

Supplemental Questions**CPA-02212 Type1 M/C A-D Corr Ans: A PM R 5-99**

133. CPA-02212 May 90 #11 Page 10

To satisfy the consideration requirement for a valid contract, the consideration exchanged by the parties must be:

- a. Legally sufficient.
- b. Payable in legal tender.
- c. Simultaneously paid and received.
- d. Of the same economic value.

CPA-02212 Explanation

Choice "a" is correct. Consideration to be binding must be "legally sufficient." Some of the more common examples of consideration include money, promise, acting, not acting, etc.

Choice "b" is incorrect. There is no requirement that all consideration be payable in legal tender.

Choice "c" is incorrect. Consideration does not have to be simultaneously paid and received.

Choice "d" is incorrect. Consideration need not have the same economic value. It merely needs to be bargained for.

CPA-02217 Type1 M/C A-D Corr Ans: B PM R 5-99

134. CPA-02217 May 90 #12 Page 7

On September 27, Summers sent Fox a letter offering to sell Fox a vacation home for \$150,000. On October 2, Fox replied by mail agreeing to buy the home for \$145,000. Summers did **not** reply to Fox. Do Fox and Summers have a binding contract?

- a. No, because Fox failed to sign and return Summers' letter.
- b. No, because Fox's letter was a counteroffer.
- c. Yes, because Summers' offer was validly accepted.
- d. Yes, because Summers' silence is an implied acceptance of Fox's letter.

CPA-02217 Explanation

Choice "b" is correct. The \$145,000 response by Fox was a counteroffer, which acts like a rejection of the original \$150,000 offer. Counteroffers are effective when received by the offeror.

Choice "a" is incorrect, since Fox's response was a counteroffer and not an acceptance. Had Fox mailed a valid acceptance at the \$150,000 price there would have been an "acceptance on dispatch." For a valid acceptance there is no requirement that the offeree sign the offeror's offer.

Choice "c" is incorrect, since there was no acceptance of the offer but a counteroffer.

Choice "d" is incorrect, since the response from Fox was a counteroffer (rejection + new offer). The offeror (Summers) was not obligated to respond.

CPA-02219 Type1 M/C A-D Corr Ans: C PM R 5-99

135. CPA-02219 May 90 #13 Page 9

On November 1, Yost sent a telegram to Zen offering to sell a rare vase. The offer required that Zen's acceptance telegram be sent on or before 5:00 P.M. on November 2. On November 2, at 3:00 P.M., Zen sent an acceptance by overnight mail. It did not reach Yost until November 5. Yost refused to complete the sale to Zen. Is there an enforceable contract?

- a. Yes, because the acceptance was made within the time specified.
- b. Yes, because the acceptance was effective when sent.
- c. No, because Zen did not accept by telegram.
- d. No, because the offer required receipt of the acceptance within the time specified.

CPA-02219 Explanation

Choice "c" is correct. There is no enforceable contract here because the offeror specified that the offeree accept by telegram and the offeree did not reply by telegram but used a slower method for accepting (overnight mail).

Choice "a", since the method of acceptance used by the offeree was not what the offeror requested. There is not a valid acceptance.

Choice "b", since to be effective when sent would require that the offeree use a telegram prior to 5:00 p.m. on November 2nd.

Choice "d", since the offer required a timely mailing of a telegram acceptance and not actual receipt.

CPA-02222 Type1 M/C A-D Corr Ans: D PM R 5-99

136. CPA-02222 May 90 #14 Page 8

Opal offered, in writing, to sell Larkin a parcel of land for \$300,000. If Opal dies, the offer will:

- Terminate prior to Larkin's acceptance only if Larkin received notice of Opal's death.
- Remain open for a reasonable period of time after Opal's death.
- Automatically terminate despite Larkin's prior acceptance.
- Automatically terminate prior to Larkin's acceptance.

CPA-02222 Explanation

Choice "d" is correct. The death of an offeror prior to acceptance terminates the offer by operation of law without notice to the offeree.

Choice "a" is incorrect, because notice is not necessary for an offer to terminate by operation of law.

Choice "b" is incorrect, because the offer terminated by operation of law upon Opal's death.

Choice "c" is incorrect, because if the offeree accepts prior to the offeror's death, the offer cannot be revoked because a contract was formed.

CPA-02231 Type1 M/C A-D Corr Ans: B PM R 5-99

137. CPA-02231 May 90 #17 Page 16

Payne entered into a written agreement to sell a parcel of land to Stevens. At the time the agreement was executed, Payne had consumed alcoholic beverages. Payne's ability to understand the nature and terms of the contract was not impaired. Stevens did not believe that Payne was intoxicated. The contract is:

- Void as a matter of law.
- Legally binding on both parties.
- Voidable at Payne's option.
- Voidable at Steven's option.

CPA-02231 Explanation

Choice "b" is correct. This agreement is valid and enforceable since the offeror's ability to understand the consequences of his acts was not impaired by the consumption of alcohol.

Choice "a" is incorrect, since the defense of intoxication renders an agreement "voidable." To be a valid defense the party at the disadvantage must be incapable of understanding the consequences of his/her actions.

Choices "c" and "d" are incorrect. The contract is binding and fully enforceable and therefore not voidable at anyone's option.

CPA-02254 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R 5-99**

~~138. CPA-02254 May 90 #19 Page 25~~

~~Union Bank lent \$200,000 to Wagner. Union required Wagner to obtain a life insurance policy naming Union as beneficiary. While the loan was outstanding, Wagner stopped paying the premiums on the policy. Union paid the premiums, adding the amounts paid to Wagner's loan. Wagner died and the insurance company refused to pay the policy proceeds to Union. Union may:~~

- ~~a. Recover the policy proceeds because it is a creditor beneficiary.~~
- ~~b. Recover the policy proceeds because it is a donee beneficiary.~~
- ~~c. Not recover the policy proceeds because it is not in privity of contract with the insurance company.~~
- ~~d. Not recover the policy proceeds because it is only an incidental beneficiary.~~

CPA-02254 **Explanation**

~~Choice "a" is correct. Union Bank has extended credit to Wagner while requiring that Wagner secure a life insurance policy with Union named as the beneficiary. Union becomes a third party creditor beneficiary.~~

~~Choice "b" is incorrect, since there is no evidence here of a "gift," rather, there is a creditor-debtor relationship.~~

~~Choice "c" is incorrect, since a third party (creditor) beneficiary creates an enforceable agreement.~~

~~Choice "d" is incorrect, since Union Bank is a creditor beneficiary they are specifically intended and not merely "incidental."~~

CPA-02262 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R 5-99**

139. CPA-02262 May 90 #20 Page 17

With regard to an agreement for the sale of real estate, the Statute of Frauds:

- a. Does not require that the agreement be signed by all parties.
- b. Does not apply if the value of the real estate is less than \$500.
- c. Requires that the entire agreement be in a single writing.
- d. Requires that the purchase price be fair and adequate in relation to the value of the real estate.

CPA-02262 **Explanation**

Choice "a" is correct. The statute of frauds does not require that an agreement be signed by all parties, merely the party to be charged. Where signatures are missing it may result in a contract not being enforceable against that party.

Choice "b" is incorrect. The \$500 rule concerns sale of goods and not real estate.

Choice "c" is incorrect. There is no such rule. The contract could be made up of a series of writings, that when taken together form a written contract.

Choice "d" is incorrect. There is no such rule. The statute of frauds is concerned with the subject (nature) of written contracts and not with the price.

CPA-02266 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R-5-99**

~~140. CPA-02266 May 90 #22 Page 25~~

~~On August 1, Neptune Fisheries contracted in writing with West Markets to deliver to West 3,000 pounds of lobsters at \$4.00 a pound. Delivery of the lobsters was due October 1 with payment due November 1. On August 4, Neptune entered into a contract with Deep Sea Lobster Farms which provided as follows: "Neptune Fisheries assigns all the rights under the contract with West Markets dated August 1 to Deep Sea Lobster Farms." The best interpretation of the August 4 contract would be that it was:~~

- ~~a. Only an assignment of rights by Neptune.
b. Only a delegation of duties by Neptune.
c. An assignment of rights and a delegation of duties by Neptune.
d. An unenforceable third-party beneficiary contract.~~

CPA-02266 **Explanation**

Choice "c" is correct. Neptune fisheries has assigned its rights (to receive payment) and also delegated its duties (to deliver).

Choices "a" and "b" are incorrect, since this is both an assignment of rights and a delegation of duties.

Note: Be careful when reviewing answers that contain absolute (exclusive) (all-inclusive) terms such as "only," "never," "always," etc.

Choice "d" is incorrect. This is not a third-party beneficiary contract.

CPA-02268 **Type1 M/C** **A-D** **Corr Ans: B** **PM** **R 5-99**

141. CPA-02268 May 90 #23 Page 15

Paco Corp., a building contractor, offered to sell Preston several pieces of used construction equipment. Preston was engaged in the business of buying and selling equipment. Paco's written offer had been prepared by a secretary who typed the total price as \$10,900, rather than \$109,000, which was the approximate fair market value of the equipment. Preston, on receipt of the offer, immediately accepted it. Paco learned of the error in the offer and refused to deliver the equipment to Preston unless Preston agreed to pay \$109,000. Preston has sued Paco for breach of contract. Which of the following statements is correct?

- Paco will not be liable because there has been a mutual mistake of fact.
- Paco will be able to rescind the contract because Preston should have known that the price was erroneous.
- Preston will prevail because Paco is a merchant.
- The contract between Paco and Preston is void because the price set forth in the offer is substantially less than the equipment's fair market value.

CPA-02268 **Explanation**

Choice "b" is correct. A one-sided mistake (unilateral) does not make a contract voidable unless the other side knows, or should have known, of the mistake. Here, the mistake is both obvious and certainly substantial.

Choice "a" is incorrect. The mistake is unilateral, not mutual.

Choice "c" is incorrect. No such rule! The fact that the offeror is a merchant does not prevent him/her from claiming a mistake as a defense.

Choice "d" is incorrect. The agreement is "voidable" and not "void."

CPA-02272 **Type1 M/C** **A-D** **Corr Ans: D** **PM** **R-5-99**

~~142. CPA-02272 May 90 #24 Page 24~~

~~Rice contracted with Locke to build an oil refinery for Locke. The contract provided that Rice was to use United pipe fittings. Rice did not do so. United learned of the contract and, anticipating the order, manufactured additional fittings. United sued Locke and Rice. United is:~~

- ~~a. Entitled to recover from Rice only, because Rice breached the contract.~~
- ~~b. Entitled to recover from either Locke or Rice because it detrimentally relied on the contract.~~
- ~~c. Not entitled to recover because it is a donee beneficiary.~~
- ~~d. Not entitled to recover because it is an incidental beneficiary.~~

CPA-02272 **Explanation**

~~Choice "d" is correct. United is an "incidental third party beneficiary" and has no enforceable rights under the contract between Rice and Locke since they did not intend to benefit United.~~

~~Choices "a", "b", and "c" are incorrect, because United is an incidental third party, not a donee beneficiary nor a creditor beneficiary.~~

CPA-02275 **Type1 M/C** **A-D** **Corr Ans: D** **PM** **R-5-99**

~~143. CPA-02275 May 90 #25 Page 19~~

~~Wren purchased a factory from First Federal Realty. Wren paid 20% at the closing and gave a note for the balance secured by a 20-year mortgage. Five years later, Wren found it increasingly difficult to make payments on the note and defaulted. First Federal threatened to accelerate the loan and foreclose if Wren continued in default. First Federal told Wren to make payment or obtain an acceptable third party to assume the obligation. Wren offered the land to Moss, Inc. for \$10,000 less than the equity Wren had in the property. This was acceptable to First Federal and at the closing Moss paid the arrearage, assumed the mortgage and note, and had title transferred to its name. First Federal released Wren. The transaction in question is a(an):~~

- ~~a. Purchase of land subject to a mortgage.~~
- ~~b. Assignment and delegation.~~
- ~~c. Third party beneficiary contract.~~
- ~~d. Novation.~~

CPA-02275 **Explanation**

~~Choice "d" is correct. In a novation, a new contract substitutes a new party for an old party in an existing contract. That is what happened here.~~

~~Choice "a" is incorrect. As will be discussed in Regulation 2 (Property), a person who takes "subject to" a mortgage does not agree to be personally liable on the mortgage. Here, Moss agreed to be personally liable, making this an assumption of a mortgage rather than taking subject to a mortgage.~~

~~Choice "b" is incorrect. In an assignment/delegation situation, the assignor (Wren) continues to be liable on the obligation. Here, Moss was substituted for Wren when Moss assumed the mortgage, so Wren has no rights or duties under the original contract.~~

~~Choice "c" is incorrect. The transaction is best described as a novation because there is a substitution of parties.~~

CPA-02276 Type1 M/C A-D Corr Ans: C PM R 5-99

144. CPA-02276 Nov 90 #23 Page 14

For a purchaser of land to avoid a contract with the seller based on duress, it must be shown that the seller's improper threats:

- Constituted a crime or tort.
- Would have induced a reasonably prudent person to assent to the contract.
- Actually induced the purchaser to assent to the contract.
- Were made with the intent to influence the purchaser.

CPA-02276 Explanation

Choice "c" is correct. The defense of duress focuses on how the wrongdoer's actions actually affected the other party.

Choice "a" is incorrect, since the defense of duress does not require that the improper threats constitute a "crime" or "tort."

Choice "b" is incorrect, since the defense of duress focuses on the actual party involved and not on a "reasonable person" test.

Choice "d" is incorrect. The defense of duress does not require that the threats be made with the intent to influence a party.

~~**CPA-02281 Type1 M/C A-D Corr Ans: B PM R 5-99**~~~~145. CPA-02281 Nov 90 #25 Page 23~~~~Parc hired Glaze to remodel and furnish an office suite. Glaze submitted plans that Parc approved. After completing all the necessary construction and painting, Glaze purchased minor accessories that Parc rejected because they did not conform to the plans. Parc refused to allow Glaze to complete the project and refused to pay Glaze any part of the contract price. Glaze sued for the value of the work performed. Which of the following statements is correct?~~

- ~~- Glaze will lose because Glaze breached the contract by not completing performance.
 - Glaze will win because Glaze substantially performed and Parc prevented complete performance.
 - Glaze will lose because Glaze materially breached the contract by buying the accessories.
 - Glaze will win because Parc committed anticipatory breach.~~

~~**CPA-02281 Explanation**~~~~Choice "b" is correct. Under the doctrine of "substantial performance" (frequently used in construction contracts) the party who performs in a substantial way (with only minor defects) is entitled to be paid for the value of their work less damages for the minor defects.~~~~Choice "a" is incorrect. Glaze can recover under the doctrine of substantial performance in spite of the breach.~~~~Choice "c" is incorrect. A "minor" defect does not result in a material breach.~~~~Choice "d" is incorrect. Glaze wins because he/she has substantially performed his/her part of the contract and not because Parc decided to reject the performance.~~

CPA-02287 Type1 M/C A-D Corr Ans: A PM R 5-99

146. CPA-02287 May 91 #12 Page 5

Carson Corp., a retail chain, asked Alto Construction to fix a broken window at one of Carson's stores. Alto offered to make the repairs within three days at a price to be agreed on after the work was completed. A contract based on Alto's offer would fail because of indefiniteness as to the:

- a. Price involved.
- b. Nature of the subject matter.
- c. Parties to the contract.
- d. Time for performance.

CPA-02287 Explanation

Choice "a" is correct. The offer must be definite and certain. An offer will fail for being indefinite where the price is either not set or at least objectively determined. ("A price to be agreed upon in the future" is not definite.)

Choice "b" is incorrect, since the nature of the subject matter (repair a window) can be objectively determined.

Choice "c" is incorrect, since it is clear who the parties to the contract are (Carson Corp. and Alto Construction).

Choice "d" is incorrect, since the time for performance can be determined (i.e., within 3 days).

CPA-02289 Type1 M/C A-D Corr Ans: D PM R 5-99

147. CPA-02289 May 91 #13 Page 16

On reaching majority, a minor may ratify a contract in any of the following ways, **except** by:

- a. Failing to disaffirm within a reasonable time after reaching majority.
- b. Orally ratifying the entire contract.
- c. Acting in a manner that amounts to ratification.
- d. Affirming, in writing, some of the terms of the contract.

CPA-02289 Explanation

Choice "d" is correct. The term "ratification" refers to the process by which a minor by his/her action or "inaction" legally accepts an entire contract after he/she reaches the age of majority. Accepting some of the terms is not "ratification."

Choice "a" is incorrect, since failing to disaffirm within a reasonable time after reaching majority is a way in which a minor may be held to have ratified a contract.

Choice "b" is incorrect, since orally ratifying the entire contract is a way in which a minor may be held to have ratified a contract.

Choice "c" is incorrect, since acting in a manner that amounts to ratification is a way in which a minor may be held to have ratified a contract.

CPA-02290 Type1 M/C A-D Corr Ans: D PM R 5-99

148. CPA-02290 May 91 #15 Page 16

In 1959, Dart bought an office building from Graco under a written contract signed only by Dart. In 1991, Dart discovered that Graco made certain false representations during their negotiations concerning the building's foundation. Dart could have reasonably discovered the foundation problems by 1965. Dart sued Graco claiming fraud in the formation of the contract. Which of the following statements is correct?

- The parol evidence rule will prevent the admission into evidence of proof concerning Dart's allegations.
- Dart will be able to rescind the contract because both parties did not sign it.
- Dart must prove that the alleged misrepresentations were part of the written contract because the contract involved real estate.
- The statute of limitations would likely prevent Dart from prevailing because of the length of time that has passed.

CPA-02290 Explanation

Choice "d" is correct. The statute of limitations on Dart's fraud claim will begin to run when Dart reasonably could have discovered the fraud (1965). The limitations period on most contracts claims generally varies from two to six years. Here, Dart waited about 26 years before bringing his claim, and the statute of limitations surely would have expired before he filed.

Choice "a" is incorrect. The parol evidence rule does not prevent the admission of evidence that would establish fraud.

Choice "b" is incorrect, since the contract was fully executed, it was enforceable.

Choice "c" is incorrect. No such rule. Dart would be permitted to prove the false representations outside of the writing. As noted above, the statute of limitations will prevent Dart from proceeding.

CPA-02291 Type1 M/C A-D Corr Ans: A PM R 5-99

149. CPA-02291 May 91 #16 Page 3

Kay, an art collector, promised Hammer, an art student, that if Hammer could obtain certain rare artifacts within two weeks, Kay would pay for Hammer's postgraduate education. At considerable effort and expense, Hammer obtained the specified artifacts within the two-week period. When Hammer requested payment, Kay refused. Kay claimed that there was no consideration for the promise. Hammer would prevail against Kay based on:

- Unilateral contract.
- Unjust enrichment.
- Public policy.
- Quasi contract.

CPA-02291 Explanation

Choice "a" is correct. Kay's promise created a unilateral contract since he was requesting an act. Since Hammer, the offeree, performed the act, he can enforce the promise.

Choices "b", "c", and "d" are incorrect. Since there is an enforceable contract, there is no need to enforce the promise under any other theory of law such as:

- Unjust enrichment
- Public policy
- Quasi contract

CPA-02292 **Type1 M/C** **A-D** **Corr Ans: B** **PM** **R 5-99**

150. CPA-02292 May 91 #17 Page 18

Bond and Spear orally agreed that Bond would buy a car from Spear for \$475. Bond paid Spear a \$100 deposit. The next day, Spear received an offer of \$575, the car's fair market value. Spear immediately notified Bond that Spear would not sell the car to Bond and returned Bond's \$100. If Bond sues Spear and Spear defends on the basis of statute of frauds, Bond will probably:

- a. Lose, because the agreement was for less than the fair market value of the car.
- b. Win, because the agreement was for less than \$500.
- c. Lose, because the agreement was not in writing and signed by Spear.
- d. Win, because Bond paid a deposit.

CPA-02292 **Explanation**

Choice "b" is correct. Under the Statute of Frauds, contracts for the sale of goods of \$500 or more must be evidenced by a writing. A car is goods, but the contract price here was \$475, so no writing was required.

Choice "a" is incorrect, because consideration does not have to be economically adequate; it merely needs to have legal sufficiency.

Choice "c" is incorrect, because the contract price was less than \$500. Thus, the statute of frauds does not apply.

Choice "d" is incorrect. The contract here is enforceable because the parties mutually exchanged promises. The deposit is irrelevant.

CPA-02293 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R 5-99**

151. CPA-02293 May 91 #18 Page 11

Dunne and Cook signed a contract requiring Cook to rebind 500 of Dunne's books at 80¢ per book. Later, Dunne requested, in good faith, that the price be reduced to 70¢ per book. Cook agreed orally to reduce the price to 70¢. Under the circumstances, the oral agreement is

- a. Enforceable, but proof of it is inadmissible into evidence.
- b. Enforceable, and proof of it is admissible into evidence.
- c. Unenforceable, because Dunne failed to give consideration, but proof of it is otherwise admissible into evidence.
- d. Unenforceable, due to the statute of frauds, and proof of it is inadmissible into evidence.

CPA-02293 **Explanation**

Choice "c" is correct. Since this contract is for services (rebinding books) the agreement is governed by the common law of contracts. Under the common law of contracts a contract modification is treated like a separate contract and requires consideration.

Choice "a" is incorrect. The parol evidence rule does not prohibit the introduction of evidence of modifications made after the contract has been made.

Choice "b" is incorrect. Per "c" this problem is governed by the common law of contracts.

Choice "d" is incorrect. The statute of frauds does not require contracts for services to be evidenced by a writing unless they cannot be performed within a year. The \$500 threshold relates to contracts for the sale of goods and was included here to trick you.

CPA-02294 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R 5-99**

152. CPA-02294 May 91 #21 Page 14

To prevail in a common law action for innocent misrepresentation, the plaintiff must prove:

- a. The defendant made the false statements with a reckless disregard for the truth.
- b. The misrepresentations were in writing.
- c. The misrepresentations concerned material facts.
- d. Reliance on the misrepresentations was the only factor inducing the plaintiff to enter into the contract.

CPA-02294 **Explanation**

Choice "c" is correct. Under the common law defense known as "innocent misrepresentation" most of the elements that must be established for fraud (except intent), including that the misrepresentation was of a material fact.

Note: Be very careful when selecting answers that use absolute terms such as "only," "never," "always."

Choice "a" is incorrect. Reckless disregard for the truth could help to establish fraud, but is not a requirement of innocent misrepresentation.

Choice "b" is incorrect, since the misrepresentation can be made orally or in writing.

Choice "d" is incorrect. There is no requirement that the misrepresentation be the only factor that the plaintiff relied on in entering the contract; it can be one of several factors.

~~CPA-02295~~ ~~Type1 M/C~~ ~~A-D~~ ~~Corr Ans: C~~ ~~PM~~ ~~R 5-99~~

~~153. CPA-02295 May 91 #22 Page 24~~

~~Graham contracted with the city of Harris to train and employ high school dropouts residing in Harris. Graham breached the contract. Long, a resident of Harris and a high school dropout, sued Graham for damages. Under the circumstances, Long will:~~

- ~~a. Win, because Long is a third-party beneficiary entitled to enforce the contract.~~
- ~~b. Win, because the intent of the contract was to confer a benefit on all high school dropouts residing in Harris.~~
- ~~c. Lose, because Long is merely an incidental beneficiary of the contract.~~
- ~~d. Lose, because Harris did not assign its contract rights to Long.~~

~~CPA-02295~~ ~~Explanation~~

~~Choice "c" is correct. Only intended third party beneficiaries can enforce a contract. To qualify as an intended third party beneficiary, there must be an intent to give a benefit directly to the third person. The contract here calls for Graham to hire and train drop outs. It would be unreasonable to assume that he would have to hire and train all drop outs. Therefore, the contract does not intend to directly benefit any particular drop out, so Long cannot qualify as an intended beneficiary. At best, Long is an incidental beneficiary and as such unable to enforce the contract between Graham and the city. For this reason choice "b" is incorrect.~~

~~Choice "a" is incorrect. Per the above discussion, Long is not an intended beneficiary.~~

~~Choice "d" is incorrect. The issue here is not whether there was an assignment but whether there was an intent to benefit the party through an enforceable third party beneficiary contract.~~

CPA-02296 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R-5-99**

~~154. CPA-02296 May 01 #23 Page 18~~

~~Maco Corp. contracted to sell 1,500 bushels of potatoes to LBC Chips. The contract did not refer to any specific supply source for the potatoes. Maco intended to deliver potatoes grown on its farms. An insect infestation ruined Maco's crop but not the crops of other growers in the area. Maco failed to deliver the potatoes to LBC. LBC sued Maco for breach of contract. Under the circumstances, Maco will:~~

- ~~a. Lose, because it could have purchased potatoes from other growers to deliver to LBC.~~
- ~~b. Lose, unless it can show that the purchase of substitute potatoes for delivery to LBC would make the contract unprofitable.~~
- ~~c. Win, because the infestation was an act of nature that could not have been anticipated by Maco.~~
- ~~d. Win, because both Maco and LBC are assumed to accept the risk of a crop failure.~~

CPA-02296 **Explanation**

~~Choice "a" is correct. Under the facts presented Maco did not contract to sell the crop from his land, but merely "1,500 bushels of potatoes." Therefore, Maco would be required to come up with substituted potatoes from another source. The theory of "impossibility of performance" would not apply here since "potatoes" are otherwise available to the seller.~~

~~Choice "b" is incorrect. There is no requirement that a contract be profitable to be enforceable.~~

~~Choice "c" is incorrect. The theory of "act of god" might be applicable but for the fact that the seller can obtain substituted goods elsewhere.~~

~~Choice "d" is incorrect. There are situations (impossibility of performance) in which a party can be excused from performing.~~

CPA-02297 **Type1 M/C** **A-D** **Corr Ans: B** **PM** **R-5-99**

~~155. CPA-02297 May 01 #24 Page 23~~

~~In general, a clause in a real estate contract entitling the seller to retain the purchaser's downpayment as liquidated damages if the purchaser fails to close the transaction, is enforceable:~~

- ~~a. In all cases, when the parties have a signed contract.~~
- ~~b. If the amount of the downpayment bears a reasonable relationship to the probable loss.~~
- ~~c. As a penalty, if the purchaser intentionally defaults.~~
- ~~d. Only when the seller cannot compel specific performance.~~

CPA-02297 **Explanation**

~~Choice "b" is correct. A clause in a contract that provides for liquidated damages will be enforceable if the amount of the damages clause bears a reasonable relationship to the probable loss. Liquidated damages clauses will not be enforced where they are so high as to constitute an unreasonable penalty.~~

~~Choice "a" is incorrect. The law does not recognize a liquidated damages clause in all cases. (again, watch out for all inclusive terms such as "all," "always," "never.")~~

~~Choice "c" is incorrect. To be enforceable, the liquidated damages clause must not be viewed as a penalty.~~

~~Choice "d" is incorrect. A liquidated damages clause may be enforced whether or not the remedy of specific performance is available. (A far out distractor designed to catch the uninformed.)~~

CPA-02300 Type1 M/C A-D Corr Ans: A PM R 5-99

156. CPA-02300 Nov 91 #21 Page 13

The intent, or scienter, element necessary to establish a cause of action for fraud will be met if the plaintiff can show that the:

- a. Defendant made a misrepresentation with a reckless disregard for the truth.
- b. Defendant made a false representation of fact.
- c. Plaintiff actually relied on the defendant's misrepresentation.
- d. Plaintiff justifiably relied on the defendant's misrepresentation.

CPA-02300 Explanation

Choice "a" is correct. A misrepresentation made with the reckless disregard for the truth will satisfy the "intent" or "scienter" element to prove fraud.

Choice "b" is incorrect. Intent will not be presumed from the mere fact that the defendant made a false representation.

Choice "c" is incorrect, since the element of reliance does not establish the intent element, even though it would be needed in a cause of action for fraud.

Choice "d" is incorrect, since the element of reliance (whether actual or justified) does not establish the intent element.

~~**CPA-02301 Type1 M/C A-D Corr Ans: B PM R 5-99**~~~~157. CPA-02301 Nov 91 #22 Page 23~~

~~Under common law and under the UCC Sales Article, a plaintiff who proves fraud in the formation of a contract may:~~

- ~~a. Elect to rescind the contract and need not return the consideration received from the other party.~~
- ~~b. Be entitled to rescind the contract and sue for damages resulting from the fraud.~~
- ~~c. Be entitled to punitive damages provided physical injuries resulted from the fraud.~~
- ~~d. Rescind the contract even if there was no reliance on the fraudulent statement.~~

~~**CPA-02301 Explanation**~~

~~Choice "b" is correct. Under common law and under article 2 of the UCC a plaintiff who establishes fraud in the formation of sales contract may act to rescind the contract and also seek to collect damages for the fraud.~~

~~Choice "a" is incorrect, since the election to rescind the contract would require that the plaintiff return the consideration received from the other party.~~

~~Choice "c" is incorrect, since the plaintiff need not prove physical injuries to recover punitive damages in a case of fraud.~~

~~Choice "d" is incorrect, since the plaintiff must establish reliance on the fraudulent statement.~~

CPA-02303 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R-5-99**

~~158. CPA-02303 Nov-91 #25 Page-19~~

~~On May 25, 1991, Smith contracted with Jackson to repair Smith's cabin cruiser. The work was to begin on May 31, 1991. On May 26, 1991, the boat, while docked at Smith's pier, was destroyed by arson. Which of the following statements is correct with regard to the contract?~~

- ~~a. Smith would not be liable to Jackson because of mutual mistake.~~
- ~~b. Smith would be liable to Jackson for the profit Jackson would have made under the contract.~~
- ~~c. Jackson would not be liable to Smith because performance by the parties would be impossible.~~
- ~~d. Jackson would be liable to repair another boat owned by Smith.~~

CPA-02303 **Explanation**

~~Choice "c" is correct. Performance of the May 25, 1991 contract has been made impossible due to the total destruction of the subject matter through no fault of either contracting party.~~

~~Choice "a" is incorrect. The defense of mutual mistake would not be applicable since the subject matter of the contract existed at the time the contract was entered into.~~

~~Choice "b" is incorrect. Since performance of the contract was impossible, damages will not be awarded to Jackson. The destruction of the subject matter was not the fault of Smith or Jackson.~~

~~Choice "d" is incorrect. No such rule! Destruction of the subject matter through no fault of either contracting party releases the parties of liability.~~

CPA-02307 **Type1 M/C** **A-D** **Corr Ans: D** **PM** **R-5-99**

~~159. CPA-02307 May-92 #33 Page-25~~

~~Egan contracted with Barton to buy Barton's business. The contract provided that Egan would pay the business debts Barton owed Ness and that the balance of the purchase price would be paid to Barton over a 10-year period. The contract also required Egan to take out a decreasing term life insurance policy naming Barton and Ness as beneficiaries to ensure that the amounts owed Barton and Ness would be paid if Egan died.~~

~~Which of the following would describe Ness' status under the contract and insurance policy?~~

- | | <i>Contract</i> | <i>Insurance policy</i> |
|---------------|---------------------------------|------------------------------------|
| a. | Donee beneficiary | Donee beneficiary |
| b. | Donee beneficiary | Creditor beneficiary |
| c. | Creditor beneficiary | Donee beneficiary |
| d. | Creditor beneficiary | Creditor beneficiary |

CPA-02307 **Explanation**

~~Choice "d" is correct. Since Ness has extended credit to Barton and since Barton has sold his business to Egan, with a contractual requirement that Egan pay Ness, Ness is a creditor beneficiary of both the contract and the insurance policy.~~

~~Choices "a", "b", and "c" are incorrect, per the above.~~

CPA-02308 Type1 M/C A-D Corr Ans: C PM R-5-99

160. CPA-02308 May 92 #34 Page 25

~~Egan contracted with Barton to buy Barton's business. The contract provided that Egan would pay the business debts Barton owed Ness and that the balance of the purchase price would be paid to Barton over a 10-year period. The contract also required Egan to take out a decreasing term life insurance policy naming Barton and Ness as beneficiaries to ensure that the amounts owed Barton and Ness would be paid if Egan died.~~

~~Barton's contract rights were assigned to Vim, and Egan was notified of the assignment. Despite the assignment, Egan continued making payments to Barton. Egan died before completing payment and Vim sued Barton for the insurance proceeds and the other payments on the purchase price received by Barton after the assignment. To which of the following is Vim entitled?~~

	<u>Payments on purchase price</u>	<u>Insurance proceeds</u>
a.	No	Yes
b.	No	No
c.	Yes	Yes
d.	Yes	No

CPA-02308 Explanation

~~Choice "c" is correct. Vim (assignee) is entitled to obtain the payments on the purchase price since Barton improperly accepted the purchase payments from Egan after the assignment. Vim is also entitled to receive the insurance proceeds since Vim was a creditor beneficiary of Barton's contract rights. Once notified of the assignment, Egan was obligated to make the payments to Vim.~~

~~Choices "a", "b", and "d" are incorrect, per the above.~~

CPA-02324 Type1 M/C A-D Corr Ans: B PM R 5-99

161. CPA-02324 Nov 92 #11 Page 9

On February 12, Harris sent Fresno a written offer to purchase Fresno's land. The offer included the following provision: "Acceptance of this offer must be by registered or certified mail, received by Harris no later than February 18 by 5:00 p.m. CST." On February 18, Fresno sent Harris a letter accepting the offer by private overnight delivery service. Harris received the letter on February 19. Which of the following statements is correct?

- A contract was formed on February 19.
- Fresno's letter constituted a counteroffer.
- Fresno's use of the overnight delivery service was an effective form of acceptance.
- A contract was formed on February 18 regardless of when Harris actually received Fresno's letter.

CPA-02324 Explanation

Choice "b" is correct. No contract was formed. The mailbox rule does not apply here because the offeror opted out of the rule by stating that the acceptance had to be received by a specific time. Since the attempted acceptance arrived late, it will be deemed a counteroffer.

Choice "a" is incorrect. There is no contract since the offeree's response was a counteroffer (rejection, by not responding in time, plus a new offer).

Choice "c" is incorrect. The offeree (Fresno) has not complied with the offeror's (Harris) requested method of acceptance.

Choice "d" is incorrect. The offeror was specific when he/she required that the acceptance must be received by the offeror by 5:00 PM CST by February 18.

~~CPA-02327 Type1 M/C A-D Corr Ans: A PM R-5-99~~

~~162. CPA-02327 Nov 92 #14 Page 19~~

~~Castle borrowed \$5,000 from Nelson and executed and delivered to Nelson a promissory note for \$5,000 due on April 30. On April 1 Castle offered, and Nelson accepted, \$4,000 in full satisfaction of the note. On May 15, Nelson demanded that Castle pay the \$1,000 balance on the note. Castle refused. If Nelson sued for the \$1,000 balance Castle would:~~

- ~~a. Win, because the acceptance by Nelson of the \$4,000 constituted an accord and satisfaction.~~
- ~~b. Win, because the debt was unliquidated.~~
- ~~c. Lose, because the amount of the note was not in dispute.~~
- ~~d. Lose, because no consideration was given to Nelson in exchange for accepting only \$4,000.~~

~~**CPA-02327 Explanation**~~

~~Choice "a" is correct. Nelson's acceptance of Castle's offer to pay a lesser amount on an earlier date constituted an accord and satisfaction. The "executed" accord and satisfaction results in a discharge of Castle's obligation to pay anything beyond the \$4,000. The earlier date constituted new consideration.~~

~~Choice "b" is incorrect. The debt is liquidated.~~

~~Choice "c" is incorrect. While the amount of the note was not in dispute Nelson accepted Castle's offer to pay a lesser sum (\$4,000) on an earlier date.~~

~~Choice "d" is incorrect. The consideration from Castle to Nelson was the payment of a lesser sum (\$4,000) on an earlier date.~~

~~CPA-02329 Type1 M/C A-D Corr Ans: D PM R 5-99~~

~~163. CPA-02329 Nov 92 #19 Page 16~~

~~The statute of limitations for an alleged breach of contract:~~

- ~~a. Does not apply if the contract was oral.~~
- ~~b. Requires that a lawsuit be commenced and a judgment rendered within a prescribed period of time.~~
- ~~c. Is determined on a case by case basis.~~
- ~~d. Generally commences on the date of the breach.~~

~~**CPA-02329 Explanation**~~

~~Choice "d" is correct. Generally speaking the statute of limitations commences on the date of the alleged breach. The statute of limitations refers to the time period in which the case must be filed. The time period varies from state to state depending on the type of case.~~

~~Choice "a" is incorrect, since the statute of limitations applies to all contracts (oral and written).~~

~~Choice "b" is incorrect, since the statute of limitations refers to the time period for filing the case and not to when a case might be heard or a judgment rendered.~~

~~Choice "c" is incorrect, since the statute of limitations is not determined on a case by case basis but rather by state law depending on the type of case.~~

~~CPA-02335 Type1 M/C A-D Corr Ans: D PM R 5-99~~

~~164. CPA-02335 Nov 97 #10 Page 26~~

~~Which of the following statements is(are) correct regarding a valid assignment?~~

- ~~I. An assignment of an interest in a sum of money must be in writing and must be supported by legally sufficient consideration.~~
- ~~II. An assignment of an insurance policy must be made to another party having an insurable interest in the property.~~
- ~~a. I only.~~
- ~~b. II only.~~
- ~~c. Both I and II.~~
- ~~d. Neither I nor II.~~

CPA-02335 Explanation

~~Choice "d" is correct. Neither I nor II.~~

~~Choice "I" is incorrect. An assignment of rights (in a contract) to another person may be oral or written and may be gratuitous.~~

~~Choice "II" is incorrect. For property insurance, the assignee need only have an insurable interest at the time of the loss.~~

~~Choices "a", "b", and "c" are incorrect, per above rule.~~

CPA-02338 Type1 M/C A-D Corr Ans: D PM R 5-99

165. CPA-02338 Nov 97 #11 Page 11

Which of the following statements is correct regarding the effect of the expiration of the period of the statute of limitations on a contract?

- a. Once the period of the statute of limitations has expired, the contract is void.
- b. The expiration of the period of the statute of limitations extinguishes the contract's underlying obligation.
- c. A cause of action barred by the statute of limitations may not be revived.
- d. The running of the statute of limitations bars access to judicial remedies.

CPA-02338 Explanation

Choice "d" is correct. The running of the statute of limitations bars access to judicial remedies.

Choice "a" is incorrect. Once the period of the statute of limitations has expired, a party cannot be sued, but the contract is valid.

Choice "b" is incorrect. The expiration of the period of the statute of limitations does not extinguish the contract's underlying obligation; it merely bars judicial elections to enforce the contract.

Choice "c" is incorrect. A cause of action barred by the statute of limitations may be revived.

CPA-02341 Type1 M/C A-D Corr Ans: A PM R 5-99

166. CPA-02341 Nov 89 #46 Page 29

Cookie Co. offered to sell Distrib Markets 20,000 pounds of cookies at \$1.00 per pound, subject to certain specified terms for delivery. Distrib replied in writing as follows:

"We accept your offer for 20,000 pounds of cookies at \$1.00 per pound, weighing scale to have valid city certificate."

Under the UCC:

- A contract was formed between the parties.
- A contract will be formed only if Cookie agrees to the weighing scale requirement.
- No contract was formed because Distrib included the weighing scale requirement in its reply.
- No contract was formed because Distrib's reply was a counteroffer.

CPA-02341 Explanation

Choice "a" is correct. The UCC does not follow the mirror image rule; instead, generally anything that looks like an acceptance will operate as an acceptance, even if it contains new terms. In such a case, a contract generally is formed even if the offeror fails to agree to the new terms. Thus, even though the acceptance contained an additional term regarding the weighing scale, it is an effective acceptance. Thus, choices "b", "c", and "d" are incorrect.

~~**CPA-02343 Type1 M/C A-D Corr Ans: A PM R 5-99**~~~~167. CPA-02343 Nov 89 #52 Page 41~~

~~Under the UCC Sales Article, if a buyer wrongfully rejects goods, the aggrieved seller may:~~

- | | <u>Resell the goods
and sue for damages</u> | <u>Cancel the
agreement</u> |
|----|--|--|
| a. | Yes | Yes |
| b. | Yes | No |
| c. | No | Yes |
| d. | No | No |

~~**CPA-02343 Explanation**~~

~~Choice "a" is correct. Yes - Yes.~~

~~Under the UCC Sales Article the seller's remedies upon the buyer's breach include:~~

- ~~Canceling the agreement and/or~~
- ~~Reselling the goods and recovering damages.~~

~~**CPA-02346 Type1 M/C A-D Corr Ans: C PM R 5-99**~~~~168. CPA-02346 May 90 #40 Page 31~~

~~To satisfy the UCC Statute of Frauds regarding the sale of goods, which of the following must generally be in writing?~~

- ~~Designation of the parties as buyer and seller.~~
- ~~Delivery terms.~~
- ~~Quantity of the goods.~~
- ~~Warranties to be made.~~

CPA-02346 Explanation

~~Choice "c" is correct. Under the UCC (Article 2) a written contract for the sale of goods must contain some indication of the quantity of the goods being sold.~~

~~Choice "a" is incorrect. A contract for the sale of goods does not require that there be a designation of the parties as buyer and seller in writing.~~

~~Choice "b" is incorrect. A contract for the sale of goods implies that delivery is at the seller's place of business unless otherwise provided. The place for delivery need not be stated in writing.~~

~~Choice "d" is incorrect. A contract for the sale of good implies the existence of certain warranties unless properly excluded.~~

CPA-02349 Type1 M/C A-D Corr Ans: A PM R 5-99

~~169. CPA-02349 May 90 #43 Page 36~~

~~An important factor in determining if an express warranty has been created is whether the:~~

- ~~a. Statements made by the seller became part of the basis of the bargain.~~
- ~~b. Sale was made by a merchant in the regular course of business.~~
- ~~c. Statements made by the seller were in writing.~~
- ~~d. Seller intended to create a warranty.~~

CPA-02349 Explanation

~~Choice "a" is correct. Any statement of fact or promise made by the seller that becomes part of the basis of the bargain creates an "express warranty."~~

~~Choice "b" is incorrect. Express warranties can be made by merchants and non-merchants alike.~~

~~Choice "c" is incorrect. Express warranties may be either written or oral.~~

~~Choice "d" is incorrect. The intent of the seller is not a factor in the creation of an express warranty.~~

CPA-02352 Type1 M/C A-D Corr Ans: D PM R 5-99

~~170. CPA-02352 May 90 #44 Page 33~~

~~Cey Corp. entered into a contract to sell parts to Deck, Ltd. The contract provided that the goods would be shipped "F.O.B. Cey's warehouse." Cey shipped parts different from those specified in the contract. Deck rejected the parts. A few hours after Deck informed Cey that the parts were rejected, they were destroyed by fire in Deck's warehouse. Cey believed that the parts were conforming to the contract. Which of the following statements is correct?~~

- ~~a. Regardless of whether the parts were conforming, Deck will bear the loss because the contract was a shipment contract.~~
- ~~b. If the parts were nonconforming, Deck had the right to reject them, but the risk of loss remains with Deck until Cey takes possession of the parts.~~
- ~~c. If the parts were conforming, risk of loss does not pass to Deck until a reasonable period of time after they are delivered to Deck.~~
- ~~d. If the parts were nonconforming, Cey will bear the risk of loss, even though the contract was a shipment contract.~~

CPA-02352 Explanation

~~Choice "d" is correct. Shipment of nonconforming goods constitutes a breach of contract. When there is a breach, risk of loss is generally borne by the breaching party no matter whether the contract is "shipment" or "destination." Therefore, "a" and "b" are incorrect.~~

~~Choice "c" is incorrect. If the goods were conforming, the risk of loss in a "shipment contract" would pass to the buyer as soon as the goods were placed in the hands of the carrier.~~

CPA-02357 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R-5-99**

~~171. CPA-02357 May 90 #46 Page 29~~

~~Jefferson Hardware ordered three hundred Ram hammers from Ajax Hardware. Ajax accepted the order in writing. On the final date allowed for delivery, Ajax discovered it did not have enough Ram hammers to fill the order. Instead, Ajax sent three hundred Strong hammers. Ajax stated on the invoice that the shipment was sent only as an accommodation. Which of the following statements is correct?~~

- ~~a. Ajax's note of accommodation cancels the contract between Jefferson and Ajax.~~
- ~~b. Jefferson's order can only be accepted by Ajax's shipment of the goods ordered.~~
- ~~c. Ajax's shipment of Strong hammers is a breach of contract.~~
- ~~d. Ajax's shipment of Strong hammers is a counteroffer and no contract exists between Jefferson and Ajax.~~

CPA-02357 **Explanation**

~~Choice "c" is correct. The examiners were trying to trick you here. Under the Sales Article, an offer can be accepted by shipment, and shipment of nonconforming goods can constitute both an acceptance and an immediate breach unless the accepting party states that the shipment was made only as an accommodation. But here, the contract was already formed it is not a case where shipment constitutes an acceptance of an offer, so the accommodation rule does not apply. Thus, the shipment of a different brand of hammers constitutes a breach of contract.~~

~~Choice "a" is incorrect. The seller's note of accommodation does not "cancel" the contract. It merely reflects a breach.~~

~~Choice "b" is incorrect. Under the Sales Article, an offer to buy goods generally can be accepted by either an acceptance, such as the letter here, or by shipment.~~

~~Choice "d" is incorrect. This would be correct if Ajax had not already accepted Jefferson's offer, because the shipment would have been considered an accommodation shipment. But because Ajax had already accepted Jefferson's offer, the shipment of nonconforming hammers constituted a breach.~~

CPA-02362 **Type1 M/C** **A-D** **Corr Ans: B** **PM** **R-5-99**

~~172. CPA-02362 May 90 #47 Page 42~~

~~On September 10, Bell Corp. entered into a contract to purchase 50 lamps from Glow Manufacturing. Bell prepaid 40% of the purchase price. Glow became insolvent on September 19 before segregating, in its inventory, the lamps to be delivered to Bell. Bell will **not** be able to recover the lamps because:~~

- ~~a. Bell is regarded as a merchant.~~
- ~~b. The lamps were not identified to the contract.~~
- ~~c. Glow became insolvent fewer than 10 days after receipt of Bell's prepayment.~~
- ~~d. Bell did not pay the full price at the time of purchase.~~

CPA-02362 **Explanation**

~~Choice "b" is correct. A buyer (Bell) may recover goods from an insolvent seller (Glow) if the goods are "identified to the contract" and the buyer made a payment within 10 days before insolvency. Although Bell made payment within 10 days before insolvency, the goods were *not* identified to the contract (i.e., segregated). Thus, Bell will not recover.~~

~~Choice "a" is incorrect. It makes no difference whether the buyer is a merchant or non-merchant.~~

~~Choice "c" is incorrect. If the goods would have been identified to the contract and Glow became insolvent fewer than 10 days after Bell's prepayment, Bell would have been able to recover.~~

~~Choice "d" is incorrect. Payment in full is not required at the time of purchase to recover goods from an insolvent seller.~~

CPA-02368 **Type1 M/C** **A-D** **Corr Ans: D** **PM** **R 5-99**

~~173. CPA-02368 May 90 #48 Page 42~~

~~Eagle Corporation solicited bids for various parts it uses in the manufacture of jet engines. Eagle received six offers and selected the offer of Sky Corporation. The written contract specified a price for 100,000 units, delivery on June 1 at Sky's plant, with payment on July 1. On June 1, Sky had completed a run. When Eagle's truck arrived to pick up the parts on June 1, Sky refused to deliver claiming the contract price was too low. Eagle was unable to cover in a reasonable time. Its production lines were in danger of shutdown because the parts were not delivered. Eagle would probably:~~

- ~~a. Have as its only remedy the right of replevin.~~
- ~~b. Have the right of replevin only if Eagle tendered the purchase price on June 1.~~
- ~~c. Have as its only remedy the right to recover dollar damages.~~
- ~~d. Have the right to obtain specific performance.~~

CPA-02368 **Explanation**

~~Choice "d" is correct. The buyer's (Eagle's) remedy would be to sue in specific performance for the object of the contract itself and not merely for money damages. Where the object of the contract is "unique" or "special" the buyer may sue for the object of the contract itself. Here, it appears that since Eagle "was unable to cover in a reasonable time" they must obtain the parts to mitigate their damages. The facts as presented do not suggest that the seller had a legitimate excuse for failing to perform.~~

~~Choice "a" is incorrect. The remedy of "replevin" could be available if the units Eagle ordered had been identified. However, replevin is not Eagle's only remedy. Instead, Eagle could sue for damages.~~

~~Choice "b" is incorrect. The contract here called for payment on July 1, so Eagle would not have to tender payment until then.~~

~~Choice "c" is incorrect. The buyer has the right to sue for the property itself in place of money damages (or may replevy the goods if they have been identified). As noted above the remedy of "specific performance" is available where the object of the contract is "unique" or "special" and the buyer is unable to cover.~~

CPA-02384 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R 5-99**

174. CPA-02384 Nov 90 #21 Page 30

Which of the following requires consideration to be binding on the parties?

- a. Material modification of a contract involving the sale of real estate.
- b. Ratification of a contract by a person after reaching the age of majority.
- c. A written promise signed by a merchant to keep an offer to sell goods open for 10 days.
- d. Material modification of a sale of goods contract under the UCC.

CPA-02384 **Explanation**

Choice "a" is correct. A common law contract (**not** Article 2 UCC) requires the element of consideration for any material change (modification) to the contract. A contract to sell real estate is governed by common law principles.

Choice "b" is incorrect. The process of ratification does not require consideration.

Choice "c" is incorrect. Under the firm offer rule a merchant's written offer to hold an offer open for 10 days needs no consideration to be binding.

Choice "d" is incorrect. Under Article 2 of the UCC (Sales Article) a sales contract may be modified without any additional consideration.

CPA-02388 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R-5-99**

~~175. CPA-02388 May 91 #49 Page 31~~

~~Under a contract governed by the UCC Sales Article, which of the following statements is correct?~~

- ~~a. Unless both the seller and the buyer are merchants, neither party is obligated to perform the contract in good faith.~~
- ~~b. The contract will not be enforceable if it fails to expressly specify a time and a place for delivery of the goods.~~
- ~~c. The seller may be excused from performance if the goods are accidentally destroyed before the risk of loss passes to the buyer.~~
- ~~d. If the price of the goods is less than \$500, the goods need not be identified to the contract for title to pass to the buyer.~~

CPA-02388 **Explanation**

~~Choice "c" is correct. Under Article 2 of the UCC the seller of goods may be excused from performance if the goods (subject matter of the contract) are accidentally destroyed before the risk of loss passes to the buyer and performance is thereby rendered impossible.~~

~~Choice "a" is incorrect since the UCC requires that all parties to a contract act in good faith.~~

~~Choice "b" is incorrect. In the absence of a place for delivery the UCC provides for the "seller's place" of business.~~

~~In the absence of a time for delivery the UCC provides a reasonable time.~~

~~Choice "d" is incorrect. In all cases the goods must be identified to the contract for title to pass to the buyer.~~

CPA-02393 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R-5-99**

~~176. CPA-02393 May 91 #50 Page 37~~

~~Under the UCC Sales Article, the implied warranty of merchantability:~~

- ~~a. May be disclaimed by a seller's oral statement that mentions merchantability.~~
- ~~b. Arises only in contracts involving a merchant seller and a merchant buyer.~~
- ~~c. Is breached if the goods are not fit for all purposes for which the buyer intends to use the goods.~~
- ~~d. Must be part of the basis of the bargain to be binding on the seller.~~

CPA-02393 **Explanation**

~~Choice "a" is correct. Under Article 2 of the UCC the implied warranty of merchantability may be disclaimed in a number of ways. One such way is by the use of an oral statement that mentions merchantability.~~

~~Choice "b" is incorrect. Under the UCC the implied warranty of merchantability can only be given where the seller is a "merchant" of goods. The buyer may be a merchant or a non-merchant.~~

~~Choice "c" is incorrect. This answer concerns the implied warranty of "fitness" and not merchantability.~~

~~Choice "d" is incorrect. An "express" warranty must be part of the basis of the bargain; this is not true of the "implied" warranties.~~

CPA-02397 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R-5-99**

~~177. CPA-02397 May 91 #51 Page 31~~

~~Yost Corp., a computer manufacturer, contracted to sell 15 computers to Ivor Corp., a computer retailer. The contract specified that delivery was to be made by truck to Ivor's warehouse. Instead, Yost shipped the computers by rail. When Ivor claimed that Yost did not comply with the contract, Yost told Ivor that there had been a trucker's strike when the goods were shipped. Ivor refused to pay for the computers. Under these circumstances, Ivor:~~

- ~~a. Is obligated to pay for the computers because Yost made a valid substituted performance.~~
- ~~b. Is obligated to pay for the computers because title to them passed to Ivor when Ivor received them.~~
- ~~c. May return the computers and avoid paying for them because of the way Yost delivered them.~~
- ~~d. May return the computers and avoid paying for them because the contract was void under the theory of commercial impracticability.~~

CPA-02397 **Explanation**

~~Choice "a" is correct. Under the UCC, if the parties agreed that delivery would be made in a certain way and the agreed method becomes impossible, the seller must arrange for other commercially reasonable transportation and the buyer must accept. Therefore, "c" is incorrect. Impracticability is not a defense, so "d" is incorrect too.~~

~~Choice "b" is incorrect. Under the UCC title to the goods passes to the buyer when the goods are delivered to a carrier (shipment or destination contracts).~~

CPA-02403 **Type1 M/C** **A-D** **Corr Ans: D** **PM** **R-5-99**

~~178. CPA-02403 May 91 #52 Page 41~~

~~Gray Fabricating Co. and Pine Corp. agreed orally that Pine would custom manufacture a processor for Gray at a price of \$80,000. After Pine completed the work at a cost of \$60,000, Gray notified Pine that the processor was no longer needed. Pine is holding the processor and has requested payment from Gray. Pine has been unable to resell the processor for any price. Pine incurred storage fees of \$1,000. If Gray refuses to pay Pine and Pine sues Gray, the most Pine will be entitled to recover is:~~

- ~~a. \$60,000~~
- ~~b. \$61,000~~
- ~~c. \$80,000~~
- ~~d. \$81,000~~

CPA-02403 **Explanation**

~~Choice "d" is correct. \$81,000.~~

~~Where the buyer of specially manufactured goods breaches the contract and the seller is unable to resell the goods, the seller may recover as damages the contract price (\$80,000) plus reasonable incidental expenses (\$1,000).~~

~~Note: An oral agreement in excess of \$500 is binding in the sale of "special order goods" as an exception to the Statute of Frauds.~~

~~Choices "a", "b", and "c" are incorrect. The injured seller is entitled to recover reasonable incidental expenses in addition to lost profits.~~

~~CPA-02406 Type1 M/C A-D Corr Ans: D PM R 5-99~~

~~179. CPA-02406 May 91 #54 Page 32~~

~~West purchased a painting from Noll, who is not in the business of selling art. Noll tendered delivery of the painting after receiving payment in full from West. West informed Noll that West would be unable to take possession of the painting until later that day. Thieves stole the painting before West returned. The risk of loss:~~

- ~~a. Remained with Noll, because West had not yet received the painting.~~
- ~~b. Remained with Noll, because the parties agreed on a later time of delivery.~~
- ~~c. Passed to West at the time the contract was formed and payment was made.~~
- ~~d. Passed to West on Noll's tender of delivery.~~

~~**CPA-02406 Explanation**~~

~~Choice "d" is correct. Under the UCC risk of loss rules, the risk of loss passes to the buyer on tender of delivery where the seller is a non-merchant who is making the delivery.~~

~~Choices "a" and "b" are incorrect. The risk of loss passed to the buyer upon tender of delivery, despite the fact that the buyer stated that he would return later to pick the goods up.~~

~~Choice "c" is incorrect. Under the UCC the risk of loss passes to the buyer on tender of delivery and not when the contract was formed.~~

~~CPA-02408 Type1 M/C A-D Corr Ans: A PM R 5-99~~

~~180. CPA-02408 May 91 #55 Page 33~~

~~Lazur Corp. agreed to purchase 100 radios from Wizard Suppliers, Inc. Wizard is a wholesaler of small home appliances and Lazur is an appliance retailer. The contract required Wizard to ship the radios to Lazur by common carrier, "F.O.B. Wizard Suppliers, Inc. Loading Dock."~~

~~Risk of loss for the radios during shipment to Lazur would be on:~~

- ~~a. Lazur, because the risk of loss passes when the radios are delivered to the carrier.~~
- ~~b. Wizard, because the risk of loss passes only when Lazur receives the radios.~~
- ~~c. Wizard, because it is a shipment contract.~~
- ~~d. Lazur, because title to the radios passes to Lazur at the time of shipment.~~

~~**CPA-02408 Explanation**~~

~~Choice "a" is correct. Under the UCC risk of loss rules the risk of loss passes to the buyer when the goods are delivered to the carrier where the contract is a "shipment contract" (F.O.B. seller's loading dock).~~

~~Choice "b" is incorrect, per "a" above.~~

~~Choice "c" is incorrect. While this is a shipment contract the UCC provides that the risk passes to the buyer (Lazur) when the goods are delivered to the carrier.~~

~~Choice "d" is incorrect. The risk of loss issue is separate from the title issue.~~

CPA-02411 Type1 M/C A-D Corr Ans: A PM R-5-99~~181. CPA-02411 May 01 #56 Page 32~~~~Lazur Corp. agreed to purchase 100 radios from Wizard Suppliers, Inc. Wizard is a wholesaler of small home appliances and Lazur is an appliance retailer. The contract required Wizard to ship the radios to Lazur by common carrier, "F.O.B. Wizard Suppliers, Inc. Loading Dock."~~~~Under the UCC Sales Article:~~

- ~~a. Title to the radios passes to Lazur at the time they are delivered to the carrier, even if the goods are nonconforming.~~
- ~~b. Lazur must inspect the radios at the time of delivery or waive any defects and the right to sue for breach of contract.~~
- ~~c. Wizard must pay the freight expense associated with the shipment of the radios to Lazur.~~
- ~~d. Lazur would have the right to reject any shipment if Wizard fails to notify Lazur that the goods have been shipped.~~

CPA-02411 Explanation~~Choice "a" is correct. Under the UCC pertaining to shipment contracts, title to the goods passes to the buyer when the goods are delivered to a common carrier. Under the UCC pertaining to destination contracts, title to goods only passes when the goods are tendered at that destination, (not when they are delivered to the common carrier). This rule applies even when the goods are nonconforming goods.~~~~Choice "b" is incorrect. The UCC provides that the buyer of goods may inspect the goods within a reasonable period of time after the goods are delivered.~~~~Choice "c" is incorrect. The contract "F.O.B. seller's loading dock" requires that the buyer (Lazur) pay the freight expense.~~~~Choice "d" is incorrect. The UCC does not require that the seller notify the buyer that the goods were shipped.~~**CPA-02420 Type1 M/C A-D Corr Ans: D PM R-5-99**~~182. CPA-02420 May 02 #53 Page 34~~~~On May 2, Lace Corp., an appliance wholesaler, offered to sell appliances worth \$3,000 to Parco, Inc., a household appliance retailer. The offer was signed by Lace's president, and provided that it would not be withdrawn before June 1. It also included the shipping terms: "F.O.B. Parco's warehouse." On May 29, Parco mailed an acceptance of Lace's offer. Lace received the acceptance on June 2.~~~~If Lace inadvertently ships the wrong appliances to Parco and Parco rejects them two days after receipt, title to the goods will:~~

- ~~a. Pass to Parco when they are identified to the contract.~~
- ~~b. Pass to Parco when they are shipped.~~
- ~~c. Remain with Parco until the goods are returned to Lace.~~
- ~~d. Revert to Lace when they are rejected by Parco.~~

CPA-02420 Explanation~~Choice "d" is correct. Once the buyer has rightfully rejected the non-conforming goods, the title to the goods reverts back to the seller.~~~~Choice "a" is incorrect. Title to goods does not pass when the goods are identified to the contract.~~~~Choice "b" is incorrect. Title to the goods does not pass when the goods are shipped.~~~~Choice "c" is incorrect. The title to the goods does not remain with the buyer, it reverts back to the seller.~~

CPA-02455 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R-5-99**

~~183. CPA-02455 May 92 #54 Page 30~~

~~On May 2, Mason orally contracted with Acme Appliances to buy for \$480 a washer and dryer for household use. Mason and the Acme salesperson agreed that delivery would be made on July 2. On May 5, Mason telephoned Acme and requested that the delivery date be moved to June 2. The Acme salesperson agreed with this request. On June 2, Acme failed to deliver the washer and dryer to Mason because of an inventory shortage. Acme advised Mason that it would deliver the appliances on July 2 as originally agreed. Mason believes that Acme has breached its agreement with Mason. Acme contends that its agreement to deliver on June 2 was not binding. Acme's contention is:~~

- ~~a. Correct, because Mason is not a merchant and was buying the appliances for household use.~~
- ~~b. Correct, because the agreement to change the delivery date was not in writing.~~
- ~~c. Incorrect, because the agreement to change the delivery date was binding.~~
- ~~d. Incorrect, because Acme's agreement to change the delivery date is a firm offer that cannot be withdrawn by Acme.~~

CPA-02455 **Explanation**

~~Choice "c" is correct. Under the UCC, a contract involving "goods" may be modified without the need for additional (new) consideration. Here, the subsequent modification is binding.~~

~~Choice "a" is incorrect. No such rule! Modifications of sales contracts are binding whether or not the parties are merchants.~~

~~Choice "b" is incorrect. Since the contract as modified continues to be outside the Statute of Frauds (< \$500) a writing is not required.~~

~~Choice "d" is incorrect. The agreement to change the delivery date is a modification of an existing contract and not a firm offer.~~

CPA-02458 **Type1 M/C** **A-D** **Corr Ans: B** **PM** **R-5-99**

~~184. CPA-02458 May 92 #55 Page 37~~

~~Which of the following conditions must be met for an implied warranty of fitness for a particular purpose to arise in connection with a sale of goods?~~

- ~~I. The warranty must be in writing.~~
 - ~~II. The seller must know that the buyer was relying on the seller in selecting the goods.~~
- ~~a. I only.~~
 - ~~b. II only.~~
 - ~~c. Both I and II.~~
 - ~~d. Neither I nor II.~~

CPA-02458 **Explanation**

~~Choice "b" is correct. II only. The implied warranty of fitness is created where the seller of goods knows at the time of the sale that the buyer is relying on the seller selecting the goods. The implied warranty of fitness requires that the seller know of the buyer's intended use of the goods.~~

~~The implied warranty of fitness need not be in writing.~~

~~Choices "a", "c", and "d" are incorrect, per above.~~

CPA-02462 Type1 M/C A-D Corr Ans: A PM R-5-99

~~185. CPA-02462 May 92 #56 Page 41~~

~~On February 15, Mazur Corp. contracted to sell 1,000 bushels of wheat to Good Bread, Inc. at \$6.00 per bushel with delivery to be made on June 23. On June 1, Good advised Mazur that it would not accept or pay for the wheat. On June 2, Mazur sold the wheat to another customer at the market price of \$5.00 per bushel. Mazur had advised Good that it intended to resell the wheat. Which of the following statements is correct?~~

- ~~a. Mazur can successfully sue Good for the difference between the resale price and the contract price.~~
- ~~b. Mazur can resell the wheat only after June 23.~~
- ~~c. Good can retract its anticipatory breach at any time before June 23.~~
- ~~d. Good can successfully sue Mazur for specific performance.~~

CPA-02462 Explanation

~~Choice "a" is correct. Based on the facts presented, the seller's remedy would be to sue the buyer for the difference between the contract price (\$6 per bushel) and the sales price (\$5 per bushel).~~

~~Choice "b" is incorrect. The buyer has breached the contract early, the seller can immediately act on the breach. (Early breach is known as anticipatory breach.)~~

~~Choice "c" is incorrect. The buyer cannot retract its anticipatory breach once the seller notifies the buyer that he/she is relying (acting) on the breach.~~

~~Choice "d" is incorrect. Since the goods are not unique or special, the remedy known as specific performance would not be available. Additionally, since Good (buyer) is the one who breached the contract he/she cannot successfully sue.~~

CPA-02472 Type1 M/C A-D Corr Ans: A PM R-5-99

~~186. CPA-02472 May 92 #57 Page 37~~

~~Under the UCC Sales Article, an action for breach of the implied warranty of merchantability by a party who sustains personal injuries may be successful against the seller of the product only when~~

- ~~a. The seller is a merchant of the product involved.~~
- ~~b. An action based on negligence can also be successfully maintained.~~
- ~~c. The injured party is in privity of contract with the seller.~~
- ~~d. An action based on strict liability in tort can also be successfully maintained.~~

CPA-02472 Explanation

~~Choice "a" is correct. The implied warranty of "merchantability" can only arise where the seller of goods is a merchant with respect to the goods involved.~~

~~Choice "b" is incorrect. The implied warranty of merchantability is separate and apart from the legal theory known as negligence.~~

~~Choice "c" is incorrect. The implied warranty of merchantability does not require that the injured party (plaintiff) be in privity of contract with the seller (defendant). For example, it can extend to members of the purchaser's household who are injured due to breach of the warranty.~~

~~Choice "d" is incorrect. The implied warranty of merchantability is separate and apart from the legal theory known as strict liability in tort.~~

~~CPA-02476 Type1 M/C A-D Corr Ans: B PM R 5-99~~

~~187. CPA-02476 May 92 #59 Page 41~~

~~Under the UCC Sales Article, a seller will be entitled to recover the full contract price from the buyer when the:~~

- ~~a. Goods are destroyed after title passed to the buyer.~~
- ~~b. Goods are destroyed while risk of loss is with the buyer.~~
- ~~c. Buyer revokes its acceptance of the goods.~~
- ~~d. Buyer rejects some of the goods.~~

~~CPA-02476 Explanation~~

~~Choice "b" is correct. Under the UCC a seller is entitled to recover the full contract price from the buyer when the goods are destroyed while the risk of loss is with the buyer.~~

~~Choice "a" is incorrect. The buyer can assume the risk of loss long before title passes to the buyer. "Risk of loss", rather than title, determines who recovers.~~

~~Choice "c" is incorrect. The seller will not be able to recover the full contract price where the buyer properly revokes its acceptance of the goods.~~

~~Choice "d" is incorrect. The seller may not be able to recover the full contract price where the buyer has rejected some of the goods.~~

~~CPA-02481 Type1 M/C A-D Corr Ans: A PM R 5-99~~

~~188. CPA-02481 May 92 #60 Page 36~~

~~Which of the following factors result(s) in an express warranty with respect to a sale of goods?~~

- ~~I. The seller's description of the goods as part of the basis of the bargain.~~
 - ~~II. The seller selects goods knowing the buyer's intended use.~~
- ~~a. I only.~~
 - ~~b. II only.~~
 - ~~c. Both I and II.~~
 - ~~d. Neither I nor II.~~

~~CPA-02481 Explanation~~

~~Choice "a" is correct. An "express" warranty is created by the seller's description of the goods which forms part of the basis of the bargain between the parties. The "express" warranty does not require that the seller select goods knowing the buyer's intended use.~~

~~Choices "b", "c", and "d" are incorrect, per the above.~~

~~CPA-02489 Type1 M/C A-D Corr Ans: C PM R 5-99~~

~~189. CPA-02489 May 95 #42 Page 28~~

~~Under the Sales Article of the UCC, when a written offer has been made without specifying a means of acceptance but providing that the offer will only remain open for ten days, which of the following statements represent(s) a valid acceptance of the offer?~~

- ~~I. An acceptance sent by regular mail the day before the ten-day period expires that reaches the offeror on the eleventh day.~~
 - ~~II. An acceptance faxed the day before the ten-day period expires that reached the offeror on the eleventh day, due to a malfunction of the offeror's printer.~~
- ~~a. I only.~~
 - ~~b. II only.~~
 - ~~c. Both I and II.~~
 - ~~d. Neither I nor II.~~

CPA-02489 Explanation

Choice "c" is correct. Both I and II.

Under the UCC Sales Article, if the offer does not state that acceptance is effective upon receipt and does not specify the means of acceptance, the offeree may invoke the "mailbox rule" and make the acceptance effective upon dispatch by using any reasonable means of acceptance. Both regular mail and facsimile transmission appear to be reasonable means of acceptance. Since the mailbox rule was properly invoked, the acceptances are effective upon dispatch; it is irrelevant that they were received on the eleventh day.

CPA-02503 Type1 M/C A-D Corr Ans: D PM R 5-99

~~190. CPA-02503 Nov 97 #13 Page 36~~

~~Under the Sales Article of the UCC, most goods sold by merchants are covered by certain warranties. An example of an express warranty would be a warranty of:~~

- ~~a. Usage of trade.~~
- ~~b. Fitness for a particular purpose.~~
- ~~c. Merchantability.~~
- ~~d. Conformity of goods to sample.~~

CPA-02503 Explanation

~~Choice "d" is correct. A warranty of conformity of goods to sample is an example of an express warranty promised by the seller.~~

~~Implied warranties are created by the UCC and include:~~

- ~~• usage of trade.~~
- ~~• fitness for a particular purpose.~~
- ~~• merchantability.~~
- ~~• transfer of good title.~~
- ~~• free from undisclosed liens.~~

~~Choices "a", "b", and "c" are incorrect, per the above rule.~~

CPA-02509 Type1 M/C A-D Corr Ans: B PM R 5-99

~~191. CPA-02509 Nov 97 #14 Page 34~~

~~Under the Sales Article of the UCC, unless a contract provides otherwise, before title to goods can pass from a seller to a buyer, the goods must be:~~

- ~~a. Tendered to the buyer.~~
- ~~b. Identified to the contract.~~
- ~~c. Accepted by the buyer.~~
- ~~d. Paid for.~~

CPA-02509 Explanation

~~Choice "b" is correct. Under the Sales Article of the UCC, if the parties do not agree to a time that title will pass, it will pass on delivery. Before goods may be delivered, they must be identified as the ones that will pass under the contract. Thus, choices "a" and "c" are incorrect.~~

~~Choice "d" is incorrect. Goods are commonly paid for after title to the goods has passed from a seller to a buyer.~~

CPA-02515 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R-5-99**

~~192. CPA-02515 R98 #11 Page 41~~

~~Under the Sales Article of the UCC, the remedies available to a seller when a buyer breaches a contract for the sale of goods may include:~~

	<i>The right to resell goods identified to the contract</i>	<i>The right to stop a carrier from delivering the goods</i>
a.	Yes	Yes
b.	Yes	No
c.	No	Yes
d.	No	No

CPA-02515 **Explanation**

~~Choice "a" is correct. "Yes-Yes." Under the Sales Article of the UCC, a seller has the right to resell goods identified to the contract and stop the carrier from delivering the goods when a buyer breaches the contract.~~

CPA-02519 **Type1 M/C** **A-D** **Corr Ans: A** **PM** **R-5-99**

~~193. CPA-02519 R98 #12 Page 31~~

~~Under the Sales Article of the UCC and the United Nations Convention for the International Sale of Goods (CISG), absent specific terms in an international sales shipment contract, when will risk of loss pass to the buyer?~~

- ~~a. When the goods are delivered to the first carrier for transmission to the buyer.~~
- ~~b. When the goods are tendered to the buyer.~~
- ~~c. At the conclusion of the execution of the contract.~~
- ~~d. At the time the goods are identified to the contract.~~

CPA-02519 **Explanation**

~~Choice "a" is correct. Under the Sales Article of the UCC, absent any agreement to the contrary, risk of loss passes to the buyer when the goods are delivered to the carrier. The rule is the same for domestic and international shipments.~~

~~Choices "b", "c", and "d" are incorrect, because absent an agreement to the contrary, risk of loss passes upon delivery to the carrier, not upon tender to the buyer, execution of the contract, or when the goods are identified to the contract.~~

CPA-02523 **Type1 M/C** **A-D** **Corr Ans: C** **PM** **R-5-99**

~~194. CPA-02523 Nov-89 #32 Page 47~~

~~An employee will generally be precluded from collecting full worker's compensation benefits when the injury is caused by:~~

	<i>Noncompliance with the employer's rules</i>	<i>An intentional, self-inflicted action</i>
a.	No	No
b.	Yes	Yes
c.	No	Yes
d.	Yes	No

CPA-02523 Explanation

~~Choice "c" is correct. No Yes.~~

~~An employee is precluded from collecting full worker's compensation benefits for intentional self-inflicted injuries but not negligent (noncompliance with an employer's rules) injuries.~~

~~Choices "a", "b", and "d" are incorrect, as explained above.~~

CPA-02541 Type1 M/C A-D Corr Ans: D PM R 5-99

~~195. CPA-02541 May 90 #27 Page 46~~

~~Taxes payable under the Federal Unemployment Tax Act (FUTA) are:~~

- ~~a. Partially deductible by the covered employee for federal income tax purposes.~~
- ~~b. Calculated as a fixed percentage of all compensation paid to an employee.~~
- ~~c. Payable by all employers regardless of the total amount of compensation paid to individual employees.~~
- ~~d. Deductible by the employer as a business expense for federal income tax purposes.~~

CPA-02541 Explanation

~~Choice "d" is correct. Taxes paid under "FUTA" are deductible by the employer as a business expense for federal income tax purposes.~~

~~Choice "a" is incorrect. The employee does not get a deduction since the employee has not paid the tax.~~

~~Choice "b" is incorrect. Only the first \$7,000 of a covered employee's wages is taxable.~~

~~Choice "c" is incorrect. An employer does not have to pay the tax unless the employer has a quarterly payroll of at least \$1,500.~~

CPA-02546 Type1 M/C A-D Corr Ans: B PM R 5-99

~~196. CPA-02546 Nov 90 #36 Page 44~~

~~Under the Federal Insurance Contributions Act (FICA), all of the following are considered wages, except:~~

- ~~a. Contingent fees.~~
- ~~b. Reimbursed travel expenses.~~
- ~~c. Bonuses.~~
- ~~d. Commissions.~~

CPA-02546 Explanation

~~Choice "b" is correct. Reimbursed travel expenses are not considered wages and are not in gross income; therefore they are not subject to FICA.~~

~~Under the federal insurance contributions act (FICA) the following would be considered as wages:~~

- ~~a. Contingent fees would be considered as wages.~~
- ~~c. Bonuses would be considered as wages.~~
- ~~d. Commissions would be considered as wages.~~

CPA-02550 Type1 M/C A-D Corr Ans: D PM R 5-99

~~197. CPA-02550 May 91 #36 Page 45~~

~~Social security benefits may include all of the following, except:~~

- ~~a. Payments to divorced spouses.~~
- ~~b. Payments to disabled children.~~
- ~~c. Medicare payments.~~
- ~~d. Medicaid payments.~~

CPA-02550 Explanation

~~Choice "d" is correct. Social security benefits do not include Medicaid payments. The federal social security system contains four major benefit programs:~~

- ~~1. (OASI) old age and survivors insurance.~~
- ~~2. (DI) disability insurance.~~
- ~~3. (Medicare).~~
- ~~4. (SSI) supplemental security income.~~

~~Choices "a", "b", and "c" are incorrect, since social security benefits may include:~~

- ~~a. Payments to divorced spouses.~~
- ~~b. Payments to disabled children.~~
- ~~c. Medicare.~~

CPA-02554 Type1 M/C A-D Corr Ans: C PM R 5-99

~~198. CPA-02554 May 91 #37 Page 46~~

~~An employer having an experience unemployment tax rate of 3.2% in a state having a standard unemployment tax rate of 5.4% may take a credit against a 6.2% federal unemployment tax rate of:~~

- ~~a. 3.0%~~
- ~~b. 3.2%~~
- ~~c. 5.4%~~
- ~~d. 6.2%~~

CPA-02554 Explanation

~~Choice "c" is correct. The employer may take a credit against the federal unemployment tax in an equal amount to the state rate. Here the state rate of 5.4% will be used since it is less than the federal rate.~~

CPA-02557 Type1 M/C A-D Corr Ans: C PM R 5-99

~~199. CPA-02557 Nov 91 #32 Page 44~~

~~Which of the following types of income is subject to taxation under the provisions of the Federal Insurance Contributions Act (FICA)?~~

- ~~a. Interest earned on municipal bonds.~~
- ~~b. Capital gains of \$3,000.~~
- ~~c. Car received as a productivity award.~~
- ~~d. Dividends of \$2,500.~~

CPA-02557 Explanation

~~Choice "c" is correct. Since a car received as a productivity award would be considered a substitute for wages/salary, the FMV of the car would be subject to FICA taxation.~~

~~Note: FICA is based on earnings through employment.~~

~~Choices "a", "b", and "d" are incorrect, since the following forms of income would not be subject to taxation under FICA.~~

- ~~a. Interest on municipal bonds~~
- ~~b. Capital gains~~
- ~~d. Dividends~~

~~CPA-02562 Type1 M/C A-D Corr Ans: A PM R 5-99~~

~~200. CPA-02562 Nov 91 #33 Page 46~~

~~An unemployed CPA generally would receive unemployment compensation benefits if the CPA:~~

- ~~a. Was fired as a result of the employer's business reversals.~~
- ~~b. Refused to accept a job as an accountant while receiving extended benefits.~~
- ~~c. Was fired for embezzling from a client.~~
- ~~d. Left work voluntarily without good cause.~~

~~**CPA-02562 Explanation**~~

~~Choice "a" is correct. Unemployment compensation benefits are available to an unemployed CPA (or anyone else) who was discharged (fired) as a result of the employer's business reversals.~~

~~Choice "b" is incorrect. Unemployment benefits are not available where an unemployed individual refuses to accept similar work while receiving extended benefits.~~

~~Choice "c" is incorrect. Unemployment benefits are not available where the unemployed CPA was fired for embezzling.~~

~~Choice "d" is incorrect. Unemployment benefits are not available where the unemployed CPA left work voluntarily without good cause.~~

~~CPA-02642 Type1 M/C A-D Corr Ans: B PM R 5-99~~

~~201. CPA-02642 Nov 91 #34 Page 47~~

~~Workers' Compensation laws provide for all of the following benefits, **except**:~~

- ~~a. Burial expenses.~~
- ~~b. Full pay during disability.~~
- ~~c. The cost of prosthetic devices.~~
- ~~d. Monthly payments to surviving dependent children.~~

~~**CPA-02642 Explanation**~~

~~Choice "b" is correct. Workers' compensation laws do not provide for "full" pay during a disability. With disability benefits the employee may receive a percentage of his/her wages, but not "full" wages.~~

~~Choice "a" is incorrect. Workers' compensation laws can provide for burial expenses.~~

~~Choice "c" is incorrect. Workers' compensation laws can provide for the cost of a prosthetic device.~~

~~Choice "d" is incorrect. Workers' compensation laws can provide for payments to surviving dependent children.~~

~~CPA-02646 Type1 M/C A-D Corr Ans: C PM R 5-99~~

~~202. CPA-02646 May 92 #36 Page 44~~

~~An employer who fails to withhold Federal Insurance Contributions Act (FICA) taxes from covered employees' wages, but who pays both the employer and employee shares would:~~

- ~~a. Be entitled to a refund from the IRS for the employees' share.~~
- ~~b. Be allowed no federal tax deduction for any payments.~~
- ~~c. Have a right to be reimbursed by the employees for the employees' share.~~
- ~~d. Owe penalties and interest for failure to collect the tax.~~

CPA-02646 Explanation

~~Choice "c" is correct. An employer who fails to withhold FICA taxes from an employee's wages is liable for the employee's portion. Once the employer pays both shares to the government, he/she has the right to be reimbursed by the employee for the employee's share.~~

~~Choice "a" is incorrect. Where the employer fails to withhold, the employer becomes primarily liable for the employee's share.~~

~~Choice "b" is incorrect. Employers are allowed a deduction for the employer's portion.~~

~~Choice "d" is incorrect. The penalties are based on the failure to pay and not on the failure to collect the tax.~~

CPA-02648 Type1 M/C A-D Corr Ans: D PM R 5-99

~~203. CPA-02648 May 92 #37 Page 46~~

~~Unemployment tax payable under the Federal Unemployment Tax Act (FUTA), is:~~

- ~~a. Payable by all employers.~~
- ~~b. Deducted from employee wages.~~
- ~~c. Paid to the Social Security Administration.~~
- ~~d. A tax deductible employer's expense.~~

CPA-02648 Explanation

~~Choice "d" is correct. An employer's payment under the Federal Unemployment Tax Act (FUTA) is a tax deductible employer expense.~~

~~Choice "a" is incorrect. An employer that does not have a quarterly payroll of at least \$1,500 or does not employ at least one person one day a week for 20 weeks in a year does not have to pay.~~

~~Choice "b" is incorrect. The federal unemployment tax is paid by the employer and not deducted from the employee's wages.~~

~~Choice "c" is incorrect. The federal unemployment tax is paid to the Internal Revenue Service and not to the social security administration.~~

CPA-02662 Type1 M/C A-D Corr Ans: A PM R 5-99

~~204. CPA-02662 May 92 #38 Page 47~~

~~Workers' Compensation Acts require an employer to:~~

- ~~a. Provide coverage for all eligible employees.~~
- ~~b. Withhold employee contributions from the wages of eligible employees.~~
- ~~c. Pay an employee the difference between disability payments and full salary.~~
- ~~d. Contribute to a federal insurance fund.~~

CPA-02662 Explanation

~~Choice "a" is correct. Workers' compensation laws require that employers provide coverage for all eligible employees.~~

~~Choice "b" is incorrect. Workers' compensation contributions are made by the employer.~~

~~Choice "c" is incorrect. No such rule! Employees are paid a percentage of their wage subject to established limitations.~~

~~Choice "d" is incorrect. There is no federal insurance fund. Workers' compensation laws are administered at the state level.~~

~~CPA-02664 Type1 M/C A-D Corr Ans: C PM R-5-99~~

~~205 CPA-02664 Nov-96 #14 Page 49~~

~~Under the federal Age Discrimination in Employment Act, which of the following practices is prohibited?~~

- ~~a. Termination of employees between the ages of 65 and 70 for cause.~~
- ~~b. Mandatory retirement of any employee.~~
- ~~c. Unintentional age discrimination.~~
- ~~d. Termination of employees as part of a rational business decision.~~

~~**CPA-02664 Explanation**~~

~~Choice "c" is correct. The age discrimination in employment act ("ADEA") prohibits age discrimination, whether intentional or unintentional.~~

~~Choice "a" is incorrect, because the ADEA does not prohibit termination for cause at any age.~~

~~Choice "b" is incorrect, because the ADEA does not prohibit mandatory retirement for employees over 40 if, for example, there is a bona fide occupational qualification.~~

~~Choice "d" is incorrect, because the ADEA does not prohibit termination of employees as part of a rational business decision.~~