignee, and the debtor. 53) _____
- 54) An assignment can only be created by an intentional act of the assignor. 54) _____
- 55) As a wedding anniversary present for himself and his wife, Louisa, Mario entered into an agreement with Stanislaus, a world famous pianist. Under the terms of that agreement, Mario promised to pay Stanislaus \$52 000. Stanislaus promised that he would provide weekly lessons for one year for both Mario and Louisa. After two weeks of lessons, Mario completely lost interest, but Louisa is eager to continue. Stanislaus, however, refuses to go on. Louisa has the right to demand the remainder of the lessons from Stanislaus because the courts generally assume that if one party (such as Mario) enters into a contract for another person (such as Louisa), the promise provided by the other contractual party (such as Stanislaus) is held on trust. 55) _____

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

- 56) "The law of contract assumes that people are generally capable of looking after their own interests. An agreement therefore may be enforceable even if the parties do not exchange things of equal value." Discuss that statement. Illustrate your answer with three business law examples.
- 57) Explain the relationship between offer and acceptance on the one hand and consideration on the other. Your answer should focus on the concepts of cross offers and mutuality of consideration.
- 58) Sebastien Johan is a music critic known for his ill-tempered manner. In a recent newspaper article, he harshly criticized a classical recording that was released shortly after the death of Glenn Klavier, its featured performer. Johan's review attacked Klavier's music, which was not unusual. However, the review also attacked Klavier personally. It unfairly and inaccurately suggested that Klavier had intentionally stolen all of his ideas from another pianist. Klavier's widow sued Johan under the tort of defamation on the basis that the review tended to make people think less of her late husband. She threatened to sue for \$500 000 unless she

immediately received payment of \$100 000. Although Johan normally would have simply ignored the matter, he recently had experienced a number of financial setbacks. He therefore realized that while he would prefer to pay nothing, he could afford \$100 000, but would be ruined if he was ever required to pay \$500 000. He therefore promised to pay \$100 000 within one year to Klavier's widow in exchange for her promise to drop the lawsuit. Six months later, however, Klavier's widow was reliably informed that her lawsuit certainly would have failed if it had been brought before a judge. The law of defamation states that a person cannot be held liable for making derogatory comments about a dead person. Johan therefore now refuses to fulfill his promise to pay \$100 000. Is he entitled to do so? Explain your answer.

- 59) "Depending upon the circumstances, a promise to pay a specific sum of money may or may not be enforceable if that promise is given in response to services that have already been received." Explain whether or not that statement is accurate.
- 60) Under the *Electronic Home Business Administration Act*, any citizen that pays a \$50 fee is entitled to receive a licence to operate a certain type of business from home. Donna, who wished to operate such a business, sought information over the telephone from Duncan, a government official who was responsible for issuing licences under the legislation. Duncan agreed to provide a licence to Donna, but only if she promised to pay an additional fee of \$25 to him directly. Although Duncan was not actually entitled to demand that extra sum, he honestly believed that he was acting within his rights. Because she was anxious to receive the licence, Donna promised to pay \$75. However, she now regrets her decision to do so. How much must she pay Duncan in order to receive a licence? Explain your answer.
- 61) "A promise to perform a pre-existing contractual obligation cannot provide consideration for a new contract. That rule is based on the fact that it would be undesirable if party A could threaten to break an existing contract in order to get party B to enter into a second agreement at a higher price." Is that statement true: (i) if the existing contract was created between A and B, or (ii) if the existing contract was created between A and C? In each instance, provide two reasons for your answer.
- 62) What is the essential purpose of a seal?
- 63) Briefly describe the requirements that must exist before a promissory estoppel will arise.
- 64) Betta Corp, a manufacturer, sold widgets to Splendens Inc, a wholesaler. Under the terms of that agreement, Splendens was entitled to re-sell the widgets to a retailer, but only if its contract with the retailer: (i) required the retailer to sell the widgets to its own customers at a list price established by Betta, and (ii) required the retailer to pay \$500 to Betta for every widget that it sold to a customer at a price that was below the list price established by Betta. Splendens in fact sold the widgets to Siamese Fish Ltd, a retailer. Siamese then sold ten of the widgets to its own customers for less than Betta's list price. Is Siamese required to pay \$5000 to either Betta or Splendens? Explain your answer.
- 65) Paradise Publishing Inc entered into a contract with Carol Chambers, a successful author, for the writing of two novels. Under the terms of that agreement, Carol was entitled to payment of \$50 000 six months after the submission of each novel. Carol submitted the first novel on the first day of January. As she found the first phase of the contract to be exhausting, she wanted to immediately take a vacation. She asked Paradise for payment of \$50 000, but it pointed to the terms of their contract and denied her request. Carol purported to sell her contractual rights regarding the first novel to Nigel. Under that arrangement, Nigel immediately paid \$35 000 to Carol in exchange for her right to receive \$50 000 from Paradise on the first day of July. With

the money that she received from Nigel, Carol took an extended vacation to Costa Rica. While relaxing on the beach, she met Jose, an aspiring author who explained that he was finding it difficult to break into the publishing world. Carol then proposed an arrangement under which he would pay \$10 000 to her in exchange for the right to write her second contract for Paradise. Jose agreed. In the middle of May, Paradise learned about Carol's agreements with Nigel and Jose. It insists that both of those arrangements are invalid. Is it correct? Explain your answer.

- 66) Koln Enterprises Ltd is a music publisher that manufactures compact discs. In January, it agreed to record a jazz concert for Jade Nagoya, a pianist, in exchange for payment of \$25 000. The recording was to take place in April. Under the terms of that agreement, Jade would then be entitled to sell the CDs to her own customers for her own profit. As soon as that contract was created, Koln orally assigned its rights to Bremen Collection Inc. In February, Koln breached a separate contract that it had with Jade. As a result of that breach, it became indebted to her for \$5000. It has not yet paid that amount to her. In March, Bremen notified Jade of the assignment that it had received from Koln. Koln recorded the concert in April and pressed it onto a set of CDs. When Jade received those discs, however, she noticed that while the sound quality was acceptable, the packaging did not satisfy the terms of her January agreement with Koln. As a result of the shoddy packaging, Jade lost \$3000 on the re-sale of the CDs to her own customers. How much money is Bremen entitled to collect from Jade? Explain your answer.
- 67) Dawn Sumi hosts a national call-in radio program. On a number of occasions, when the on-air discussion concerned computers and electronic devices, she spoke very favourably about the merchandise manufactured by Rabby Electronics Inc. As a result of those compliments, Rabby's business increased dramatically. Rabby was both delighted and surprised: delighted because it was making larger profits and surprised because it had never asked Sumi for the endorsements. As a gesture of thanks, the president of Rabby wrote to Sumi and promised to pay him \$25 000 within six weeks. In reliance upon that promise, Sumi immediately entered into a contract with a builder to add a sun deck to her home at a cost of \$25 000. Sumi never would have entered into that contract if she had not received Rabby's promise. A week later, however, the president of Rabby changed his mind and told Sumi that she would not be receiving the money after all. Is Rabby entitled to do so? Did a contract exist between the parties? If no contract existed between the parties, is Rabby nevertheless obliged to fulfill its promise? Explain your answer.
- 68) "A trust does not provide a true exception to the privity of contract doctrine. The contract is enforced by the person to whom the contractual promise was given." Explain the meaning of that statement and indicate whether or not it is true.
- 69) Identify and explain two situations in which legislation allows a stranger to sue on a contract that was made for its benefit.
- 70) Identify the circumstances in which an employee can take advantage of an exclusion clause that is contained in a contract that was created between an employer and a customer.

- 1) C
- 2) B
- 3) C
- 4) E
- 5) E
- 6) A
- 7) A
- 8) E
- 9) B
- 10) A
- 11) C
- 12) B
- 13) D
- 14) E
- 15) C
- 16) B
- 17) C
- 18) B
- 19) D
- 20) A
- 21) C
- 22) C
- 23) B
- 24) C
- 25) A
- 26) D
- 27) C
- 28) B
- 29) B
- 30) A
- 31) E
- 32) A
- 33) A
- 34) E
- 35) A
- 36) B
- 37) B
- 38) C
- 39) E
- 40) C
- 41) FALSE
- 42) FALSE
- 43) FALSE
- 44) FALSE
- 45) FALSE
- 46) TRUE
- 47) FALSE
- 48) FALSE
- 49) FALSE
- 50) FALSE
- 51) FALSE
- 52) TRUE
- 53) TRUE
- 54) FALSE
- 55) FALSE
- 56) This question asks students, in a fairly open-ended manner, to reflect on the role of consideration and the nature of "bargains." An agreement is generally enforceable only if it is supported by consideration. The courts, however, only require consideration to be

sufficient, it does not have to be adequate. As a result, a contract will normally be enforced even if one party gains a much greater benefit than the other.

There are many illustrations of that proposition. First, forbearance to sue is sufficient consideration even if the underlying action was not valid. Consequently, a party may be bound by a payment (or a promise of payment) even though the action threatened by the other party was actually worthless. (The situation is different, however, if the other party knew that the claim was worthless.) In such circumstances, there generally is some benefit to the payor because that party is not put to the trouble and expense of court proceedings. However, that benefit is less valuable than the value of the payment (or promised payment).

Second, sufficient consideration may consist of a promise to perform a pre-existing obligation that is owed to a different party. In a sense, the promisor is getting more than it is giving. On the basis of a promise to do one thing, it is able to bind two other parties to two other contracts. (At the same time, however, the promisor is, in a sense, giving up two things—it is accepting exposure to liability to two different parties under two different contracts.)

Third, a promise to perform a pre-existing obligation to the same party generally is not sufficient consideration. Exceptions exist, however, if the promisor promises to do something slightly different—even if that slight difference does not have the same objective value as the promise that is received in exchange. For instance, as long as the creditor agrees to such an arrangement, a debtor can discharge an obligation to pay \$100 000 by merely paying \$50 000 one day early or by cheque rather than by cash or with an additional benefit (e.g. a computer worth \$3000). Many provinces also have legislation that allows a debt to be discharged upon the actual payment (and not just the promise of payment) of a lesser sum if the creditor agrees to such an arrangement.

Fourth, a promise may be enforceable, without the support of any consideration at all, if it is placed under seal. In that situation, the formalities associated with a seal draw the promisor's attention to the fact that it is likely giving up something without getting anything in return. The law assumes that a party that has gone through the requisite formalities is capable of looking after its own interests.

Fifth, the doctrine of promissory estoppel may compel a party to give something for nothing if certain conditions are met. In that situation, the law treats representor's apparent willingness to forgo an existing right seriously, even though that party gets nothing in exchange.

Finally, consideration can consist of either a benefit (or a promise of a benefit) or a detriment (or a promise of a detriment). Furthermore, a benefit may be sufficient even if it is enjoyed by a third party. Consequently, one party may be bound to a promise even if it is not entitled to receive a benefit from the other. The other party may provide consideration simply by giving up something (such as smoking or drinking) or by conferring a benefit on a third party.

- 57) This question requires students to combine their knowledge of Chapter 2 and Chapter 3. As discussed in Chapter 2, a contract is created through the process of offer and acceptance. There must be a meeting of the minds in which one party offers to enter into a contract on certain terms and the other party agrees. Consequently, there is no contract in a case of cross offers—that is, in a case in which both parties offer to enter into an agreement on identical terms. Since neither party agreed to the other's proposal, there is no meeting of the minds. There were simply two minds that, coincidentally, were entertaining the same idea.

The notion of mutuality of consideration operates along similar lines. Consideration is effective only if it was provided in return for consideration from the other party. Consequently, past consideration is no consideration at all because it was not given *in exchange* for the other party's consideration. Once again, there is no meeting of the minds.

In this instance, the temporal element is missing. One party had an idea and acted upon it. Only then did the other party form an idea and act upon it. As in the case of cross offers, there was no moment when both parties shared the same idea.

- 58) Johan is required to pay \$100 000 to Klavier's wife even though they both now realize that he could not possibly be liable under the tort of defamation. The parties entered into an enforceable settlement contract. He promised to pay her \$100 000 and she promised to drop her lawsuit against him*—ie* she gave her forbearance to sue. It is irrelevant that the lawsuit was actually invalid. (It would be different, however, if Klavier's widow knew at the time that she threatened litigation that her claim was invalid.) The promise provided by Klavier's widow did not actually release Johan from any liability. Nevertheless, it did provide him with a benefit because it relieved him of the expense and effort of a full lawsuit. Moreover, the courts generally recognize forbearance to sue as sufficient consideration in order to encourage settlements and create finality to litigation.
- 59) This question requires students to draw a distinction between a promise that is simply given in response to rendered services on the one hand and a promise that provides evidence of an earlier agreement to pay on the other hand. The former is past consideration and therefore cannot support an enforceable contract. Past consideration lacks the element of mutuality. It is given in response to the services that have been rendered, but those services were not given in response to the promise to pay. And since a contract requires a meeting of the minds and an exchange of value, the courts will not get involved.

In contrast, the courts will enforce a promise of a specific sum that was given *after* services were rendered, but which also provides evidence of an earlier agreement to pay a reasonable price. In that situation, the consideration is not past consideration because it was given, at least implicitly, at the same time that the other party provided (or agreed to provide) the services in question. The subsequent promise therefore does not create the consideration—it merely specifies the value of that consideration. Consequently, there is mutuality of consideration.

- 60) Donna only has to pay \$50 for the licence. In effect, her promise to pay the additional amount was given in response to Duncan's promise to perform his pre-existing public duty. Donna therefore did not receive any consideration for her promise to pay \$25 to him. Duncan gave nothing in exchange for that promise because he was already obliged to issue a licence to Donna in return for the flat fee of \$50. Furthermore, as a matter of public policy, the courts would not recognize consideration moving from Duncan because they would want to discourage public officials from improperly demanding extra benefits for the performance of public obligations.
- 61) The question is phrased in abstract terms to test the students' understanding of the underlying principles. The statement is true in situation (i), but not in situation (ii). As a general rule, a promise to perform a pre-existing contractual obligation *does not* provide consideration for a new contract between the *same* parties. One reason is that, in such circumstances, B does not receive fresh consideration for its promise to provide a new benefit to A. That is true because A is merely repeating its earlier promise to act in a certain way. B already received that promise under the existing contract. Another reason is that the courts do not want to encourage A to threaten to break its original contract with B unless B provides some new benefit. In such circumstances, B may be especially vulnerable and easily coerced into creating a new contract for fear of losing the benefit of the existing contract.

The same concerns do not arise, however, in situation (ii). As a general rule, a promise to perform a pre-existing contractual obligation *does* provide consideration for a new contract between the parties. Even though A previously promised C that it would act in a certain way, B is receiving that promise from A for the first time. Consequently, from B's perspective, A does provide fresh consideration for the new contract. Furthermore, as a matter of public policy, there is far less need to worry that A might use a threat to break its contract with C in order to coerce a new contract out of B. Given the circumstances, B is not unusually vulnerable to such a threat. After all, B normally does not care whether or not A performs its agreement with C.

- 62) As a general rule, a promise is enforceable only if it was given in exchange for consideration. In other words, a promise is normally effective only if it was purchased. The

law of contracts is based on that commercial paradigm. And within that paradigm, the courts are not concerned with the adequacy of consideration—as long as there is sufficient consideration, the courts are willing to assume that each party was capable of protecting its own interests. A gratuitous promise (*ie* one that is not supported by consideration), of course, stands outside of that paradigm. Such a promise nevertheless is enforceable if the promisor placed it under seal. A seal is not consideration, but it provides a sufficient proxy for consideration. While they have been reduced in modern times, the formalities associated with a seal alert the promisor to the fact that it may be giving up something for nothing. A party is entitled to act in that way, but the courts insist upon the presence of a seal to ensure that the promisor appreciates that the promisee may acquire a benefit without paying for it.

- 63) The doctrine of promissory estoppel is generally premised upon four requirements. First, the representor must clearly indicate, to the representee, that it will not enforce its rights against the representee. Second, the representee must rely upon the representor's statement in such a way that it would be unfair to allow the representor to deny its representation. (Often, however, the representor can revive its original rights with respect to the future by providing the representee with notice of its intention to do so.) Third, the representee must not be guilty of inequitable behaviour. And fourth, the representor's statement must be made within the context of an existing legal relationship. Promissory estoppel can vary or suspend existing rights, but it cannot create new rights. In other words, it can be used as shield, but not as a sword.
- 64) Although the answer may be contrary to normal commercial instincts, the general rules suggest that Siamese is not required to pay \$5000 to either Splendens or Betta. Splendens is not entitled to the money because it was not entitled to that money under the terms of its agreement with Siamese. Splendens merely used that contract to require Siamese to pay money to a third party beneficiary—*ie* Betta. Moreover, since Betta was not a party to that agreement, it probably is not entitled to receive the money from Siamese either. A party can normally sue on a contract only if it enjoys privity of contract. And although the terms of Siamese's agreement with Splendens reflects Betta's role in the entire scheme, there is no direct connection between Betta and Siamese.
- 65) Paradise is half right and half wrong. Unless its contract with Carol prohibited such an arrangement, she was entitled to assign her *rights* under that agreement. She therefore was entitled to immediately sell her right to receive \$50 000 on July 1st to Nigel. The law generally allows an assignment of contractual rights because it should not matter to the debtor (Paradise) to whom it is obliged to pay. In contrast, as a general rule, contractual *obligations* cannot be assigned. An exception exists that allows for vicarious performance if an obligation is non-personal—*ie* if it does not matter who exactly performs it. That is usually true, for instance, when a contractor arranges for a sub-contractor to install plumbing in a new house. The homeowner does not care precisely *who* undertakes the various tasks associated with the project. Vicarious performance is not allowed, however, if the identity of the performing party is significant. That would be true in the present case. Paradise can legitimately object to receiving a novel written by Jose, rather than Carol. The publisher presumably contracted with Carol because it had a favourable impression of her abilities. Carol therefore cannot assign her obligation to write the second novel to Jose.
- 66) The assignment is presumably a valid equitable assignment. Contractual rights are generally assignable unless prohibited by the underlying agreement. There is no reason to believe that such a prohibition existed under the January agreement involving Koln and Jade. (The assignment must be an equitable assignment because it was oral, rather than written.)

An assignment is generally "subject to the equities." That means that the debtor (Jade) may be able to assert against the assignee (Bremen) any defences or counterclaims that she could have asserted against the assignor (Koln). In this case, Koln assigned to Bremen the right to collect \$25 000 from Jade. Jade, however, has two matters to plead by way of counterclaim or assignment. First, as a result of Koln's breach of a *different* transaction, it owes her a debt of \$5000. Second, as a result of Koln's breach of the *same* transaction, it owes her a debt of \$3000.

The debtor (Jade) is entitled to assert against the assignee (Bremen) any defence or

counterclaim arising out of the *same* transaction that it has against the assignor (Koln) *regardless* of when the assignee provides notice. Consequently, *regardless* of when Bremen notified Jade of the assignment, she could reduce the amount payable to it by \$3000.

The debtor (Jade) is entitled to assert against the assignee (Bremen) any defence or counterclaim arising out of the *different* transaction that it has against the assignor (Koln) *only if* that defence or counterclaim arose *before* receiving notice from the assignee. In this case, Jade's right to receive \$5000 from Koln under the different transaction arose in February. She only received notice of the assignment from Bremen, however, in March. Consequently, she can also reduce the amount payable to it by an additional \$5000. (Bremen clearly should have notified Jade of the assignment more promptly.)

In the final analysis, Jade therefore must pay Bremen \$17 000 (\$25 000 - \$3000 - \$5000 = \$17 000). Because it received less under the assignment than it initially expected, Bremen presumably could sue Koln for breach of the contract constituting the assignment.

- 67) Sumi is not entitled to the money, or indeed, any payment from Rabby. First, there is no contract between the parties. Although Rabby promised to pay \$25 000 to Sumi, her only consideration for that promise was past consideration. She *previously* had helped Rabby's business by speaking well of its products. And since her compliments were not given in exchange for Rabby's promise, there was no mutuality of consideration.

Second, the doctrine of promissory estoppel does not apply. Admittedly, the first three requirements may appear to be met: Rabby made a representation, Sumi detrimentally relied upon that representation, and Sumi was not guilty of inequitable behaviour. However, in Canada, promissory estoppel can only be used as a shield and not as a sword. It can vary or suspend rights within an existing legal relationship, but it cannot create new rights. On the facts, there was no prior legal relationship between Sumi and Rabby. The doctrine therefore is inapplicable.

- 68) The privity of contract doctrine states that only a person who is a party to a contract can sue or be sued on it. A trust does not provide a true exception to that doctrine. In a trust situation, one contractual party gives a promise to another contractual party. The party that receives that promise, however, receives it as trustee on behalf of the third party, who is the beneficiary under the trust. Even though that beneficiary did not receive the contractual promise directly, it did receive the promise indirectly *i.e.* through a contractual party that acted as a trustee. Consequently, in that indirect fashion, the beneficiary *is* a party to the contract and can therefore enforce the promise.
- 69) Two such situations were identified in the text. First, if the owner of an automobile purchases insurance, the insurance company is required (at least in some circumstances) to provide benefits with respect to accidents that occur without the owner's direct participation (*e.g.* when the car owner's daughter is involved in an accident while driving the vehicle with consent). Second, even though it is a stranger to the creation of the contract, the beneficiary under a life insurance policy can sue the insurance company for benefits. Those exceptions reflect practical reality. As a matter of social policy, it is desirable for automobile insurance to extend beyond the actual parties to the insurance contract. Accidents frequently occur without any participation by the vehicle's owner. Nevertheless, there is a need to provide compensation for losses. Likewise, the primary point of life insurance is to provide a benefit to a stranger after the insured party dies. It would be repugnant if the insurer nevertheless could refuse to pay a benefit on the basis that the beneficiary is a stranger to the contract.
- 70) As a general rule, an employee cannot take advantage of a contract created between an employer and a customer. That is because the employee is not a party to that agreement. According to the test established by the Supreme Court of Canada in *London Drugs Ltd v Kuehne & Nagel International Ltd*, however, an employee is protected by an exclusion clause that is contained in such a agreement if two conditions are met. First, it must have been clear from the outset that the employees would perform work under the contract. Second, the employees must have been acting in the course of their employment when the accident occurred. That exception to the privity doctrine is based on practical considerations. In the typical situation, the employees are in need of protection since they will actually be performing the work in question. Moreover, the contractual parties normally expect that

the exclusion clause will protect the employees. And finally, the presence of an exclusion clause signals to the customer the need to arrange insurance against losses. The customer therefore is not unfairly prejudiced if it is precluded from suing both the employer and the employee.