

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

- 1) Where parties to a contract are mistaken about the existence of an essential fact, this type of mistake is classified as:

- A) a mutual mistake.
- B) a unilateral mistake.
- C) a mistake regarding the nature of the contract document.
- D) a common mistake.

Answer: D

- 2) Where there is a common mistake, both parties are mistaken about a fact that is:

- A) is common knowledge in their trade or business.
- B) recognised by the common law.
- C) essential to the contract.
- D) commonly accepted as based on opinion instead of clear evidence.

Answer: C

- 3) Where the parties to a contract misunderstand each other regarding the details of a fact that is essential to the contract, this type of mistake is classified as:

- A) a mutual mistake.
- B) a unilateral mistake.
- C) a mistake regarding the nature of the contract document.
- D) a common mistake.

Answer: A

- 4) Under common law, if both parties to a contract are mistaken about the quality or value of the subject matter of the contract, the most likely result is that:

- A) the contract is void *ab initio*.
- B) there has been a mistake about the nature of the contract document.
- C) there has been a bilateral distortive mistake.
- D) the contract remains valid.

Answer: D

- 5) If both parties to a contract misunderstand each other regarding an essential fact the contract is:

- A) void because of mutual mistake.
- B) voidable because of unilateral mistake regarding the identity of one party.
- C) void because of unilateral mistake.
- D) void because of common mistake.

Answer: A

- 6) Where one party is mistaken about a term of the contract and the other party is aware of the mistake but does nothing to correct it, the result is that:

- A) the parties have never been in genuine agreement.
- B) there has been a unilateral mistake.
- C) the contract is usually void.
- D) all of the above apply.

Answer: D

- 7) Mori advertised to sell his scuba diving equipment. A person who resembled Tom Cruise and spoke with an American accent came to Mori's house and convinced Mori that he was the actor. Mori accepted a cheque for the equipment. Five days later, when the cheque proved to be a forgery, Mori contacted the police. They discovered that the fake Tom Cruise had sold the equipment to an innocent third party two days after obtaining it from Mori. Under common law, the most likely result is that:
- A) Mori's only chance for compensation is to sue the fake Tom Cruise, if he can be found.
  - B) the contract between Mori and the fake Tom Cruise is voidable.
  - C) The innocent third party has the right to gain good title to the goods.
  - D) all of above are true.

Answer: D

- 8) *Non est factum* is a defence used by persons who want to void a contract. In plain English, the term means:
- A) 'this is not a factor' - the mistake should not be considered in this legal action.
  - B) 'this is not my deed' - the document I signed was fundamentally different from the one I thought I was signing.
  - C) 'this is not a fact' - I am not responsible for this mistake.
  - D) 'not in my right mind' - my judgment was affected by a foreign substance which prevented a true meeting of the minds.

Answer: B

- 9) A partially blind elderly lady is tricked into signing a contract for expensive repairs to the roof of her house. She believed she was signing an approval for the roof to be inspected. Under common law if she wants to avoid the contract she will have to rely on:
- A) mutual mistake.
  - B) *non potest credere* (not my correct belief).
  - C) *non est factum* (not my deed).
  - D) common mistake.

Answer: C

- 10) A contract is void if a person can prove that the agreement they signed was fundamentally different from the one they believed they were signing. Which of the following statements are true in relation to this rule?
- A) The person who signed the agreement must have been suffering from a severe disability such as blindness.
  - B) The person who signed the agreement must not have been careless or negligent.
  - C) This rule is also known as 'non est factum' meaning 'not my deed'.
  - D) All of the above.
  - E) A and B only.

Answer: D

- 11) The difference between innocent misrepresentation and fraudulent misrepresentation is that:
- A) innocent misrepresentation - no intention to mislead; fraudulent misrepresentation - intention to mislead.
  - B) innocent misrepresentation - no intention to mislead; fraudulent misrepresentation - breach of a duty of care.
  - C) innocent misrepresentation - reckless indifference to telling the truth; fraudulent misrepresentation - deliberate conduct to mislead.
  - D) innocent misrepresentation - no intention to mislead; fraudulent misrepresentation - partial intention to mislead.

Answer: A

12) Under common law, the tests that a plaintiff must satisfy in a fraudulent misrepresentation action include:

- A) the innocent party suffered loss as a result of the representation.
- B) the representor was recklessly indifferent about the truthfulness of the representation.
- C) the representor failed to issue a disclaimer.
- D) all of the above.
- E) A and B only.

Answer: E

13) Persons who have been induced (persuaded) to enter a contract by an innocent misrepresentation often prefer to sue for negligent misstatement. The advantage of an action for negligent misstatement is that:

- A) there is no need to prove that the statement was false.
- B) there is no need to prove that the plaintiff suffered a loss because of the statement.
- C) the remedy is rescission only.
- D) damages are available.

Answer: D

14) A was persuaded to buy B's exercise equipment because of fraudulent misrepresentations by B. This contract is most likely to be

- A) an illegal contract.
- B) a unilateral contract.
- C) a void contract.
- D) a voidable contract.

Answer: D

15) In *Barton v Armstrong*, it was proved that Armstrong had made death threats against Barton. Consequently, the High Court held that contracts Barton had entered into with Armstrong were void on the grounds of duress.

The court also held that:

- A) violence, or the threat of violence, must be directed at the person who enters a contract, not at a near relative or close friend.
- B) it is acceptable to use economic duress to pressure someone into entering a contract
- C) a contract will be void even if duress was not the only reason the 'innocent' party entered the contract.
- D) a contract cannot be voided on the grounds of duress unless violence, or the threat of violence, was the major reason the plaintiff entered the contract.

Answer: C

16) A entered into a contract with B when she was under the undue influence of B. The common law view is that A has not:

- A) given consideration for the benefits obtained under the contract.
- B) given genuine consent to the contract.
- C) intended to enter the contract.
- D) understood all the terms of the contract.

Answer: B

17) Under common law, if one party enters a contract because of duress the contract is:

- A) valid.
- B) voidable.
- C) illegal.
- D) void.

Answer: B

- 18) In an action for undue influence, defendants may be obliged to prove they did not obtain a benefit by exploiting their special relationship with the plaintiff. In which of the following relationships does the law presume that this special relationship exists?
- A) Doctor and patient.
  - B) Editor and author.
  - C) Brother and sister.
  - D) Coach and athlete.
  - E) All of the above.

Answer: A

- 19) In which of these relationships is there a presumption that undue influence exists?
- A) Solicitor and client.
  - B) Employer and employee.
  - C) Tax Agent and client.
  - D) Aunt and niece.
  - E) All of the above

Answer: A

- 20) In *Allcard v Skinner*, the court held that a former sister in the Church of England could not recover gifts she had passed to the church as a result of undue influence because:
- A) the plaintiff had not taken action within a reasonable time.
  - B) there is no recognised fiduciary relationship between a religious adviser and devotee.
  - C) the plaintiff had genuinely consented at the time the gifts were made.
  - D) the Church had satisfactorily discharged its burden of proof under the presumption of benefit rule.

Answer: A

- 21) In *Commercial Bank v Amadio*, the High Court held that a loan guarantee signed by two Italian-born parents with limited business experience and no independent legal advice was not valid because the bank had:
- A) used undue influence.
  - B) used economic duress.
  - C) engaged in unconscionable conduct.
  - D) made fraudulent misrepresentations.
  - E) committed all of the above.

Answer: C

- 22) Which of the following statements is not true concerning unconscionable conduct by a party to a contract?
- A) Unconscionable conduct is prohibited under the Australian Consumer Law.
  - B) One of the questions a court will ask when determining unconscionable conduct is: was one of the parties a trained solicitor or accountant?
  - C) Under the *Contracts Review Act of 1980 (NSW)* a court may order an injunction or specific performance to correct unconscionable conduct.
  - D) Under common law an unconscionable contract may be voidable.

Answer: B

- 23) The *NSW Contracts Review Act* does not apply to contracts that involve:
- A) agreements with professionals, such as solicitors and doctors.
  - B) consumer purchases.
  - C) farming agreements.
  - D) all of the above.

Answer: D

24) Which of the following types of mistakes is most likely to result in a voidable contract?

- A) A common mistake
- B) A unilateral mistake where the parties met 'face-to-face'.
- C) A mutual mistake where parties did not meet 'face to face'.
- D) A mutual mistake where the parties met face-to-face.

Answer: B