

Exam

Name _____

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

1) Contracts that have a serious unlawful purpose are usually classified as:

- A) voidable. B) criminal. C) illegal. D) unconscionable.

Answer: A

2) Which of the following is an example of a contract which is probably illegal at common law?

- A) Bill sells cigarettes to someone with lung cancer.
B) Bill arranges to transport milk across the border from Victoria to New South Wales.
C) Bill arranges to buy a news agency business and has a clause in the contract which restricts the seller from carrying on the same business in Sydney for 5 years.
D) Bill donates \$4000 to a charity to get an award in the Australia Day Honours list.

Answer: D

3) In the case of *Parkinson v College of Ambulance*, the court ruled that:

- A) as the agreement promoted public corruption Mr Parkinson had to serve a gaol sentence.
B) both parties had to pay a fine.
C) Mr Parkinson could not recover his 'donation'.
D) because neither party intended to act fraudulently the College had to make reasonable attempts to arrange Mr Parkinson's knighthood.
E) the College of Ambulance had to return the 'donation' it had received for arranging a knighthood.

Answer: C

4) A contract which is made for the purpose of defrauding a public authority of taxation would be classified as:

- A) void at common law. B) illegal at common law.
C) illegal by statute. D) void by statute.

Answer: B

5) Ben and Lenny agreed that Lenny would receive 25% of the value of Ben's deceased grandmother's estate for providing false evidence that Ben was entitled to the estate. Ben succeeded but refused to pay Lenny his 25%. If Lenny tried to sue Ben the result would probably be:

- A) Ben could enforce his rights under the contract but Lenny could not.
B) Neither Ben nor Lenny could enforce their rights.
C) Ben would have to pay Lenny the agreed 25% share.
D) Both Ben and Lenny could enforce their rights if they paid the necessary fine.

Answer: B

6) Contracts are void under common law if they act as an unreasonable restraint of trade because these types of contracts:

- A) discourage enterprise and deprive the community of competition.
B) are prohibited by the constitution.
C) do not recognise the unequal bargaining power of the individuals.
D) have all of the above faults.

Answer: A

- 7) A court is likely to find that a restraint of trade clause in a contract of employment is void if the clause:
- A) was probably agreed to because of the employer's superior bargaining power
 - B) does not protect the legitimate interests of the employee.
 - C) is harsh or unfair.
 - D) falls into one or more of the above categories

Answer: D

- 8) Which of the following issues do the courts consider when determining the validity of a restraint of trade clause in a contract for the sale of a business?
- A) The extent and duration of the restraint.
 - B) The price paid for the business.
 - C) Whether legal advice was obtained before the contract was made.
 - D) All of the above

Answer: A

- 9) When a court has to decide whether a restraint of trade clause is reasonable it does not consider:
- A) the defendant's capacity to pay damages.
 - B) the duration (length of time).
 - C) the type of trade or business.
 - D) the geographical area.

Answer: A

- 10) When Jill began working as an electrician for Bob she signed a contract that prohibited her from commencing her own electrical business for 10 years from the date she left his employment. Two years after leaving Bob, Jill started her own business that competes with Bob. If Bob took action against Jill a court would probably rule that:
- A) Jill is in breach. She should close down her business or pay damages.
 - B) Jill is not in breach. The contract of employment had no effect once she stopped working for Bob.
 - C) the clause was an unreasonable attempt to restrict competition, and therefore cannot be enforced.
 - D) the clause was unreasonable but it is binding because Jill signed the contract.

Answer: C

- 11) The main precedent established in *Schroeder v Macaulay [1974]* was:
- A) if a party uses its superior bargaining position to include unreasonable and unfair restraints in a contract of employment, the restraint clauses will be void.
 - B) post-employment restraint clauses on senior managers are too wide and specific to be valid.
 - C) a worldwide restraint on an armaments dealer who had sold his business was not an unreasonable restraint of trade.
 - D) if one party breaks its promise to another and the innocent party will suffer loss, the guilty party is liable even though there was no restraint of trade clause or consideration in the contract.

Answer: A

- 12) In *Nordenfelt v Maxim-Nordenfelt Guns and Ammunition Co* the court held that:
- A) both restraints were unreasonable because they were too restrictive.
 - B) both restraints were reasonable and therefore the contract was valid.
 - C) one restraint was reasonable to protect the company but the other restraint was unreasonable because it was too restrictive.
 - D) the restraints had been properly disclosed and therefore the contract was valid.

Answer: C

13) The purpose of a valid restraint of trade clause in a contract for the sale of a business is:

- A) to allow other traders to become aware of the change in ownership.
- B) to ensure the public knows of the change in ownership of the business.
- C) to set an area and a time limit in which the buyer can start another business.
- D) to reasonably protect the goodwill of the business.
- E) all of the above purposes.

Answer: D

14) A contract for the sale of business often includes several alternative restraint of trade clauses, such as 'for three years and five kilometres' or 'two years and three kilometres' etc. The buyer inserts these alternatives because:

- A) courts cannot alter the wording of a restraint of trade clause.
- B) courts have the power to choose the most reasonable clause and to 'sever' (cut) the others.
- C) courts require this type of contract to offer at least two alternative restraint of trade clauses.
- D) all of the above are correct.
- E) A & B only are correct.

Answer: E

15) Which of the following types of restraint of trade clauses are likely to be ruled invalid?

- A) 'If you leave our employment you agree you will not set up a rival business within 15 kilometres of our business address. This restriction applies for five years from when you leave.' The employer runs a hairdresser business and the employee is a newly qualified hairdresser.
- B) 'If you leave our employment you agree you will not work for a rival business in any capacity relating to the business of producing or selling cars within Australia or New Zealand. This restriction applies for three years from when you leave.' The employer is a car manufacturer and the employee is their national sales manager.
- C) 'The seller of a business will not do anything related to that business anywhere in the world for 20 years.' The buyer is purchasing an IT business that has a worldwide monopoly.
- D) All of the above
- E) A and B only.

Answer: E

16) Which of the following statutes gives the courts greater power to correct contracts that involve unreasonable restraints of trade?

- A) *The Income Tax Assessment Act.*
- B) *The Competition and Consumer Act.*
- C) *The Fair Trading Act.*
- D) *The Frustrated Contracts Act.*

Answer: B

17) Which types of contracts are illegal and unenforceable from the time they are made, no matter what the parties intended when they entered into the contracts?

- A) Contracts that involve illegal gambling.
- B) Contracts that involve tax avoidance.
- C) Contracts that involve unreasonable restraint of trade clauses in employment contracts.
- D) All of the above.

Answer: A

- 18) Which of the following statutes or common law rules allows a court to sever (cut out) an unreasonable restraint of trade clause from a contract?
- A) The *Competition and Consumer Act 2010*.
 - B) The contract can 'stand alone' (is valid) without the restraint of trade clause
 - C) The *NSW Restraints of Trade Act, 1976*
 - D) All of the above.
 - E) A and B only.

Answer: D