EXAM INSTRUCTIONS

Note to student: This exam is for Contracts for section EJD1Sep14, Fall 2014 Term. If you are not taking Contracts in EJD1Sep14, Fall 2014 Term, please contact Administration immediately (310-689-3200).

1. This is a three (3) hour examination.

2. The exam is to be completed on your computer and submitted in the same fashion as you did during the school year. The exam file must be submitted by the time indicated in the exam schedule. The interface that allows submissions will close fifteen minutes after the ending time of the exam, as indicated in the exam schedule. If your exam is not received or we are not contacted before the deadline, your exam will be subject to penalties up to and including non-acceptance of the entire exam. As a precaution, you must have immediate access to a fax machine while taking your exam to ensure your ability to submit your essay in time. Concord Law School of Kaplan University’s fax number is 310-496-2746. Please contact Administration if you have any questions about your exam by telephone at (310) 689-3200 or email administration@concord.kaplan.edu. The Tech Center can be reached at 866-577-0436.
Sue placed the following advertisement in the local paper: “Sue has an over-stock of ‘Lady Beliles #12’ women’s hair dye in all colors. For immediate shipment. CHEAP to the first person who calls at 555.555.5555.” Bob, an owner of a large hair stylist shop, called the number and told Sue, “I’ll take 10 bottles of all 13 colors – a total of 130 bottles - and, since the normal wholesale price is $10.00 per bottle, I will pay $5.00 per bottle.” Sue replied, “I can do that, but I need to sell all of my 260. If you will buy all 260 bottles, then the price of $5.00 per bottle - $1,300.00 – is acceptable.” Bob said, “Okay, if you hold the offer open for one week so I can make sure I have the money?” “Yes,” Sue replied. Bob called Sue five days later and said, “Okay, I have the money,” to which Sue replied, “Sorry I have already sold all of my stock.” At this point, Bob went to his normal supplier and purchased the same quantity of the same product at $10.00 per bottle ($2,600.00). Since it took awhile for the supplier to get the product to Bob, Bob had to close his shop for 3 days. Bob calculates he lost $20,000.00 per day.

2. Assuming Bob prevails on his suit, how much will be his damages and explain how you arrived at that amount.
1. Carl and Homer entered into a valid written contract under which Carl agreed to build a house on Homer's lot. Homer agreed to pay $150,000 for the house. The contract stated, "Homer's duty to pay shall not arise unless and until the house is constructed in full compliance with the attached specifications."

Assume that shortly after commencing performance Carl called Homer and said that the 1/2 inch rods for the foundation required in the specifications were in short supply, but that 1/4 inch rods were readily available. Homer replied: "Go ahead and use the 1/4 inch." One day later, before Carl had bought or installed the rods, Homer called and stated that Carl must use the 1/2 inch rods. Carl refused to do so.

The best analysis of the parties legal rights is

A (A) Homer waived his right to have 1/2 inch steel and his waiver cannot be retracted.
B (B) Homer and Carl modified their contract and Carl may use 1/4 inch rods.
C (C) Homer waived his right to have 1/2 inch rods, but he has retracted the waiver so that Carl must use 1/2 inch rods.
D (D) Homer's statement, "Go ahead and use the 1/4 inch," is not effective either as a modification or a waiver because Homer did not expressly agree to modify or waive.

2. Original fact pattern: Carl and Homer entered into a valid written contract under which Carl agreed to build a house on Homer's lot. Homer agreed to pay $150,000 for the house. The contract stated, "Homer's duty to pay shall not arise unless and until the house is constructed in full compliance with the attached specifications."

Assume that during his vacation, Homer voluntarily spent two days helping Carl construct the house. At the end of the second day, Carl mentioned the fact that he had an antique weathervane and Homer said he would like to buy it. Carl stated: "You've already done enough for me. I'll give the weathervane to you and install it tomorrow." Homer said: "Thanks a lot." When Carl refused to deliver or install the weathervane, Homer sued.

The principal question for the court is whether

A (A) Homer's voluntary work was sufficient consideration for Carl's promise to give Homer the weathervane.
B (B) Carl's statement about the Weathervane is enforceable as an oral modification of a written contract.

C (C) the parole evidence rules bars admission of evidence of the promise to give Homer the weathervane.

D (D) Carl's statement about the weathervane constituted a promise.

3. **Original fact pattern:** Carl and Homer entered into a valid written contract under which Carl agreed to build a house on Homer's lot. Homer agreed to pay $150,000 for the house. The contract stated, "Homer's duty to pay shall not arise unless and until the house is constructed in full compliance with the attached specifications."

Assume that neither the written agreement nor the specifications mentioned the size of the water heater to be installed. Carl installed a 20 gallon heater. The size of the house reasonably required one of at least 40 gallons. After the house was completed, Homer noticed the size of the water heater and said he would not pay the contract price.

Carl is now entitled to recover from Homer

A (A) nothing because his breach allows Homer to treat the contract as discharged.

B (B) the full contract price because the agreement did not specify the size of the water heater.

C (C) the full contract price because he substantially performed the contract.

D (D) the full contract price minus Homer's damages for breach of Carl's implied obligation to install a heater of the size reasonably required.

4. Seller contracted in writing to deliver to Buyer by August 10 100 bushels of soy beans at $5.00 per bushel. On August 8 Seller discover that he had only 95 bushels of soy beans in his warehouse with which to fulfill his contract with Buyer. If Seller tenders 95 bushels of wheat to Buyer on August 8, and Buyer refuses to accept or pay for any of the soy beans, which of the following best states the legal relationship between Seller and Buyer?

A (A) Seller has a cause of action against Buyer, because Seller has substantially performed his contract.

B (B) Seller is excused from performing on the contract because of impossibility of performance.
C (C) Buyer has a cause of action against Seller for Seller's failure to deliver 100 bushels of soy beans.

D (D) Buyer is obligated to give Seller until August 10 to attempt to obtain the other five bushels of soy beans.

5. Gerry was the owner of Gerry's Market, the largest supermarket in the town of Suburb. On September 10, Gerry sent the following fax to Concita, who was the owner of a banana plantation in Panama:

"Subject to your prompt acceptance, ship at once 200 bushels of your Conquita bananas to our supermarket. Thereafter, deliver 100 bushels of bananas by the first day of each of the following three months. Will pay current market price for all shipments.

s/Gerry"

This purchase order was received by Concita on September 12. The next day, Concita shipped 199 bushels of bananas to Gerry, which were received and accepted on September 19. At the time Gerry accepted this shipment, he realized that it contained 199 bushels of bananas, not the 200 as ordered. Nonetheless, Gerry promptly paid for the first shipment as billed. Concita's second shipment of bananas was received by Gerry on September 30. This shipment, which contained the full 200 bushels, was accepted and paid for by Gerry. On October 10, however, Concita sent a fax to Gerry notifying him that no further banana shipments would be made.

Which of the following best characterizes Concita's shipment and Gerry's acceptance of the first 199 bushels of bananas?

A (A) The shipment was an acceptance of Gerry's offer, and, by accepting the non-conforming tender, with or without timely objection, Gerry waived whatever rights he may have had against Concita.

B (B) The shipment was an acceptance of Gerry's offer, and, notwithstanding Gerry's acceptance of the bananas, also a breach by Concita to deliver according to specifications.

C (C) The shipment was a counteroffer, and Gerry accepted it by paying for the bananas with knowledge of the shortage.

D (D) The shipment was made for purposes of accommodation only, and thus Concita was entitled to cure the non-conforming tender within a reasonable period of time.

6.
Axel wrote Grant saying: "Please ship 175 Model X Hearing Aids per catalog price... " Grant shipped 175 Model Y Hearing Aids, which are superficially similar to Model X and can be distinguished only by taking them apart. Model Y is an obsolete model with no market demand. On tender of delivery, Axel discovered the discrepancy and demanded that Grant deliver Model X Hearing Aids. Grant refused.

If Axel sues for breach of contract, what result?

A (A) Grant wins, because there was no meeting of the minds.
B (B) Grant wins because his shipment was only a counteroffer which Axel rejected.
C (C) Axel wins, because the offeror is master of his offer.
D (D) Axel wins, because Grant's shipment of Model Y Hearing Aids constituted an acceptance of Axel's offer to buy Model X hearing aids.

7.

On December 20, 1979, Carl, owner of Carl's coffee Shop, entered into a written contract with Dan, owner of Dan's Doughnut Factory, under which Carl agreed to purchase his doughnut requirements for the calendar year 1980. The contract provided that "Carl shall have no obligation to receive any specified quantity of doughnuts, but only his daily requirements" and the fixed price per dozen specified in the contract, "cash on delivery." During 1979, Carl's requirements of doughnuts for his coffee shop averaged approximately 50 dozen per week.

Early in 1980, Dan experienced a rise in his costs and decided he could no longer afford to supply Carl's requirements at the price fixed in their agreement.

If Dan asserts that the agreement is not binding upon him because of lack of consideration will Dan prevail?

A (A) Yes, because requirements contracts lack mutuality of obligation.
B (B) Yes, because the provision that Carl had no obligation to receive any specified quantity made the contract illusory.
C (C) No, because requirements contracts do not need consideration to be enforceable.
D (D) No, because Carl's agreement to buy his requirements was sufficient consideration for Dan's agreement to supply those requirements.

8.

Original fact pattern: On December 20, 1979, Carl, owner of Carl's coffee Shop, entered into a written contract with Dan, owner of Dan's Doughnut Factory, under which Carl agreed to purchase his doughnut requirements for the calendar year 1980. The contract
provided that "Carl shall have no obligation to receive any specified quantity of doughnuts, but only his daily requirements" and the fixed price per dozen specified in the contract, "cash on delivery." During 1979, Carl's requirements of doughnuts for his coffee shop averaged approximately 50 dozen per week.

Assume that on May 1, 1980, Carl opened "Carl's Coffee Shop #2" in a new office building. During the first four months of 1980, Carl had ordered an average of 50 dozen doughnuts per week from Dan. The first week in May he ordered 75 dozen doughnuts, explaining that he needed the larger quantity because of the opening of Carl's Coffee Shop #2. Dan refused to supply any more than 50 dozen at the price fixed in the agreement.

Is Dan justified in his refusal?

A (A) Yes, if the normal requirements of the original coffee shop are approximately 50 dozen per week.
B (B) Yes, because the opening of Carl's Coffee Shop #2 was an unanticipated occurrence which excused Dan from his contract with Carl.
C (C) No, because the agreement provided that Dan would supply Carl's requirements of doughnuts at the fixed price.
D (D) No, if in opening Carl's Coffee Shop #2, Carl relied on his requirements contract with Dan.

9.

On March 5 Ohner entered into a contract with Builder wherein the latter agreed to construct a house on Ohner's lot. Pursuant to their agreement, the home would be built in accordance with plans and specifications supplied by Ohner. The contract further provided that Ohner would pay Builder $100,000 for the completed structure.

Builder finished construction on August 12 and submitted a bill to Ohner for $105,000. The bill contained an itemization of charges for labor and materials. When Ohner received the bill, he telephoned Builder and agreed to pay the additional charges. Two days later, Ohner forwarded Builder a certified check in the amount of $100,000. The check was endorsed by Builder under protest.

In a suit by Builder against Ohner to recover the $5,000, Builder will most likely:

A (A) succeed, on an implied-in-fact contract basis.
B (B) succeed, on quasi-contract principles.
C (C) not succeed, because Ohner's promise was not in writing, 
D (D) not succeed, because of a lack of consideration.

10. Original fact pattern: On March 5 Ohner entered into a contract with Builder wherein the latter agreed to construct a house on Ohner's lot. Pursuant to their agreement, the home would be built in accordance with plans and specifications supplied by Ohner. The contract further provided that Ohner would pay Builder $100,000 for the completed structure.

Builder finished construction on August 12 and submitted a bill to Ohner for $105,000. The bill contained an itemization of charges for labor and materials. When Ohner received the bill, he telephoned Builder and agreed to pay the additional charges. Two days later, Ohner forwarded Builder a certified check in the amount of $100,000. The check was endorsed by Builder under protest.

In a suit by Builder against Ohner to recover the $5,000, Builder will most likely:

Assume that the Ohner-Builder contract contained the following provision: "Any modifications or changes in the construction work that deviate from the original plans and specifications will not be paid for unless approved in writing by Ohner." When Builder had completed 70% of the construction job, Ohner authorized him to make certain changes at an increased cost of $5,000. Although Builder sought written approval, Ohner assured him that it was not necessary. Builder went ahead and made the changes but Ohner refused to pay the $5,000. In a suit by Builder against Ohner to recover the $5,000, Builder will most likely:

A (A) succeed, because Ohner was unjustly enriched. 
B (B) succeed, because Builder relied on Ohner's oral waiver which resulted in a valid modification. 
C (C) not succeed, because Ohner's authorization was not in writing. 
D (D) not succeed, because there was no consideration to support Ohner's promise to pay Builder the additional $5,000.

11. Martha purchased a new home in Hillsborough. After moving into the house, she contracted with Stewart, a craftswoman, to build a canopy bed, for her bedroom. Martha agreed to pay Stewart $15,000 which would be payable upon completion.
After the agreement was entered into, Martha left on a vacation. While shopping, Martha saw an exquisite French canopy bed at a country store. She fell in love with the bed and decided that it was more to her liking than the one that Stewart was hired to build. She purchased the bed for $12,000 and had it shipped to her home in Hillsborough.

While Martha was on vacation, Stewart bought wood (at a cost of $2,000) and purchased tools (at a cost of $500) to build the bed. When Martha returned home, she contacted Stewart and told her that another bed had been purchased and that she (Martha) did not want the one being built. Stewart did not tell Martha but she had not yet started to work on the bed. After their conversation, Stewart constructed the bed, which Martha then refused to buy.

If Stewart sues Martha for breach of contract, she should be entitled to the following amount of damages:

A (A) $2,000.
B (B) $2,500.
C (C) $15,000.
D (D) Quantum meruit, based on the reasonable value of services the rendered.

Anna, the owner of a nightclub, booked Sam, a famous entertainer, for the week beginning Sunday, July 1. On June 20 Sam was stricken by appendicitis and according to his surgeon would not be able to perform until August 1. On June 21, Anna sent the following telegrams to Ella and to two other performers. The contents of the telegrams were identical.

"Sam ill and unable to perform during the July 1 week. Desperately need replacement act. You must arrive no later than June 29 to give band time to rehearse with you. Money no object as all performances sold out. /s/ Anna."

Assume that Ella received her wire on June 22 and immediately wired back: "On my way. Hope I get a better room than you provided last time. /s/ Ella." After Ella sent her wire, but before Anna received it, Anna learned from Sam's surgeon that Sam had recovered and could perform July 1. Anna immediately telephoned Ella and said that Ella was not needed because Sam had recovered.

If Ella asserts a claim against Anna and Anna defends on the ground that there was no effective acceptance of her offer, who will prevail?
A (A) Ella, because her acceptance was dispatched prior to Anna's revocation of her offer.
B (B) Ella, because Anna's revocation was not communicated in the same form as Anna's offer.
C (C) Anna, because Ella's response failed to specify any salary.
D (D) Anna, because Ella's response, added a term to the offer, which Anna was free to reject.

13. Original fact pattern: Anna, the owner of a nightclub, booked Sam, a famous entertainer, for the week beginning Sunday, July 1. On June 20 Sam was stricken by appendicitis and according to his surgeon would not be able to perform until August 1. On June 21, Anna sent the following telegrams to Ella and to two other performers. The contents of the telegrams were identical.

"Sam ill and unable to perform during the July 1 week. Desperately need replacement act. You must arrive no later than June 29 to give band time to rehearse with you. Money no object as all performances sold out. /s/ Anna."

Assume the same facts as in question 12. Anna defends on the ground that her wire was not intended as an offer, since it was sent to three people and she needed only one replacement act.

Will this defense succeed?

A (A) Yes, if Anna did not intend to be bound to more than one person.
B (B) Yes, because, as creator of the purported offer," Anna's intent not to make an offer prevails.
C (C) No, if Ella did not know that identical wires were sent to others.
D (D) No, because Anna would only be bound by the first acceptance she received.

14. Original fact pattern: Anna, the owner of a nightclub, booked Sam, a famous entertainer, for the week beginning Sunday, July 1. On June 20 Sam was stricken by appendicitis and according to his surgeon would not be able to perform until August 1. On June 21, Anna sent the following telegrams to Ella and to two other performers. The contents of the telegrams were identical.
"Sam ill and unable to perform during the July 1 week. Desperately need replacement act. You must arrive no later than June 29 to give band time to rehearse with you. Money no object as all performances sold out. /s/ Anna."

Assume the same facts as in previous question 12. Anna defends on the ground that Sam's recovery was a changed circumstance that excused her from liability on her contract with Ella.

**Will this defense succeed?**

A (A) Yes, because the risk of Sam's recovery was assumed by Ella.

B (B) Yes, because illness in personal service contracts operates to excuse performance.

C (C) No, because Anna was unilaterally mistaken as to whether Sam would recover in time to perform.

D (D) No, because Anna did not condition her offer on Sam's continued incapacity and, therefore, the risk of his recovery was assumed by her.

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15.

Uncle Harry was a wealthy businessman who loved his niece Maxine. Maxine was experiencing severe financial problems after being fired from her job. Seeing Maxine at a family gathering, Uncle Harry said to Maxine, "I know you're having a tough time financially and could use some extra money. I would like to give you $5,000 to help you out." Maxine responded, "Thank you but I'm too proud to accept your offer." Uncle Harry then told Maxine, "In that case, I know you owe Franklin $5,000; I promise to pay Franklin the $5,000 you owe him." Thereafter, Uncle Harry suffered a downturn in his business operations and did not pay Franklin the $5,000.

If Franklin sues Uncle Harry for the $5,000, who should prevail?

A (A) Franklin, because he was an intended third-party beneficiary of the gift promised to Maxine.

B (B) Franklin, because since Uncle Harry's promise was made to Maxine on behalf of Franklin, it did not violate the suretyship provision of the statute of frauds.

C (C) Uncle Harry, because the promise was not supported by consideration.

D (D) Uncle Harry, because there was no discernible detrimental reliance on the part of Franklin.

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16.
Higgins, a wealthy lawyer, lived in an exquisite home located in the fashionable neighborhood of Bel Air. Higgins had known Otto, a gardener, for many years. One day, Otto was walking down the street when he ran into Higgins. Otto said to Higgins, "I will landscape your garden for $200." Higgins replied, "That seems like a good deal." Thereupon, Swenson, who was Higgins' brother-in-law walked by. The three individuals then started conversing about other matters. Nothing further was said about the landscaping of Higgins' garden.

The next day, Higgins telephoned Otto and said, "I accept your offer." Otto replied, "I can't landscape your garden because last night I contracted to landscape Darwin's property." Darwin and Higgins were neighbors.

If Higgins sues Otto for breach of contract, who will likely prevail?

A (A) Otto, because the offer lapsed at the end of their conversation.

B (B) Otto, because his contract with Darwin effectuated a revocation of his offer to Higgins.

C (C) Higgins, because the acceptance was communicated before the attempted revocation.

D (D) Higgins, because the revocation was ineffective.

17.

On March 1, Seller and Buyer entered into a written contract under which Seller agreed to sell his home to Buyer, and Buyer agreed to purchase the home for the sum of $60,000. The contract specified July 1 as the closing day on which Seller was to deliver the deed and Buyer was to pay the price.

Assume that on April 1, Seller conveyed his home to a third party. Buyer learned of the sale the following day and wants to cancel his contract with Seller and buy another home.

May he do so without any risk that he will be obliged to perform his contract obligation to Seller?

A (A) Yes, but only if he first demands assurance from Seller that Seller will perform on July 1, and Seller is unable to provide such assurance.

B (B) Yes, if Seller, in connection with the sale to the third party, did nothing to preserve Buyer's rights to acquire the property.

C (C) No, because Seller's performance is not due until July 1 and Buyer must remain in a position to perform his contract obligation up to that time.
D (D) No, because there is a possibility that Seller could buy back the property and tender a deed to Buyer on July 1.

Howard was a 12th grade English teacher at Capitol High School in Washington, D.C. After a blizzard hit the Washington area, Howard posted the following notice on a high school bulletin board:

"ATTENTION STUDENTS

I have recently undergone a hernia operation. As a result, I cannot lift heavy objects. Yesterday's blizzard dumped a large amount of snow at my residence. Since I cannot shovel the snow myself, I will pay $50 to any student who removes the snow from my driveway and sidewalk."

The blizzard struck Washington on Wednesday and Howard posted the notice on Thursday. Casey, a high school senior, read the notice Friday morning and decided to accept Howard's offer. On Saturday, Casey purchased a shovel for $15, intending to use it to remove the snow from Howard's home. Because of prior commitments, Casey did not have time to remove the snow on Saturday and planned to do so on Sunday. Saturday and Sunday were unseasonably warm days with the temperature reaching 60 degrees. When Casey arrived at Howard's home on Sunday, 95% of the snow had melted. Nonetheless, Casey removed the remaining snow from the property. Afterwards he requested the $50 payment from Howard but Howard refused to pay him anything because the snow had practically all melted.

If Casey asserts an action against Howard for breach of contract, what will be the probable outcome?

A (A) Casey is entitled to recover $15 for the shovel which he purchased in reliance on Howard's offer.

B (B) Casey is entitled to recover $50 because a valid acceptance occurred when he removed the remaining snow from Howard's property.

C (C) Casey is entitled to recover $17.50, which includes $15 for the purchase of the shovel and $2.50 (5% of $50) for the part performance that he completed.

D (D) Casey is not entitled to any recovery because the offer lapsed due to the melting of the snow.
Vendee entered into a real estate sales contract to purchase a home from Vendor. Vendor was mentally incompetent at the time the real estate agreement was entered into. One month before closing, Vendee learned that Vendor was mentally incompetent.

As a result, Vendee notified Vendor's legal representative that he wanted to rescind the real estate sales agreement. However, Vendor's legal representative notified Vendee that Vendor would not honor the rescission and would take appropriate action to specifically enforce the real estate sales agreement.

Which of the following is the most accurate statement regarding Vendee's duty with respect to enforcement of the real estate sales agreement?

A (A) Vendee's duty is discharged because there is no mutuality of obligation.
B (B) Vendee's duty is discharged unless it appears that Vendee had reason to know of Vendor's incapacity.
C (C) Vendee's duty is not discharged because Vendee cannot raise Vendor's incapacity.
D (D) Vendee's duty is not discharged because Vendor is willing and able to close.

Barney owned a hardware store in New York. Wishing to move to a warmer climate, he entered into a written contract to buy Sampson's hardware store in Florida. The contract stated that Barney would buy Sampson's store for $125,000 "provided Barney finds a purchaser who will buy his present business for $100,000 cash." Sampson rents the building in which his store is located, under a lease with one more year to run.

Assume Sampson repudiated the contract soon after signing it and before Barney had made any effort to find a buyer for his present business. Barney sued Sampson for breach of contract and Sampson defended on the ground that his promise to sell was unsupported by consideration.

Will this defense succeed?

A (A) Yes, because Barney's promise to buy was subject to a condition within Barney's complete control and was therefore illusory.
B (B) Yes, because Barney's promise to buy was still executory.
C (C) No, because the court will interpret the condition of Barney's promise as requiring Barney to make a good faith effort to find a buyer for his present business.
D (D) No, because Barney's promise to sell his present business was consideration for Sampson's promise to sell his business to Barney.
21. Original fact pattern: Barney owned a hardware store in New York. Wishing to move to a warmer climate, he entered into a written contract to buy Sampson's hardware store in Florida. The contract stated that Barney would buy Sampson's store for $125,000 "provided Barney finds a purchaser who will buy his present business for $100,000 cash." Sampson rents the building in which his store is located, under a lease with one more year to run.

Assume Barney made no effort to find a buyer for his present business and refused to perform his promise to buy Sampson's business.

Sampson sued Barney and the evidence shows that Barney could have found a purchaser to buy his business for $10,000 cash.

What result?

A (A) Sampson wins, because the condition of Barney's promise was excused by Barney's failure to try to make it occur.

B (B) Sampson wins, because the stipulation about the sale of Barney's present business was a mere promise and not a condition.

C (C) Barney wins, because the condition of Barney's promise to buy Sampson's business did not occur.

D (D) Barney wins, because he made no promise to try to find a buyer for his business.

22. Original fact pattern: Barney owned a hardware store in New York. Wishing to move to a warmer climate, he entered into a written contract to buy Sampson's hardware store in Florida. The contract stated that Barney would buy Sampson's store for $125,000 "provided Barney finds a purchaser who will buy his present business for $100,000 cash." Sampson rents the building in which his store is located, under a lease with one more year to run.

Assume Barney refused to perform his promise to buy Sampson's business and Sampson sued. Barney defended on the ground that at the time the contract was signed the parties orally agreed that Barney's obligation to buy was conditioned upon Barney's obtaining a 5-
year extension of Sampson's lease, and that Barney has been unsuccessful in his efforts to obtain such an extension from the landlord. No mention of the lease was made in the contract. Sampson objected to the admission of evidence to prove such a condition on the ground of the Parol Evidence Rule.

Which of the following arguments that Barney might make has any chance of avoiding the Parol Evidence Rule?

A (A) The evidence is offered to clear up an ambiguity in the writing.
B (B) The evidence is offered to show a modification of a written contract.
C (C) The writing was not an "integrated" written contract.
D (D) The Parol Evidence Rule does not bar evidence of the oral agreement because the evidence is offered to establish an oral condition of a promise contained in an "integrated" written contract.

23.

Tom is a teacher who is quite knowledgeable about coins and their value and his collection is worth thousands of dollars. Tom also buys and sells coins. Jim, who had no prior experience with coins, had inherited a sizeable coin collection. Jim opened "Coin Shop" in a local shopping center.

Assume that on June 1 Jim advertised in the local newspaper as follows: "Special sale. Coins on sale at 10% over their face value." In response to this ad, Tom visited Jim's shop and saw in a display case a fifty cent coin which Tom recognized as having a value of $100. Tom tendered fifty-five cents to Jim but Jim refused to sell the coin. Jim said that the coin had already been sold to Zeke for $100 prior to the start of the sale and that Jim had forgotten to remove it from the display case.

Tom sued Jim for damages.

What result?

A (A) Jim wins because the ad was not an offer.
B (B) Jim wins because fifty-five cents was not sufficient consideration for a coin worth $100.
C (C) Tom wins because, in visiting Jim's shop, Tom detrimentally relied on the ad.
D (D) Tom wins because Jim's ad was an offer which Tom accepted when he tendered the fifty-five cents to purchase the coin.

24.
Original fact pattern: Tom is a teacher who is quite knowledgeable about coins and their value and his collection is worth thousands of dollars. Tom also buys and sells coins. Jim, who had no prior experience with coins, had inherited a sizeable coin collection. Jim opened "Coin Shop" in a local shopping center.

Assume that Tom telephoned Jim and learned that Jim owned fifty 1937 silver dollars. Jim agreed to sell them to Tom for $1,000, which sum Tom agreed to pay in advance of shipment. Following the conversation, Jim sent Tom this letter: "This confirms your purchase of the silver dollars. Upon receipt of your check for $1,000 the coins will be shipped to you as agreed. /s/Jim." Tom received the letter but did not respond to it and did not pay the $1,000. Jim sues Tom, who asserts the Statute of Frauds as a defense.

Will this defense succeed?

A (A) No, because the letter signed by Jim satisfies the writing requirement against Tom.
B (B) No, because the face value of the coins is less than $5,000.
C (C) Yes, because Tom is not a merchant and there is no writing signed by Tom.
D (D) Yes, because a memorandum signed after the contract is made does not satisfy the Statute of Frauds.

25.

Original fact pattern: Tom is a teacher who is quite knowledgeable about coins and their value and his collection is worth thousands of dollars. Tom also buys and sells coins. Jim, who had no prior experience with coins, had inherited a sizeable coin collection. Jim opened "Coin Shop" in a local shopping center.

Assume the same facts as in question 24, but that Tom defends on the ground that there was no consideration for his promise to pay $1,000.

Will this defense succeed?

A (A) Yes, because a court will not enforce a promise to pay $1,000 for coins with a face value of $50.
B (B) Yes, because Jim did not change his position in reliance on the promise of Tom to pay $1,000.
C (C) No, because Jim's promise to sell the coins was sufficient consideration.
D (D) No, because both Tom and Jim are merchants and contracts between merchants do not require consideration.
26. **Original fact pattern:** Tom is a teacher who is quite knowledgeable about coins and their value and his collection is worth thousands of dollars. Tom also buys and sells coins. Jim, who had no prior experience with coins, had inherited a sizeable coin collection. Jim opened "Coin Shop" in a local shopping center.

Assume that Tom and Jim had entered into an enforceable contract for the sale of fifty 1937 silver dollars but that before the coins were delivered to Tom, the government made the transfer of pre-1964 silver coins illegal.

**Which of the following is a correct statement of the rights of Tom and Jim?**

A (A) The court will not enforce the agreement and will leave the parties as they are, enabling Jim to keep the $1,000.

B (B) Jim is in breach and must pay damages, even though he is excused from delivering the coins.

C (C) Jim may keep the $1,000 and need not deliver the coins, because merchants should anticipate changes in the law.

D (D) Jim is excused from delivering the coins, and Tom is entitled to restitution of the $1,000.

27. Youth is a 17-year-old boy who has been buying and selling bicycles since he was eleven. Teller is a 25 year old bank teller who has never bought a bicycle before. Teller asked Youth if he had a bicycle to sell. Youth showed Teller a bicycle with a crack in the frame. Teller asked if the crack would impair the bicycle's utility, and Youth said, "Not a bit." In fact, the crack would probably cause the frame to collapse under very little strain. Youth knew this, but Teller did not. Teller said, "Very well, I'll pay you $100 for the bicycle and pick it up tomorrow." They signed a writing, prepared by Youth, that purported to memorialize the terms of their agreement. Later that day Teller learned that the crack would probably cause the frame to collapse under very little strain.

If Teller told Youth he would not accept the bicycle and Youth asserted a claim against Teller for damages for breach of contract, who will prevail?

A (A) Teller, because Youth is a minor and lacks capacity to contract.

B (B) Teller, because he relied on a material misrepresentation.

C (C) Youth, because the contract is voidable only at Youth's election.

D (D) Youth, because Teller's reliance on Youth's statement was not reasonable.
28. **Original fact pattern:** Youth is a 17-year-old boy who has been buying and selling bicycles since he was eleven. Teller is a 25 year old bank teller who has never bought a bicycle before. Teller asked Youth if he had a bicycle to sell. Youth showed Teller a bicycle with a crack in the frame. Teller asked if the crack would impair the bicycle's utility, and Youth said, "Not a bit." In fact, the crack would probably cause the frame to collapse under very little strain. Youth knew this, but Teller did not. Teller said, "Very well, I'll pay you $100 for the bicycle and pick it up tomorrow." They signed a writing, prepared by Youth, that purported to memorialize the terms of their agreement. Later that day Teller learned that the crack would probably cause the frame to collapse under very little strain.

Assume that Teller had said to Youth, "I know the crack can cause a problem, but that's all right. I can have it welded and it will work well enough."

**If Teller then demands the bicycle, but Youth refuses, saying he has changed his mind about selling, and Teller asserts a claim against Youth for damages for refusing to deliver the bicycle, who will prevail?**

A (A) Teller, because he has waived his right to avoid the agreement.
B (B) Teller, because even a minor is responsible for his misrepresentations.
C (C) Youth, because as a minor he can avoid liability on an executory contract.
D (D) Youth, because Teller could not waive his right to avoid the agreement.

29. **Original fact pattern:** Youth is a 17-year-old boy who has been buying and selling bicycles since he was eleven. Teller is a 25 year old bank teller who has never bought a bicycle before. Teller asked Youth if he had a bicycle to sell. Youth showed Teller a bicycle with a crack in the frame. Teller asked if the crack would impair the bicycle's utility, and Youth said, "Not a bit." In fact, the crack would probably cause the frame to collapse under very little strain. Youth knew this, but Teller did not. Teller said, "Very well, I'll pay you $100 for the bicycle and pick it up tomorrow." They signed a writing, prepared by Youth, that purported to memorialize the terms of their agreement. Later that day Teller learned that the crack would probably cause the frame to collapse under very little strain.
Assume the writing purported to describe the bicycle by serial number, but Youth mistakenly inserted serial number 100B, the number of another bicycle in his possession, instead of number 100A, the number of the bicycle being sold. No one noticed the error until the time of delivery. The bicycle designated by serial number 100B is the same model as the one Teller agree to buy, but does not have a cracked frame. Youth delivered the bicycle with the cracked frame, serial number 100A, but Teller refused to accept it. Thereupon Youth tendered the sound bicycle, serial number 100B, which Teller also refused to accept.

if Youth asserts a claim against Teller for damages for breach of contract to accept the bicycle with serial number 100B, who will prevail?

A (A) Youth, because the parol evidence rule bars evidence that the bicycle identified in the writing is not the one Teller agreed to accept.

B (B) Youth, because the bicycle identified in the writing is a fair exchange for $100, while the bicycle with the cracked frame was not.

C (C) Teller, because parol evidence is admissible to show that he never agreed to accept the bicycle identified as 100B.

D (D) Teller, because the writing was not a sufficient memorandum to satisfy the statute of frauds.

30.

On September 1 Virginia, a stockbroker, contracted in writing to buy a computer system from Microtek for $2,000. The computer was to be delivered on September 25, with payment due on October 1. Shortly thereafter, Virginia lost her job when the brokerage firm she worked for went out of business. On September 10, Virginia notified Microtek that she could not afford to pay for the computer system. Marvin, Microtek's president, told Virginia that the company reserved all legal rights in the event of her non-performance.

On September 15, Virginia's mother, Willow, contacted Marvin and said, "If you don't sue my daughter for the $2,000, I'll pay you $1,500 for the computer system as full payment." Marvin replied, "O.K." The next day Willow sent Marvin a check in the amount of $1,500, which he accepted. Microtek delivered the computer on September 25.

Neither Virginia nor Willow made any further payment to Microtek. After October 1 can Microtek sue Virginia and recover the additional $500?

A (A) Yes, because there was insufficient consideration to support Willow's promise to Microtek.
31. Daniel and Paul were involved in an automobile accident. Paul sued Daniel for $10,000 alleging that Daniel was negligent. Daniel's liability depends on whether he had the green light at the time of the accident. Each party claims to have had the green light. Of the two other witnesses, one says that Paul had the green light. Before trial, Daniel offered Paul $5,000 to settle all claims arising from the accident. Paul accepted the offer.

Assume that before payment of the $5,000 and before dismissal of the suit, Daniel repudiates his promise to pay Paul $5,000. Paul sues for $5,000. What result?

A (A) Paul wins because the agreement was an enforceable compromise of a disputed claim.
B (B) Paul wins because Daniel's promise to pay $5,000 was enforceable without consideration.
C (C) Daniel wins because his promise was a mere executory accord.
D (D) Daniel wins because his promise was void as against public policy.

32. Original fact pattern: Daniel and Paul were involved in an automobile accident. Paul sued Daniel for $10,000 alleging that Daniel was negligent. Daniel's liability depends on whether he had the green light at the time of the accident. Each party claims to have had the green light. Of the two other witnesses, one says that Paul had the green light. Before trial, Daniel offered Paul $5,000 to settle all claims arising from the accident. Paul accepted the offer.

Assume the same facts as in question 31 except that, instead of suing for $5,000, Paul prosecuted his $10,000 negligence action. Daniel defended on the ground that his liability, if any, has been replaced by his obligation on his $5,000 promise.

What result on this defense?

A (A) Paul wins because the promise to pay $5,000 was void from the outset.
B (B) Paul wins because, after Daniel repudiated his promise, Paul had the option to sue on that promise or on the original claim.
33. **Original fact pattern:** Daniel and Paul were involved in an automobile accident. Paul sued Daniel for $10,000 alleging that Daniel was negligent. Daniel's liability depends on whether he had the green light at the time of the accident. Each party claims to have had the green light. Of the two other witnesses, one says that Paul had the green light. Before trial, Daniel offered Paul $5,000 to settle all claims arising from the accident. Paul accepted the offer.

Assume that after Daniel promised to pay $5,000, Paul dismissed the negligence suit. Paul's witness then admits to Daniel that he lied, and that the traffic light was green in Daniel's favor. Paul did not know that the witness had lied. Daniel refused to pay Paul and Paul sued Daniel for $5,000.

**What result?**

A (A) Daniel wins because his promise was a mere executory accord.

B (B) Daniel wins because the new evidence shows there was no consideration for Daniel's promise to pay $5,000.

C (C) Paul wins because the settlement was an accord and satisfaction.

D (D) Paul wins because he did not know the witness was lying when he accepted Daniel's offer.

34. **Original fact pattern:** Daniel and Paul were involved in an automobile accident. Paul sued Daniel for $10,000 alleging that Daniel was negligent. Daniel's liability depends on whether he had the green light at the time of the accident. Each party claims to have had the green light. Of the two other witnesses, one says that Paul had the green light. Before trial, Daniel offered Paul $5,000 to settle all claims arising from the accident. Paul accepted the offer.
Assume that after Daniel promised to pay the $5,000, Paul dismissed the negligence suit. Daniel was unable to pay the $5,000 and Paul threatened to sue Daniel. Upon learning these facts, Ted told Paul: "Daniel is an old friend of mine. If you will not sue him, I will pay you $5,000." Paul said: "Okay," and did not file suit against Daniel. A week later, Ted repudiated his promise to Paul. Paul sued Ted for $5,000.

What result?

A (A) Ted wins because there was no consideration for his promise.
B (B) Ted wins because Paul must sue Daniel before he can sue Ted.
C (C) Paul wins because his agreement to forebear suing Daniel is sufficient consideration for Ted's promise.
D (D) Paul wins because Ted's friendship with Daniel is sufficient consideration for Ted's promise.

35.

Original fact pattern: Daniel and Paul were involved in an automobile accident. Paul sued Daniel for $10,000 alleging that Daniel was negligent. Daniel's liability depends on whether he had the green light at the time of the accident. Each party claims to have had the green light. Of the two other witnesses, one says that Paul had the green light. Before trial, Daniel offered Paul $5,000 to settle all claims arising from the accident. Paul accepted the offer.

Assume the same facts as in question 34, except that Ted defended on the ground of the Statute of Frauds.

What result on this defense?

A (A) Ted wins because his promise was to pay an amount in excess of $500 and was not evidenced by a writing signed by Ted.
B (B) Ted wins because his promise was to pay the debt of another and was not evidenced by a writing signed by Ted.
C (C) Paul wins because Ted's promise was not one required to be evidenced by a writing signed by Ted.
D (D) Paul wins because his forebearance to sue Daniel constituted part performance.