
Formation of Contracts

1. As of July 22, which of the following is an accurate statement as to whether a contract was formed?

On July 18, a shovel manufacturer received an order for the purchase of 500 snow shovels from a wholesaler. The wholesaler had mailed the purchase order on July 15. The order required shipment of the shovels no earlier than September 15 and no later than October 15. Typed conspicuously across the front of the order form was the following: "[the wholesaler] reserves the right to cancel this order at any time before September 1." The manufacturer's mailed response, saying "We accept your order," was received by the wholesaler on July 21.

- **No contract was formed, because of the wholesaler's reservation of the right to cancel**
- No contract was formed, because the wholesaler's order was only a revocable offer
- A contract was formed, but prior to September 1 it was terminable at the will of either party
- A contract was formed, but prior to September 1 it was an option contract terminable only at the will of the wholesaler

Note:
One kind of “promise” that is not sufficient consideration to support a counter-promise is called an illusory promise. An illusory promise is a statement that appears to be promising something but does not actually commit the promisor to anything at all. One common kind of illusory promise occurs when a promisor reserves the right to change his mind, which does not bind the promisor and is therefore illusory. If the promisor’s right to change his mind is limited by some objective standard, consideration is likely to be found and the contract upheld.

A promise that reserves for the promisor several alternative performances is generally consideration only if each of the alternative performances would have been consideration if it had been bargained for alone.

A is correct. A promise is not consideration to support a return promise if, by its terms, the promisor unconditionally reserves the right of alternative performances, such as reserving the right to cancel an order. Such a promise is illusory. When the wholesaler reserved the right to cancel the order at any time before September 1, this meant that as of July 22, the wholesaler gave only an illusory promise to purchase the shovels. Therefore, as of that time, the contract was not enforceable against either party.

B is incorrect. The most common manner in which the power of acceptance can be terminated is through expiration or lapse of the offer. Termination of an offer can also arise through a valid revocation of the offer by the offeror. A revocation is a retraction of the offer. In general, offers are revocable and a contract may be formed as long as an offer is not actually revoked. Because there is no indication in the fact pattern that the offer was revoked, a valid contract may have been formed.

C is incorrect. As explained above, an illusory promise is not sufficient consideration to create an enforceable contract because it will not commit the promisor to give up anything of their own. A contract was not formed as of July 22 because only the wholesaler reserved the right to terminate.

D is incorrect. In a typical option contract, the seller agrees to keep an offer open for a certain amount of time. A potential buyer has to give the seller some payment in exchange. In other words, in an option contract, the seller is agreeing to keep the "option" open for the buyer. A contract was not formed as of July 22 because the facts do not suggest that the manufacturer gave the wholesaler an option.

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2. Which of the following is an accurate statement as of October 10 after the wholesaler rejected the shovels?

The wholesaler did not cancel the order, and the manufacturer shipped the shovels to the wholesaler on September 15. When the shovels, conforming to the order in all respects, arrived on October 10, the wholesaler refused to accept them. On July 18, a shovel manufacturer received an order for the purchase of 500 snow shovels from a wholesaler. The wholesaler had mailed the purchase order on July 15. The order required shipment of the shovels no earlier than September 15 and no later than October 15. Typed conspicuously across the front of the order form was the following: "[the wholesaler] reserves the right to cancel this order at any time before September 1." The manufacturer's mailed response, saying "We accept your order," was received by the wholesaler on July 21.

- **The wholesaler's order for the shovels, even if initially illusory, became a binding promise to accept and pay for them**
- The wholesaler's order was an offer that became an option after shipment by the manufacturer
- The wholesaler's right to cancel was a condition subsequent, the failure of which resulted in an enforceable contract
- In view of the wholesaler's right to cancel its order prior to September 1, the shipment of the shovels on September 15 was only an offer by the manufacturer

Note:
One kind of "promise" that is not sufficient consideration to support a counter-promise is called an illusory promise. An illusory promise is a statement that appears to be promising something but does not actually commit the promisor to anything at all. One common kind of illusory promise occurs when a promisor reserves the right to change his mind, which does not bind the promisor and is illusory. If the promisor's right to change his mind is limited by some objective standard, consideration is likely to be found present and the contract upheld.

A promise that reserves for the promisor several alternative performances is generally consideration only if each of the alternative performances would have been consideration if it had been bargained for alone. However, consideration will be found if one of the alternative performances would be consideration and there is a substantial possibility that before the promisor makes his choice, events will eliminate the alternatives.

A is correct. An illusory promise may become adequate consideration if the time during which the promisor could choose alternative performances has passed. Although reserving the right to terminate a contract for a specified period makes a promise illusory, the promise becomes consideration once the period for exercising the right to terminate has passed. Because the wholesaler did not exercise the right to cancel the order, the manufacturer became bound to the contract as of September 1.

B is incorrect. In a typical option contract, the seller agrees to keep an offer open for a certain amount of time. A potential buyer has to give the seller some payment in exchange. In other words, in an option contract, the seller is agreeing to keep the "option" open for the buyer. Both parties became bound to a contract as of September 1. Before that date, the promise was still illusory because the wholesaler had an unrestricted right to cancel.

C is incorrect. A condition subsequent is an event that, if it happens, will defeat or modify an existing arrangement or discharge an existing duty. In a contract, a condition subsequent can often terminate the duty of one party to perform under the agreement. There is no language that indicates the existence of condition subsequent, and even if there were such language, the failure of a condition subsequent would not create an enforceable contract.

D is incorrect. While illusory promises cannot be consideration, they can be converted into consideration if one of the alternative promises would be consideration and events have eliminated all other alternatives. As explained above, the illusory promise to buy the shovels converted into consideration after the right to terminate passed and the manufacturer and wholesaler were bound by a contract on September 1.

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3. In an action by the developer against the well driller for damages, which of the following is the probable decision?

The developer signed the form and returned it to the well driller, who neglected to sign it but promptly began drilling the well at the proposed site on the developer's project. After drilling for two days, the well driller told the developer during one of the developer's daily visits that he would not finish unless the developer would agree to pay twice the price recited in the written proposal. The developer refused, the well driller quit, and the developer hired substitute to drill the well to completion for a price of $7,500. A developer, needing a water well on one of his projects, met several times about the matter with a well driller. Subsequently, the well driller sent a developer an unsigned typewritten form captioned "WELL DRILLING PROPOSAL" and stating various terms the two had discussed but not agreed upon, including a "proposed price of $5,000." The form concluded, "This proposal will not become a contract until signed by you [the developer] and then returned to and signed by me [the well driller]."

- The developer wins, because his signing of the well driller's form constituted an acceptance of an offer by the well driller
- **The developer wins, because the well driller's commencement of performance constituted an acceptance by the well driller of an offer by the developer and an implied promise by the well driller to complete the well**
- The well driller wins, because he never signed the proposal as required by its terms
- The well driller wins, because his commencement of performance merely prevented the developer from revoking his offer, made on a form supplied by the well driller, and did not obligate the well driller to complete the well

Note:
B is correct. An offer is a manifestation of a willingness to bargain that creates a capacity in the offeree to form a contract by consent. Unless otherwise provided, an offer is construed as inviting acceptance in any reasonable manner and by any medium reasonable under the circumstances. Any objective manifestation of the offeree's counter-promise is usually sufficient. Since the form that the well driller sent to the developer stated that the proposal would not be a contract until signed by both parties, it is not an offer because it does not manifest an intent to conclude a contract upon mere signing by the developer. However, after the developer signed the form, the form became an offer that the well driller could accept either by signing the form or by manifesting assent in some other way (such as by commencing performance).

A is incorrect. The developer's signing of the form amounted to an offer and not an acceptance.

C is incorrect. The well driller manifested assent by commencing performance.

D is incorrect. The offer sought a return promise, which the well driller implicitly made by commencing performance.

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4. Assuming that there is no controlling statute, is the April 1 agreement an effective defense for the man?

A man owed his friend $1,000, plus interest at 8% until paid, on a long-overdue promissory note, collection of which would become barred by the statute of limitations on June 30. On the preceding April 1, the man and his friend both signed a writing in which the man promised to pay the note in full on the following December 31, plus interest at 8% until that date, and the friend promised not to sue on the note in the meantime. The friend, having received some advice from his nonlawyer brother-in-law, became concerned about the legal effect of the April 1 agreement. On May 1, acting pro se as permitted by the rules of the local small claims court, he filed suit to collect the note.

- **Yes, because the man's promise to pay interest until December 31 was consideration for the friend's promise not to sue**
- Yes, because the law creates a presumption that the man relied on his friend's promise not to sue
- No, because there was no consideration for the friend's promise not to sue, in that the man was already obligated to pay $1,000 plus interest at 8% until the payment date
- No, because the man's April 1 promise is enforceable with or without consideration

Note:
*A promise is supported by consideration if two things are true: (i) the promisee is giving up something of value, or circumscribes his liberty in some way to suffer a legal detriment; and (ii) the promisor makes his promise as part of a bargained-for exchange for the promisee’s legal detriment. *

Under the pre-existing duty rule, if a party does or promises to do what he is already legally obligated to do, or if he forebears or promises to forebear from doing something which he is not legally entitled to do, he has not incurred the kind of legal detriment necessary to constitute consideration.

A is correct. Generally, a promise to perform a pre-existing legal duty is not sufficient consideration to support a return promise. Since the man was already obligated to pay the friend $1,000 at 8% interest, normally a promise to do the same would not be sufficient consideration to support the friend's promise to refrain from suit. However, the man offered to extend interest payments until December 31 in consideration for the friend's promise not to sue during the remaining time under the statute of limitations. Therefore, there was adequate consideration for the April 1 agreement and it will provide an effective defense against the friend's claim.

B is incorrect. Detrimental reliance is a term commonly used to force another to perform their obligations under a contract, using the theory of promissory estoppel. Detrimental reliance must be shown to involve reliance that is reasonable, which is a determination made on an individual case-by-case basis, taking all factors into consideration. Detrimental means that some type of harm is suffered. The man does not need to invoke detrimental reliance, however, because there was adequate consideration for the April 1 agreement.

C is incorrect. As explained above, the pre-existing duty rule will not prevent this contract from being enforceable. The payment of interest for six additional months is adequate consideration.

D is incorrect. All contracts require valid consideration to be enforceable. The April 1 agreement would provide an adequate defense against the friend's claim.

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5. In an action by the lender against the father's estate for $1,000 plus accrued interest, which of the following is true regarding the father's promise to pay?

Assume that the borrower's entire $1,000 debt is due and that she has failed to repay any part of it. The borrower did not pay the installments due on October 31, November 30, or December 31, and has informed the lender that she will be unable to make repayments in the foreseeable future. A borrower asked a lender to lend her $1,000. The lender replied that he would do so only if the borrower's father would guarantee the loan. At the borrower's request the father mailed a signed letter to the lender: "If you lend $1,000 to my daughter, I will repay it if she doesn't." On September 15, the lender having read the father's letter, lent $1,000 to the borrower, which the borrower agreed to repay in installments of $100 plus accrued interest on the last day of each month beginning October 31. The father died on September 16. Later that same day, unaware of the father's death, the lender mailed a letter to the father advising that he had made the $1,000 loan to the borrower on September 15.

- There was no consideration to support the father's promise, because he did not receive any benefit
- The father died before the lender accepted his offer
- The father died before the lender notified him that his offer had been accepted
- **The father's letter was a unilateral contract accepted by performance**

Note:
The mutual assent necessary for the formation of a valid contract generally takes place through an offer and an acceptance. An offer is a statement or act that creates a power of acceptance. When a person makes an offer, he is indicating that he is willing to be immediately bound by the other person's acceptance without further negotiation. An acceptance is a statement or act that indicates the offeree's immediate intent to enter into the deal proposed by the offer.

An acceptance is the offeree's manifestation of assent to the terms of the offer, made in a matter invited or required by the offer. The offeror is the master of his offer, which means he may prescribe the method by which it may be accepted.

Most offers propose an exchange of promises. However, in some instances, the offer will propose an exchange of the offeror's promise for the offeree's act. A unilateral contract is a type of contract in which only one party promises to do something and the other party is free to act or not act as he wishes. When an offer proposes that the offeree accept by performing an act rather than by making a return promise, this is an offer for a unilateral contract.

D is correct. A unilateral contract is a contract created by an offer that can only be accepted by performance. Here, the father's letter could only be accepted by the lender lending $1,000 to the borrower. Generally, the offeree is not required to give the offeror notice that he has begun the requested performance, but is required to notify the offeror within a reasonable time after performance has been completed. Therefore, when the lender made the loan to the borrower on September 15, the contract was effectively accepted even if the father had not yet been notified. Thus, the father's death on September 16 does nothing to render the promise made in his letter to the lender ineffective.

A is incorrect. In order to constitute consideration, there must be a bargained-for-exchange between the parties and a benefit to the promisor or detriment to the promisee. Here, the father wanted the lender to lend the $1,000 to his daughter. The loan was to his benefit. Therefore, there was consideration.

B is incorrect. The father died on September 16, but the lender accepted the father's offer on September 15, when he lent $1,000 to the borrower.

C is incorrect. A majority of courts hold that when an offer looks to be a unilateral contract, the offeree must give reasonably prompt notice of his acceptance after he has done the requested act. Here, the lender provided notice of the loan to the father one day after he provided the loan to the borrower. Therefore, the lender fulfilled his notice requirement, even though the father died without knowing that his offer had been accepted.

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6. How much is the painter likely to recover?

The painter hired a friend to help finish the painting and paid the friend $200. The woman has offered to pay the painter $1,000. The painter is demanding $1,200. Assume the following facts. If the painter had started to paint on the following Saturday morning, he could have finished before Sunday evening. However, he stayed home that Saturday morning to watch the final game of the World Series on TV and did not start to paint until Saturday afternoon. By late Saturday afternoon, the painter realized that he had underestimated the time it would take to finish the work over the weekend unless he hired a helper. He also stated that to do so would require an additional charge of $200 for the work. The woman told the painter that she apparently had no choice but to pay "whatever it takes" to get the work done as scheduled. A woman entered into a contract with a painter, by the terms of which the painter was to paint the woman's office for $1,000 and was required to do all of the work over the following weekend so as to avoid disruption of the woman's business.

- **$1,000 only, because the woman received no consideration for her promise to pay the additional sum**
- $1,000 only, because the woman's promise to pay "whatever it takes" is too uncertain to be enforceable
- $1,200, in order to prevent the woman's unjust enrichment
- $1,200, because the impossibility of the painter's completing the work alone discharged the original contract and a new contract was formed

Note:
A is correct. A unilateral modification of a contract (such as the woman's promise to pay an additional $200 for the same work) lacks consideration because of the preexisting duty rule. However, some unilateral modifications may be enforceable notwithstanding the lack of additional consideration if the modification was done in good faith in light of circumstances that the parties did not anticipate at the time the contract was formed. Because the painter should have anticipated the circumstances that required his hiring an extra worker, the modification is not enforceable and the woman is not bound by her promise to pay the extra $200.

B is incorrect. The promise viewed in the context of the painter's demand was sufficiently definite.

C is incorrect. Unjust enrichment is not applicable where the benefit has been conferred pursuant to a binding contract.

D is incorrect. The facts do not show that performance was impossible.

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7. Which of the following best states the buyer's rights and duties upon delivery of the peaches?

A buyer ordered from a seller 500 bushels of No. 1 Royal Fuzz peaches, at a specified price, "for prompt shipment." The seller promptly shipped 500 bushels, but by mistake shipped No. 2 Royal Fuzz peaches instead of No. 1. The error in shipment was caused by the negligence of the seller's shipping clerk.

- The seller's shipment of the peaches was a counteroffer and the buyer can refuse to accept them
- The seller's shipment of the peaches was a counteroffer but, since peaches are perishable, the buyer, if it does not want to accept them, must reship the peaches to the seller in order to mitigate the seller's losses
- The buyer must accept the peaches because a contract was formed when the seller shipped them
- **Although a contract was formed when the seller shipped the peaches, the buyer does not have to accept them**

Note:
Some offers are ambiguous about if they invite acceptance through a return promise or through performance (thus forming a unilateral contract). This commonly occurs when the offer is a request that the goods be shipped. In this situation, the Uniform Commercial Code (UCC) states that an order or other offer to buy goods for prompt or current shipment shall be construed as inviting acceptance either by a prompt shipment of conforming OR non-conforming goods, OR a prompt promise to ship. See UCC § 2-206(1)(b).

Under the UCC, when a seller sends a prompt shipment of non-conforming goods, he is accepting the offer and breaching the contract simultaneously. The buyer may respond in multiple ways, including accepting the non-conforming goods or rejecting them. If the buyer decided to reject the non-conforming goods, he can then sue for breach.

However, if a seller seasonably notifies the buyer that the shipment of non-conforming goods is being offered only as an accommodation to the buyer, the seller's shipment of those non-conforming goods will NOT result in a breach. UCC § 2-206(1)(b). The buyer can choose to accept the accommodation shipment, which is NOT considered an official acceptance, but rather a counter-offer of the goods that have shipped as they are. If the buyer does accept the accommodation shipment, a contract for the goods as they are will be formed. If the buyer chooses to reject the accommodation shipment, no contract will be found to have formed at all, and the buyer may not sue the seller for breach.

D is correct. The seller promptly shipped non-conforming goods, which means he was both accepting the buyer's offer and breaching the contract simultaneously. There is no indication that the seller seasonably notified the buyer that the goods were non-conforming or that he offered them as an accommodation shipment. Thus, the buyer has two choices: accept or reject the non-conforming 500 bushels of Royal Fuzz peaches that were No. 2 (rather than No. 1).

A is incorrect. This is an incorrect application of the law to the facts. The seller's shipment of non-conforming goods is a breach of the contract. However, in the event that there has been a prompt shipment of non-conforming goods, AND the seller seasonably notifies the buyer and offers them as an accommodation, IF the buyer chooses to accept the accommodation, THAT action is considered a counter-offer to purchase the goods as they are. Thus, the seller's shipment of the non-conforming peaches alone is not a counter-offer but is instead a breach, and the buyer can reject them, as stated above.

B is incorrect. As explained above, the prompt shipment of non-conforming goods is not a counter-offer, but a simultaneous acceptance and breach. Moreover, the UCC states that if the non-conforming goods are perishable, the buyer is only obligated to follow any directions the seller gave for protecting the goods and selling them to mitigate losses for the seller, not ship them back.

C is incorrect. Although a contract was formed when the seller shipped the non-conforming goods (which constituted an acceptance of the buyer's offer to purchase), the buyer still has the right to reject non-conforming goods.

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8. As of March 22, which of the following is a correct statement?

On March 1, an apartment complex received a letter from a retailer offering to sell the apartment complex 1,200 window air conditioners suitable for the apartments in the complex's buildings. The retailer's offer stated that it would remain open until March 20, but that the apartment complex's acceptance must be received on or before that date. On March 16, the apartment complex posted a letter of acceptance. On March 17, the retailer telegraphed the apartment complex to advise that it was revoking the offer. The telegram reached the apartment complex on March 17, but the apartment complex's letter did not arrive at the retailer's address until March 21.

- The telegram revoking the offer was effective upon receipt
- The offer was revocable at any time for lack of consideration
- The mail was the only authorized means of revocation
- **Under the terms of the retailer's offer, the apartment complex's attempted acceptance was ineffective**

Note:
An acceptance is the offeree's manifestation of assent to the terms of the offer, made in a matter invited or required by the offer. The offeror is the master of his offer, which means he may prescribe the method by which it may be accepted.

The mailbox rule is followed by most courts and holds that an acceptance is effective upon proper dispatch. This means that when a letter is deposited in the mail, the acceptance becomes effective, and applies to acceptances dispatched by means other than letters, including telegrams and emails.

*An ordinary offer is revocable at the will of the offeror, even if he has promised not to revoke for a certain period. *

However, there are several exceptions to the general rule allowing revocation: (i) the standard option contract; (ii) firm offers under the UCC; and (iii) temporary irrevocability as the result of the offeree's part performance or detrimental reliance.

*Article 2 of the UCC allows for circumstances in which a promise to keep an offer open is enforceable (i.e., the offer becomes irrevocable), even if no payment has been made to keep it open (i.e., no consideration) under § 2-205, if: *

*(i) the offer is made by a merchant (a person who deals in goods of the kind or otherwise by his occupation holds himself out as having knowledge or skill peculiar to the practices or goods involved in the transaction); *

(ii) the merchant's offer is in a signed writing; AND

*(iii) the writing gives explicit assurance that the offer will be held open (e.g., "this offer will be held open for 10 days"). *

When an offer meets these three criteria, it will be held irrevocable even though there is not consideration given for keeping it open.

If the UCC firm offer states a time period for how long the offer remains open and irrevocable, that time period governs how long the offer remains irrevocable. If the firm offer did not state a period of time, it will be held irrevocable for a reasonable time. A firm offer cannot be made irrevocable for more than three months, even if contracted to remain open for longer.

*D is correct. This was a UCC firm offer because it was: (i) made by a merchant (the retailer); (ii) the offer was in a signed writing (the offer letter); and (iii) the writing explicitly stated the offer would remain open until March 20. As such, the offer was irrevocable until March 20. *

*Additionally, the offer stated that the apartment complex's acceptance must be received on or before March 20, which means the mailbox rule does not apply. *

When the retailer attempted to revoke, it was ineffective because of the irrevocability under this firm offer. When the apartment complex tried to accept, it was ineffective under the terms of the offer because it was not received until March 21.

*A is incorrect. Although the general rule is that an offeror is free to revoke his or her offer at any time before it is accepted, this is not true for firm offers. *

This case involved a UCC firm offer and as such, the retailer's revocation was not effective. The original offer was irrevocable until March 20. The fact that the acceptance wasn't received until March 21 is the basis for finding that there was no contract; it was an ineffective acceptance under the terms of the offer (that the acceptance must be received by March 20).

B is incorrect. On the contrary, for a UCC firm offer such as the one in this question, consideration is not required to be irrevocable. Here, the offer remained open and irrevocable, despite a lack of consideration, until March 20.

*C is incorrect. The means of revocation are of no consequence here, where the UCC firm offer was irrevocable until March 20. *

*As an aside, while it is true that the maker of the offer can specify how he wants to be notified that the other party has accepted, this rule does not extend to revocation. Generally, revocation can be effectuated by any means. *

9. If the property owner refuses and sues the builder for breach of contract, which of the following will the court probably decide?

Claiming accurately that removal of enough granite to permit the construction as planned would cost him an additional $3 million and a probable net loss on the contract of $2 million, the builder refused to proceed with the work unless the property owner would promise to pay an additional $2.5 million for the completed building. For an agreed price of $20 million, a builder specializing in large scale construction projects contracted with a property owner to design and build on the property owner's commercial plot a 15-story office building. As per a local statute due to the number of earthquakes in the area, the building's foundation required a minimum excavation of 25 feet. In excavating for the foundation and underground utilities, the builder encountered a massive layer of granite at a depth of 15 feet. When the contract was made, neither the property owner nor the builder was aware of the subsurface granite, for the presence of which neither party had hired a qualified expert to test.

- The builder is excused under the modern doctrine of supervening impossibility, which includes severe impracticability
- The builder is excused, because the contract is voidable on account of the parties' mutual mistake concerning an essential underlying fact
- **The property owner prevails, because the builder assumed the risk of encountering subsurface granite that was unknown to the property owner**
- The property owner prevails, because the builder did not know that there was subsurface granite in the area

Note:
Three elements must be met before an adversely-affected party can avoid a contract because of mutual mistake: (i) the mistake must concern a basic assumption on which the contract was made; (ii) the mistake must have a material effect on the agreed exchange of performances; and (iii) the adversely-affected party must not have assumed the risk of the mistake.

A disadvantaged party will not be able to avoid the contract if the risk of that mistake was and still is allocated to him. The risk can be re-allocated to the other party in three ways: (i) by agreement of the parties; (ii) when a party is aware at the time the contract is made that he has only limited knowledge with respect to the facts related to the mistake but treats his limited knowledge as sufficient; or (iii) the risk is allocated by the court as is reasonable under the circumstances.

C is correct. Generally, a contract may be rescinded due to a mistake of fact if the mistake relates to a fundamental assumption of the contract and has a material effect on the exchange. This holds true unless the court determines that the party asserting mistake should bear the risk of the mistake. Here, the builder is engaged in the business of excavation and had the opportunity to investigate the condition of the ground. He knew that he had to excavate at least 25 feet and failed to do any test inspections ahead of time. Therefore, the contractual duty will not be discharged for increased price and difficulty because the builder assumed the risk here that the ground included granite.

A is incorrect. Impracticality requires an extreme, unreasonable, and unanticipated difficulty or expense. Here, there is only a change in the degree of difficulty resulting in a 15% increase in expense, which is the type of risk that a fixed-price construction contract is intended to cover. His additional price increase and work did not render his performance impossible, and not extreme or unreasonable.

B is incorrect. This choice is factually and legally incorrect because a mutual mistake did not occur. A mutual mistake is a mistake by both parties to a contract concerning a basic assumption of fact on which the contract was based. Here, the builder assumed the risk that the ground included granite, and he cannot avoid the contract if the construction proves much more difficult than expected.

D is incorrect. The fact that the builder did not have actual notice of the existence of granite in the area does not alter the conclusion that the builder should bear the risk. He knew that he had to excavate at least 25 feet and failed to do any test inspections ahead of time.

10. If the spendthrift sues his uncle for $5,000 after the latter learned of the car-purchase contract and then repudiated his promise, which of the following is the uncle's best defense?

A notorious spendthrift, who was usually broke for that reason, received the following letter from his uncle, a wealthy and prudent man: "I understand you're in financial difficulties again. I promise to give you $5,000 on your birthday next month, but you'd better use it wisely or you'll never get another dime from me." The spendthrift thereupon signed a contract with a car dealer to purchase a $40,000 automobile and to make a $5,000 down payment on the day after his birthday.

- A promise to make a gift in the future is not enforceable
- Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless the value of the promised gift is substantially equivalent to the promisee's loss by reliance
- Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless that reliance also results in an economic benefit to the promisor
- **Reliance by the promisee on a promise to make a future gift does not make the promise enforceable unless injustice can be avoided only by such enforcement**

Note:
The consideration doctrine is designed to enforce promises that are “bargained for.” There are some promises which, although the promisor makes them without bargaining for anything in return, nonetheless induce the promisee to rely upon them to his legal detriment. This situation is known as promissory estoppel, which arises when a promise is made that the promisor should reasonably expect to induce action or forbearance on the part of the promisee. When the promisee then relies on such a promise, a court may bind the promisor to the promise he made if injustice can only be avoided by the enforcement of the promise. The promissory estoppel doctrine requires actual reliance on the promise, and the reliance must have been foreseeable.

D is correct. Under the theory of detrimental reliance, a gratuitous promise may be enforceable notwithstanding lack of consideration if the party making the promise has reason to expect the promise will induce reliance on the part of the promisee, there has been reliance in fact, and injustice may only be avoided by enforcement of the promise. The uncle should have foreseen that his promise would induce action on the spendthrift's part, which the promise did. However, the nature of the spendthrift's reliance (buying a car that he could not afford) is inconsistent with the intended purpose of the uncle's gift, which suggests that justice does not require enforcement of the promise.

A is incorrect. There are some promises which, although the promisor makes them without bargaining for anything in return, nonetheless induce the promisee to rely to his legal detriment. Some gift promises are enforceable under a reliance theory.

B is incorrect. This is not the correct way to measure whether a promisee reasonably relied on the gratuitous promise made by a promisor. Reliance does not require equivalence between the value of the promise and the extent of the reliance.

C is incorrect. The essential tenet behind promissory estoppel is that it is not a bargained-for exchange, meaning the promisor is not suffering any legal detriment by making the gratuitous promise. Reliance does not require the reliance to confer a benefit on the promisor.
