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.
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
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
III. Contract Content & Meaning

A. Parole evidence

B. Interpretation

C. Omitted & implied terms
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
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
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 promise

B. Assignment of rights and delegation of duties