

## Contracts

Note: Examinees are to assume that Articles 1 and 2 of the Uniform Commercial Code (including the 1999 amendments made as part of the revision of the Article 9 of the Commercial Code) have been adopted and are applicable when appropriate. Applicants should assume that the 2001 proposed amendments to Article 1 and the 2003 proposed amendments to Article 2 have NOT BEEN ADOPTED.

- 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
  - A. Intended beneficiaries
  - 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. Statutes of frauds
- VI. Parol evidence and interpretation
- VII. Conditions
  - A. Express
  - B. Constructive
    - 1. Conditions of exchange: excuse or suspension by material breach
    - 2. Immaterial breach and substantial performance
    - 3. Independent covenants
    - 4. Constructive conditions of non-prevention, non-hindrance, and affirmative cooperation
  - C. Obligations of good faith and fair dealing in performance and enforcement of contracts
  - D. Suspension or excuse of conditions by waiver, election, or estoppel
  - 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, certainty, and foreseeability
  - H. Liquidated damages and penalties
  - I. Restitutionary and reliance recoveries
  - J. Remedial rights of defaulting parties
  - K. Avoidable consequences and mitigation of damages
- IX. Impossibility of performance and frustration of purpose
- X. Discharge of contractual duties

Approximately 60% of the Contracts questions for each MBE will be based on categories I, VII, and VIII, and approximately 40% will be based on the remaining categories, II, III, IV, V, VI, IX, and X. All of the major topics (designated by Roman numerals) will be represented in each examination, but not necessarily all of the subtopics. Approximately 25% of the Contracts questions for each MBE will be based on provisions of the Uniform Commercial Code, Articles 1 and 2.