

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

- 1) Susan contractually agreed to sell a particular computer to Davor for \$5000. Although Davor paid the money, Susan refuses to actually give him the computer. A court will likely award monetary damages, rather than specific performance, to Davor because 1) _____
- A) the loss of the computer is too remote.
 - B) Susan has not committed a serious breach of contract.
 - C) judges do not have the authority to force the defendant to act in a particular way.
 - D) monetary damages will provide Davor with an adequate remedy.
 - E) Davor has already paid the purchase price.
- 2) Savannah agreed to buy a car from Rhett for \$10 000. Savannah paid the price, but Rhett refused to perform the contract after he discovered that the vehicle was really worth \$17 000. At the time that the contract was created, neither he nor Savannah was aware of the vehicle's actual value. Which of the following statements is TRUE? 2) _____
- A) The court will likely award specific performance because of the significant difference between the contract price and the actual value of the car.
 - B) Savannah cannot get expectation damages for \$17 000 because she did not expect to receive a car of that value when she entered into the contract.
 - C) Savannah will be entitled to receive a total of \$7000 in expectation damages because that is the profit that she should have received under the contract.
 - D) The court will likely award expectation damages based on the profit that Rhett expected to receive under the contract.
 - E) Even though he breached the contract, Rhett may not be liable for the full difference between the contract price and the market value if Savannah could have purchased a similar car from a third party for less than \$17 000.
- 3) Which of the following statements is TRUE? 3) _____
- A) Expectation damages compensate the plaintiff for expenses that it actually paid in reliance upon the contract.
 - B) In deciding whether or not damages in contract should be forward-looking or backward-looking, a court will be influenced by whether or not the defendant's breach was deliberate.
 - C) Damages in contract are always backward-looking.
 - D) Damages in contract are usually forward-looking because the courts want to protect the fact that promises are valuable only if they will be kept in the future.
 - E) Damages in contract are always forward-looking.
- 4) Luis contractually agreed to sell a widget to Monica for \$20 000. Monica accepted delivery of the widget, but has paid only \$13 000. Although neither party realized it when they created their contract, the widget is actually worth \$23 000. A court will order Monica to pay Luis 4) _____
- A) \$7000.
 - B) \$10 000.
 - C) \$20 000.
 - D) \$23 000.
 - E) \$13 000.

- 5) Joshua contractually agreed to sell a widget to Maya for \$50 000. Before the sale was completed, however, Maya announced that she no longer wanted the widget. She therefore refused to accept delivery of it or to make any payment. The widget is really worth \$55 000. There are several other parties who are willing to buy it from Joshua at that price. At the time of entering into his contract with Maya, however, Joshua thought that the widget was worth \$60 000. He therefore thought that he would earn a profit of \$10 000 under the contract. A court will order Maya to pay Joshua _____
- A) \$10 000.
 - B) \$0.
 - C) \$50 000.
 - D) \$5000.
 - E) \$55 000.
- 6) Armand contractually agreed to sell a widget to Melanie for \$100 000. However, she refused to accept delivery of the widget or to pay the contract price because the widget is really worth \$80 000. Britt then offered to buy the widget from Armand for \$80 000, but he rejected that offer. If Armand claims expectation damages, a court will order Melanie to pay him _____
- A) \$80 000.
 - B) \$0.
 - C) \$100 000.
 - D) \$40 000.
 - E) \$20 000.
- 7) The victim of a breach of contract is entitled to _____
- A) compel the party in breach to mitigate the losses.
 - B) insist upon receiving cost of cure damages.
 - C) recover damages for intangible losses only if the defendant deliberately breached the contract.
 - D) enforce a contractual term regarding liquidated damages, but not penalties.
 - E) claim expectation damages for remote losses.
- 8) The monetary value of expectation damages may be affected by _____
- A) the concept of disgorgement.
 - B) the fact that some of the plaintiff's losses are intangible.
 - C) the money that the party in breach saved as a result of the breach.
 - D) the concept of *esperanto*.
 - E) the profit that the defendant expected to receive under the contract.
- 9) Which of the following statements is TRUE? _____
- A) Cost of cure damages will never be awarded unless the plaintiff has already spent money to cure the defect in the defendant's performance.
 - B) Cost of cure damages will always be less than loss of value damages.
 - C) Cost of cure damages are more likely to be awarded if the innocent party has a legitimate reason for wanting to have a defect actually cured.
 - D) Cost of cure damages are a form of reliance damages.
 - E) Cost of cure damages will always be awarded if the plaintiff's only loss is intangible.

- 10) Woody entered into a contract with Jezebel. She promised to pay \$10 000 and he promised to build a sun deck in her back yard. The contract contained specific terms regarding the quality of the materials that Woody would use. Woody built a sun deck, but many of the materials that he used fell below the standard required by the contract. As a result of that breach, the deck is worth \$1000 less than Jezebel expected. It will cost \$9000 to replace the defective materials with materials that satisfy the terms of the contract. Which of the following statements is TRUE? 10) _____
- A) A court will probably refuse to award cost of cure damages because the difference between the loss of value and the expense of repairing the defect is very large.
 - B) If Jezebel is awarded cost of cure damages, she must use that money to cure the defect.
 - C) Cost of cure damages are classified as a form of punitive damages because they often require the defendant to pay for more than the plaintiff's actual loss of value.
 - D) If Woody deliberately breached the contract by using inferior materials, Jezebel will receive total damages worth \$18 000.
 - E) A court will certainly award cost of cure damages if Woody deliberately used materials that did not satisfy the terms of the contract.
- 11) An intangible loss 11) _____
- A) is a loss that has market value.
 - B) may be the subject of damages if the contract was intended to provide "peace of mind" to the plaintiff.
 - C) usually leads to reliance damages.
 - D) traditionally resulted in expectation damages.
 - E) usually triggers the remedy of an account of profits.
- 12) Harold agreed to sell a widget to Sheila for \$10 000. Sheila paid the purchase price immediately and Harold was required to deliver the widget on June 1. In fact, Harold did not deliver the widget until June 21. As a result, Sheila was unable to perform a contract for ABC Inc on June 19 that would have paid her \$15 000. Which of the following statements is TRUE? 12) _____
- A) Depending upon the facts, Sheila's damages may be reduced on the basis of both the concept of remoteness and the concept of mitigation.
 - B) Sheila's loss of \$15 000 is best described as an intangible loss.
 - C) Damages will be reduced to the extent that Harold failed to mitigate the loss that was caused by the breach.
 - D) Sheila is entitled to recover \$15 000 in damages from Harold as long as she knew, or should have known, that late delivery would cause her to lose her contract with ABC Inc.
 - E) Sheila is liable to Harold for \$15 000 as long as he knew, or should have known, of the possibility of that loss when he breached the contract.
- 13) The concept of remoteness 13) _____
- A) is based on facts that the defendant knew, or should have known, at the time of committing the breach of contract.
 - B) allows recovery for losses that were not reasonably foreseeable.
 - C) applies only if the plaintiff's loss was caused by a combination of the defendant's breach and the actions of a third party.
 - D) is related to the risks that the parties accepted when they created their contract.
 - E) always applies if the plaintiff mitigated the loss that was caused by the defendant's breach.

- 14) Widgets are manufactured by very few companies and they are often difficult to locate. On January 1, Alpha Corp contractually agreed to sell a widget to Beta Inc. Beta paid the total purchase price of \$30 000 immediately. The contract required Alpha to deliver the widget on April 1. On March 25, Alpha contacted Beta and announced that it would not be able to deliver the widget. By that time, the cost of a widget had increased to \$50 000. On March 28, Beta paid \$2000 to an independent firm to locate an alternative widget supplier. That firm suggested Gamma Ltd. On March 30, Beta paid \$50 000 to Gamma Ltd to deliver a widget by April 1. A court would probably order Alpha to pay Beta
- 14) _____
- A) \$22 000.
 - B) \$2000.
 - C) \$30 000.
 - D) \$52 000.
 - E) \$50 000.
- 15) On June 1, Lauto Inc contractually agreed to buy a Pupmobile LX from Dos Motors Ltd for \$25 000. Payment of the price and delivery of an appropriate vehicle were scheduled to occur on July 15. On July 1, however, Dos informed Lauto that it had carelessly crushed its only Pupmobile LX with an industrial-sized garbage bin. Dos apologized profusely and explained that it did not have another one in stock. It also informed Lauto that, because a Pupmobile LX had recently appeared in a highly successful movie, such cars were in great demand. "If you still want one," said the manager at Dos, "you had better act quickly. I'll expect that they will start to go up in value very quickly." Between July 1 and July 10, Lauto could have agreed to purchase a Pupmobile LX from another dealer for \$30 000. Nevertheless, Lauto waited until July 11 before buying a Pupmobile LX from Tertius Motors Ltd for \$35 000. By July 15, the market value of such vehicles had increased to \$40 000. A court would probably order Dos to pay Lauto
- 15) _____
- A) \$5000.
 - B) \$15 000.
 - C) \$30 000.
 - D) \$10 000.
 - E) \$25 000.
- 16) Dave was contractually required to deliver a widget to Pam by July 1. He failed to do so. At that point, Pam predicted that she would suffer a loss of \$100 000 during the next six months because her factory cannot operate efficiently without a widget. Which of the following statements is TRUE?
- 16) _____
- A) Because Dave is under a duty to mitigate, the damages that he must pay will be reduced to the extent that he reasonably spends money trying to help Pam purchase a widget from another supplier.
 - B) Because she is under a duty to mitigate, Pam must do everything possible to acquire a widget from another supplier.
 - C) Because she is under a duty to mitigate, Pam will be denied damages to the extent that she could reasonably avoid a loss flowing from Dave's breach.
 - D) Because she is under a duty to mitigate, Pam cannot receive any damages unless she purchases a widget from another supplier.
 - E) Because he is under a duty to mitigate, Dave will be held liable for \$100 000 unless he takes reasonable steps to help Pam purchase a widget from another supplier.

- 17) Alexi agreed to sell a particular type of car to Carole for \$15 000. He breached the contract by refusing to deliver the car and complete the sale. She bought another car of the same type from Ivan for \$18 000. These facts most clearly illustrate the concept of
- 17) _____
- A) cost of cure.
 - B) intangible losses.
 - C) mitigation.
 - D) remoteness.
 - E) loss of value.
- 18) Shinji contractually agreed to record a concert for Keith. The concert was to occur on November 8 and Keith was to pay a price of \$10 000 on the same day. On October 15, Shinji informed Keith that he would not be able to record the concert. On November 2, Keith entered into a contract with his good friend, Manfred. Under the terms of that agreement, Manfred was required to record the concert on November 8 and Keith was required to pay \$25 000. The evidence indicates that Keith could have easily hired someone other than Manfred for \$17 000. Which of the following statements is TRUE? A court would probably order Shinji to pay Keith
- 18) _____
- A) \$17 000.
 - B) \$10 000.
 - C) \$7000.
 - D) \$25 000.
 - E) \$15 000.
- 19) Sammy Productions Inc wanted to hold an open-air concert on September 30. On February 1, it entered into a contract with Maxine, a wealthy landowner. Under the terms of that agreement, Maxine agreed to let the concert be held on her property and Sammy agreed to pay her 10 percent of its gross revenues from the concert. The parties agreed to set the price in that way because they did not have any way of knowing how many people would attend the concert. Attendance would depend upon a large number of factors, including the weather and the general state of the economy. Based on past experience, however, Sammy and Maxine agreed that the event would certainly be profitable. After signing its contract with Maxine, Sammy spent \$75 000 on advertising. It also passed up an opportunity to organize a Canada Day celebration in Ottawa, for which it would have received \$100 000 in net profits from the government of Canada. Maxine was aware that Sammy sacrificed that opportunity. On August 1, however, Maxine abruptly announced that she would not allow the concert to be held on her land. She offered Sammy \$50 000 as compensation for its losses. It is not possible for Sammy to arrange another site for its concert given the late date. A court would most likely order Maxine to pay Sammy
- 19) _____
- A) \$50 000.
 - B) \$100 000.
 - C) \$175 000.
 - D) \$0.
 - E) \$75 000.
- 20) Which of the following statements is TRUE?
- 20) _____
- A) Nominal damages are usually worth more than punitive damages.
 - B) An account of profits normally is not available even if the defendant earned a large profit as a result of committing a breach of contract against the plaintiff.
 - C) Canadian judges award punitive damages more often than American judges.
 - D) Punitive damages are intended to compensate the plaintiff for

losses that it unexpectedly suffered as a result of the defendant's breach of contract.

- E) If a court awards nominal damages, it will always award costs against the party that breached the contract.

21) Brianna contractually agreed to sell a widget to Oren. She was required to deliver the item on June 1 and he was required to pay \$75 000 on the same day. Paragraph 21 of the contract said that if Brianna breached the contract by refusing to deliver the item, Oren would be entitled to a payment of \$20 000. Brianna did, in fact, refuse to deliver the widget. Oren therefore has not yet paid the price. Which of the following statements is TRUE? 21) _____

- A) If Oren suffered a loss of \$10 000 as a result of Brianna's breach, he will be entitled to payment of \$20 000 if paragraph 21 of the contract was a penalty.
- B) If Oren suffered a loss of \$15 000 as a result of Brianna's breach, he will be entitled to payment of that amount if paragraph 21 of the contract was a penalty.
- C) If Oren suffered a loss of \$30 000 as a result of Brianna's breach, he will be entitled to payment of that amount if paragraph 21 of the contract was for liquidated damages.
- D) If Oren suffered a loss of \$10 000 as a result of Brianna's breach, he will be entitled to payment of that amount and no more if paragraph 21 of the contract was for liquidated damages.
- E) If Oren suffered a loss of \$20 000, and the court classified paragraph 21 as liquidated damages, then Brianna would be liable to pay \$95 000.

22) Which of the following statements is TRUE? 22) _____

- A) Liquidated damages are enforceable if they represent a genuine estimate of the losses that the plaintiff might have suffered as a result of the defendant's breach.
- B) Liquidated damages are always available if the defendant breached a contract for the sale of land.
- C) Because of the risk of unfairness, liquidated damages are never allowed unless the defendant received independent legal advice at the time that the contract was created.
- D) The plaintiff cannot recover the full amount of liquidated damages if it suffered a smaller loss as a result of the defendant's breach.
- E) The plaintiff can recover more than liquidated damages if it suffered a larger loss as a result of the defendant's breach.

23) Mayo committed a breach of contract against Dirk. After ordering Mayo to compensate Dirk for the losses that he suffered, the judge also ordered Mayo to pay an additional \$10 000 to Dirk. These facts most likely demonstrate the concept of 23) _____

- A) nominal damages.
- B) a penalty clause in the contract.
- C) liquidated damages.
- D) equitable relief.
- E) punitive damages.

24) As a general rule, punitive damages will not be awarded for a breach of contract unless 24) _____

- A) monetary damages would not adequately compensate the plaintiff.
- B) the plaintiff seeks equitable relief.
- C) the plaintiff committed an independently actionable wrong.
- D) the defendant is guilty of breaching at least two obligations.

E) the contract expressly allows for such relief.

- 25) Katarzyna contractually agreed to sell a painting to Trent. She promised to deliver it on June 1 and he promised to pay \$10 000 on the same day. On May 15, Katarzyna discovered that the painting is really worth \$25 000. She therefore has told Trent that she does not intend to fulfill the contract. Which of the following statements is TRUE? 25) _____
- A) If specific performance is not available, Trent will probably be entitled to receive \$25 000 from Katarzyna.
 - B) A court will probably give Trent specific performance and reliance damages.
 - C) Trent probably is not entitled to specific performance if Katarzyna is under the age of majority.
 - D) Since specific performance is an equitable remedy, Trent is entitled to receive the painting only if he agrees to pay \$25 000 to Katarzyna.
 - E) Trent is not entitled to an order for specific performance because a court will not force Katarzyna to act in any particular way.
- 26) Which of the following statements is TRUE? 26) _____
- A) Although the courts traditionally awarded specific performance for a contract to sell a piece of land, the plaintiff will now receive damages unless a piece of land is somehow special or unique.
 - B) A court will refuse to award specific performance if monetary damages are inadequate.
 - C) Specific performance is not available if the defendant has "dirty hands" when it comes to court.
 - D) because it is an equitable remedy, specific performance is always available even if the plaintiff waits a long time before suing the defendant.
 - E) The requirement of mutuality means that specific performance will not be awarded unless both parties provided consideration under a contract.
- 27) Iago contractually agreed to sell a particular piece of land to Desdemona. He later changed his mind and decided to keep the property for himself. Which of the following statements is TRUE? 27) _____
- A) Since the contract dealt with a sale of land, Desdemona will certainly receive an order for specific performance.
 - B) A court would not award an order for specific performance because it would not be willing to supervise the transfer of land.
 - C) Desdemona probably is not entitled to an order for specific performance if she is a child.
 - D) Desdemona will be entitled to receive an order for specific performance only if she grants an injunction to Iago.
 - E) Desdemona will receive specific performance only if Iago comes to court with unclean hands.
- 28) Silvio agreed to perform as a pianist with the Moose Jaw Symphony Orchestra (the MJSO). His contract with the orchestra contained two important clauses. One required him to perform with the MJSO four times per month for three years. The other prohibited him from "acting in any musical capacity for any other employer" during the same period. After a short time, Silvio grew dissatisfied with the MJSO. He therefore announced his intention to quit the MJSO and to join the Thunder Bay Orchestra (the TBO). Which of the following statements is TRUE? 28) _____
- A) A court would not grant either specific performance or an injunction because the requirement of mutuality could not

- possibly be satisfied on the facts.
- B) Silvio is entitled to quit the MJSO and join the TBO because a contract for personal services is never enforceable.
 - C) A court might grant an injunction to the MJSO to prevent Silvio from performing for the TBO if it is reasonably possible for Silvio to earn a living without violating the terms of his contract.
 - D) Since an injunction is an equitable remedy, such relief is available only if the contract between Silvio and the MJSO was under seal.
 - E) Because Silvio has special skills, a court would certainly grant an order of specific performance to the MJSO.
- 29) Eleni agreed to act as an investment adviser for Gnuhigh Ltd. After completing her first project for Gnuhigh, she asked for payment of \$10 000, as calculated under the terms of the parties' agreement. Gnuhigh refused to pay. In support of its position, it pointed to the *Financial Industry Standards Act*, which says that a contract for investment advice is unenforceable unless it is registered with a government official. The agreement between Eleni and Gnuhigh is not registered. Eleni is most likely entitled to receive
- 29) _____
- A) an order for specific performance.
 - B) \$10 000 as restitution.
 - C) \$10 000 as expectation damages.
 - D) \$10 000 as liquidated damages.
 - E) \$10 000 as reliance damages.
- 30) Manny contractually agreed with Akio Inc to present a series of ten lectures to that company's employees. The total price of \$5000 was to be paid after the last lecture. The work turned out to be far more complicated and far more expensive than Manny first expected. He nevertheless carried on with the agreement because he did not want to damage his reputation for reliability and professionalism. Manny spent \$12 000 preparing and delivering five lectures. It would have cost the same amount to prepare and deliver the remaining lectures. At that point, however, Akio breached the contract and prevented Manny from completing the contract. Which of the following statements is TRUE?
- 30) _____
- A) Manny is entitled to receive an order for specific performance.
 - B) Manny is entitled to receive \$12 000 as reliance damages.
 - C) Manny is entitled to receive \$5000 as expectation damages.
 - D) Manny is not entitled to any remedy.
 - E) Manny is entitled to receive \$12 000 as restitution.
- 31) Which of the following sets of remedies are both equitable?
- 31) _____
- A) liquidated damages and rescission
 - B) punitive damages and nominal damages
 - C) restitution and punitive damages
 - D) specific performance and injunction
 - E) account of profits and reliance damages
- 32) Which of the following concepts limits the availability of specific performance?
- 32) _____
- A) penalty
 - B) remoteness
 - C) mutuality
 - D) mitigation
 - E) cost of cure
- 33) Which of the following statements is TRUE with respect to reliance damages?
- 33) _____
- A) They are intended to allow the plaintiff to complete any work that

the defendant did not perform.

- B) The plaintiff is entitled to recover both reliance damages and expectation damages.
- C) because contractual promises look to the future, reliance damages are forward looking
- D) They are available only to the extent that the plaintiff entered into a bad bargain.
- E) The plaintiff is entitled to spend the money as it chooses.

34) Restitution is

34) _____

- A) available only if the parties' relationship is not governed by an enforceable contract.
- B) a cause of action that sometimes is available in a contractual context.
- C) another appropriate name for an account of profits.
- D) a remedy that may require the defendant to give up a benefit that it acquired from a third party as a result of committing a wrong against the plaintiff.
- E) never able to exceed the value of expectation damages.

35) On May 1, George contractually agreed to purchase a painting from Laura for \$50 000. On that date, George pre-paid half of the purchase price and promised to pay the other half upon delivery. Laura promised to deliver the painting to George on June 1. In anticipation of receiving the painting, George spent \$10 000 building a special display case in his home. On May 15, the artist who created the painting died and the value of the painting immediately increased to \$75 000. Laura therefore refused to deliver the painting to George. George is entitled to receive

35) _____

- A) \$50 000 in expectation damages.
- B) no more than \$10 000 as reliance damages.
- C) \$75 000 in expectation damages.
- D) \$35 000 in expectation damages.
- E) \$25 000 in expectation damages.

36) On August 1, Brian contractually agreed to purchase a diamond from Mila for \$100 000. On that date, Brian pre-paid half of the purchase price and promised to pay the other half upon delivery. Mila promised to deliver the diamond to Brian on October 1. The diamond has a unique size and shape. In anticipation of receiving it, Brian spent \$25 000 on a custom-made ring that could accommodate the diamond. On September 1, political revolutions in several diamond producing countries disrupted the flow of diamonds. The diamond that was the subject of Brian and Mila's contract consequently increased in value to \$150 000. Mila therefore refused to deliver the diamond to Brian. Brian is entitled to receive

36) _____

- A) expectation damages of \$150 000.
- B) reliance damages of no more than \$75 000.
- C) restitution of \$150 000.
- D) reliance damages of no more than \$25 000.
- E) restitution of \$100 000.

- 37) On March 1, Joe contractually agreed to purchase an antique family heirloom from his third cousin, Maureen, for \$40 000. Joe paid half of that price immediately and promised to pay the other half upon delivery. Maureen promised to deliver the heirloom on May 1. On April 1, another member of the family discovered that the heirloom had not belonged to a famous ancestor, as everyone had believed, but rather to that person's half-brother. The market value of the heirloom consequently dropped to \$10 000. Maureen nevertheless refuses to deliver it as promised. Joe is entitled to
- 37) _____
- A) reliance damages of \$20 000.
 - B) expectation damages of \$40 000.
 - C) expectation damages of \$10 000.
 - D) expectation damages of \$30 000.
 - E) restitution of \$20 000.
- 38) Munchable Catering Company contractually agreed to cater Indira's wedding for a price of \$25 000. Because Indira was anxious for everything to go just right on her wedding day, she insisted that the agreement contain a clause that said that, if Munchable breached the contract, it would be required to pay damages of \$250 000. Tarik, the owner-operator of Munchables, agreed to the insertion of that clause because he was (1) new to the business, (2) very confident that he would perform exactly as required, and (3) easily persuaded. Two weeks before the wedding, however, disaster struck. Tarik was hospitalized with a mysterious illness. He immediately called Indira and explained that he would not be able to fulfill the contract. Indira became hysterical and demanded payment of \$250 000. She eventually calmed down and was able to hire a replacement caterer at a price of \$35 000. The wedding then occurred precisely as Indira had long hoped. She nevertheless still wants to sue Tarik for as much money as possible. Which of the following statements is most likely to be TRUE if a judge decides the case?
- 38) _____
- A) The judge will classify the contractual clause that requires the payment of \$250 000 as a nominal damages clause.
 - B) Indira is entitled to receive \$250 000 from Tarik.
 - C) If Indira paid \$25 000 to Tarik at the outset, she is now entitled to receive \$35 000.
 - D) Tarik is liable for punitive damages.
 - E) Tarik merely has to repay \$25 000 to Indira.
- 39) Mountain City Construction Company (MCCC) contractually agreed to build a recreational complex for Valley City. The City agreed to pay \$2 000 000 upon completion of the project. Shortly after starting the project, MCCC realized that it had entered into a very bad bargain. It would have to provide \$4 000 000 in services and materials in order to build the recreational complex. It decided to nevertheless fulfill its obligations. After MCCC had finished 75 per cent of the project, at a total cost of \$3 000 000, a new mayor was elected. True to the new mayor's campaign promise, the City immediately locked MCCC out of the work site. The City then hired Valley City Construction Incorporated (VCCI) to complete the recreational complex at a cost of \$1 000 000. The City refuses to pay anything to MCCC. MCCC therefore has discharged the contract and taken its case to court. A judge most likely would award
- 39) _____
- A) reliance damages worth \$3 000 000.
 - B) expectation damages worth \$3 000 000.
 - C) restitution worth \$3 000 000.
 - D) an account of profits worth \$1 000 000.
 - E) expectation damages worth \$4 000 000.

- 40) Alpha Corp has sued Beta Inc for breach of contract. The judge imposed liability as a result of relying upon the concept of a fundamental breach. The case must have dealt with 40) _____
- A) punitive damages.
 - B) unjust enrichment.
 - C) an injunction
 - D) an exclusion clause.
 - E) liquidated damages.

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

- 41) In the context of contractual damages, there is only one measure of relief. 41) _____
- 42) While damages in tort are always backward-looking, damages in contract are always forward-looking. 42) _____
- 43) Because of the need for commercial certainty, a court will award expectation damages only if the value of the plaintiff's loss can be calculated with precision. 43) _____
- 44) Penelope contractually agreed to repair Don's roof with a specific type of tile for a price of \$10 000. After she completed the job, Don noticed that she had not used the type of tile that was required by the contract. She had used a lower grade of tile. Consequently, Don's roof was worth \$3000 less than he had expected. It will cost \$5000 to remove the tiles that Penelope used and to put the proper type of tiles in their place. If a court awards cost of cure damages to Don, he will be required to use that money to actually replace the existing tiles with the tiles that he expected to receive under his contract with Penelope. 44) _____
- 45) Dina entered into a contract with George. She agreed to decorate his office and he agreed to pay her \$10 000. She spent \$3000 performing her obligations under the agreement. He has paid her \$2000, but refuses to pay any more. Under the concept of reliance damages, George must now pay \$8000 to Dina. 45) _____
- 46) On June 1, Sergei contractually agreed to purchase a widget from Marisa. The total price was \$15 000. Sergei paid \$5000 immediately and promised to pay the remainder upon delivery. Although Marisa was required to deliver on July 15, she refused to do so. The market value of the widget was \$15 000 on June 1, but \$22 000 on July 15. Sergei is entitled to receive \$12 000 in expectation damages. 46) _____
- 47) On October 15, Madeleine contractually agreed to sell a widget to Hugh. The total price was \$20 000. Hugh paid \$4000 immediately and promised to pay the remainder upon delivery. Madeleine delivered the widget to Hugh on November 2, as required by the contract. He refused to accept it, however, because its market value had dropped from \$20 000 to \$10 000. Madeleine is entitled to receive \$6000 in expectation damages. 47) _____
- 48) On March 26, Sanjeev agreed to sell a widget to Anita for \$50 000. She paid \$10 000 immediately and promised to pay the remainder when he made delivery on August 30. Sanjeev breached the contract, however, by refusing to deliver the widget. On August 30, its market value had dropped to \$47 000. Anita cannot recover expectation damages, but she can recover a maximum of \$3000 in reliance damages. 48) _____

- 49) On September 1, Mira agreed to sell a shipment of beans to Marco for a total price of \$20 000. He paid the price immediately and the contract required her to make delivery on December 1. She failed to do so. By that time, the market value of the beans had increased to \$27 000. Although Marco could have arranged to receive a shipment of beans from another supplier almost immediately, he actually waited three weeks before entering into such a contract with Hector. By that time, the market value of the beans had increased to \$30 000. Marco is entitled to expectation damages of \$30 000 as long as a reasonable person could have predicted the full price increase on December 1. 49) _____
- 50) The courts often award cost of cure damages in order to punish the defendant for acting outrageously. 50) _____
- 51) Imran contractually agreed to sell a widget to Juanita for a total price of \$200 000. Juanita paid \$50 000 immediately and promised to pay the remainder upon delivery. However, Imran refused to ever deliver a widget. Between the time that the contract was created and the time of breach, the value of the widget dropped from \$200 000 to \$100 000. Juanita nevertheless is entitled to get back her payment of \$50 000. 51) _____
- 52) A court will award punitive damages only if the plaintiff is not entitled to expectation damages. 52) _____
- 53) Brown's Construction Co agreed to renovate a lecture hall at Moosehead University. The contract required the work to be done between July 1 and September 1 so that classes would not be disrupted. The contract also stated that Brown's would be required to pay the university \$10 000 per week for each week that the work ran over schedule. That part of the contract was intended to allow Moosehead to rent other premises for the purpose of holding classes off-campus in the event of a delay. In fact, the project was finished six weeks late. Because of an unexpected downturn in the economy, however, the university only had to pay a total of \$20 000 to hold classes off-campus during the delay. Brown's Construction nevertheless may be required to pay \$60 000. 53) _____
- 54) If defendants in a private law case refuse to obey orders for specific performance, they can be sent to jail. 54) _____
- 55) If the plaintiff proves an enrichment, a corresponding deprivation, and a juristic reason for the enrichment, it will normally be entitled to the remedy of restitution. 55) _____

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

- 56) Provide two reasons as to why courts generally award monetary damages, rather than specific performance if one party breaks a sales contract by refusing to make delivery.
- 57) "Reliance damages cannot be used to escape the consequences of a bad bargain." Explain the meaning of that statement. Explain the justification for that rule. Provide an example that illustrates your answers.
- 58) "The idea of compensation usually means that the plaintiff is entitled to get back something that it previously enjoyed, but that it lost because of the defendant's bad conduct. Although they are considered compensatory, expectation damages do not work in exactly the same way." Explain the meaning of that statement. Provide a justification for awarding expectation damages to the victim of a breach of contract.
- 59) A distinction is often drawn between cost of cure damages and loss of value

damages. Which of those possibilities is closer to the remedy of specific performance? Explain your answer.

- 60) "Compensation is normally not available for intangible losses. Recently, however, Canadian courts have begun to award compensation in such circumstances if one of the purposes of the contract was to protect the plaintiff's peace of mind. In one case, for instance, an elderly couple was awarded damages for the grief that they suffered after their beloved dog was suffocated in an airplane's cargo hold. The couple had stressed to the airline, at the outset, how much the dog meant to them." On the basis of such cases, it has been suggested that compensation is available for intangible losses if they are not too remote from the defendant's breach. Formulate an argument that supports that statement.
- 61) What are nominal damages? Why is it sometimes dangerous to sue for breach of contract and claim nominal damages?
- 62) When will punitive damages be available for a breach of contract?
- 63) "A contractual term for liquidated damages relieves the court of the need to carefully calculate the plaintiff's losses. A contractual term for a penalty does not have the same effect." Explain the meaning of that statement. Explain whether or not that statement is true.
- 64) Why are the courts willing to award injunctions more often than orders for specific performance?
- 65) On December 16, Ludwig agreed to sell an antique piano to Elise for \$100 000. She paid \$20 000 immediately and promised to pay the remainder on March 26, when he was required to deliver the instrument. Prior to the delivery date, however, Ludwig realized that the piano was really worth \$175 000. He therefore refused to perform the contract. Is Elise entitled to specific performance? Identify and explain the factors that affect your answer. If Elise is entitled to specific performance, is Ludwig entitled to receive anything from her in return? If Elise is not entitled to specific performance, how much, if anything, will she receive in damages? Explain your answer.
- 66) Pascal, who is 15 years old, entered into a contract with Wagers Antique Shop. He promised to trade his services as a computer programmer for an antique bible. Under the terms of that agreement, he was required to begin work as a computer programmer as soon as Wagers delivered the book to him two weeks later. The next day, however, Wagers informed Pascal that it decided to keep the book for itself. Since Pascal is anxious to acquire the book, which is unique, he wants to bring a claim for specific performance. Explain why that claim may fail. Provide two (related) reasons for your answer.
- 67) On March 1, Shoshanah agreed to manufacture and sell a widget to Marshall for a total price of \$50 000. He paid \$20 000 immediately and promised to pay the remainder on June 15. The contract required Shoshanah to deliver the widget to Marshall on June 1. On April 15, Marshall spent \$10 000 altering his production plant in a way that would accommodate the widget that he expected to receive from Shoshanah. On May 20, Shoshanah informed Marshall that she would not be able to deliver as promised. On June 1, the market value of a widget was \$65 000. Marshall can acquire a similar widget for that amount, but he will have to once again spend \$10 000 in renovations to his production plant to accommodate that substitute. (No two widgets are exactly alike and each one has unique requirements.)

Is Marshall entitled to receive expectation damages? If so, on what basis and in what amount? Is Marshall entitled to receive reliance damages? If so, on what basis and in what amount? Is Marshall entitled to receive restitution? If so, on what basis and in

what amount? If Marshall has an option between several types of damages, which one should he choose?

- 68) Berner Building Inc agreed to build a house to certain specifications for Kendra. The total contract price was \$500 000. A term in that contract required Berner to use marble from a certain region in northern Italy in the main bathroom. By mistake, Berner used marble from a region in southern Italy instead. The value of the marble was the same in either event. Kendra nevertheless is unhappy. Because she had once enjoyed a wonderful honeymoon in northern Italy, she was very upset that her demands were not met. She insists that Berner should be required to renovate her bathroom using proper materials. That job would cost \$25 000 and it would not increase the value of the house at all. Is Kendra entitled to any remedy? Explain your answer.
- 69) Slodder Construction Co entered into a contract with the City of Lowey. It agreed to build a tunnel under city hall in exchange for a total price of \$5 000 000. Shortly after beginning the project, Slodder realized that it had entered into a very bad bargain. The job was much more difficult than initially expected. It would cost \$15 000 000 to complete. Slodder nevertheless carried on in order to protect its reputation. Somewhat surprisingly, however, after half the tunnel had been finished, Lowey breached the contract by refusing to give Slodder access to the worksite. At that point, the city had already paid \$2 500 000 to Slodder, and Slodder had already spent \$7 500 000 on the project. Before trial, another construction company completed the tunnel under a separate contract with the city. Is Slodder entitled to receive any more money from the city in the form of expectation damages or reliance damages? Explain your answer. Is there any other basis upon which Slodder can claim a remedy from Slowey? If so, how much will that remedy be worth? Explain your answer.
- 70) A man and his elderly aunt entered into an oral contract. He promised to provide services to her for the rest of her life and she promised to leave a specific house to him under her will. That house was worth \$10 000. The nephew performed his end of the bargain by spending \$3000 to care for his aunt before she died. He was disappointed upon her death, however, to learn that her will did not leave the house to him. The nephew thought about suing his aunt's estate for breach of contract. His lawyer has explained, however, that that action will fail because while the contract is valid, it is also unenforceable. It deals with an interest in land, but contrary to the *Statute of Frauds*, it was not evidenced in writing. It was entirely oral. Is there any basis upon which the nephew can successfully sue his aunt's estate? If so, will the expectations that the nephew had under the contract be fulfilled? Or will some other measure of relief be available to him? Explain your answers.

- 1) D
- 2) E
- 3) D
- 4) A
- 5) B
- 6) E
- 7) D
- 8) B
- 9) C
- 10) A
- 11) B
- 12) A
- 13) D
- 14) D
- 15) A
- 16) C
- 17) C
- 18) C
- 19) C
- 20) B
- 21) B
- 22) A
- 23) E
- 24) D
- 25) C
- 26) A
- 27) C
- 28) C
- 29) B
- 30) E
- 31) D
- 32) C
- 33) E
- 34) A
- 35) A
- 36) B
- 37) E
- 38) C
- 39) C
- 40) D
- 41) FALSE
- 42) FALSE
- 43) FALSE
- 44) FALSE
- 45) FALSE
- 46) TRUE
- 47) TRUE
- 48) FALSE
- 49) FALSE
- 50) FALSE
- 51) TRUE
- 52) FALSE
- 53) TRUE
- 54) TRUE
- 55) FALSE
- 56) Historically, the courts generally lacked the authority to award specific performance. That rule no longer applies. There are, however, two other reasons as to why courts prefer monetary damages that continue to be important today. First, especially in commercial

contexts, neither party is particularly interested in receiving a thing, as opposed to the value of a thing, under a sales contract. Business people are generally content to reduce everything to monetary values. Second, specific performance tends to inhibit the free flow of commerce. If there is a realistic possibility that the plaintiff is entitled to specific performance, the defendant will be required to retain a particular item pending the outcome of the trial. In the meantime, the defendant will not be able to sell that same item to another party.

- 57) After suffering a breach of contract, the plaintiff is normally entitled to choose between expectation damages and reliance damages. However, reliance damages are not available to the extent that the contract was unprofitable from the plaintiff's perspective. That rule is based on the allocation of risk that the parties voluntarily accept when they create a contract. A contract is usually a gamble in the sense that each party knows that it may receive more or less than the value that it is providing under the agreement. The law respects and enforces the choices that the parties have made for themselves. Accordingly, if the plaintiff entered into a bad bargain, it must live with the consequences of that fact. It can still recover reliance damages with respect to expenses that were expended as a result of the defendant's breach. It cannot, however, recover reliance damages with respect to expenses that it would have lost in any event as a result of being on the losing end of an uneven deal.

The text provided an example in which the plaintiff agreed to pay \$14 000 for a shipment of flour that was really only worth \$11 000. The plaintiff paid \$5000 in advance, but the defendant refused to deliver the flour. The plaintiff's claim for reliance damages was limited to \$2000. Even if the contract had been fully performed, the plaintiff would have made \$3000 on the deal. Consequently, although it had paid \$5000 in reliance upon the contract, it could only recover \$2000. The court respected and enforced the fact that the plaintiff had entered into a bad bargain. (As the text also indicates, however, the full \$5000 could be recovered as restitution under the cause of action in unjust enrichment.)

- 58) Expectation damages are not compensatory in the normal sense. Compensation usually allows the plaintiff to get back something that it had, but lost. Expectation damages, in contrast, allow the plaintiff to get something that it never had before, but that it expected to get under its contract with the defendant. In other words, while compensation is usually backward-looking, expectation damages are forward-looking. They are not intended to reverse the consequences of the defendant's bad conduct. Instead, they are intended to provide the monetary equivalent of the consequences that would have occurred if the defendant had acted properly.

Expectation damages nevertheless are justifiable. In essence, a contract is almost always about the future. The parties exchange promises to act in certain ways at a later date. Moreover, contracts are generally valuable in a commercial sense only if the parties can be reasonably sure of getting either the thing, or the value of the thing, that they expected to get. If damages were limited to allowing the plaintiff to get back what it had, but lost (*ie* reliance damages), then a contract would lose its capacity to speak to the future. For instance, the plaintiff would not be willing to enter into contracts with third parties on the basis of its contract with the defendant unless it could be sure that the defendant's promise would be fulfilled (either directly through actual performance or indirectly through the substitute of monetary damages).

- 59) Depending upon one's perspective, specific performance may seem to be more closely linked to *either* cost of cure damages *or* loss of value damages.

A strong argument can be made that cost of cure damages are closer to specific performance. Specific performance requires the defendant to actually perform a contractual undertaking, such as an obligation to level land after a mining operation. Cost of cure damages provide the plaintiff with enough money to have that task completed by a third party. Furthermore, the courts sometimes refuse to award such damages unless the plaintiff has already incurred expenses to cure the defect in the defendant's performance or has a legitimate reason for doing so in the future. However, it is also true that once cost of cure damages are awarded, they do not actually have to be used for the purpose of curing the defect in the defendant's performance. Consequently, for instance, even if the plaintiff

receives \$60 000 because that is the price that a third party would charge to level a piece of land after a mining operation, the plaintiff is not required to actually use the money for that purpose. It can leave the land in an un-level state and pocket the \$60 000. If so, the plaintiff will be in a much different, and much better, position that it would have enjoyed if the defendant had properly performed.

Loss of value damages do not provide the plaintiff with the amount of money that a third party would charge the plaintiff to cure the defect in the defendant's performance. Instead, loss of value damages simply compensate the plaintiff for the loss that it actually suffered as a result of the defendant's deficient performance. Such damages nevertheless are related to specific performance because they monetarily place the plaintiff in the same position that it would have enjoyed if the contract had been properly performed.

- 60) This is a difficult question that requires students to combine the fundamental concepts underlying two different areas of contractual damages: intangible losses and remoteness.

There are several reasons as to why the courts traditionally refused to award compensation for intangible losses. For instance, such losses are, by their very nature, difficult to quantify in monetary terms. Furthermore, intangible losses come in many forms. They range from mere annoyance to psychological devastation. For that reason, there is also a fear that a more generous rule will open the floodgates to litigation. It is usually true that a breach of contract creates a sense of disappointment, at least to some extent. Most significantly, however, compensation for intangible losses may not be justifiable because they are too remote. Leaving aside complaints based on mere annoyance and disappointment, it usually is not known or foreseeable that a breach of contract will wreak emotional havoc on the plaintiff. That is especially true in commercial contexts.

The situation has been different, however, when the courts have awarded compensation of intangible losses. If an elderly couple clearly and emphatically explains to an airline that they are concerned about the safety of their beloved pet, the airline knows that a breach of contract will likely create a great emotional hardship. Likewise in the other example that was cited in the text. The purpose of taking a holiday is to enjoy peace of mind. A breach of contract by the travel agency therefore is likely to prove particularly upsetting for the disappointed vacationer. (The facts of both of these cases are more fully explained in the Case Brief section of the *Instructor's Manual*.)

An argument therefore can be made that compensation may be available for intangible losses, if those losses are not too remote from the defendant's breach. As a matter of fairness, it is appropriate to hold the defendant liable in such circumstances because it knew, at the time of voluntarily creating the contract, that a breach might cause such losses.

- 61) Nominal damages are awarded in very small amounts to signify that the defendant committed a wrong against the plaintiff by breaching a contract, but did not actually cause the plaintiff to suffer any loss. They are available because the cause of action for breach of contract is actionable *per se*. In other words, the defendant's breach is wrong in itself, regardless of the consequences that it has for the plaintiff.

Although the plaintiff is technically entitled to claim at least nominal damages every time that the defendant commits a breach of contract, it may be dangerous to do so. The courts do not want to waste time on trivial matters and sometimes have little interest in helping the plaintiff to secure a "principled victory." Consequently, while awarding nominal damages to the plaintiff, the court may also award costs against that party. In other words, while collecting, say, \$10 in nominal damages that signify that the defendant did indeed breach the contract, the plaintiff may be required to pay part of the defendant's costs of litigation. The courts occasionally award costs in that manner as a way of discouraging frivolous litigation.

- 62) Punitive damages are an extraordinary remedy. Contrary to popular perception (based largely on American news reports and television programs), punitive damages are rarely available in Canada, especially under the cause of action for breach of contract. (They are somewhat more readily available for some torts and for the equitable wrong of breach of fiduciary duty.) Punitive damages are not intended to compensate the plaintiff for a loss.

They are awarded *in addition* to the usual measure of damages. Punitive damages are intended, instead, to express societal disapproval of the defendant's outrageous conduct.

The Supreme Court of Canada generally states that punitive damages can be awarded for breach of contract only if two requirements are met. First, the defendant's breach of contract must be "harsh, vindictive, reprehensible and malicious." Those adjectives offer little concrete guidance. It nevertheless is clear that the defendant must have acted very badly in a way that justifies punishment. Second, the defendant must have committed an "independently actionable wrong." A single breach of contract therefore is usually not enough to attract punitive damages. (As explained in the Case Brief for *Royal Bank of Canada v W Got & Associates Electric Ltd*, that rule is not always applied.) The defendant also must have, as part of the same event underlying the plaintiff's claim for breach of contract, committed a tort or another breach of contract against the plaintiff. (It was often previously thought that the "independent actionable wrong must have been something other than another breach of contract. As explained in the Case Brief for *Whiten v Pilot Insurance Co*, however, the Supreme Court of Canada has now held that the independent actionable wrong may be another breach of contract.)

- 63) The statement is true. A contractual term for liquidated damages represents an honest attempt by the parties, at the time of creating their contract, to estimate the loss that might occur as a result of a breach. The value of such a term is that, in the event of breach, it eliminates the need for protracted litigation regarding the extent and value of the plaintiff's loss. The defendant is simply required to pay to the plaintiff the agreed upon amount, no more and no less. That is true even if the plaintiff's loss is more or less than the parties' initially expected.

A penalty, in contrast, is not an honest attempt to estimate the losses that may be caused by a breach of contract. Instead, it is a contractual term that requires the defendant, in the event of breach, to pay an exorbitant amount of money to the plaintiff. The intention behind such a term is usually to coerce the defendant into a certain form of behaviour and to gouge the defendant if the contract is breached.

A court will not enforce a penalty clause. Instead, they will, in the event of breach, calculate damages in the usual way by investigating the actual extent of the plaintiff's loss.

- 64) The answer turns on the ideas of freedom of choice and freedom of action. An injunction normally prohibits a person from *doing* something. While that person is *not doing* the prohibited act, it can, of course, still *do* anything else. In contrast, an order for specific performance requires a person to *do* something. And while that person is *doing* one thing, it *cannot do* anything else.

Those ideas are especially important when they are applied to contractual obligations regarding the defendant's services. If the defendant is prevented by an injunction from working for a competitor in a particular field, it can still work in other fields. In contrast, specific performance for a positive obligation to provide personal services for the plaintiff not only would greatly limit the defendant's freedom of action, it would come close to imposing a form of slavery. If the defendant did not work for the plaintiff, as ordered by the court, he could be held in contempt of court (and therefore, in theory at least, be imprisoned). The legal system will not tolerate such a situation.

- 65) Specific performance is generally limited to circumstances in which monetary damages would not adequately compensate the plaintiff for her loss. That may be true in this case because the parties' contract dealt with an antique piano. If the piano is sufficiently special, no amount of money will allow Elise to purchase a substitute from a third party. A court therefore might want to award specific performance to ensure that her expectations under the contract are fulfilled. (The court will also consider a number of other factors. For instance, it would not award specific performance if Elise delayed an unreasonable length of time before suing Ludwig, nor if she was guilty of bad conduct.) Of course, if a court did award specific performance to Elise, it would also allow Ludwig to collect the remainder of the purchase price. If Elise wants the contract performed, she must be willing to perform it herself. She therefore would be required to pay another \$80 000 to Ludwig. (He is only entitled to the contract price, and not the actual value of the piano. He must accept

responsibility for entering into a bad bargain.)

If specific performance was not available, Elise would be entitled to expectation damages that would monetarily fulfill her expectations under the contract. She started the contract with \$100 000 in value (all in the form of money). Although she may not have fully realized it at the time of creating the contract, she expected to end up with \$175 000 in value (in the form of a piano). Since she already paid \$20 000 of the total purchase price of \$100 000, she still has \$80 000. She therefore is entitled to receive \$95 000 from Ludwig. Together, those two amounts will fulfill her expectations ($\$80\,000 + \$95\,000 = \$175\,000$).

- 66) The availability of specific performance is subject to a number of limitations. One such limitation is the requirement of mutuality. That requirement states that specific performance generally will not be awarded *to* a party, unless it could also be awarded *against* that same party. After all, it would be unfair if one party could insist upon specific performance and at the same time force the other party to accept mere monetary damages.

The requirement of mutuality cannot be satisfied on the facts. Since Pascal is only 15 years old, he is a minor. A contract generally cannot be enforced against a minor. (As we saw in Chapter 5, there are exceptions dealing with the necessities of life, but those exceptions do not apply here.) Consequently, since the contract could not be enforced *against* him, it cannot be enforced in his favour either.

The same point arises again because Pascal agreed to trade his personal services in exchange for the bible. As a general rule, however, the courts will not order specific performance to compel a person to provide personal services. Such an order would look too much like slavery. Consequently, the requirement of mutuality once again is not met. Since Pascal could not be forced to work as a computer programmer for Wagers, Wagers cannot be forced to hand over the book. (Wagers nevertheless has breached the contract and therefore could be held liable for damages.)

- 67) Marshall can claim expectation damages under the cause of action for breach of contract. He started with value of \$50 000 and expected to receive value worth \$65 000. Since he paid \$20 000 to Shoshanah, he was left with \$30 000. His contractual expectations therefore will be fulfilled if Shoshanah pays \$35 000 to him ($\$30\,000 + \$35\,000 = \$65\,000$). That same figure can be calculated in a slightly different way. Marshall expected to receive a widget for \$50 000. After paying \$20 000 to Shoshanah, he still has \$30 000. Given his contractual expectation, he should not be required to spend any more of his *own* money to get a widget. A substitute widget is available in the marketplace for \$65 000. Marshall can be expected to spend \$30 000 of his own on that widget, but Shoshanah must come up with the remainder of the purchase price (*ie* \$35 000). After all, she effectively promised him that he would get a widget if he paid a total of \$50 000 out of his own pocket.

Marshall can alternatively claim reliance damages under the cause of action in breach of contract. In reliance upon the contract, he paid \$20 000 to Shoshanah and \$10 000 to a third party to renovate his premises. Those expenses were wasted under the contract because Shoshanah did not actually deliver the widget. Marshall therefore can claim \$30 000 in reliance damages. (He could not claim the second payment of \$10 000 in renovations costs, if he incurred that expense, because that payment would not be wasted as a result of Shoshanah's breach of contract. Rather, it would be necessary once the substitute widget was delivered by the third party.)

Marshall could receive restitution under the cause of action in unjust enrichment. Shoshanah was enriched by the receipt of \$20 000. Marshall suffered a corresponding deprivation because that payment came from him. And there is no juristic reason for the enrichment because it was provided under a contract that has been discharged for breach. Shoshanah is therefore required to give back the benefit that she received from Marshall: \$20 000.

Marshall will choose expectation damages (\$35 000) over either reliance damages (\$30 000) or restitution (\$20 000).

- 68) The question is focused on the difference between loss of value damages and cost of cure

damages. On the facts, the former would be nil because, despite Berner's breach, Kendra's house is worth the same amount as it would be if the contract had not been breached. Cost of cure damages, in contrast, would allow Kendra to demand \$25 000 from Berner because that is the amount that it would cost to fit the bathroom with the sort of marble specified in the contract. It is highly unlikely, however, that a court would award that amount. The discrepancy between the cost of cure and the consequences of actually undertaking the cure is too great. It would be wasteful to spend \$25 000 to affect repairs that would not have any effect on the value of the house.

As in the House of Lords' decision in *Ruxley Electronics & Construction Ltd v Forsyth*, however, a court might be persuaded to award a smaller amount of money (say, \$7000) to compensate Kendra for suffering an intangible loss (or, as the House said, the "loss of amenity"). A contractual party should be entitled to be picky. Although the market is indifferent as between marble from northern and southern Italy, Kendra had some reason to prefer the former. Since she did not receive what she expected, substantial damages may be available to repair her disappointment.

As a final resort, Kendra would be entitled to nominal damages to reflect the fact that Berner breached the contract, even though she did not suffer any loss as a result.

- 69) These facts are based on the case of *Lodder v Slowey*, which appears in the Case Briefs in the *Instructor's Manual*.

The contract was entirely unprofitable from Slodder's perspective. It expected to spend \$15 000 000 and to be paid \$5 000 000. It cannot recover anything by way of expectation damages because it did not expect to enjoy a profit from the agreement. Furthermore, since the contract was unprofitable to the extent of \$10 000 000, Slodder cannot claim anything by way of reliance damages for the \$7 500 000 that it spent on the project. Under the cause of action in breach of contract, Slodder must accept responsibility for the fact that it entered into a disastrously bad deal.

However, since the contract has been discharged on the basis of Slowey's breach of a condition, Slodder enjoys an option. First, it can bring an action for breach of contract and claim contractual relief. As we have seen, that is a pointless exercise. Second, it can bring an action for unjust enrichment: (i) Slowey was enriched by the receipt of services worth \$7 500 000, (ii) Slodder suffered a corresponding deprivation of \$7 500 000 because it provided those services, and (iii) there is no juristic reason for the enrichment because the contract under which they were provided has been discharged for breach.

Once Slodder establishes the cause of action in unjust enrichment, it is entitled to receive restitution. Slowey must give back the value of the enrichment that it received from Slodder. That enrichment is quantified by reference to its true market value. It is not limited to the contractual price. Slowey therefore is required to pay Slodder \$7 500 000. Since it has already paid \$2 500 000, it must pay an additional \$5 000 000.

- 70) These facts are based on the case of *Degelman v Guaranty Trust Co of Canada*, which appears in the Case Briefs in the *Instructor's Manual*.

Since the contract is unenforceable, the nephew cannot claim any sort of contractual relief. He therefore cannot recover expectation damages (which would give him the monetary value of the house), reliance damages (which would compensate him for the costs that he incurred under the agreement), nominal damages (which would give him a small amount of money to signify the fact that the aunt breached the contract), punitive damages (which would punish the aunt for breaking her promise), or specific performance (which would give him the house itself).

However, since the contract is unenforceable, the plaintiff can choose to bring a cause of action in unjust enrichment. He would prove that: (i) the aunt was enriched by the receipt of his services, (ii) he suffered a corresponding deprivation by providing those services, and (iii) there was no juristic reason for the aunt's enrichment because he gave it to her only on the assumption that she would leave a house to him under her will. Once the

nephew established that cause of action, the court would award restitution. The nephew therefore would "get back" the value of the enrichment that he gave to his aunt. The value of that remedy would be \$3000.

Notice that the action in unjust enrichment leads to restitution which only allows the nephew to get back what he gave to his aunt. Restitution looks backward. Consequently, it cannot look forward and fulfill the nephew's expectation of getting either the house (through specific performance) or the value of the house (through expectation damages).