



متون حقوق به زبان خارجی

سری کتابهای کمک آموزشی کارشناسی ارشد

مجموعه حقوق بین الملل

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متون حقوقی به زبان خارجی / حسین یوسفی

مشاوران صعود ماهان ۱۴۰۴

۳۳۶ص، جدول، نمودار (آمادگی آزمون کارشناسی ارشد)

ISBN: ۹۷۸-۶۰۰-۴۵۸-۷۵۹-۴

فهرست نویسی براساس اطلاعات فیپا

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حسین یوسفی

ج - عنوان

۲۳ ت ۳۴۷ الف / LB ۲۳۵۳

رده‌بندی دیویی:

۳۷۸/۱۶۶۴

شماره کتابشناسی ملی

۳۴۸۰۹۷۲



نام کتاب: متون حقوق به زبان خارجی

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ناشر: مشاوران صعود ماهان

نوبت و تاریخ چاپ: اول / ۱۴۰۴

تیراژ: ۱۰۰۰ نسخه

قیمت: ۵/۰۱۰/۰۰۰ ریال

شابک: ISBN ۹۷۸-۶۰۰-۴۵۸-۷۵۹-۴

انتشارات مشاوران صعود ماهان: خیابان ولیعصر، بالاتر از تقاطع مطهری،

روبروی قنادی هتل بزرگ تهران، جنب بانک ملی، پلاک ۲۰۵۰

تلفن: ۴-۸۸۱۰۰۱۱۳

سخن ناشر

آیا آنانکه می‌دانند با آنانکه نمی‌دانند برابرند؟ (قرآن کریم)

پس از حمد و سپاس و ستایش به درگاه بی‌همتای احدیت و درود بر محمد مصطفی، عالی نمونه بشریت که در تاریخ دور تاریخ، بنا به فرمان نافذ صمدیت از میان مردمی برخاست که خود بودند در پست‌ترین حد توحش و ضلال و بربریت و آنگاه با قوانین شامل خویش هم ایشان را راهبری نمود و رهانید از بدویت و استعانت جوییم از قرآن کریم، کتابی که هست جاودانه و بی‌نقص تا ابدیت.

کتابی که در دست دارید آخرین ویرایش از مجموعه کتب خودآموز مؤسسه آموزش عالی آزاد ماهان است که بر مبنای خلاصه درس و تأکید بر نکات مهم و کلیدی و تنوع پرسش‌های چهار گزینه‌ای جمع‌آوری شده است. در این ویرایش ضمن توجه کامل به آخرین تغییرات در سرفصل‌های تعیین شده جهت آزمون‌های ارشد تلاش گردیده است که مطالب از منابع مختلف معتبر و مورد تأکید طراحان ارشد با ذکر مثال‌های متعدد بصورت پرسش‌های چهار گزینه‌ای با کلید و در صورت لزوم تشریح کامل ارائه گردد تا دانشجویان گرامی را از مراجعه به سایر منابع مشابه بی‌نیاز نماید.

لازم به ذکر است شرکت در آزمون‌های آزمایشی ماهان که در جامعه آماری گسترده و در سطح کشور برگزار می‌گردد می‌تواند محک جدی برای عزیزان دانشجو باشد تا نقاط ضعف احتمالی خود را بیابند و با مرور مجدد مطالب این کتاب، آنها را برطرف سازند که تجربه سال‌های مختلف موکد این مسیر به عنوان مطمئن‌ترین راه برای موفقیت می‌باشد.

لازم به ذکر است از پورتال ماهان به آدرس www.mahanportal.ir می‌توانید خدمات پشتیبانی را دریافت دارید. و نیز بر خود می‌بالیم که همه ساله میزان تطبیق مطالب این کتاب با سؤالات آزمون‌های ارشد- که از شاخصه‌های مهم ارزیابی کیفی این کتاب‌ها می‌باشد- ما را در محضر شما سربلند می‌نماید.

در خاتمه بر خود واجب می‌دانیم که از همه اساتید بزرگوار و دانشجویان ارجمند از سراسر کشور و حتی خارج از کشور و همه همکاران گرامی که با ارائه نقطه نظرات سازنده خود ما را در پربارتر کردن ویرایش جدید این کتاب یاری نمودند سپاسگزاری نموده و به پاس تلاش‌های بی‌چشمداشت، این کتاب را به محضرشان تقدیم نماییم.

مؤسسه آموزش عالی آزاد ماهان

معاونت آموزش



متون حقوقی از چهار قسمت تشکیل شده است:

Law of contract
Criminal law
International law
Public law

سعی شده است که این جزوه به تنهایی کافی برای مطالعه متون حقوقی باشد. زیرا از کتب مختلف به منظور تهیه آن استفاده شده است.

برای بخش زبان عمومی که در سالهای اخیر در کنکور کارشناسی ارشد سوال داده می شود جزوه دیگری تدوین شده است.

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فصل اول

Contract (قراردادها)

- ◆ Offers
- ◆ Kinds of contract
- ◆ Acceptance
- ◆ Tender
- ◆ Consideration
- ◆ Contracts with minors
- ◆ Corporations
- ◆ Condition and warranties
- ◆ Mistake
- ◆ Effects of illegality

فصل اول

Contract (قراردادها)

A contract is an agreement between two or more parties which the law will enforce. This agreement means a meeting of mind called in law consensus ad idem.

Every contract is an agreement but not every agreement is a contract.

قرارداد توافقی بین دو یا چند گروه است که بوسیله حقوق (قانون) لازم الاجرا شده است. توافق گفته شده به معنی برخورد دو عقیده است که در حقوق برخورد دو اراده نامیده می شود. هر قرارداد یک توافق است ولی هر توافق یک قرارداد نیست.

Meeting of minds

→ Agreement → Contract

Consensus ad idem

A Simple contract has these elements:

- 1-Offer and acceptance
- 2-Consensus ad idem (agreement)
- 3-Intention to create legal relation
- 4-Capacity of the parties
- 5-Consent must be genuine
- 6-Considration must be present
- 7-Legality of the object
- 8-Possibility of performance

یک قرارداد ساده دارای این عناصر است.

۱- ایجاب و قبول ۲- توافق دو اراده ۳- قصد ایجاد رابطه حقوقی ۴- اهلیت طرفین ۵- رضایت باید واقعی باشد.

۶- عوض باید موجود باشد. ۷- مشروعیت جهت ۸- امکان اجرا

Offers

The party making the offer is called the offeror;

The party to whom it is made is called the offeree

An invitation to treat means an invitation to make offers.

Termination of an offer

- 1-on the death of either offeror or offeree before acceptance
- 2-By non-acceptance within the time stipulated.
- 3-When revoked before acceptance
- 4-When rejected by the offree.

Rejection of offer take two forms:

- 1-Where the offeree communicates his rejection to the offeror
- 2-Where the offeree makes a counter – offer it means the offeree accepts subject to condition.

ایجاب

گروهی که ایجاب را می‌سازد ایجاب دهنده (موجب) و گروهی که ایجاب به او داده می‌شود طرف ایجاب (قابل) گفته می‌شود. دعوت به انجام معامله به معنی دعوت به ساخت ایجاب است.

خاتمه ایجاب

- ۱- در مرگ هر کدام از موجب و قابل قبل از پذیرش
- ۲- یا عدم پذیرش در طول زمان تعیین شده
- ۳- وقتی از طرف موجب پس گرفته می‌شود.
- ۴- وقتی بوسیله قابل رد شود.

رد ایجاب به دو شکل ممکن است صورت پذیرد.

۱- وقتی قابل رد کردن خود را به اطلاع موجب می‌رساند.

۲- وقتی قابل یک ایجاب متقابل می‌سازد و این به این معنی است که قابل ایجاب را مشروط به امری می‌کند.

An option is an offer to keep a contract open for a specified time.

An option is not binding unless made by deed or is supported by valuable consideration.

- (option) ایجابی است که قرارداد را برای مدتی معین باز نگه می‌دارد.

- یک option الزام آور نیست مگر اینکه با سند رسمی تنظیم شود یا عوض ارزشمندی در برابر آن تعیین گردد.

Kinds of contract

a) Contract of Record:

1. judgements of court
2. Recognizances

b) Contract by deed. The only formal contract in the law.

Contract by deed must (i) signed (ii) sealed and (iii) delivered.

Escrow means that when delivery made subject to a condition.

Indenture means where there are two or more parties the deed is some times called an indenture.

c) Simple contract: may be made (i) orally (ii) in writing (iii) simplified by conduct.

انواع قراردادها (از نظر شکلی)

الف- قراردادهای در متن حکم: ۱- احکام دادگاههای حقوقی ۲- دستورات دادگاه کیفری

ب- قراردادهای رسمی (قراردادهای تنظیم شده در سند رسمی): تنها شکل قرارداد رسمی در حقوق

Contract by deed= specialty contract

قرارداد رسمی باید ۱- امضاء شود ۲- مهر شود ۳- اسناد آن مبادله شود.

Escrow یعنی وقتی مبادله اسناد مشروط به شرایطی شود.

Indenture یعنی وقتی که دو یا چند نفر طرف قرارداد باشند سند رسمی گاهی Indenture نامیده می‌شود.

Rejection is self – explanatory.

Revocation is the withdrawal of the offer by the offeror or reliable third party.

مفهوم رد ایجاب از خود عنوان آن گویا است.

رجوع عبارتست از پس گرفتن ایجاب توسط ایجاب دهنده به طوری که رجوع به طور موثر به قابل و یا شخص ثالث قابل اعتماد ابلاغ شود.

- 1-Void contracts: are destitute of legal effect and agreements of this kinds do not confer legal rights on the parties there to.
- 2-Voidable contracts: are those which may be made void at the assent of one of the parties
- 3-Unenforceable contracts: are those which are valid but are unenforceable at law because of the absence of (i) evidence of the contract or (ii) the form require by law.
- 4-Valid contract

قراردادها

قراردادهای باطل هستند، یا،

قراردادهای قابل ابطال، یا

قراردادهای غیر قابل اجرا و یا

قراردادهای نافذ

- ۱- قراردادهای باطل: قراردادهایی هستند که فاقد اثر حقوقی اند و توافقاتی از این نوع هیچ حقوق قانونی به طرفین اعطا نمی کند.
- ۲- قراردادهای قابل ابطال: قراردادهایی هستند که ممکن است بر اساس اراده یکی از طرفین باطل شوند.
- ۳- قراردادهای غیر قابل اجرا: قراردادهایی هستند که معتبر بوده ولی از نظر حقوقی غیر قابل اجرا هستند به خاطر فقدان ۱- ادله قرارداد ۲- شکل مورد نیاز بوسیله حقوق (قانون)
- ۴- قراردادهای نافذ یا معتبر

Acceptance

An acceptance is the unconditional assent of the offeree to all terms of the offers.

Acceptance of an offer may be made orally in writing or by conduct and must be unqualified. Acceptance subject to contract means that the parties do not intend to be bound and are not bound until a formal contract is prepared and signed by them.

Acceptance by post: An offer has no effect until it reached the offeree. The contract is made at the moment the letter accepting the offer is posted even though it never reaches its destination. Revocation of an offer is communicated when the letter of revocation is received and read by the offeree.

قبول

قبول عبارت از پذیرش بدون قید و شرط کل مفاد ایجاب بوسیله طرف ایجاب است.

قبولی ایجاب ممکن است شفاهی یا کتبی یا به صورت عمل کردن باشد و قبولی باید بدون قید و شرط باشد.

قبولی مشروط به قرارداد به این معنی است که طرفین به قرارداد ملزم نمی شوند و ملزم نمی شوند تا وقتی یک قرارداد رسمی آماده شود و امضا شود بوسیله آنان.

قبولی بوسیله پست: ایجاب تا زمانی که به دست طرف ایجاب نرسیده است هیچ گونه اثری ندارد. قرارداد زمانی منعقد می گردد که نامه قبولی ایجاب پست شود حتی اگر هیچ گاه به مقصد نرسد. پس گرفتن ایجاب زمانی موثر است که نامه پس گرفتن توسط موجب دریافت و خوانده می شود.

- قاعده ای که به موجب آن قبولی ایجاب از طریق دادن نامه قبولی به پست صورت می گیرد:

Mail box rule

Tender- مناقصه

A tender is an offer:

(a) Where tenders are invited for the supply of services each tender submitted is a separate offer any one of which may be accepted.

یک ایجاب مناقصه محسوب می‌شود در مواردی که مناقصه دهندگان دعوت شده‌اند که خدماتی ارائه دهند هر یک از Tenderهای پیشنهادی ایجاب جداگانه‌ای است هر کدام را می‌توان قبول کرد.

(b) Where the tender is a standing offer to supply goods or services as required by the buyer. (or offeree) a separate acceptance is made each time an order is placed.

در مواردی که ایجاب پابرجایی است برای ارائه کالاها یا خدمات آنگونه که خریدار یا طرف ایجاب آن را ضروری دانسته در این صورت هر بار که سفارشی اعلام شود قبولی جداگانه‌ای ضروری می‌باشد.

Intention to create legal relation

A contract is an agreement that is intended to have legal consequences.

Agreement of purely social or domestic are not contracts. It is not possible to make an agreement which outs the jurisdiction of the courts of law. Such a term is void.

قصد ایجاد روابط حقوقی

یک قرارداد توافقی است که هدفش این است که آثار حقوقی داشته باشد. توافقاتی که صرفاً ویژگی اجتماعی یا خانوادگی دارند قرارداد محسوب نمی‌شوند.

این امکان وجود ندارد که توافقی به عمل آورد و صلاحیت دادگاه را از میان برد. چنین شرایطی باطل است.

Consideration

Valuable consideration means any benefit to the promiser or detriment to the promisee, which is sufficient in law to support promise. Executed consideration means that consideration which is wholly performed on one side immediately after the contract came is entered into executory consideration is a promise to confer a benefit or to suffer some detriment at some future time.

Consideration must be:

- 1-Real or genuine
- 2-It needs not be adequate
- 3-It must be legal
- 4-It must move from the promisee
- 5-It must be possible
- 6-It must not be past

Caveat emptor (let the buyer be aware). If I buy for one pound a picture which turns to be a Rembrandt I am lucky.

Payment of a lesser sum on the day can not be any satisfaction for the whole, but to this general rule there are the following exceptions:

- 1-An earlier payment at the creditors request
- 2-Where the mode of payment is altered
- 3-Where something is added
- 4-Composition agreement
- 5-Payment of a lesser sum by a third party

There are two exception to this rule:

1-Bills of exchange: The consideration for a bill of exchange may be any antecedent debt or liability, provided that such debt or liability is not that of a stranger to the instrument.

2-services Rendered: Where it is proved that services have been rendered at the express or implied request of the promisor, it has been held that this is sufficient consideration to support a subsequent promise to pay.

3-Promissory or equitable stopple: A promise intended to create legal relation, which to the knowledge of the promisor, will be acted upon by the promisee, and which is in fact acted upon must be honored.

عوض

عوض ارزشمند به معنی هر گونه سود و نفع به متعهد یا ضرر به متعهدله می‌باشد که از نظر قانونی برای پشتیبانی از تعهد کفایت می‌کند. عوض اجرا شده (عوض نقد) به معنی عوضی است که بلافاصله پس از انعقاد قرارداد یک طرف آن را اجرا می‌کند. عوض موجد تعهد بر دادن سود یا متحمل شدن خسارت در آینده می‌باشد.

عوض باید:

- ۱- عوض باید واقعی یا حقیقی باشد ۲- لازم نیست که عوض کافی باشد ۳- باید قانونی باشد
 - ۴- متعهدله باید آنرا پرداخت کند ۵- عوض باید امکان‌پذیر باشد ۶- عوض نباید مربوط به گذشته باشد.
- قاعده Caveat emptor (اجازه دهید خریدار آگاه شود) قاعده‌ای اساسی و بنیادین است اگر من به قیمت یک پوند تابلویی را خریداری کنم بعداً معلوم گردد مربوط به رامبراند است من آدم خوش‌شانسی هستم.
- پرداخت مبلغ کمتر به صورت حال نمی‌تواند برای کننده مسئولیت پرداخت تمامی مبلغ باشد ولی بر این قاعده استثنائات ذیل وارد است:
- ۱- پرداخت زودتر بنابه درخواست طلبکار
 - ۲- در جایی که نحوه پرداخت تغییر کرده باشد.
 - ۳- در جایی که چیزی اضافه شود.
 - ۴- در قراردادهای ارفاقی (برای جلوگیری از ورشکستگی)
 - ۵- پرداخت مبلغ کمتر توسط طرف ثالث
- به این قاعده ۲ استثنا وارد شده است:

- ۱- برات یا قانون برات: عوض برات می‌تواند دین یا مسئولیت قبلی باشد مربوط بر آنکه نسبت به شخص بیگانه باشد.
- ۲- خدماتی که در گذشته انجام می‌شود و در مواردی که ثابت شود که خدمات انجام گرفته بنا به درخواست صریح یا ضمنی متعهد بوده دادگاهها چنین رای داده‌اند این امر عوض کافی در برابر تعهد بعدی در پرداخت می‌باشد.
- ۳- استاپل وعده‌ای یا مبتنی بر انصاف: تعهدی که قصد آن بوده روابط حقوقی ایجاد کند و متعهد می‌داند که متعهدله به آن اعتماد نموده و در عمل نیز متعهدله به آن اعتماد می‌کند باید محترم شناخته شود این اصل به صورت سپری برای فردی که طرف دعوی قرار گرفته عمل می‌کند و ابزاری تهاجمی نیست که طرف مقابل را قادر سازد دست به طرق دعوی به موجب وعده‌ای مجانی بزند.

Contracts with minors

All contract with minors for the payment of money lent, or for goods supplied or to supplied (other than contracts for necessities) are absolutely void.

A guarantee of a minor is not enforceable against the minore:

Valid contracts are two types (i) contract for necessities (ii) contracts for the minors benefit:

If a minor is a trader and agrees to sell goods and receives payment for them he or she can not if they have committed no fraud, be compelled to refund the money or deliver the goods.

Voidable contracts of infant include: (i) contract of continuing nature and (ii) contracts under which a minor acquires an interest in property of a permanent kind e.g. leases of property, partnership agreement or the taking of shares in a company.

قراردادهای با صغار

تمامی قراردادهای منعقد با صغار جهت پرداخت پول یا تحویل کالا در خصوص کالاهای تحویل شده به جز قراردادهای مربوط با مایحتاج مطلقاً باطلند تضمین صغیر تعهدات قراردادی قابل اجرا نیستند علیه صغیر.

قراردادهای نافذ صغیر بر دو دسته می‌باشند: ۱- قراردادهای مربوط به مایحتاج ضروری ۲- قراردادهایی که به نفع صغیر می‌باشد.

اگر صغیر تاجر بوده و توافق کند که کالاهایی را فروخته و پول آنها را دریافت نماید اگر که مرتکب تقلبی شوند نمی‌توان آنها را مجبور نمود که پول را پس داده یا کالاها را تحویل دهند.

قراردادهای قابل ابطال صغیر عبارتند از: ۱- قراردادهایی که طبیعتی مداوم دارند و ۲- قراردادهایی که به موجب آن صغیر نفعی را در مالی که ویژگی دائمی دارد بدست آورد مانند اجاره اموال و موافقتنامه شرکت یا خرید سهام شرکت

Corporations

- a) Chartered corporations: Are formed by royal charter there are no limits to the contractual capacity of these corporations.
- b) Statutory corporations: Any acts or contracts formed beyond the powers contained in statuted or statutory instruments are ultra vires and void.
- c) Registered companies: An act in excess of the powers defined in the memorandum is ultra vires and void.

شرکت‌ها

- ۱- شرکت‌هایی که با منشور سلطنتی بوجود آمده: از طریق و فرمان پادشاه بوجود آمده و هیچ‌گونه محدودیت حقوقی بر اهلیت قراردادی این شرکتها وجود ندارد.
- ۲- شرکت‌هایی که از طریق قانون بوجود آمده: هر گونه فعل یا قراردادهای این شرکتها که ورای اختیارات مندرج در قانون یا اسناد قانونی این شرکتها باشد خارج از حدود اختیارات این شرکتها بوده و باطل می‌باشد.
- ۳- شرکت‌های به ثبت رسیده: هر گونه عمل یا قراردادی خارج از حدود اساسنامه خارج از حدود اختیار بوده و باطل می‌باشد.

Insane and drunken person:

Contracts entered into by an insane person are voidable by liability exists to pay a reasonable price for necessities:

Drunken or intoxicated persons are treated the same way as those suffering from insanity.

مجانین و اشخاص مست

قراردادهای منعقد توسط مجانین قابل ابطال است ولی مسئولیت مربوط به پرداخت قیمتی معقول برای مایحتاج ضروری وجود خواهد داشت، امر باید توسط فردی که ادعای جنون می‌کند به اثبات برسد: ۱- اینکه در زمان عقد قرارداد مجنون بوده‌اند و قادر به درک اهمیت معامله نبوده‌اند ۲- اینکه طرف مقابل از شرایط آنها مطلع بوده)

افراد مست یا کسانی که مواد مخدر استفاده کرده‌اند وضعیتی کاملاً مشابه با وضعیت مجانین دارند.

Negligence liability (both in contract and tort)

1-Liability for negligence resulting in death or personal injury can no longer be excluded or restricted in contract or by notice in the course of a business.

مسئولیت ناشی از بی‌احتیاطی (هم در مورد قرارداد و هم ضمان قهری)

- ۱- مسئولیت ناشی از بی‌احتیاطی که منجر به مرگ یا آسیب بدنی می‌شود را دیگر نمی‌توان در چهارچوب یک قرارداد یا از طریق صدور اعلامیه در جریان تجارت مستثنا ساخت یا محدود نمود.

2-Liability for other loss or damage resulting from negligence can no longer be excluded or restricted in all guarantee given with consumer good.

۲- مسئولیت مربوط به سایر صدمات یا خساراتی که از بی احتیاطی ناشی می شود را دیگر نمی توان در گارانتی هایی که با کالاهای مصرفی داده می شود مستثنا ساخت یا محدود نمود.

3-Except as provided for in 2 above liability for negligence not resulting in death or personal injury can be excluded or restricted but only is so for the contract term or notice the test of reasonableness.

۳- به جز در دو مورد فوق مسئولیت ناشی از بی احتیاطی که منجر به مرگ یا آسیب بدنی نشود را می توان مستثنا ساخت و یا محدود کرد مشروط بر آنکه مفاد قرارداد یا اعلامیه صادره معیار معقول بودن را دارا باشد.

لغات متن: لغات اصلی

Absence	فقدان	Deceit	فریب، نیرنگ
Acceptance	قبول	Deception	فریب
Act upon	بر اساس چیزی عمل کردن	Deed	سند
Adequate	کافی	Defined	تعریف شود
Affective	موثر بودن	Deliver	تحویل شدن
Affirm	تایید کردن	Description	توصیف
Agent	نماینده مامور	Destination	مقصد
Alien	بیگانه	Detriment	ضرر
Altered	تغییر یافته	Diffinite	شخص خاص
Antecedent	پیشین	Discharge	مبری کردن
Assent	رضایت دادن	disclose	فاش کردن
Auctioneer	مسئول حراج	Document	سند
Avoidance	اجتناب	Efficiency	تاثیر، سودمندی
Bankruptcy	ورشکستگی	Employment	استخدام
Benefit	سود	Equitable	عادلانه
Bill of exchange	برات	Escrow	سندی که تحویل آن مشروط است
Capability	توانایی	Essential elements	عناصر ضروری
Capacity	اهلیت	Evidence	ادله، شواهد
Classification	دسته بندی	Executed	اجرا شده
Communicate	به اطلاع رسیدن	Express	صریح
Confer	اعطا کردن	Failure	قصور
Consequences	آثار	Form	شکل، صورت
Consideration	عوض	Fraudulent	متقلبانه
Contract	قرارداد	Genuine	واقعی
Conveyance of land	انتقال ملک	Gratuitous	مجانی
Counter offer	ایجاب متقابل	Guardian	قیم
Creditor	طلبکار	Hire - purchase	قرارداد اجاره به شرط تملیک
Death	مرگ	Ignore	بی اعتنائی کردن
Debtor	بدهکار	Implied	ضمنی

Implied by conduct	قرارداد منعقدۀ با عمل
Indemnity	ضمانت
indenture	سند دارای خیر طرف
Insane	مجنون
Invitation to treat	دعوت به دادن ایجاب
Item	اقلام، موارد
Lease of property	اجاره اموال
Legally enforceable	آثار لازم الاجرای حقوقی
Material to	دارای اهمیت بودن
Meaningless	بی معنا
Meeting of minds	توافق اراده‌ها
Memorandum	یادداشت
Minors	صغار
Mistake	اشتباه
Mutual	دو جانبه
Negotiable instrument	سند قابل انتقال یا در وجه عامل
Notice of revocation	نامه لغو ایجاب
Object	موضوع
Offer	ایجاب
Offeror	ایجاب کننده
Parties	طرفهای قرارداد
Partnership	شرکت - شراکت
Payment	پرداخت کردن
Performance	اجرا
Personal injury	آسیب مردمی
Possible	امکان پذیر
Presume	فرض کردن
Principal	اصلی
Privity of contract	شخصی بودن قراردادها
Promisee	کسی که قول به نفعش صادر شده، متعهدله
Promisor	وعده دهنده
Promissory note	سفته
Proof	دلیل
Reasonable	معقول
Reasonable time	مدت معقول

Receipt	رسید قبض
Recklessly	بی احتیاطی
Recognizance	تعهدنامه
Rectification	اصلاح
Registered	ثبت شده
Registered company	شرکت به ثبت رسیده
Reject	رد کردن
Reliable	قابل اعتماد
Render	انجام شدن
Rescission	فسخ دارای اثر بطلان
Revoke	لغو کردن
Seal	مهر شدن
Seal	مهر کردن
Shareholder	سهامدار
shield	سیر
social	اجتماعی
Standing offer	ایجاب مستمر
Statutory	قانونی
Subsequent	متعاقب، بعدی
Subsidiary	فرعی
Sue	تعقیب کردن، طرح دعوی کردن
Suffer detriment	متضرر شدن
Supply	تهیه، ارائه
Surtey ship	ضمانت
Suspect	ظن بردن - مظنون
Tender	مناقصه
Termination	خاتمه
Title	عنوان مالکیت
Transaction	معامله
Trustee	تراستی، امین
unaware	بی اطلاع
Unconditionally	بدون قید و شرط
Unenforceable	غیر قابل اجرا
Valuable	ارزشمند
Void	باطل
Voidable	قابل ابطال
Warranty	مشروط فرعی

Condition and warranties

A condition is a term which goes directly to the root of the contract or is so essential to its very nature that if it is broken the innocent party can treat the contract as discharged

A warranty is a term of the contract which is collateral or subsidiary to the main purpose of the contract.

شروط اصلی و شروط فرعی

شرط اصلی شرطی است که مستقیماً مربوط به مبنا و ریشه قرارداد می‌شود یا با توجه به ویژگی و طبیعت قرارداد آن چنان ضروری است که اگر نقض گردد طرف متضرر می‌تواند قرارداد را خاتمه یافته تلقی کند.

شروط فرعی شرطی است که با توجه به هدف اصلی قرارداد جنبه فرعی یا تبعی دارد. نقض شروط فرعی به طرف متضرر تنها حق طرح دعوی جهت جبران خسارت را می‌دهد.

Mistake

The general rule of common law is that mistake does not effect the validity of a contract.

در قانون کلی حقوق عرفی اصولاً اشتباه بر اعتبار قرارداد اثری ندارد.

a) Mistake as to the identity of subject – matter:

Here there is no true agreement and hence no contract. Where each party makes a different kind of mistake, it is known as (mutual) mistake. Where both parties make the same mistake, it is a common mistake.

الف - اشتباه در خصوص خود موضوع معامله: در اینجا هیچ توافق درستی وجود ندارد در نتیجه هیچ قراردادی وجود ندارد. در جایی که هر یک از طرفین یک اشتباه متفاوت از دیگری را مرتکب می‌شود این به عنوان اشتباه دو جانبه نامیده می‌شود. در مواردی که هر دو طرف یک اشتباه را می‌کنند آن به عنوان اشتباه متداول نامیده می‌شود.

Unilateral mistake means a mistake by one party

اشتباه یک طرفه اشتباه بوسیله یک طرف قرارداد است که در اینجا قرارداد قابل ابطال است.

b) Mistake as to the existence of the subject – matter:

This is fundamental mistake which renders the contract void.

ب) اشتباه در خصوص وجود موضوع معامله: این یک اشتباه بنیادین است که قرارداد را باطل می‌کند.

c) Mistake as to the quality of subject- matter:

This does not invalidate the contract.

ج) اشتباه در خصوص کیفیت موضوع معامله: اشتباه در خصوص کیفیت مورد معامله قرارداد را بی اعتبار نمی‌سازد.

d) Mistake as to the identity of the other party:

This type of mistake arises, where for example A intends to contract with B but by the mistake contacts with C. Mistake of identity will nullify the contract if it is

Proved that (i) the identity of the party contracted with is material to other contract

And (ii) that the party contracted with knows that he is not the person that the other party intended to enter into contractual relation with

د) اشتباه در خصوص هویت طرف معامله: این نوع اشتباه در مواردی بوقوع می‌پیوندد که برای مثال **الف)** قصد دارد قراردادی را با

ب) منعقد کند ولی بر اثر اشتباه با **ج)** قرارداد منعقد می‌کند. اشتباه در خصوص هویت طرف معامله قرارداد را باطل می‌سازد اگر

که ثابت شود که ۱- هویت طرف معامله برای انعقاد قرارداد اساسی بوده و ۲- طرف معامله می‌داند که همان فردی نیست که طرف دیگر قصد ایجاد رابطه حقوقی با وی را داشته است.

e) Mistake as to the nature of the documents:

In such a case ((non est factum) i.e (not my deed), may be pleaded. If the document is a negotiable instrument the plea of (non)

Est factum) can only be used if the signer has not been negligent.

ه) اشتباه در خصوص طبیعت سند یا نوع سند: در چنین مواردی می‌توان ادعای «این سند من نیست» را مطرح کرد که اگر این سند، سند در وجه حامل باشد تنها در صورتی می‌توان ادعای (factum non est) را مطرح نمود که امضاء کننده بی‌احتیاط نبوده یعنی هر آدم عاقل دچار این اشتباه می‌شد.

The mistake must be proved exactly.

اشتباه باید دقیقاً به اثبات برسد.

A representation is a statement made by one party to the other, before or at the time of contract with regard to some existing fact or to some past event which is material to the contract.

Representation اظهاراتی است که یک طرف قرارداد در زمان انعقاد قرارداد یا پیش از آن در خصوص برخی از وقایع موجود یا حوادث گذشته خطاب به طرف مقابل اعلام می‌دارد و برای انعقاد قرارداد اهمیت بسیاری دارد.

Misrepresentations are of three kinds:

1) innocent, 2) negligent and 3) fraudulent misrepresentation is distinct tort knows ad deceit.

بیان اظهار غلط ۳ نوع است:

۱- بدون سوء نیت، ۲- یا بی‌احتیاطی، ۳- به صورت متقلبانه - متقلبانه خود ضمان قهری جداگانه‌ای نیز می‌باشد که به deceit موسوم است.

Rescission is a discretionary remedy, and in any legal action on the contract it is granted subject to certain important principles in particular.

Rescission جبران خسارتی در اختیار دادگاه می‌باشد و در کلیه دعاوی در خصوص قراردادها با رعایت اصول مهمی پذیرفته می‌گردد.

The exemption clause shall be void unless the court allows reliance on it as being fair and reasonable in the circumstances.

شروط معاف کننده باطل است مگر آنکه دادگاه اجازه استناد به آن را به علت منصفانه و معتدل بودن با توجه به اوضاع و احوال موجود اجازه دهد.

Contracts (uberrimae fidei) (of the utmost good faith):

In the law of contract silence by a party does not in general amount to misrepresentation. But there is one class of contracts in which disclosure of material facts must be made. Agreements falling this class are known as contracts uberrimae fidei.

قراردادهایی که حسن نیت در آنها در بالاترین حد خود قرار دارد: در حقوق قراردادها سکوت یک طرف معمولاً منجر به misrepresentation نمی‌شود. اما دسته‌ای از قراردادها وجود دارند که در آنها افشای حقایق اصل لازم است. توافقاتی که در این دسته جای می‌گیرند معروف به قراردادهای با حداکثر حسن نیت هستند.

Duress: At common law means violence or threatened violence to a party to a contract or to a member of his family or threatened imprisonment. The Effect on the agreement is that it is probably voidable at the instance of the party threatened; but arguably it is void.

اکراه مادی: در حقوق عرفی به معنای خشونت یا تهدید به خشونت نسبت به یک طرف قرارداد و یا یکی از اعضای خانواده وی یا تهدید به حبس کردن می‌باشد. اثر اکراه در قرارداد این است که احتمالاً قرارداد بنا به میل و اراده طرف مورد تهدید قابل ابطال می‌گردد ولی همچنین این استدلال وجود دارد که این قراردادها باطلند.

Undue influence

An equitable doctrine, is a more subtle form of pressure exerted upon a party to a contract. Where no special relationship exists between the parties, undue influence may be presumed by the court, in which case the party in whom confidence is reposed has the burden of rebutting the presumption.

نفوذ غیر موجه: دکترونی مبتنی بر انصاف می‌باشد و به اشکال خفیف‌تر فشار اعمال شده نسبت به یک طرف قرارداد اطلاق می‌گردد. در مواردی که رابطه‌ای خاص بین طرفها وجود ندارد، طرفی که مدعی نفوذ غیرموجه می‌باشد بار اثبات آن را به عهده

دارد در مواردی که رابطه‌ای مبتنی بر اعتماد بین طرفها وجود دارد دادگاه می‌تواند نفوذ غیر موجه را فرض نماید در این صورت طرفی که فرض اعتماد نسبت به وی گردیده با رد این فرض (اماره) را به عهده دارد.

A contract is illegal if it contravenes a statute or the common law.

قرارداد نامشروع است که مغایر قانون یک حقوق عرفی باشد.

The general rule is that an illegal contract is void. The maxim applied by the courts is *exturpi causa non oritur action* (no action arises from a base or wrongful cause)

قاعده کلی بر این است که قراردادهای نامشروع باطل هستند. قاعده‌ای که توسط دادگاهها اعمال می‌گردد به این شرح است: هیچ دعوایی از مبنایی غلط ناشی نمی‌شود.

Effects of illegality

No money or goods delivered under such a contract can be recovered by action.

آثار نامشروع بودن

هیچ پول یا کالای تحویلی ناشی از اینگونه قراردادها را نمی‌توان از طریق طرح دعوی باز پس گرفت.

The maxim applied is *in pari delicto patio rest condition defentis* (where there is equal wrong doing the position of the defendant is stronger). There are certain exceptions to the above rule: (i) where the parties are non (in pair delicto) (equal in wrong doing) (ii) where the illegal purpose of the contract has not been carried out, one party may repent and recover back any money or property transferred.

قاعده‌ای که در این زمینه اعمال می‌گردد عبارتست از (در مواردی که دو طرف به یک اندازه گناهکار می‌باشند وضعیت خواننده مستحکم‌تر است استثنائات خاصی بر این قاعده وارد است: ۱- در مواردی که طرفین به یک اندازه گناهکار نیستند ۲- در مواردی که هدف مشروع قرارداد به مرحله اجرا در نیامده طرف قرارداد می‌تواند پشیمان شود و هر گونه پول یا کالایی را که انتقال داده باز پس گیرد.

جدا ساختن بخش صحیح قرارداد از بخش نامشروع (تبعض صفقه) : servance

Discharge of contract

a) Discharge of contract by agreement: The mutual release of each party from their obligations under the agreement provides the consideration for the agreement to discharge the contract.

فسخ قرارداد

الف - فسخ از طریق توافق: بری الذمه نمودن دو جانبه از تعهدات ناشی از توافق توسط طرفین عوض توافق بر فسخ قرارداد محسوب می‌گردد.

This from of release is known as waiver

این نوع از ابراء به ابراء *waiwer* موسوم است.

b) Discharge by performance: where time is of the essence of contract failure to perform within the stated time amounts to a breach.

ب - خاتمه از طریق اجرا: قصور در اجرا ظرف زمان تعیین شده چنانچه زمان نقش اساسی در قرارداد داشته باشد منجر به نقض قرارداد می‌شود.

c) Discharge by breach

A breach of contract entitles the injured party to an action in damages.

ج - سقوط قرارداد به واسطه نقض

خاتمه بعلت نقض قرارداد

نقض قرارداد طرف زیان دیده را محلق به طرف دعوی خسارت می‌کند.

d) Discharge by subsequent impossibility or (frustration)

د- خاتمه قرارداد به علت غیرممکن شدن بعدی اجرای قرارداد یا frustration

ه- فسخ به علت اجرای قانون

e) Discharge by operation of law

like:

(i) laps of time

۱- گذشت زمان اجرای قرارداد

(ii) merger: Merger arises where a simple contract is made and subsequent the parties make a speciality contract embodying all former terms.

۲- ادغام سند عادی در قرارداد رسمی: زمانی به وقوع می‌پیوندد که در ابتدا قراردادی ساده منعقد گردیده و متعاقباً طرفهای قرارداد، قراردادی رسمی را که در برگیرنده کلیه شروط قرارداد نخست می‌گردد منعقد می‌نمایند.

(iii) Material alteration

۳- تغییر اساسی و ماهوی در سند

(iv) bankruptcy

۴- ورشکستگی

(v) Death: the death of either party to a contract discharges the contract where personal services are concerned.

۵- مرگ: مرگ هر یک از طرفهای قرارداد در مواردی که قرارداد مربوط به خدمات شخصی می‌گردد، قرارداد را فسخ می‌کند.
 درمان‌های نقض قرارداد

Remedies for breach of contract

a) refusal of further performance

الف - امتناع از ادامه اجرای قرارداد

b) action for damages

ب - طرح دعوی جهت دریافت خسارت

c) action on a quantum meruit

ج - طرح دعوی بر اساس اجرت المثل

d) action for specific performance

د - طرح دعوی جهت الزام به انجام اصل تعهد

e) an injunction

ه- دستور مبنی بر منع انجام عمل

An injunction is an order of the court restraining a person from doing an act.

دستور منع انجام عمل دستور دادگاه است که فرد را از انجام عملی باز می‌دارد.

f) rescission

و - فسخی که اثر قهقرایی دارد.

لغات کلیدی مربوط به بخش

Act upon	بر اساس چیزی عمل کردن	Misrepresentation	بیان نادرست اوصاف مورد معامله
Beneficiary	منتفع	Notify	اطلاع دادن
Bribery	رشوه	Party prejudiced	طرف متضرر
champerty	شرخری	Pressure exerted upon	فشار وارده
Company prospectus	آگهی عرضه سهام	Public policy	نظم عمومی
Contrivance	مغایرت داشتن	Rebut the presumption	خلاف فرض را نشان دادن
Deceive	فریفتن	Redress	جبران خسارت
Duress	اکراه	Release	مبری ساختن از تعهد
Entitle	حق داشتن	Representation	بیان اوصاف مورد معامله
Execution	اجرا	Repudiate	رد کردن
Exemption clause	شروط معاف کننده	Rescind	لغو کردن
Expression	بیان - گفتار	Restore to original position	بالحالت اول برگرداندن
False	دروغ	Satisfy condition	بیان اوصاف مورد معامله
Fiduciary	امین	servance	جدا ساختن بخش سالم و باطل قرارداد
Frustration	غیرممکن شدن بعدی قرارداد، انتفای قرارداد	Solicitor	وکیل
Honours	القاب رسمی	Suffer damage	متحمل ضرر شدن
Imprisonment	حبس	tender	تلاش جهت اجرای قرارداد
Indicate	نشان دادن	Undue influence	نفوذ
Insurance	بیمه	Waiver	اعراض - اسقاط
Maxim	قاعده	ward	فرد تحت قیمومیت

سوالات چهارگزینه‌ای آزمون سراسری

1- are primarily engaged in advocating parties in courts. (سراسری ۷۷)

- | | |
|----------------------|----------------|
| 1) Advisory counsels | 2) Barristers |
| 3) Councilors | 4) Magistrates |

2- "The gradual reduction of an existing debt or claim by partial payments, of principal and accrued interest, stated intervals over definite period of time." (سراسری ۷۸)

- | | | | |
|--------------|-----------------|--------------|----------------|
| 1) Affidavit | 2) Amortization | 3) Annulment | 4) Arraignment |
|--------------|-----------------|--------------|----------------|

3- A Purchase of property is a real or valid purchase as distinguished from a fraudulent conveyance. (سراسری ۷۸)

- | | | | |
|-----------------|--------------|---------------|---------------|
| 1) bill of sale | 2) bona fide | 3) certiorari | 4) ipso facto |
|-----------------|--------------|---------------|---------------|

4- Evidence that is considered to sufficient in law to establish the presumption that a certain fact is true. It means that there is sufficient evidence to establish this presumption, unless it should be disapproved by subsequent evidence. (سراسری ۷۸)

- | | | | |
|----------|-----------|------------|----------------|
| 1) write | 2) Waiver | 3) Probate | 4) Prima Facie |
|----------|-----------|------------|----------------|

Passage 1:

The Sloan Automobile Agency agrees to sell Mr. Post an automobile and Mr. Post agrees to pay 550000 on delivery. The Sloan Agency tenders the automobile to Mr. Post, but Mr. Post refuses without tenders the automobile to Mr. Priest but Mr. Priest refuses without justification to accept delivery. (سراسری ۷۸)

5- Which of the following is true?

- 1) Mr. Priest is said to have committed a breach of contract.
- 2) Mr. Priest has to tender the car back to the Agency.
- 3) The Sloan Agency has the right to cancel the contract.
- 4) The Sloan Agency has to decompensate for the loss.

6- When a person breaks a contract, the person who is damaged may sue for the breach. when the harm caused by the breach is insubstantial, the damage is said to be

(سراسری ۷۸)

- | | | | |
|-------------|-------------|------------|-----------------|
| 1) recovery | 2) remedial | 3) nominal | 4) compensatory |
|-------------|-------------|------------|-----------------|

Passage 2:

Although the rule has been relaxed in some states, generally a contract must be supported by consideration Bearing in mind that a contract is essentially a promise consideration is something given in return for a promise. It does not necessarily have to have monetary value. Consideration will support a promise if the condition of the promise is that the person to whom it is made agrees to do something in return or to refrain from doing something.

Mr. Ames promises his nephew that if he will go to college and complete his course he will pay him \$ 10,000 . The nephew receives a degree and has a valid contract claim against his uncle. In the average case the consideration does have a dollars- and- cents value but this is not necessary.

When one says to the owner of a garage, "I will pay you \$ 150 if you will make my car run properly", the undertaking by the garage owner of the job is sufficient consideration for the promise. It is not necessary that the person making the promise be benefited by the consideration.

A father promises to pay his son the sum of \$ 500 if the son does not use intoxication liquor until he reaches the age of 25 years. The forbearance by the son of his legal right to use intoxication liquors is sufficient consideration.

Written as well as oral promises generally require consideration, but some states have reconsidered consideration; that is, they have changed the rules of the common law in order to provide that the majority of written contracts are presumed to have valid consideration.

(سراسری ۷۸)

7- According to the text, it is necessary that

- 1) a contract be supported by a consideration
- 2) consideration do have monetary values
- 3) contract be well- written and documented
- 4) the promisor be benefited by the consideration

8- According to the text, a consideration necessarily has to

- | | |
|------------------------------------|------------------------------|
| 1) support a promise | 2) make agreements binding |
| 3) be paid back by monetary values | 4) be returned for a promise |

9- According to the text, when a promisor promises, he/ she

- 1) can not bargain over the promise given
- 2) does not need to enjoy any benefits
- 3) must be older than the promise
- 4) must be physically capable of performing his/ her promise

10- The word presumed is closest in meaning to ".....".

- | | | | |
|------------|-----------|----------------|---------------|
| 1) assumed | 2) argued | 3) anticipated | 4) attributed |
|------------|-----------|----------------|---------------|

Passage 3:

A second family of law is that of the Common law. This family includes the law of England and those laws modeled on English law. The term "common law" refers to the law which is common to all England. Before the time of the Plantagenet kings (1154- 1399). There was a rich variety of customs and "law" in the land. The common law was built up in Plantagenet times by the professional lawyers of the king's courts. But in Anglo- Saxon times, there was no such body of men and no body of case law for the whole nation.

The English king most responsible for England's legal reform was Henry II (1154- 1189). He increased the power and jurisdiction of the king's central courts. He sent officials of these courts into the countryside to execute the law. These central courts and their representatives made possible the rapid growth of the English common law. He also provided the beginnings of the concept of trial by Jury so central common law as it operates today.

Common law is very different from the Roman- Germanic family. Common law was primarily by judges who had to resolve specific individual disputes. The common law legal rule tries to provide the solution to a trial.

The Romano- Germanic system tries to formulate a general rule of conduct for the future. Common law is, then, much less abstract than the legal rule of the Romano- Germanic family. Romano- Germanic law is determined by legal scholars who are concerned with the theory than with the practical application of law. This practical application is left to the

courts. In contrast, common law jurist are generally more intested in the practical application of law. This is the case because, historically, common law jurists have been concerned to reestablish peace rather than set down a moral basis for the social order.

Finally, great differences exist between the Romano - Germanic system and common law because the original of the common law are linked to royal power. It developed as a system in those cases where peace of the English kingdom was threatened. It seems essentially to be public law. Disputes between private individuals did not interest the common law courts except as they involved the interest of the crown or kingdom. There was little influence of the Romano - Germanic system on the formation and development of the common law. The divisions of the common law, its concepts and vocabulary, and the methods of the common law lawyer are entirely different form those of the jurists of the Romano - Germanic family.

(سراسری ۷۸)

11- The world common is attributed to law since

- 1) the Anglo- Saxons levied laws only for common people
- 2) the lawyers were not considered as common people
- 3) it refers to the law which is common in England
- 4) it refers to any law based on human needs

12- The most important factor in the execution of the common law was the

- 1) development of the concept of trial by the jury
- 2) establishment of judicial courts in the capital of England
- 3) laws levied and executed by kings Henry himself
- 4) rapid growth of the number of central courts

13- According to the text, Romano- Germanic law

- 1) was primarily more common than the common laws
- 2) was levied only to be applied in Rome and Germany
- 3) is rather less abstract than the principles of the law
- 4) is more concerned with theory rather than the application of the law

14- The ultimate goal of common law was to

- 1) establish the dominancy of the Germanic system on the community
- 2) find solutions to the disputes between individuals
- 3) make peace dominant in the social order
- 4) set down moral basis for the social order

15- When one reads the text, it seems that the author

- 1) considers the common laws more theory- oriented
- 2) considers the Romano- Germanic laws more practice- oriented
- 3) finds no resemblance between the methods used by common law lawyers and the Romano- Germany ones
- 4) sees no difference between the two systems of common law and Romano- Germanic laws

16- According to the text, the common law was

- 1) essentially inapplicable
- 2) unknown to the Anglo- Saxons
- 3) a tool in the hands of the English kings
- 4) practices fully by the Romano- Germanic families

17- Contract is an agreement that the courts, recognize and enforce it.

The above statement means that, for an agreement to be considered a contract,

(سراسری ۷۹)

- 1) it needs to be signed by court officials
- 2) it should be verified by the court
- 3) the court should reinforce it
- 4) the documents should be recorded in the court's books

If a defendants wishes to make a counter claim, he shall file the same at the time provided for in Article 4.

18- The word "same" refers to

(سراسری ۷۹)

- 1) pronoun "he"
- 2) defendant
- 3) counter claim
- 4) Article 4

In general, legal principles require that an offer defines the essential terms of performance by both the offer and the offered.

19- The statement roughiy means that

(سراسری ۷۹)

- 1) the offer or and the offered have different rights
- 2) legal principles are very difficult to define
- 3) essential terms must be defined before included
- 4) both parties obligations should be observed

Many conventional rules, for example, those relating to the cabinet system, do not affect a citizen's rights and interests closely enough for a personal judicial remedy to be justified.

20- From the above text, it is understood that conventions relating to the cabinet systems

(سراسری ۷۹)

- 1) have no impact on the constitutions
- 2) do not affect the people's interests
- 3) are marginal in regard to judicial remedies
- 4) are mostly indifferent to the citizen's rights

Equity sometimes gives relief where an agreement has been obtained by some from of pressure, which falls outside the narrower legal definition of duress. For example close relative, for a criminal offence.

21- The text implies that contracts made this way

(سراسری ۷۹)

- 1) are apt to be aside
- 2) are thought to be mandatory
- 3) should be set aside for duress
- 4) should be totally disregarded

Passage 4:

The principles of Islamic jurisprudence resemble a shading tree which spreads justice and ensures peace to those under its protection. It is based on the proper. And legitimate rule of the legislator and is guide by the light of reason.

22- The text implies that

(سراسری ۷۹)

- 1) The Islamic jurisprudence works in the basis of human's rights
- 2) The Islamic jurisprudence is derived from the source of piety
- 3) the rules of legislator is guided by jurisprudence
- 4) the Islamic jurisprudence is based on legislation

23- When an offer is withdrawn by and offer or one can say that the offer has been

(سراسری ۸۰)

- 1) rejected 2) revoked 3) innovated 4) capitulated

The agent of necessity must act bonafide in the interests all parties concerned.

24- The statement implies that

(سراسری ۸۰)

- 1) the parties acts for all parties concerned
2) the agent of necessity gives the interests to all parties concerned
3) all parties concerned act bonafide in the interests of the agent
4) the agent of necessity observes the benefits of all parties concerned

Passage 5:

The doctrine of privity, while not an irrational inference from the nature of contract in general of English Contract in particular, has in its incidence worked injustice and proved inadequate to modern needs.

25- The text implies that to attend the relativity of contracts is logically justifiable

(سراسری ۸۰)

- 1) and irrefutable 2) and irreducible
3) but not adequate enough 4) but needs modifications in modern time

26- An evidence of a fact which the court must take as proof of such fact unless disproved by future evidence is called evidence.

(سراسری ۸۰)

- 1) conclusive 2) direct 3) hearsay 4) prima- facie

27- A Contract is an obligation not created by, but similar to that created by contract, and is independent of the consent of the person bond.

(سراسری ۸۰)

- 1) quasi 2) unilateral 3) credit 4) bilateral

English judgment have found, from experiences, that if one person makes a clear and definite offer and another person unconditionally accepts that offer, then it is reasonable to say that the two of them are in agreement. There is no attempt they say what they do that counts.

28- According to the text, what is a criterion for a contract agreed upon. (سراسری ۸۰)

- 1) a judge openly expresses
2) is implied but not what is mentioned
3) one says clearly and not what one intends for
4) one presents in the written form

29- If "a major consequence of the corporation's entity status is the limited liability it accords to its shareholders" then:

(سراسری ۸۱)

- 1) shareholders of a corporation have limited liability
2) a major consequence of the corporation is its entity stams
3) limited liability is accorded to a corporation by its shareholders
4) entity status is accorded to the corporation by its shareholders

30- Should distinguishing partnership property from a timited partner's individual property is seldom problem then:

(سراسری ۸۱)

- 1) limited partner's property is seldom a problem
2) you may have a problem in distinguishing the properties of this category
3) partnership property is seldom one of limited partner's individual property
4) distinguishing partnership is seldom a problem when limited partnership has a property

31- If a plaintiff could maintain a contract action only against the party with whom the contract had been made. Then: (سراسری ۸۱)

- 1) a contract could only made by plaintiff
- 2) an action against a plaintiff could be maintained by defendant
- 3) the defendant could only be one who had made a contract with plaintiff
- 4) an action could be maintained only against the party with whom the contract could be made

In a sale contract made through the post, a letter of acceptance is effective and valid as soon sentence implies that:

32- This sentence implies that: (سراسری ۸۱)

- 1) an agreement is made when a letter of acceptance is posted
- 2) no agreement is obtained when a letter of acceptance is posted
- 3) a letter of acceptance is valid and of effect if it is received by the offeror
- 4) a contract is certainly terminated as soon as a letter of acceptance is posted

33- The sentence: Security holders are the owners of corporation means that: (سراسری ۸۱)

- 1) corporation's owners hold it as security
- 2) holders and owners of security are ones who secure the corporation
- 3) the security holders are corporations
- 4) one who has security is one who has the ownership of corporation

34- What is the meaning of: If a contact cannot be performed within a year, it must be put in writing? (سراسری ۸۱)

- 1) performance of a contract must be in writing
- 2) The writing of a contract cannot be performed within a year
- 3) The writing performance of contract cannot be within a year
- 4) There is no need that a contract to be in writing unless it is contemplated

35- A contract in which only one party gives promise and the other party, giving no promise just accept the promise is technically called (سراسری ۸۱)

- | | |
|---------------------------|------------------------|
| 1) bilateral contract | 2) unilateral contract |
| 3) synallagmatic contract | 4) quasi contract |

36- An evidence of a fact which the court must take as full proof of it and which excludes all evidence to disprove it, is referred to as (سراسری ۸۱)

- | | |
|------------------------|-------------------------|
| 1) direct evidence | 2) prima facie evidence |
| 3) conclusive evidence | 4) real evidence |

37- In deciding the issue of contractual intention, the courts apply objective test. In this sentence objective test means: (سراسری ۸۱)

- 1) A test by which a court investigates the tintentions of a reasonable man in the circumstances of the conclusion of the contract
- 2) subjective test
- 3) A test not relating to intention at all
- 4) A test by which a court investigates the intentions of the parties to the contact

38- According to one school of thought the legal nature of the transfer of a documentary credit is that the transfer operates as an equitable assignment. In this sentence the phrase equitable assignment means: (سراسری ۸۱)

- 1) an assignment upon which only the second beneficiary of the credit will be liable.
- 2) an assignment upon which the first beneficiary of the credit drops out and will not have any more liability.
- 3) an assignment upon which the original beneficiary of the credit (the transferor) may still be liable in respect of the transaction.
- 4) an assignment upon which the first beneficiary of the credit drops out but he will still be liable.

39- The argument that legal rights exist only where the holder of a right can enforce it by bringing a legal action (سراسری ۸۳)

- | | |
|------------------------------------|------------------------------------|
| 1) is rebutted by Hart | 2) has been suggested by Hart |
| 3) is proved to be correct by Hart | 4) is not taken as serious by Hart |

As conventional rules often give rise to reciprocal , on consequence of a breach may be to release another office- holder from the normal constrains that would otherwise bind him.

40- The text implies that: (سراسری ۸۳)

- 1) Conventional rules obligations just for one of the parties to the convention.
- 2) A breach of obligation by one of the office- holder may not release another from his obligation.
- 3) If there is no breach of obligation by one office- holder, the other is not entitled to discharge himself from his obligation.
- 4) If there is a breach of obligation by one of the office - holder , the other inbound to perform his normal obligation.

41- If the policy is illegal, whether because there is no insurable interest, the premium can be recovered back, therefore: (سراسری ۸۳)

- 1) if the policy is lawful, the premium may be paid back.
- 2) the premium could not be paid back if the insurance policy is unlawful.
- 3) the premium could be recovered back whenever the policy is illegal.
- 4) if there is no insurable interest, the premium can not be recoverd back.

42- An equitalbe lien is a charge upon property, conferred by law until certain claims have been satisfied therefore: (سراسری ۸۳)

- 1) there is a lien wherever there is a claim.
- 2) there is no lien wherever there is no claim.
- 3) if there is a claim satistied, there will be a lien.
- 4) if there is a charge upon property, the law confers a lien for it.

43- An insolvency petition may be presented either by one or more of the creditors. Thus: (سراسری ۸۳)

- 1) every petition may be made by the insolvent.
- 2) a creditor may make a petition against the creditors.
- 3) a creditor may claim against a person as an insolvent.
- 4) a creditor who is an insolvent may makes a petition.

Passage 6:

Ownership has been described as 'the entirety of the powers of use and disposal allowed by law'. The owner of a thing has an aggregate of rights, namely (i) the right of enjoyment, (ii) the right of destruction, and (iii) the right of disposition, subject to the right of others. Thus if A owns a hat he or she can wear it, alter it, burn it, or merely throw it away. There are, however, limits to these rights. If A throws the hat at B, this might be an assault on B (or a battery if the hat strikes B), for under the general law 11 has a right not to be interfered with. Similarly in regard to land, A may enjoy and use it, sell it or give it away; but use of this land is subject to the rights of others as allowed by law, e.g. in nuisance and tort. Today a landowner's rights are much circumscribed by legislation aimed at social control, e.g. the Town and Country Planning Act, 1971. Permission for any change in the use of the land owned has to be obtained from the local planning authorities.

Moreover, Government department and local authorities may compulsorily acquire privately owned land and use it for public purposes, e.g. as a site for a school or college. A person may own land notwithstanding that another has an easement, such as a right of way, over it. In course of time the idea of ownerships grew with an advancing industrial and capitalistic economy. The right of possession changed into the right of ownership which we know today. Ownership may be acquired in the following ways. Ownership may be thus obtained by (i) creating something, e.g. a clay jar or a picture; (ii) occupation, where a person claims something not owned by anyone, e.g. a wild bird or animal, or by occupation of property abandoned by another; or (iii) accession, e.g. if A owns an animal which begets young, the young animals become the property of A by accession. (سراسری ۸۶)

44- What does the passage mainly discuss?

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|---------------------------|-----------------------------|
| 1) The law of use | 2) The law of property |
| 3) The entirety of powers | 4) The entirety of disposal |

45- What does 'aggregate' in line 2 refer to?

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|-------------------------------|-------------------------------------|
| 1) an entirety | 2) an individuality |
| 3) made up of several amounts | 4) added together as a total amount |

46- According to the passage, if A B, this might be:

- | | |
|---------------------------------|--------------------------------------|
| 1) strikes, a battery | 2) strikes, an assault |
| 3) throws the hat at, a battery | 4) throws the battery at, an assault |

47- A person may possess land another has the right of accommodation in his or her land.

- | | |
|--------------|------------------------------|
| 1) but | 2) however |
| 3) so far as | 4) in spite of the fact that |

48- Ownership cannot be obtained by

- | | |
|----------------------------------|------------------------------------|
| 1) yielding | 2) producing something |
| 3) taking up something abandoned | 4) threatening or violent behavior |

Passage 7:

All human beings are 'persons' under English law. One of the most important concepts of English law is that all persons within the realm, including aliens, have rights and are subject to certain duties.

This state of affairs is not universal. Slaves in early Roman and Anglo-Saxon times, for example, had no rights. They were regarded as chattels: A thing to be owned and used or even killed at the will of their master or owner. A slave had, in law, no 'legal personality'. Similarly in early Norman times a criminal could be declared an outlaw: Some one outside

the law's protection whom any man could kill with impunity. In early times also, animals which had 'misbehaved' by attacking humans or cattle were sometimes hanged. In the East gods and idols were offered gifts or appeased in some way as if they were persons. Whether a human begin or some other creation is a 'legal person' depends, therefore, on the law of the state where that being or creature is.

In English law legal personality generally attaches to a human being at birth and ends at death. Although certain parts of the criminal law recognize and protect the existence of a child not yet 'in being', e.g. it is an offence to commit abortion of child destruction (which means unlawfully causing the death of a child before it has an existence independent of the mother), this does not necessarily attribute legal personality to the unborn infant.

Death puts and end to both the physical and legal personality. For example, the defamation of a deceased person is not actionable in English law by his personal representatives or near relations.

(سراسری ۸۶)

49- According to English law, aliens persons:

- | | |
|-----------------------|---------------------------|
| 1) are considered | 2) are not considered |
| 3) may be regarded as | 4) may not be regarded as |

50- In early Roman and Anglo-Saxon times, slaves were not regarded as

- | | |
|------------------------|-----------------------|
| 1) a thing to be owned | 2) a thing to be used |
| 3) belongings | 4) individuals |

51- What does 'impunity' in line 8 mean?

- 1) A person does not get punished for what he has done.
- 2) A person gets punished for what he has done.
- 3) A person could be killed for what he has done.
- 4) A person could not be killed for what he has done.

52- According to the criminal law, a child not yet 'in being'

- 1) cannot be a legal personality because it does not have an existence independent of the mother
- 2) can be a legal personality because it has an existence independent of the mother
- 3) is not a legal personality
- 4) is a legal personality

53- What does 'not actionable' in line 19 mean?

- 1) No action can be taken to defame the person.
- 2) The case cannot be stopped in a court of law.
- 3) The case cannot be brought in a court of law.
- 4) No one must take responsibility for the action.

Passage 8:

Business law is the body of law which governs business and commercial transactions. It is often considered to be a branch of civil law and deals both with of private law and public law.

Business law include within its compass titles as principal and agent; carriage by land and sea; merchant shipping; guarantee; fire, life and accident insurance; bills of exchange and partnership. It can also be understood to regulate corporate contracts, hiring practices, and the manufactures and sales of consumer goods. Many countries have adopted civil codes which contain comprehensive statements of their Business law. In the Unites States, Business law is the province of the both the states under their police power. Efforts have

been made to create a unified body of Business law in the US; the most successful of these attempts has resulted in the general adoption of the Uniform Commercial Code.

Various regularity scheme control how commerce is conducted. Privacy laws, safety laws. (I.e. the Occupational Safety and Health Act in the Unites States), food and drug laws are some examples.

54- What would the possible topic be for the above passage? (سراسری ۸۸)

- 1) commercial law
- 2) public law
- 3) private law
- 4) safety law

55- Which statements is NOT true about 'business law'? (سراسری ۸۸)

- 1) It deals with such topics as carriage by land and sea.
- 2) It contains issues like accident insurance and merchant shipping.
- 3) It is often a branch of civil law and concerns matters related to private law.
- 4) It is a branch of public law and discusses such titles as principal and agent.

56- Most countries have which includes complete statements of their business law.

(سراسری ۸۸)

- 1) tolerated civil rules
- 2) acknowledge internal laws
- 3) admitted military rules
- 4) acquired international laws

57- In the United States, business law is the

(سراسری ۸۸)

- 1) province or state controlled by the police power
- 2) responsibility of the Congress and the states
- 3) province or state controlled by the United States Congress
- 4) the responsibility of the House of Representative and their police power

58- The author finally concludes that there are

(سراسری ۸۸)

- 1) food and drug laws regarded among the schemes admitted in the United States
- 2) various regulatory schemes which control safety and health in the Unites States
- 3) safety laws dealing with commerce and health
- 4) different regulatory arrangements which control business