

Remedies

1. Which of the following statements is TRUE?

- A. A judge will always order specific performance if the defendant deliberately committed a breach of contract.
- B. Although the usual remedy for breach of contract is now damages, the courts historically awarded specific performance in most cases.
- C. The plaintiff usually has the option of receiving either damages or specific performance.
- D. The courts often prefer to award specific performance because business people are most concerned with money.
- E. none of the above

2. Expectation damages are “forward-looking”

- A. because they are intended to provide the plaintiff with the benefit that it expected to have after the contract was performed.
- B. only if the defendant actually expected to receive a specific profit at the time of entering into the contract.
- C. only if the plaintiff actually expected to receive a specific profit at the time of entering into the contract.
- D. because they are intended to provide the defendant with the benefit that it expected to have after the contract was performed.
- E. none of the above.

3. Chammiqie contractually agreed to sell a widget to Franz for \$10 000. Franz, however, later refused to accept delivery of the widget or complete the sale when he learned that the widget was really only worth \$7000. Which of the following statements is most likely TRUE?

- A. Chammiqie will receive expectation damages of \$17 000.
- B. Chammiqie will receive expectation damages of \$13 000.
- C. Chammiqie will receive expectation damages of \$10 000.
- D. Chammiqie will receive expectation damages of \$3000.
- E. none of the above

4. Cost of cure damages

- A. are intended to compensate the plaintiff for an intangible loss.
- B. are always a form of reliance damages.
- C. may not be available if the cost of cure is much greater than the loss of value.
- D. are always available if the defendant deliberately breached a contract.
- E. all of the above

5 . The concept of remoteness

- A. prevents the plaintiff from recovering compensation for losses that the defendant should have known were a possible result of a breach of contract.
- B. is based on information that the plaintiff possesses at the time of trial.
- C. is based on a principle of fairness.
- D. determines whether or not the defendant's breach in fact caused the plaintiff to suffer a loss.
- E. all of the above

6. On February 14, Perry contractually agreed to sell 10 000 shares in XYZ Ltd to Georgina. He was required to deliver the shares to her on March 1 and she was required to pay the purchase price of \$20 000 one day later. On February 21, Georgina agreed to sell those same shares to Nick. Under the terms of that contract, Georgina was required to deliver the shares to Nick by March 8 and he was required to pay \$30 000 to her on the same day. On March 1, Perry refused to deliver the shares to Georgina. As a result, she breached her contract with Nick. Which of the following statements is TRUE?

- A. If the shares were really worth \$25 000, a court would probably order Georgina to pay \$5000 to Nick.
- B. A court could order Perry to pay \$20 000 to Georgina if he knew, or should have known, that a breach of contract might cause her to lose the ability to perform a re-sale.
- C. Georgina would be denied recovery if she could have reasonably mitigated her loss by purchasing shares from someone other than Perry between March 1 and March 8 for \$20 000 or less.
- D. A court would probably order Perry to pay \$30 000 to Georgina.
- E. none of the above

7 . Which of the following statements is TRUE?

- A. Expectation damages can be used to avoid the consequences of a bad bargain.
- B. The purpose of reliance damages is to indicate symbolically that the defendant breached the contract.
- C. If the defendant deliberately breached the contract, the plaintiff is usually entitled to both expectation damages and reliance damages.
- D. Reliance damages are not available at all if the plaintiff entered into a bad bargain.
- E. Restitution can be used to avoid the consequences of a bad bargain.

8 . Shandon contractually agreed to sell a shipment of computers to Janice. Paragraph 7 of the parties' contract stated that if Shandon failed to perform as promised, he would be required to pay \$25 000 to Janice. Which of the following statements is TRUE?

- A. Paragraph 7 of the parties' contract illustrates the concept of punitive damages.
- B. Paragraph 7 of the parties' contract may illustrate the concept of a penalty.
- C. Paragraph 7 of the parties' contract illustrates the concept of nominal damages.
- D. Paragraph 7 of the parties' contract may illustrate the concept of an exclusion clause.
- E. none of the above

9 . Perry has sued Jane for specific performance of a contract. Which of the following statements is TRUE?

- A. Perry will certainly be entitled to specific performance if he is a child.
- B. A court will not award specific performance in a way that requires Jane to perform personal services for Perry.
- C. Specific performance will certainly be awarded if the contract required Jane to sell a particular piece of land to Perry.
- D. A court certainly will not award specific performance to Perry if Jane proves that monetary damages would be an inadequate remedy for him.
- E. all of the above

10 . Rosa has sued Lothar for unjust enrichment. Which of the following statements is TRUE?

- A. Rosa must prove that Lothar suffered a corresponding deprivation.
- B. Rosa must prove that there was a juristic reason for the enrichment.
- C. Rosa will receive the remedy of restitution if her claim is successful.
- D. Rosa must prove that she received an enrichment.
- E. all of the above

11. A power plant spews out large amounts of pollution on neighboring houses and farms. After the neighbors bring suit, the court issues an injunction ordering the factory to provide the neighbors with masks that they can wear when the pollution is particularly bad. This injunction is best characterized as

- a. prophylactic
- b. preventive
- c. prohibitory
- d. restorative

12. One day while Linda is away from home, her neighbor Ed notices smoke coming from her garage. He runs over and puts out the fire with his fire extinguisher. Linda, who had set the fire herself to collect the insurance money, is annoyed that her scheme failed and refuses Ed's request that she buy him another fire extinguisher. If Ed sues, the court will likely grant Ed

- a. an injunction mandating Linda provide a new extinguisher
- b. restitution in the amount of the fire extinguisher
- c. restitution for the value of the fire extinguisher and Ed's time

d. a constructive trust

13. Which argument against granting punitive damages against a private company is LEAST likely to be effective in a suit by one plaintiff in a mass tort or product liability case?

- a. compensatory damages (including pain and suffering) are often sufficient to deter further wrongdoing
- b. because there are multiple plaintiffs, the first to sue will likely receive large punitive damage awards and later plaintiffs may get little
- c. the manufacturer, to a certain extent, can pass the costs of a punitive damage award on to the consumer
- d. punitive damages violate the Eight Amendment
- e. punitive damages are often a large windfall to the plaintiff

14. Betty embezzles \$5000 from a bank where she works. She uses all the money to buy a 1985 Harley Davidson motorcycle. She later trades it at a Harley shop for a 1986 Harley, which is newer but in somewhat worse condition, (no money changes hands). Harleys now go up in value. The 1985 Harley is worth \$7000 and Betty's 1986 Harley is now worth \$6000. What is the bank's best option, based on current law, and assuming no punitive damages are available?

- a. an equitable lien on the 1985 Harley
- b. an equitable lien on the 1986 Harley
- c. a suit for conversion
- d. a constructive trust on the 1985 Harley
- e. a constructive trust on the 1986 Harley

15. Which of the following equitable defenses is MOST likely to be applied to an action at law?

- a. estoppel
- b. unconscionability
- c. laches
- d. unclean hands

16. The husband in a divorce action tries to sneak a real pistol into a courtroom during divorce proceedings with his wife. He is caught by marshals at the front entrance to the courthouse, where they are operating a metal detector. The marshals escort the husband into the judge's courtroom on the second floor, where the judge summarily sentences him to prison for three years. Under the modern approach, the sentence is

- a. valid, but only if the judge had jurisdiction over the divorce action
- b. valid, because this is criminal contempt
- c. valid only if court was in session, in which case the husband's act would be an obstruction of justice
- d. invalid, because this is indirect contempt
- e. invalid, because this is criminal contempt

17. Hal is severely injured in an automobile accident. He is 25 years old at the time. Doctors estimate that he will need medical care for the rest of his life. At today's rates,

they estimate that the care will cost \$10,000 per year. In order to adequately compensate Hal, Kristol, who negligently ran into him, should be assessed damages in the amount of

- \$10,000 per year for the duration of Hal's life expectancy
- The same as (a), but reduced to present value
- The same as (a), but adjusted for inflation and reduced to present value
- nothing, because the amount of damages is not reasonably certain
- nothing, because the fact of damages is not reasonably certain

18. Mike contracts to buy a house from Terry for \$100,000. Mike then spends \$500 for a contractor's inspection. For reasons beyond her control, Terry cannot convey good title to the property, so the deal falls through and Mike sues. By the time of judgment, it would cost Mike \$103,000 to buy an equivalent house. Under the American rule, Mike will probably get

- specific performance
- \$500 for the inspection
- \$3000 for the contract/market differential
- b and c only
- a and b only

19. Candy is a contestant in the Miss Loyola contest, which has a total purse of \$10,000. She is one of five finalists. Unbeknownst to the organizers, she is in reality a feminist who finds these spectacles degrading to women. During the final round, a swimsuit competition, she appears on stage wearing large slabs of beef at appropriate places on her body, along with a banner declaring. "To you guys I'm just a slab of meat." She is quickly disqualified and escorted off stage. Assume that she can successfully sue the contest organizers for breach of contract. As a remedy, a court operating under the American rule will likely

- invalidate the contest and order it to be completed again
- grant Candy her expectation: the full amount of the prize (\$10,000)
- give Candy nothing because any damages would be speculative
- give Candy one-fifth of the prize (\$2000)
- permit expert testimony on the probability that Candy would have won and multiply the total prize times this probability

20. An evidentiary hearing will be provided on a request for injunctive relief if

- There is any factual dispute
- The parties both agree to the hearing
- There is a sharp factual dispute where the credibility of the witnesses may be in issue
- There is time to impanel a jury before the moving party suffers irreparable harm