1. A-1 Roofing Co. entered into a written contract with Jaffe to put a new roof on the latter's residence for $1,800, using a specified type of roofing, and to complete the job without unreasonable delay. A-1 undertook the work within a week thereafter, but when all the roofing material was at the site and the labor 50 percent completed, the premises were totally destroyed by fire caused by lightning. A-1 submitted a bill to Jaffe for $1,200 for materials furnished and labor performed up to the time of the destruction of the premises. Jaffe refused to pay the bill, and A-1 sued Jaffe. Decision?

Answer: Impossibility. Decision for A-1 Roofing Co. As a general rule, and in the absence of a provision to the contrary in the contract, if the act to be performed is necessarily dependent upon the continued existence of a specific thing, its destruction before the time of performance, without the fault of the promisor, will excuse nonperformance of the contract, unless such destruction could have been reasonably anticipated. The rule is based on an implied condition of the continued existence of a particular thing. However, the out-of-pocket expenses present a question as to whether restitution is appropriate.

In the United States, courts have generally taken the view that when a contract is discharged by impossibility or frustration the parties must make restitution for the benefits conferred upon them. Sometimes, the concept of "benefit" is stretched to include expenses incurred in preparation for performance. There is increasing recognition that restitution, when employed to unwind a contract that cannot be performed, is concerned with equitable readjustment of the gains and losses sustained by the parties and not merely the redressing of unjust enrichment.

2. By contract dated January 5, Rebecca agreed to sell to Nancy, and Nancy agreed to buy from Rebecca, a certain parcel of land then zoned commercial. The specific intent of Nancy, which was known to Rebecca, was to erect a storage plant upon the land, and the contract stated that the agreement was conditioned upon Nancy's ability to construct such a plant upon the land. The closing date for the transaction was set for April 1. On February 15, the city council rezoned the land from commercial to residential, which precluded the erection of the storage plant. As the closing date drew near, Nancy made it known to Rebecca that she did not intend to go through with the purchase because the land could no longer be used as intended. On April 1, Rebecca tendered the deed to Nancy, who refused to pay Rebecca the agreed purchase price. Rebecca brought an action against Nancy for breach of their contract. Decision?

Answer: Impossibility. Decision for Nancy. Since both parties entered into the sales contract with the purpose of erecting a storage plant and the rezoning by the city council from commercial to residential thereby frustrated the expressed intent, the parties were discharged from their obligations under the contract.

3. On November 23, Sylvia agreed to sell to Barnett her Pontiac automobile for $7,000, delivery and payment to be made on December 1. On November 26, Barnett informed Sylvia that he wished to rescind the contract and would pay Sylvia $350 if Sylvia agreed. She agreed and took the $350 cash. On December 1, Barnett tendered to Sylvia $6,850 and demanded that she deliver the automobile. Sylvia refused and Barnett initiated a lawsuit. Decision?

Answer: Accord and Satisfaction. Decision for Sylvia. The parties have entered into a valid accord and satisfaction which discharges the parties from their performance. Barnett after entering into this accord and satisfaction cannot now unilaterally reinstate the original contract. Section 281 of the Restatement, Second, Contracts, provides as follows:

1. An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing duty. Performance of the accord discharges the original duty.
2. Until performance of the accord, the original duty is suspended unless there is such a breach of the accord by the obligor as discharges the new duty of the obligee to accept the performance in satisfaction. If there is such a breach the obligee may enforce either the original duty or any duty under the accord.

4. Webster, Inc. dealt in automobile accessories at wholesale. Although he manufactured a few items in his own factory, among them windshield wipers, Webster purchased most of his supplies from a large number of other manufacturers. In January, Webster entered into a written contract to sell Hunter 2,000 windshield wipers for $4,900, delivery to be made June 1. In April, Webster's factory burned to the ground, and Webster failed to make delivery on June 1. Hunter, forced to buy windshield wipers elsewhere at a higher price, brings an action against Webster for breach of contract. Decision?

Answer: Impossibility. Decision for Hunter. This is not a case of impossibility of performance by Webster, Inc. Although Webster, Inc. may have expected to manufacture the windshield wipers in his factory the agreement did not require him to do so. Windshield wipers purchased from other manufacturers would have served the purpose. Had Webster, Inc. contracted to manufacture the wipers in his factory and to sell them to Hunter, who contracted to buy, and thereafter Webster's factory was destroyed by fire, without his fault, the contract would be discharged. There would have been destruction of the specific means of performance, rendering performance impossible. In the problem, however, the fact that Webster's factory burned to the ground did not constitute destruction of the specific means or source of performance.

5. Erwick Construction Company contracted to build a house for Charles. The specifications called for the use of Karlene Pipe for all plumbing. Erwick, however, got a better price on Boynton Pipe and substituted the equally good Boynton Pipe for Karlene Pipe. Upon inspection, Charles discovered the change, and he now refuses to make the final payment. The contract price was for $200,000, and the final payment is $20,000. Erwick now brings suit seeking the $20,000. Decision?

Answer: Material Breach. Judgment for Erwick Construction Company. Although Erwick deviated from the contract specifications, its conduct would be evaluated as to whether it constituted a material breach. The critical question is whether Charles received substantially what he had bargained for. Since the substitution of the comparable pipe did not qualitatively alter the value of the house, there is no material breach. Charles is not entitled to a discharge of his obligations to perform the contract.
By written contract Ames agreed to build a house on Bowen's lot for $65,000, commencing within ninety days of the date of the contract. Prior to the date for beginning construction, Ames informed Bowen that he was repudiating the contract and would not perform. Bowen refused to accept the repudiation and demanded fulfillment of the contract. Eighty days after the date of the contract, Bowen entered into a new contract with Curd for $62,000. The next day, without knowledge or notice of Bowen's contract with Curd, Ames began construction. Bowen ordered Ames from the premises and refused to allow him to continue. Ames sued Bowen for damages. Decision?

Answer: Anticipatory Repudiation. Judgment for Bowen. Traditionally, if one party to an executory contract, before the time for performance arrives, absolutely and unequivocally renounces and repudiates the contract, the other party has a right to do one of two things: (1) He may accept the renunciation by words or conduct, and treat such announcement as a breach of the contract which absolves him from performance on his part and entitles him to sue for damages, or (2) he may refuse to accept such renunciation in advance of the breach, wait until the time fixed for performance arrives, and then demand fulfillment of the contract and sue if it be refused. If he chose the second of these alternatives he was not permitted to change his mind and assert that the contract was terminated at the time it was repudiated. The Restatement, however, alters this rule by providing that a retraction of a repudiation of a contract is effective provided "the retraction comes to the attention of the injured party before he materially changes his position in reliance on the repudiation..." Section 256. Accordingly, Bowen will prevail under this standard since he materially changed his position in that he hired Curd to construct the house.

The Park Plaza Hotel awarded its valet and laundry concession to Larson for a three-year term. The contract contained the following provision: "It is distinctly understood and agreed that the services to be rendered by Larson shall meet with the approval of the Park Plaza Hotel, which shall be the sole judge of the sufficiency and propriety of the services." After seven months, the hotel gave a month's notice to discontinue services based on the failure of the services to meet its approval. Larson brought an action against the hotel, alleging that its dissatisfaction was unreasonable. The hotel defended upon the ground that subjective or personal satisfaction may be the sole justification for termination of the contract. Decision?

Answer: Condition Precedent. Decision for Park Plaza Hotel on the assumption that its dissatisfaction with the services of Larson, while not reasonable, was nevertheless in good faith. The question is whether the test of dissatisfaction in a contract such as this, where the promise to perform is made expressly conditional on approval or satisfaction, is objective or subjective. If subjective, the dissatisfaction must be reasonable. If subjective, it need only be genuine and in good faith and is not required to meet the standard of a reasonable person. This contract specifically provided that the services must meet the approval of the Hotel, who solely was to be the judge of its adequacy.

Schlosser entered into an agreement to purchase a cooperative apartment from Flynn Company. The written agreement contained the following provision:

This entire agreement is conditioned on Purchaser's being approved for occupancy by the board of directors of the Cooperative, in the event approval of the Purchaser shall be denied, this agreement shall thereafter be of no further force or effect.

When Schlosser unilaterally revoked her "offer," Flynn sued for breach of contract. Schlosser claims the approval provision was a condition precedent to the existence of a binding contract and, thus, she was free to revoke. Decision?

Answer: Condition Precedent. Judgment for Flynn Company. The critical question in this case is the legal effect of the contract provision. In this case the contract provision is a condition precedent to the duty to perform, but not a condition precedent to the creation of the contract since the agreement was formed through the mutual assent of the parties. Their intention was clear as evidenced by the writing. The contract to purchase was created without reliance on a prior conditional approval. Schlosser must perform the contract unless the required approval is denied.
2. Daniel agreed to erect an apartment building for Steven for $2 million and that Daniel would suffer a deduction of $2,000 per day for every day of delay. Daniel was twenty days late in finishing the job, losing ten days because of a strike and ten days because the material suppliers were late in furnishing materials. Daniel claims that he is entitled to payment in full (a) because the agreement as to $2,000 a day is a penalty and (b) because Steven has not shown that he has sustained any damage. Discuss each contention and decide.

Answer: Liquidated Damages.

(a) The contention that the agreement as to $1000 a day is a penalty is not tenable. The provision is a modest liquidated damages provision. The agreed amount of damages is reasonable, considering the cost of the apartment building and that actual damages are not readily ascertainable. Restatement, Second, Contracts, Section 356.

(b) Steven does not have to prove damages. One of the principal purposes of a liquidated damages provision is to obviate the necessity of proving damages.

3. Stuart contracts to act in a comedy for Charlotte and to comply with all theater regulations for four seasons. Charlotte promises to pay Stuart $800 for each performance and to allow Stuart one benefit performance each season. It is expressly agreed that "Stuart shall not be employed in any other production for the period of the contract." During the first year of the contract, Stuart and Charlotte have a terrible quarrel. Thereafter, Stuart signs a contract to perform in Elaine's production and ceases performing for Charlotte. Charlotte seeks (a) to prevent Stuart from performing for Elaine, and (b) to require Stuart to perform his contract with Charlotte. What result?

Answer: Injunctions. (a) Injunction against Stuart's performing for Elaine would probably be granted if Elaine is a competitor of Charlotte and if Stuart's services are unique or extraordinary. Restatement, Second, Contracts, Section 367, Comment C.

(b) Specific Performance, Page 318. Specific performance will not be granted. Restatement, Second, Contracts, Section 367 provides that "a promise to render personal services will not be specifically enforced." Otherwise, this would allow for involuntary servitude.

4. (a) Mary and Anne enter into a written agreement under which Mary agrees to sell and Anne agrees to buy for ten dollars per share 100 shares of the 300 shares outstanding of the capital stock of the Infinitesimal Steel Corporation, whose shares are not listed on any exchange and are closely held. Mary refuses to deliver when tendered the $1,000, and Anne sues in equity for specific performance, tendering the $1,000. Decision?

(b) Modifying (a) above, assume that the subject matter of the agreement is stock of the United States Steel Corporation, which is traded on the New York Stock Exchange. Decision?

(c) Modifying (a) above, assume that the subject matter of the agreement is undeveloped farmland of little commercial value. Decision?

Answer: Specific Performance.

(a) Decision for Anne. Where shares of stock in a corporation have no market value and are not on the market for sale, money damages do not afford an adequate remedy for breach of contract for the sale of a part of these corporate shares and the purchaser may obtain specific performance of the contract. Hills v. McMunn, 232 Ill. 488, 83 N.E. 963. In accord, Restatement, Second, Contracts, Section 360.

(b) Decision for Mary. Specific performance is denied where the remedy at law is adequate. Money damages may be recovered in an action at law for breach of contract. Shares of U.S. Steel Corporation are readily available on the market. Therefore, the legal remedy is adequate.

(c) Decision for Anne. A contract for the sale of land may be specifically enforced in equity. Land is unique, and one parcel of land is not the same as any other parcel. The lack of commercial value, or the underdeveloped condition, of the land is immaterial.