

MBE Subject Matter Outline: Contracts

Contracts

NOTE: Examinees are to assume that the Official Text of Articles 1 and 2 of the Uniform Commercial Code has been adopted and is applicable when appropriate. Approximately half of the Contracts questions on the MBE will be based on categories I and IV, and approximately half will be based on the remaining categories—II, III, V, and VI. Approximately one-fourth of the Contracts questions on the MBE will be based on the Official Text of the Uniform Commercial Code, Articles 1 and 2.

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I. Formation of Contracts

A. Mutual Assent

1. Offer & Acceptance
2. Unilateral, Bilateral, & Implied-in-fact Contracts

B. Indefiniteness & absence of terms

C. Consideration

1. Bargained-for exchange

D. Obligations enforceable without bargained-for exchange

1. Reliance
2. Restitution

E. Modification to Contracts



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II. Defenses to Enforceability

- A. Incapacity to contract
- B. Duress & undue influence
- C. Mistake & misunderstanding
- D. Fraud, misrepresentation, & nondisclosure
- E. Illegality, unconscionability, and public policy
- F. Statute of frauds



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III. Contract Content & Meaning

- A. Parole evidence
- B. Interpretation
- C. Omitted & implied terms



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IV. Performance, Breach, & Discharge

- A. Conditions
 - 1. Express
 - 2. Constructive
- B. Excuse of conditions
- C. Breach
 - 1. Material & partial breach
 - 2. Anticipatory repudiation
- D. Obligations of good faith & fair dealing
- E. Express & implied warranties in sale-of-goods contracts



IV. Performance, Breach, & Discharge (Cont.)

F. Other performance matters

1. Cure
2. Identification
3. Notice
4. Risk of Loss

G. Impossibility, impracticability, & frustration of purpose

H. Discharge of duties

1. Accord & satisfaction
2. Substituted contract
3. Novation
4. Rescission
5. Release



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V. Remedies

- A. Expectation interest
 - 1. Direct damages
 - 2. Incidental damages
 - 3. Consequential damages
- B. Causation, certainty, & foreseeability
- C. Liquidated damages and penalties, and limitation of remedies
- D. Avoidable consequences and mitigation of damages
- E. Rescission & reformation
- F. Specific performance & injunction
- G. Reliance & restitution interests
- H. Remedial rights of breaching parties



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VI. Third-party rights

- A. Third-party beneficiaries
 1. Intended beneficiaries
 2. Incidental beneficiaries
 3. Impairment or extinguishment of third-party rights
 4. Enforcement by the promisee

- B. Assignment of rights and delegation of duties

