QUESTIONS & ANSWERS: CONTRACTS

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QUESTIONS & ANSWERS: CONTRACTS

Multiple Choice and Short Answer Questions and Answers

SECOND EDITION

SCOTT J. BURNHAM
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Gonzaga University School of Law

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Dedication

To John Kidwell, *bon ami*

About the Author

Scott J. Burnham is the Curley Professor of Commercial Law at Gonzaga University School of Law in Spokane, Washington. For many years he taught at The University of Montana School of Law and has visited the law schools at Santa Clara, University of Tennessee, Western New England, UNLV, Hawaii, Memphis, The Ohio State, and Cardozo, as well as law schools in Uruguay, Lithuania, Vietnam, and China. He also teaches online at Concord Law School.

Professor Burnham is the author of numerous books, articles, and CALI lessons in the areas of Contracts, Commercial Law, and Copyright Law. He is a member of the American Law Institute.

Preface

Answering Multiple Choice Questions

Multiple Choice and short answer questions are an excellent way to review your knowledge of the concepts of Contracts by requiring you to apply that knowledge to new fact situations. Some of the questions test your ability to recall or recognize a concept or a definition. But most of them are analytical. I believe that a good multiple choice question is similar to an essay question and is best approached through the IRAC method. First, try to spot the issue raised by the facts. This is easier when the questions are organized by topic, for the topic will help you narrow the area from which the issue will be drawn. It will be harder in the Practice Final Exam, where the topics are interspersed.

Note the call of the question — exactly what is the question looking for? Take a moment to try to answer the question without looking at the options. Try to recall the relevant rule. The facts will often suggest whether a rule or an exception to a rule is being tested. For example, if the facts say "a buyer made a telephone call to a seller," ask why the author thought it was important to tell you that this transaction took place over the telephone. It was probably to indicate that the rule may involve oral contracts. If the facts say, "a merchant buyer made a telephone call to a merchant seller," ask why the author told you the parties were merchants. It was probably to invoke a rule or an exception applicable only to merchants.

Then apply the rule to the facts. As with an essay question, make sure you account for all the facts — there is a reason the author included them. And don't make up facts that aren't there. This analysis should lead you to a conclusion found in one of the options. If the question is tricky, you will probably narrow the choice down to two options that both seem correct. To distinguish between the options that seem close, you might employ some of the following techniques:

- Ask what body of law is applicable. One option might be right under the common law, and another under the UCC.
- Review the facts to determine whether you are being tested on a factual distinction. One option might be correct when the contract is *oral*, another when the contract is *written*. Or one option might be correct when the seller is a *merchant*, another when the seller is a *non-merchant*.
- Make sure you are applying the right rule. Rule A might lead you to one option, while Rule B might lead you to another.
- Check whether you are being tested on the exception to a rule. The rule might lead you to one option, while the exception might lead you to another.
- If the facts of two questions are similar, the assessor is probably trying to get you to spot a factual distinction that affects the outcome. Review the earlier question to help determine whether the different facts suggest a different outcome.
- Be skeptical of options that are stated in terms of absolutes like *always* or *never*.

The Sources of Contract Law

Traditionally, Contracts was a common law course. The law of contracts is state law, and the common law varies from state to state. However, your Contracts course likely involves the study of general principles rather than the law of a particular state. Similarly, the bar exam tests general principles rather than local rules. In theory, to know what the common law rule is, you would have to read all the cases and synthesize them. The good news is that our friends at the American Law Institute have done this for us. They have digested all the cases and stated the rules as black-letter law in the Restatement (Second) of Contracts.

This book relies heavily on the common law rules and principles as found in the Restatement (Second) of Contracts, which I will refer to as "the Restatement" — any other Restatement will be designated by name. However, every time you see a citation to the Restatement, you should imagine that there is a footnote stating:

> *WARNING! The Restatement is not the law of any particular U.S. jurisdiction. It is a handy short-cut for finding the general principles of contract law. But judges are not bound to follow it, and when you practice in a particular jurisdiction, you will have to find the case law and rules that have developed in that jurisdiction.

Statutes are an increasingly important part of the study of law. In some U.S. jurisdictions, such as Louisiana and California, the law of contracts is found in the form of a code rather than the common law, though the common law still has an important role in interpreting the statutes. All U.S. jurisdictions have enacted most of one very important statute — the Uniform Commercial Code (UCC). More specifically, all jurisdictions have enacted Article 1, which contains general principles and definitions, and all but Louisiana have enacted Article 2, which codifies the law of the sale of goods. Most basic Contracts courses introduce you to the UCC, so it is discussed in this book.

Just as the common law is different in each state, so is the UCC. While our friends at the Uniform Law Commission promulgate a uniform version of the Code, each state legislature enacting the Code is free to make changes, and often does. This book uses

the Code as found in the uniform version. But just as with the common law, when you are in practice you will need to consult the law of a particular jurisdiction to see what the Code section looks like and how it has been interpreted in that jurisdiction.

There have been many attempts to revise the UCC over the years. Revised Article 1 (2001) has been enacted in most states and is the source for the bar exam, so this book uses that version of Article 1. Attempts to revise Article 2 have all failed (other than changes made to coordinate it with the adoption of Revised Article 1). Therefore, you should make sure you are using a recent version of Article 2 as promulgated by the ULC and not Revised Article 2 or Amended Article 2, both of which have been withdrawn from consideration by the states.

The United States and many of its trading partners have joined in the United Nations Convention on the International Sale of Goods (CISG), which governs international commercial contracts for the sale of goods. Because most Contracts courses regrettably do not include study of the CISG, and because it is not tested on the bar, I have not included questions about the CISG beyond a basic understanding of when it applies to a transaction.

How to Use This Book

I suggest you work with the questions in this book after you have studied each topic in order to review and reinforce your understanding of that topic. The topics are not always studied in the same order in every Contracts course, but you should be able to find the appropriate topic by its description or by using the Index. If you get a question wrong, make sure you review the reasoning to find out why you got it wrong. Then take the Practice Final Exam before you take your final. You might also want to review the questions when you study Contracts in preparation for the bar exam. The multiple choice portion of the bar exam includes Contracts and Sales questions, and there are often essay questions in those areas as well.

If you have questions or comments, feel free to contact me at sburnham@lawschool.gonzaga.edu.

Acknowledgments

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Table of Contents

QUESTIONS 1

TOPIC 1: Overview 3
TOPIC 2: Offer and Acceptance 7
TOPIC 3: Consideration 15
TOPIC 4: Formation Defenses 19
TOPIC 5: Statute of Frauds 25
TOPIC 6: Obligations Enforceable Without Consideration 29
TOPIC 7: Parol Evidence 35
TOPIC 8: Terms Implied by Law 41
TOPIC 9: Discharge of Duties 45
TOPIC 10: Conditions 51
TOPIC 11: Anticipatory Repudiation 55
TOPIC 12: Remedies 59
TOPIC 13: Third Parties 67
PRACTICE FINAL EXAM 71

ANSWERS 87
TOPIC 1: Overview 89
TOPIC 2: Offer and Acceptance 95
TOPIC 3: Consideration 107
TOPIC 4: Formation Defenses 113
TOPIC 5: Statute of Frauds 121
TOPIC 6: Obligations Enforceable Without Consideration 127
TOPIC 7: Parol Evidence 137
TOPIC 8: Terms Implied by Law 147
TOPIC 9: Discharge of Duties 153
TOPIC 10: Conditions 161
TOPIC 11: Anticipatory Repudiation 167
TOPIC 12: Remedies 173
TOPIC 13: Third Parties 185
PRACTICE FINAL EXAM 193

INDEX 207

QUESTIONS

TOPIC 1: OVERVIEW

QUESTIONS

1. What is the difference between an *agreement* and a *contract*? (Hint: *see* U.C.C. §§ 1-201(b)(3) and (12).)

ANSWER:

2. Byron, a law student, needed a pen to write an exam. Sarah, another law student, sold him her spare pen for $1.29. During the exam, the pen stopped working. Frustrated, Byron stopped taking the exam and failed the course. His grade point average slipped below the required standard, and he flunked out of law school. Thinking that he learned something useful in law school, he sued Sarah for the $2 million difference between what he would have earned as a lawyer and what he was likely to earn without a law degree.

   What body of law applies to this transaction?

   (A) The common law of contracts, because neither Byron nor Sarah is a merchant with respect to pens.

   (B) The common law of contracts, because the sale price of the pen was under $500.

   (C) U.C.C. Article 2, because a pen is a good.

   (D) U.C.C. Article 2, because pens are commonly sold in interstate transactions.

3. A corporation in Oregon ordered 10,000 feet of lumber from a corporation in British Columbia, Canada. The lumber was supposed to be delivered to the buyer's ship in the port of Seattle, Washington. The seller never delivered the lumber and the buyer sued the seller.

   What body of law should the court apply to this transaction?

   (A) Applicable British Columbia law.

   (B) The Oregon U.C.C.

   (C) The Washington U.C.C.

   (D) The United Nations Convention on the International Sale of Goods.

4. A corporation in Oregon ordered 10,000 feet of lumber from a corporation in British Columbia, Canada. The lumber was supposed to be delivered to the buyer's ship in the port of Seattle, Washington. The contract contained a provision stating that "[t]he UCC of the State of Oregon shall govern this transaction." The seller never delivered the lumber and

the buyer sued the seller.

What body of law should the court apply to this transaction?

(A) Applicable British Columbia law.

(B) The Oregon U.C.C.

(C) The Washington U.C.C.

(D) The United Nations Convention on the International Sale of Goods.

5. U.C.C. § 2-503(1) provides in part: "Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery."

A contract between a commercial buyer and a commercial seller contains this provision:

> **Tender of delivery**. After seller gives the buyer notice that the goods are available, the buyer shall have until 4 p.m. of the next business day to take delivery of the goods.

Is this provision enforceable? (Hint: *see* U.C.C. § 1-302.)

ANSWER:

6. What is the Uniform Commercial Code?

(A) The principal federal statute governing interstate commerce.

(B) Legislation that has been enacted uniformly in every state, so that commercial law is the same throughout the country.

(C) A model for a statute, but it has been enacted with variations in every state.

(D) An international treaty governing commerce between countries that have signed it.

7. The answer to the previous question cited the Restatement (Second) of Contracts. What is the Restatement and where does it come from?

ANSWER:

8. A woman who resided in Montana owned a parcel of land in Idaho. In a contract signed in Idaho, she hired a contractor that was incorporated and located in the state of Washington to build a house on the property. A dispute arose between the parties about defects in construction, and the woman sued the contractor for breach of contract in Federal District Court in Washington.

What body of contract law should the court apply to the transaction?

(A) Federal contract law.

(B) Montana contract law.

(C) Idaho contract law.

(D) Washington contract law.

9. You are writing a brief on the issue of the enforceability of a "choice of forum" clause in a contract that is being litigated in your state's court of general jurisdiction. You have found cases on point that have been decided in the following courts.

   Which decision has the greatest weight as authority?

   (A) The highest court in the state system in your state.

   (B) The federal district court in your state.

   (C) The federal Circuit Court of Appeals in your circuit.

   (D) The United States Supreme Court.

ANSWERS

TOPIC 1: OVERVIEW	**ANSWERS**

1. Most of the time, this distinction is not important, and we frequently use the terms interchangeably. According to the Uniform Commercial Code ("U.C.C." or "Code"), an *agreement* is what the parties in fact agree to (together with terms supplied by any applicable course of performance, course of dealing, and usage of trade), while a *contract* is an agreement that is legally enforceable. *See also* RESTATEMENT §§ 1 and 3. So if Walter calls Tuco and agrees to sell him 100 pounds of methamphetamine and Tuco agrees to pay Walter $100,000, they have made an agreement. They might not have made a contract, however, for a number of reasons. The agreement may not be enforceable because it is oral, and it is likely not enforceable because it is illegal.

   So while *agreement* is broader than *contract*, most of the time this distinction is not important, and we often use the two terms interchangeably. An example of this can be seen in the case of *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440 (2006). There, the Supreme Court was faced with the issue of whether, in a contract with an arbitration clause in it, a court or an arbitrator should resolve a claim that the contract is illegal and void. The respondent noted that the relevant statute, § 2 of the Federal Arbitration Act (F.A.A.), applies to "a written provision in . . . a contract . . . to settle by arbitration a controversy thereafter arising out of such contract." She argued that if the agreement was void, then there was no contract, so the F.A.A. would not apply.

   The Court resolved the problem by determining that Congress was a bit careless in its choice of words, and by *contract* it meant *agreement*. The Court noted that another section of the U.S. Code, the Sherman Anti-Trust Act states that "every contract . . . in restraint of trade . . . is hereby declared to be illegal." If this language was taken literally, a defendant accused of violating the Act could argue that the agreement he made in restraint of trade was illegal; therefore, it was not a contract; therefore, he did not enter a contract in restraint of trade; therefore, he is not guilty of violating the Act. So if I get careless in my use of these terms in this book, I am in good company — or at least in the company of the U.S. Congress.

2. **Answer (C) is the best answer**. Section 2-102 of the Code states that "this Article [U.C.C. Article 2] applies to transactions in goods." Section 2-105 defines *goods*, stating that " 'Goods' means all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale." A pen is movable at the time of the sale. Therefore it is a good and U.C.C. Article 2 applies to the transaction.

   Answer (D) is incorrect because while this fact may be true, it is irrelevant. Interstate commerce may be the basis for many statutes passed by Congress. The U.C.C., however, is state law enacted by each state. Moreover, when using a statute, the definitions used in that statute should be consulted to determine the meaning of words used in the statute.

   Answers (A) and (B) are incorrect because as stated in § 2-102, Article 2 applies to transactions in goods *period*. For purposes of determining the applicable law, it doesn't matter whether the parties are merchants or not and it doesn't matter what the sale price of

the goods is. As we will see, there are some particular provisions of Article 2 where it does matter whether the parties are merchants. We will also see that it matters for purposes of the Statute of Frauds whether the price was under $500. But for purposes of determining whether Article 2 applies to the transaction, those things don't matter.

Byron's lawsuit might raise some issues that are not addressed in the Code, such as the principles of causation, certainty, and mitigation. The Code tells us in § 1-103(b) that "[u]nless displaced by the particular provisions of [the Uniform Commercial Code], the principles of law and equity . . . supplement its provisions." Therefore, if we have a Code transaction, we might end up looking to the common law if the Code does not have an applicable rule, but that does not mean that it is not a Code transaction.

3. **Answer (D) is the best answer**. If you have never heard of the United Nations Convention on the International Sale of Goods (U.N.C.I.S.G. or C.I.S.G.), you are probably in the company of most lawyers. The facts of this case are based on *GPL Treatment Ltd. v. Louisiana-Pacific Corp.*, 894 P.2d 470 (Or. Ct. App. 1995). The case had been tried and was on appeal when one of the judges woke up and said, "Wait a minute. Why are we applying the U.C.C. here? The C.I.S.G. is the governing law." He was right.

The C.I.S.G. is an international treaty. According to C.I.S.G. Article 1, "This Convention applies to contracts of sale of goods between parties whose places of business are in different States [meaning nation-states or countries] . . . when the States are Contracting States [meaning they have signed the convention]." Because the U.S. and Canada have both signed it, the CISG applies to this transaction. Because the C.I.S.G. applies, **Answers (A), (B), and (C) are incorrect**.

You will probably find a copy of the C.I.S.G. in the statutory supplement to your Contracts course. Many of the provisions are similar to the U.C.C. provisions, so it is not hard to master and unlike most lawyers, you should not be afraid of it. You can also learn a lot at the web site maintained by Pace Law School at http://www.cisg.law.pace.edu/.

4. **Answer (B) is the best answer**. U.S. lawyers who are familiar with the C.I.S.G. probably know one thing about it — that they have freedom of contract to contract around it. Parties are generally free to put a "choice of law" clause in their contract. According to U.C.C. § 1-301, they may do so in a Code transaction as long as the transaction bears a "reasonable relation" to the chosen jurisdiction. In this case, the parties could have chosen British Columbia, Oregon, or Washington law, because each one bears a reasonable relation to the transaction — one party is located in British Columbia, the other is located in Oregon, and the goods are to be delivered to Washington. Because the Oregon U.C.C. applies, **Answers (A), (C), and (D) are incorrect**.

Note that a "choice of law" clause merely determines what law the forum jurisdiction will apply to the transaction. It has nothing to do with where the case is heard — that is determined by the rules of civil procedure, though the parties also have freedom of contract to insert a "choice of forum" clause that specifies where the plaintiff may sue the defendant. But in the absence of a choice of forum clause, wherever the plaintiff gets jurisdiction over the defendant, that court will apply the chosen law of Oregon.

By the way, there is a decision that held that when the parties to an international transaction specified that "The law of California applies to this transaction," the C.I.S.G. applied. Do you see why? The court took the words literally, and reasoned that the law of

California includes applicable federal law, including treaties the U.S. has entered into. Therefore, the C.I.S.G. is the law of California. While that was obviously not the intent of the parties, the careful drafter will state, as our drafter did here, that "the U.C.C. of Oregon" shall apply. Or she could have stated, "The law of Oregon applies to this transaction. The parties specifically exclude application of the C.I.S.G."

As we will see, many of the rules of contract law are "default" rules, meaning that they apply in the absence of the parties' agreement otherwise, but the parties are free to change them. However, if the rule is a "regulatory" or "mandatory" rule, then the parties are not free to change it. One of the things that makes the study of contract law difficult is trying to figure out whether a particular rule is a default rule or a regulatory rule.

5. Yes. Section 2-503 requires that the seller give the buyer reasonable notice. A good place to start our analysis is to ask whether this is a default rule or a regulatory rule. If it is the former, we are free to change it, but if it is the latter, we are not. Some Code provisions are prefaced by the language "unless otherwise agreed," which indicates that they are default rules that the parties are free to contract around. This one does not have that language, but § 1-302(c) informs us that the fact that some provisions contain this language does not mean that other provisions may not be varied by agreement.

   Section 1-302(a) states the general rule that except as otherwise provided, the provisions of the Code "may be varied by agreement" that is, they are default rules. Some exceptions are found in § 1-302(b), which tells us that "the obligations of good faith, diligence, reasonableness, and care prescribed by [the Uniform Commercial Code] may not be disclaimed by agreement." So, for example, the parties cannot agree that "seller does not have to act reasonably under this agreement."

   However, subsection (b) goes on to say:

   > The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever [the Uniform Commercial Code] requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.

   According to this rule, while the parties can't disclaim these obligations, they can define the standards for measuring them. In our example, the parties have determined that the standard for "notification reasonably necessary to enable him to take delivery" is notification that they may be picked up by 4 p.m. the next business day. Therefore the issue becomes whether this agreement is reasonable. According to the Code provision, this is permissible as long as the standard is not "manifestly unreasonable." So while it is fair to say that the answer is "it depends," this standard is probably not manifestly unreasonable.

   What would be a manifestly unreasonable expression? A provision negating the obligation, such as this:

   > **Tender of delivery**. Seller has no obligation to give the buyer notification to enable him to take delivery.

6. **Answer C is the best answer**. The Uniform Commercial Code is a project of the Uniform Law Commission (U.L.C., formerly known as the National Conference of Commissioners on Uniform State Laws) with the assistance of the American Law Institute (A.L.I.), the group

that promulgates the Restatements of Law. The U.L.C. is a nonprofit group with representatives from every state that is devoted to the improvement of law. See its website at http://www.uniformlaws.org/.

To facilitate commerce within the U.S., it would be helpful if the laws were uniform. One way to make them uniform would be for Congress to use its power to regulate interstate commerce and enact national legislation. While Congress has done this in limited areas of contract law, it has left most areas of contract law to the states. So **Answer (A) is incorrect**.

The U.L.C. stepped into this void by drafting a Uniform Commercial Code that contains various Articles that address many different areas of commercial law. The Articles we will be primarily concerned with in this book are Article 1, which contains general principles and definitions that apply throughout the Code, and Article 2, which governs the sale of goods.

Once the U.L.C. finished its drafting, however, the job had barely begun. A Uniform Law is just a proposal until it has been enacted by a state legislature, and to be truly uniform, it must be enacted in the same form by each state legislature. The U.L.C. has had pretty good success on both counts with the U.C.C. Beginning in the 1960s, it began to be adopted by the states and today Article 1 has been adopted by every state and Article 2 by every state except Louisiana. However, each state has enacted its own version, so the law is not truly uniform. That is why **Answer (B) is incorrect**.

To make matters more complicated, the U.L.C. proposes revisions to the Articles of the U.C.C. from time to time. Attempts to revise Article 2 have not been successful, but a Revised Article 1 has been enacted by most of the states. So when this book refers to the Uniform Commercial Code, the U.C.C., the Code, Article 1, or Article 2, it is referring to the most recent uniform version as promulgated by the U.L.C. When you are in practice, you will have to deal with the Code as enacted in a particular jurisdiction.

There is an international treaty governing commerce between countries that have signed it, but it is called the United Nations Convention on the International Sale of Goods (C.I.S.G.). So **Answer (D) is incorrect**.

7. Contract law is largely common law, which is to say law made by judges. Therefore, if you want to know what the rule of contract law is on a particular topic, you would have to read all the court opinions and synthesize the analysis in order to determine the rule. Fortunately, someone has already done that work for us. The Restatements of the Law are produced by the American Law Institute, which is a nonprofit group of lawyers, judges, and scholars devoted to the improvement of the law. See its website at http://www.ali.org/.

The first Restatement of Contracts came out in 1932 under the direction of Samuel Williston, who also wrote a great multi-volume treatise on contract law. The second Restatement came out in 1981 under the direction of the late E. Allan Farnsworth, who also wrote a very readable single volume treatise on contract law. There are, of course, Restatements in other areas of law. Unless otherwise indicated, when I refer to the "Restatement" in this book, I am talking about the Restatement (Second) of Contracts.

As you can tell from this description, the Restatement is not the law of the United States. It has not been enacted by any legislature and is only occasionally cited by courts. It is a just a handy shortcut to stating the general principles and rules of contract law. Like any shortcut, it has its disadvantages. For one thing, there are often "majority" and "minority" (and even "subminority") rules, but only one rule is found in the black-letter sections of the

Restatement. That section usually states the majority rule (after all, a *restatement* by definition should be merely descriptive), but occasionally the drafters couldn't help themselves and acted prescriptively, adopting a minority rule that they thought was the better rule. Another disadvantage of the black-letter provisions of the Restatement is that rules of contract law are more meaningful when seen in their application to particular facts. If you consult the entire text of the Restatement, and not just the shortened version that you get in many student supplements, you will find helpful Comments that discuss the provisions and Illustrations that demonstrate the application of the provision to a particular fact situation.

When I use the Restatement as a shortcut method of stating the legal rule, you would be wise to remember these limitations. You can cite the Restatement as persuasive authority, but that is all it is. When you are in practice, the judge is less interested in what the Restatement says on the subject than in what precedent in that particular jurisdiction has to say. So in spite of the availability of the Restatement and other sources of "black-letter law," don't neglect to work on the skill of reading and synthesizing the case law.

8. **Answer (C) is the best answer**. But let's start our analysis with the worst answer, which is Answer (A). First off, since contract law is largely state law, when a contracts case shows up in federal court, we have to ask how it got there. Most of the time, the answer is because of federal "diversity" jurisdiction, which gives federal courts the right to hear cases between residents of different states if the dollar amount in controversy is over a certain threshold (now $75,000). So if the federal court has jurisdiction over the parties, the next question is what body of law the federal court will apply.

   In Civil Procedure, you will study a case called *Erie Railroad Co. v. Tompkins*, 304 U.S. 64 (1938), which held that there is no federal common law and federal courts must apply state substantive law. Therefore, **Answer (A) is incorrect**. Since the law of contracts is a matter of state substantive law, the question now becomes which state's contract law will apply.

   This is a question answered by another body of law called Conflict of Laws, which you might study as an elective. Unfortunately, the answer to the question of which state's contract law applies varies with the jurisdiction, with some applying the "old" rule and some applying the "new" rule. When a case is in federal court, we would look at the forum state — the place where the federal court is located — and determine whether that state applies the old rule or the new rule. So in our case, that would be the law of Washington — but only to determine which Conflicts law to apply, not which contract law to apply.

   The old rule is that we use the substantive law of the jurisdiction where the last act occurred that resulted in the formation of the contract. In our case, that would be Idaho, where the contract was signed. The new rule is that we use the substantive law of the jurisdiction that has the most contacts with the transaction. Here there are contacts with Montana, where the plaintiff resides, Washington, where the contractor is incorporated and located, and Idaho, where the land is found. Since the dispute centers on a house being built on that land, that is probably the most significant contact. So the author cleverly constructed this question so that Answer (C) would be the correct answer whether Washington applies the new or the old conflict of laws rule, and **Answers (B) and (D) are incorrect answers**.

9. **Answer (A) is the best answer**. As discussed in the previous question, matters of substantive contract law, like the enforceability of a clause in a contract, are matters of state law. A decision of the highest court in the state system is mandatory authority for a lower

court in the system.

The federal court decisions will have less weight and will be merely persuasive. As we discussed in the previous question, the federal courts generally get contracts questions because of their diversity jurisdiction, and in resolving them, they apply state substantive law. The state substantive law might not even be the law of your state. And if it is, the federal district court puts itself in the position of the highest state court and tries to decide the matter the way that court would decide it. But that decision is not binding on your state court, which is free to disregard it. Therefore, **Answer (B) is incorrect**.

As with the federal district court, when you see that a federal court of appeals has heard a contracts case, you again have to ask which state's substantive law was applied. Chances are it is not your state, but even if it is, that decision is not binding on your state court, as discussed above. Therefore, **Answer (C) is incorrect**.

The U.S. Supreme Court will not take jurisdiction over a question of state substantive law since there is no federal question involved. But didn't the facts say that there was a Supreme Court case on point? In fact, there is such a case, *Carnival Cruise Lines v. Shute*, 499 U.S. 585 (1991), in which the Supreme Court decided the issue of the enforceability of a choice of forum clause. We have to ask why the Supreme Court took jurisdiction over this case. The answer is because the transaction involved a ship on the high seas, and the Court does have jurisdiction in matters of admiralty law. While you are free to cite that case in your brief, it is mandatory authority only in matters of admiralty law, so in your case it is merely persuasive. Therefore, **Answer (D) is incorrect**.