Scott Pearce's Master MBE Method

Contracts

Contracts - Official National Conference of Bar Examiners Outline of Testable Issues

I. Formation of Contracts

A. Mutual assent
1. Offer and acceptance
2. Mistake, misunderstanding, misrepresentation, nondisclosure, confidential relationship, fraud, undue influence, and duress
3. Problems of communication and "battle of the forms"
4. Indefiniteness or absence of terms

B. Capacity to contract

C. Illegality, unconscionability, and public policy

D. Implied-in-fact contract and quasi-contract

E. "Pre-contract" obligations based on detrimental reliance

F. Express and implied warranties in sale-of-goods contracts

II. Consideration

A. Bargain and exchange

B. "Adequacy" of consideration: mutuality of obligation, implied promises, and disproportionate exchanges

C. Modern substitutes for bargain: "moral obligation," detrimental reliance, and statutory substitutes

D. Modification of contracts: preexisting duties

E. Compromise and settlement of claims

III. Third-party beneficiary contracts

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B. Incidental beneficiaries

C. Impairment or extinguishment of third-party rights by contract modification or mutual rescission

D. Enforcement by the promisee

IV. Assignment of rights and delegation of duties

V. Statute of frauds

VI. Parol evidence and interpretation

VII. Conditions

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B. Constructive
1. Conditions of exchange: excuse or suspension by material breach
2. Immaterial breach and substantial performance
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E. Prospective inability to perform: effect on other party

VIII. Remedies

A. Total and partial breach of contract

B. Anticipatory repudiation

C. Election of substantive rights and remedies

D. Specific performance; injunction against breach; declaratory judgment

E. Rescission and reformation

F. Measure of damages in major types of contract and breach

G. Consequential damages: causation, certanty and foreseeability

H. Liquidated damages and penalties

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K. Avoidable consequences and mitigation of damages

IX. Impossibility of performance and frustration of purpose

X. Discharge of contractual duties

Questions 1-3 are based on the following fact situation.

On May 1, Ohner telegraphed Byer, "Will sell you any or all of the lots in Grover subdivision at $5,000 each. Details follow in letter." The letter contained all the necessary details concerning terms of payment, insurance, mortgages, etc., and provided,"This offer remains open until June 1." On May 2, after he had received the telegram but before he had received the letter, Byer telegraphed Ohner, "Accept your offer with respect to lot 101." Both parties knew that there were fifty lots in the Grove subdivision and that they were numbered 101 through 150.

Question 1

For this question only, assume that Ohner and Byer were bound by a contract for the sale of lot 101 for $5,000, that on May 3, Ohner telephoned Byer that because he had just discovered that a shopping center was going to be erected adjacent to the Grove subdivision, he would have to have $6,000 for each of the lots including lot 101", that Byer thereupon agreed to pay him $6,000 for lot 101 and that on May 6, Byer telegraphed, "Accept your offer with respect to the rest of the lots." Assuming that the two contracts were formed and that there is no controlling statute, Byer will most likely be required to pay

A. only $5,000 for each of the fifty lots.
B. only $5,000 for lot 101, but $6,000 for the remaining forty-nine lots.
C. $6,000 for each of the fifty lots.
D. $6,000 for lot 101, but only $5,000 for the remaining forty-nine lots.

Question 2

For this question only, assume that on May 5, Ohner telephoned Byer that he had sold lots 102 through 160 to someone else on May 4 and that Byer thereafter telegraphed Ohner, "Will take the rest of the lots." Assume further that there is no controlling statute. In an action by Byer against Ohner for breach of contract, Byer probably will

A. succeed, because Ohner had promised him that the offer would remain open until June 1.
B. succeed, because Ohner's attempted revocation was by telephone.
C. not succeed, because Byer's power of acceptance was terminated by Ohner's sale of the lots to another party.
D. not succeed, because Byer's power of acceptance was terminated by an effective revocation.

Question 3

For this question only, assume that on May 6, Byer telegraphed Ohner, “Will take the rest of the lots.” and that on May 8, Ohner discovered that he did not have good title to the remaining lots. Which of the following would provide the best legal support to Ohner's contention that he was not liable for breach of contract as to the remaining forty-nine lots?

A. Impossibility of performance.
B. Unilateral mistake as to basic assumption.
C. Termination of the offer by Byer's having first contracted to buy lot 101.
D. Excuse by failure of an implied condition precedent.

Question 4

In a telephone call on March 1, Adams, an unemployed, retired person, said to Dawes, “I will sell my automobile for $3,000 cash. I will hold this offer open through March 14.” On March 12, Adams called Dawes and told her that he had sold the automobile to Clark. Adams in fact had not sold the automobile to anyone. On March 14, Dawes learned that Adams still owned the automobile, and on that date called Adams and said, "I'm coming over to your place with $3,000." Adams replied, “Don't bother, I won't deliver the automobile to you under any circumstances.” Dawes protested, but made no further attempt to pay for or take delivery of the automobile.

In an action by Dawes against Adams for breach of contract, Dawes probably will

A. succeed, because Adams had assured her that the offer would remain open through March 14.
B. succeed, because Adams had not in fact sold the automobile to Clark.
C. not succeed, because Dawes had not tendered the $3,000 to Adams on or before March 14.
D. not succeed, because on March 12 Adams had told Dawes that he had sold the automobile to Clark.

Questions 5-6 are based on the following fact situation.

Eureka, Inc., inventor of the LBVC, a laser-beam vegetable chopper, ran a television ad that described the chopper and said, “The LBVC is yours for only $49.99 if you send your check or money order to Box 007, Greenville. Not available in stores.” Gourmet, who owned a retail specialty shop, wrote Eureka, “What's your best, firm price for two dozen LBVC's?” Eureka sent a written reply that said in its entirety, “We quote you for prompt acceptance $39.99 per unit for 24 LBVC's.” Gourmet subsequently mailed a check to Eureka in the appropriate amount with a memo enclosed saying, “I accept your offer for 24 LBVC's.”

Question 5

A contract would arise from the communications only if

A. both parties were merchants.
B. Eureka had at least 24 LBVC's in stock when Gourmets check and memo were received.
C . Gourmet's check and memo were mailed within three months after his receipt of Eureka's letter.
D. Gourmet's check and letter were mailed within a reasonable time after his receipt of Eureka's letter.

Question 6

For this question only, assume the following facts: Eureka shipped 24 LBVC's to Gourmet after receiving his check and memo, and with the shipment an invoice, that, among other things conspicuously stated, the following lawful provision: "These items shall not be offered for resale at retail." Gourmet received and read but disregarded the invoice restriction and displayed the 24 LBVC's for resale. Eureka has a cause of action against Gourmet for breach of contract only if

A. Eureka, as inventor of the LBVC, was NOT a merchant.
B. the invoice restriction was a material alteration of preexisting terms.
C. Eureka's written reply that quoted $39.99 per LBVC, but did not contain a restriction on retail sales, was NOT an offer that Gourmet accepted by ordering 24 LBVC'S.
D. Gourmet was consciously aware when taking delivery of the goods that the television ad had said "Not available in stores."

Questions 7-8 are based on the following fact situation.

Neff and Owens owned adjoining residences in Smithville. In 1971, they hired a contractor to lay sidewalks in front of both of their homes. Each man was to pay the contractor for that part of the work attributable to his property. After he had paid the bill which the contractor had submitted to him, Neff became convinced that the contractor had erred and had charged him for labor and materials that were used for part of the sidewalk in front of Owens' property. Neff thereupon asked Owens to reimburse him for the amount which he assumed he had erroneously paid the contractor. After a lengthy discussion, and although he was still convinced that he owed Neff nothing, Owens finally said: “I want to avoid trouble, and so if you agree not to sue for reimbursement, I'll employ a caretaker for a three-year term to keep our sidewalks free of ice and snow.” Neff orally assented.

Although he could have hired the man for three years, Owens hired Parsons in October 1971, to keep the snow and ice off the sidewalks for the winter, November 1971 - March 1972. During the early fall of 1972, Owens decided to go to Florida for the winter. He told his nephew, Morse, that he could live in Owens' house for the Winter provided that Morse would hire someone to keep snow and

ice off the walk in front of both Neff's and Owens' properties, and suggested that Morse could hire Parsons for that task at relatively little cost. Morse moved into Owens' home in October 1972, but moved out in November 1972, prior to any icing or snowfall. He did not employ anyone to remove snow and ice in front of either property. Owens did not know that Morse had moved out of his home until he returned to Smithville in the spring. During the winter Neff had kept his own walks clean. No one cleaned the ice and snow from the walks in front of the Owens' property.

Question 7

Assume that the contractor had made no error and that Neff had paid only for the labor and materials for the walk in front of his own property. Was Owens' promise to hire a caretaker supported by consideration?

A. Yes.
B. No, because Owens did not believe that Neff had a valid claim.
C. No, because Neff's claim was groundless.
D. No, because Owens' promise to employ the caretaker was aleatory.

Question 8

Assuming there is an enforceable contract between Owens and Morse, does Neff have an action against Morse?

A. Yes, because Neff is a creditor third-party beneficiary of the contract.
B. Yes, because Neff is a donee third-party beneficiary of the contract.
C. No, because Neff is only an incidental beneficiary of the contract.
D. No, because there was no privity between Neff and Morse.

Question 9

The owner of Newacre executed and delivered to a power company a right-of-way deed for the building and maintenance of an overhead power line across Newacre. The deed was properly recorded. Newacre then passed through several intermediate conveyances until it was conveyed to Sloan about ten years after the date of the right-of-way deed. All the intermediate deeds are properly recorded, but none of them mentioned the right-of-way.

Sloan entered into a written contract to sell Newacre to Jones. By the terms of the contract, Sloan promised to furnish an abstract of title to, Jones. Sloan contracted directly with Abstract Company to prepare and deliver an abstract to Jones, and Abstract Compay did so. The abstract omitted the right-of-way deed. Jones delivered the abstract to his attorney and asked the attorney for an opinion

as to title. The attorney signed and delivered to Jones a letter stating that, from the attorney's examination of the abstract, it was his "opinion that Sloan had a free and unencumbered marketable title to Newacre."

Sloan conveyed Newacre to Jones by a deed which included covenants of general warranty and against encumbrances. Jones paid the full purchase price. After Jones had been in possession of New acre for more than a year, he learned about the right-of-way deed. Sloan, Jones, Abstract Company, and Jones's attorney were all without actual knowledge of the existence of the right-of-way to the conveyance from Sloan to Jones.

If Jones sues Abstract Company for damages caused to Jones by the presence of the right-of-way, the most likely result will be a decision for

A. Jones, because Jones as a third-party creditor beneficiary of the contract between Sloan and Abstract Company.
B. Jones, because the abstract prepared by Abstract Company constitutes a guarantee of Jones's title to Newacre.
C. Abstract Company, because Abstract Company had no knowledge of the existence of the right-of-way.
D. Abstract Company, because there was no showing that any fraud was practiced upon Jones.

Questions 10-12 are based on the following fact situation.

A written contract was entered into between Boquet, a financier-investor and Vintage Corporation, a winery and grape-grower. The contract provided that Boquet would invest $1,000,000 in Vintage for its capital expansion and, in return, that Vintage, from grapes grown in its famous vineyards, would produce and market at least 500,000 bottles of wine each year for five years under the label "Premium Vintage Bouquet."

The contract included provisions that the parties would share equally the profits and losses from the venture and that, if feasible the wine would be distributed by Vintage only through Claret, a wholesale distributor of fine wines. Neither Bouquet nor Vintage had previously dealt with Claret. Claret learned of the contract two days later from reading a trade newspaper. In reliance thereon, he immediately hired an additional sales executive and contracted for enlargement of his wine storage and display facility.

Question 10

If Vintage refuses to distribute the wine through Claret and Claret then sues Vintage for breach of contract, is it likely that Claret will prevail?

A. Yes, because Vintage's performance was to run to Claret rather than to Bouquet.
B. Yes, because Bouquet and Vintage could reasonably foresee that Claret would change his position in reliance on the contract.
C. No, because Bouquet and Vintage did not expressly agree that Claret would have enforceable rights under their contract.
D. No, because Bouquet and Vintage, having no apparent motive to benefit Claret, appeared in making the contract to have been protecting or serving only their own interests.

Question 11

For this question only, assume the following facts. Amicusbank lent Bouquet $200,000 and Bouquet executed a written instrument providing that Amicusbank "is entitled to collect the debt from my share of profits, if any, under the Vintage Bouquet contract." Amicusbank gave prompt notice of this transaction to Vintage.

If Vintage thereafter refuses to account for any profits to Amicusbank and Amicusbank sues Vintage for Bouquet's share of profits then realized, Vintage's strongest argument in defense is that

A. The Bouquet-Vintage contract did not expressly authorize an assignment of rights.
B. Bouquet and Vintage are partners, not simply debtor and creditor.
C. Amicusbank is not an assignee of Bouquet's rights under the Bouquet-Vintage contract.
D. Amicusbank is not an intended third-party beneficiary of the Bouquet-Vintage contract.

Question 12

For this question only, assume the following facts. Soon after making its contract with Bouquet, Vintage, without Bouquet's knowledge or assent, sold its vineyards but not its winery to Agribiz, a large agricultural corporation. Under the terms of this sale, Agribiz agreed to sell to Vintage all grapes grown on the land for five years. Agribiz's employees have no experience in wine-grape production, and Agribiz has no reputation in the wine industry as a grape producer or otherwise. The Bouquet-Vintage contract was silent on the matter of Vintage's selling any or all of its business assets.

If Bouquet seeks an appropriate judicial remedy against Vintage for entering into the Vintage-Agribiz transaction, is Bouquet likely to prevail?

A. Yes, because the Vintage-Agribiz transaction created a significant risk of diminishing the profits in which Bouquet would share under his contract with Vintage.
B. Yes, because the Bouquet-Vintage contract did not contain a provision authorizing a delegation of Vintage's duties.
C. No, because Vintage remains in a position to perform under the Bouquet-Vintage contract.
D. No, because Vintage, as a corporation, must necessarily perform its contracts by delegating duties to individuals.

Questions 13-14 are based on the following fact situation.

On October 1, Toy Store, Inc., entered into a written contract with Fido Factory, Inc., for the purchase at $20 per unit of 1,000 mechanical dogs, to be specially manufactured by Fido according to Toy Store's; specifications. Fido promised to deliver all of the dogs "no later than November 15, for the Yule shopping season," and Toy Store promised to pay the full $20,000 price upon delivery. In order to obtain operating funds, Fido as a borrower entered into a written loan agreement on October 5 with the High Finance company. In relevant part, this agreement recited, "Fido Factory hereby transfers and assigns to High Finance its (Fido Factory's) October 1 mechanical dog contract with Toy Store as security for a 50-day loan of $15,000), the advance and receipt of which are hereby acknowledged by Fido factory...." No copy of this agreement, or statement relating to it, was filed in an office of public record.

On October 15, Fido notified Toy Store, "We regret to advise that our master shaft burned out last night because our night supervisor let the lubricant level get too low We have just fired the supervisor, but the shaft cannot be repaired or replaced until about January 1. We can guarantee delivery of your order, however, not later than January 20." Toy Store rejected this proposal as unacceptable and immediately contracted with the only other available manufacturer to obtain the 1,000 dogs at $30 per unit by November 15.

Question 13

For this question only, assume that on November 1, Toy Store sues Fido for damages and alleges the above facts, except those relating to the Fido-High Finance loan agreement. Upon Fido's motion to dismiss the complaint, the court should

A. Sustain the motion, because Fido on October 15 stated its willingness, and gave assurance of its ability, to perform the contract in January.
B. Sustain the motion, because Toy Store's lawsuit is premature until November 15.
C. Deny the motion, because Toy Store's complaint alleges an actionable tort by Fido.
D. deny the motion, because Toy Store's complaint alleges an actionable breach of contract by Fido.

Question 14

For this question only, assume that by November 16, Fido, without legal excuse, has delivered no dogs, and that Toy Store has brought an action against Fido. In an action brought on November 16 by Toy Store against High Finance Company on account of Fido's default, Toy Store can recover

A. Nothing, because the October 5 assignment by Fido to High Finance of Fido's contract with Toy Store was only an assignment for security.
B. Nothing, because no record of the October 5 transaction between Fido an High Finance was publicly filed.
C. 10,000 in damages, because Toy Store was a third party intended beneficiary of the October 5 transaction between Fido and High Finance.
D. $10,000 in damages, because the October 5 transaction between Fido and High Finance effected, with respect to Toy Store as creditor, a novation of debtors.

Questions 15-17 are based on the following fact situation.

On March 1, Green and Brown orally agree that Brown would erect a boathouse on Green's lot and dig a channel from the boathouse, across Clark's lot, to a lake. Clark had already orally agreed with Green to permit the digging of the channel across Clark's lot. Brown agreed to begin work on the boathouse on March 15, and to complete all the work before June 1. The total price of $10,000 was to be paid by Green in three installments: $2,500 on March 15; $2,500 when the boathouse was completed; $5,000 when Brown finished the digging of the channel.

Question 15

Assume that Green tendered the $2,500 on March 15, and Brown refused to accept it or to perform. In an action by Green against Brown for breach of contract, which of the following can Brown successfully use as a defense?

I. The Clark-Green agreement permitting the digging of the channel across Clark’s lot was not in writing.

II. The Green-Brown agreement was not in writing.

A. I only.
B. II only.
C. Both I and II.
D. Neither I nor II.

Question 16

Assume that Green paid the $2,500 on March 15 and that Brown completed the boathouse according to specifications, but that Green then refused to pay the second installment and repudiated the contract. Assume further that the absence of a writing is not raised as a defense. Which of the following is (are) correct?

I. Brown has a cause of action against Green and his damages will be $2,500.
II. Brown can refuse to dig the channel and not be liable for broach of contract.

A. I only.
B. II only.
C. Both I and II.
D. Neither I nor II.

Question 17

Assume that Green paid the 500 on March 15, that Brown completed the boathouse, that Green paid the second installment of $2,500, and that Brown completed the digging of the channel but not until July 11. Assume further that the absence of a writing is not raised as a defense. Which of the following is (are) correct?

I. Green has a cause of action against Brown for breach of contract.
II. Green is excused from paying the $5,000.

A. I only.
B. II only.
C. I and II.
D. Neither I nor II.

Questions 18-19 are based on the following fact situation.

Alpha and Beta made a written contract pursuant to which Alpha promised to convey a specified apartment house to Beta in return for Beta's promise (1) to convey a 100-acre farm to Alpha and (2) to pay Alpha $1,000 in cash six months after the exchange of the apartment house and the farm. The contract contained the following provision: “it is understood and agreed that Beta's obligation to pay $1,000 six months after the exchange of the apartment house and the farm shall be voided if Alpha has not, within three months after the aforesaid exchange, removed the existing shed in the parking area in the rear of the said apartment house.”

Question 18

Which of the following statements concerning the order of performances is LEAST accurate?

A. Alpha's tendering of good title to the apartment house is a condition precedent to Beta's duty to convey good title to the farm.
B. Beta's tendering of good title to the farm is a condition precedent to Alpha's duty to convey good title to the apartment house.
C. Beta's tendering of good title to the farm is a condition subsequent to Alpha's duty to convey good title to the apartment house.
D. Alpha's tendering of good title to the apartment house 90 and Bettes tendering of good title to the farm are concurrent conditions.

Question 19

Alpha's removal of the shed from the parking area of the apartment house is

A. a condition subsequent in form but precedent in substance to Beta's duty to pay the $1,000.
B. a condition precedent in form but subsequent in substance to Beta's duty to pay the $1,000.
C. a condition subsequent to Beta's duty to pay the $1,000.
D. not a condition, either precedent or subsequent, to Beta's duty to pay the $1,000.

Questions 20-22 are based on the following fact situation.

Farquart had made a legally binding promise to furnish his son Junior and the latter's fiancee a house on their wedding day, planned for June 10, 1972. Pursuant to that promise, Farquart telephoned his old contractor-friend Sawtooth on May 1, 1971, and made the following oral agreement, each making full and accurate written notes thereof.

Sawtooth was to cut 30 trees into fireplace logs from a specified portion of a certain one-acre plot, owned by Farquart, and Farquart was to pay therefore $20 per tree. Sawtooth agreed further to build a house on the plot conforming to the specifications of Plan OP5 published by Builders, Inc. for a construction price of $18,000. Farquart agreed to make payments of $2,000 on the first of every month for nine months beginning August 1, 1971, upon monthly presentation of a certificate by Builders, Inc. that the specifications of Plan OP5 were being met.

Sawtooth delivered the cut logs to Farquart in July 1971, when he also began building the house. Farquart made three $2,000 payments for the work done in July, August, and September 1971, without requiring a certificate. Sawtooth worked through October, but no work was done from November 1, 1971 to the end of February 1972, because of bad weather; and Farquart made no payments during that period. Sawtooth did not object. On March 1, 1972, Sawtooth demanded

payment of $2,000 but Farquart refused on the grounds that no construction work had been done for four months and Builders had issued no certificate. Sawtooth thereupon abandoned work and repudiated the agreement.

Question 20

Assuming that Sawtooth committed a total breach on March 1, 1972,what would be the probable measure of Farquart's damages in an action against Sawtooth for breach of contract?

A. Restitution of the three monthly installments paid in August, September and October.
B. What it would cost to get the house completed by another contractor, minus installments not yet paid to Sawtooth.
C. The difference between the market value of the partly built house, as of the time of Sawtooth's breach, and the market value of the house if completed according to specifications.
D. In addition to other legally allowable damages, an allowance for Farquart's mental distress if the house cannot be completed in time for junior's wedding on June 10, 1972.

Question 21

Assuming that Sawtooth committed a total breach on March 1, 1972, and assuming further that he was aware when the agreement was made of the purpose for which Farquart wanted the completed house, which of the following, if true, would best support Farquart's claim for consequential damages on account of delay beyond June 10, 1972, in getting the house finished?

A. Junior and his bride, married on June 10, 1972, would have to pay storage charges on their wedding gifts and new furniture until the house could be completed.
B. Junior's fiancee jilted Junior on June 10, 1972, and ran off with another man who had a new house.
C. Farquart was put to additional expense in providing Junior and his bride, married on June 10, 1972, with temporary housing.
D. On June 10, 1972, Farquart paid a $5,000 judgment obtained against him in a suit filed March 15, 1972, by an adjoining landowner on account of Farquart's negligent excavation, including blasting, in an attempt to finish the house himself after Sawtooth's repudiation.

Question 22

What was the probable legal effect of the following?

I. Sawtooth's failure to object to Farquart's making no payments on November 1, December 1, January 1 and February 1.

II. Farquart's making payments in August through October without requiring a certificate from Builders.

A. Estoppel-type waiver as to both I and II.
B. Waiver of delay in payment as to I and revocable waiver as to II.
C. Mutual rescission of the contract by I combined with II.
D. Discharge of Farquart's duty to make the four payments as to I and estoppel type waiver as to II.

Question 23

Osif owned Broadacres in fee simple. For a consideration of $5,000, Osif gave Bard a written option to purchase Broadacres for $300,000. The option was assignable. For a consideration of $10,000, Bard subsequently gave an option to Cutter to purchase Broadacres for $325,000. Cutter exercised his option.

Bard thereupon exercised his option. Bard paid the agreed price of $300,000 and took title to Broadacres by deed from Osif. Thereafter, Cutter refused to consummate his purchase.

Bard brought an appropriate action against Cutter for specific performance, or, if that should be denied then for damages. Cutter counterclaimed for return of the $10,000. In this action, the court will

A. grant money damages only to Bard.
B. grant specific performance to Bard.
C. grant Bard only the right to retain the $10,000.
D. require Bard to refund the $10,000 to Cutter.

Questions 24-26 are based on the following facts:

Johnston bought 100 bolts of standard blue wool, No. 1 quality, from McHugh. The sale contract provided that Johnston would make payment prior to inspection. The 100 bolts were shipped, and Johnston paid McHugh. Upon inspection, however, Johnston discovered that the wool was No. 2 quality. Johnston thereupon tendered back the wool to McHugh and demanded return of his payment. McHugh refused on the ground that there is no difference between the No. 1 quality wool and the No. 2 quality wool.

Question 24

Which of the following statements regarding the contract provision for pre-inspection payment is correct?

A. It constitutes an acceptance of the goods.
B. It constitutes a waiver of the buyer's remedy of private sale in the case of nonconforming goods.
C. It does not impair a buyer's right of inspection or his remedies.
D. It is invalid.

Question 25

What is Johnston's remedy because the wool was nonconforming?

A. Specific performance.
B. Damages measured by the difference between the value of the goods delivered and the value of conforming goods.
C. Damages measured by the price paid plus the difference between the contract price and the cost of buying substitute goods.
D. None, since he waived his remedies by agreement to pay before inspection.

Question 26

Can Johnston resell the wool?

A. Yes, in a private sale.
B. Yes in a private sale but only after giving McHugh reasonable notice of his intention to resell.
C. Yes, but only at a public sale.
D. No.