

Contracts



ProActive プロアクティブ／グアム大学日本事務局

Contracts (契約)

2種類

Common Law (Real Estate & Service)

Sales of Goods

内容は似ていますが、違いがあります。

通常、契約が成立とみなされるにはいくつかの条件が必要です。

Offer (申し込み)

Acceptance (受諾)

Consideration (対価)

さらに細かい条件はありますが最低この3つは必要です。

Offer ?

申し込みをかける場合、内容が明確でなければいけません(Definite Terms)。

金額

当事者 : Offeror (申し込みをかけた側)、Offeree (申し込みをかけられた側)

Nature of the subject matter (何について、車? 土地? ビル? テレビ? ペンキを塗る?)

数量 (Quantity)

期限 (Time for performance)

Offer の例 : 車のタイヤが1本パンクしちゃった、\$200 で今週の金曜日までに修理してよ?

Acceptance

Offer の内容を変更して受諾はできません。 Must accept All terms and conditions of the offer without any change or alteration

Acceptance には特別なルールがあります。Mail-Box ルールです。教科書で学習します。凄く重要です。

Consideration

通常、対価とはお金を払うことですが、お金じゃなくてもいいです。

例えば、ビール1本、汚れたお皿を洗う、訴訟を取り下げる、タバコをやめる etc。

CPAの試験で問われるのは契約が成立していたか?

契約違反はあったのか?

口頭による契約はいいのか?

書面で交わさないといけない契約は?

CONTRACT ELEMENTS

OFFER + ACCEPTANCE = A MEETING OF THE MINDS

- A. Offer
 - 1. Characteristics
 - a. Seriously intended
 - b. Communicated
 - c. Definite in its terms
 - 2. Advertising, price tags, and price quotes usually are **not** offers; they are invitations to deal, negotiate, or make an offer.
 - a. Advertisement for reward may be an offer.
 - b. Uncommunicated reward is not an offer.
- B. Acceptance
 - 1. Unconditional
 - 2. Communicated (Silence is rarely a valid acceptance unless there is a long course of dealings between parties.)
 - 3. Can only be accepted by the party to whom it s made.
- C. Consideration
- D. Capacity
- E. Legal subject matter

Notes: _____

OFFER TERMINATION

- A. Counteroffer: Effective when **received**
- B. Rejection: Effective when **received**
- C. Revocation: Effective when **received**
 - 1. Offeror usually can revoke anytime before acceptance.
 - 2. Exceptions
 - a. Option Contracts: Offeree pays consideration to keep an offer open. (Counteroffers have no effect on options.)
 - b. Firm Offer (personal property only): Merchant's written promise guaranteeing the offer will be held open
 - (1) No consideration needed
 - (2) 3-month duration
- D. Lapse of Stated Time: If no stated time, law says a reasonable time.
- E. Death or insanity of Either Party: Ends offer immediately (not most contracts)
- F. Illegality.
- G. Destruction of Subject Matter
- H. Sale of Subject Matter to Another (only when the offeree learns of it)

Notes: _____

EFFECTIVE ACCEPTANCE

- A. Most things in contracts are effective when received.
- B. Mailbox Rule (Early Acceptance Rule): Acceptance is valid when **sent** if offeree uses an equally fast method to accept the offer. When offeree uses a slower method, acceptance takes effect when received.
- C. If offeror says acceptance is not valid unless received, then not valid until received.

Notes: _____

CLASSIFICATION

- A. Bilateral vs. Unilateral
 - 1. Bilateral: A promise for a promise
 - 2. Unilateral: A promise in exchange for an act
- B. Executed vs. Executory
 - 1. Executed: Fully performed
 - 2. Executory: Not fully performed
- C. Valid vs. Voidable vs. Void
 - 1. Valid: Enforceable
 - 2. Voidable
 - a. Valid, but one party can rescind.
 - b. Fraud makes a contract voidable.
 - 3. Void: Not legally enforceable

Notes: _____

FRAUD

A. Actual Fraud

Elements of Actual Fraud (MS RID)

- M** Must be a misrepresentation of **Material** fact
- S** Must have **Scienter**: Intent to deceive

- R** Must have **Reliance**
- I** Must have **Intent** to rely
- D** Must have **Damages**

B. Constructive Fraud (gross negligence): All the elements of actual fraud, except scienter is replaced by a reckless disregard for the truth

Elements of Constructive Fraud (MS RID)

- M** Must be a misrepresentation of **Material** fact
- R** Must have **Reckless disregard for the truth**

- R** Must have **Reliance**
- I** Must have **Intent** to rely
- D** Must have **Damages**

C. Fraud in the Execution

1. Tricking someone so badly that they did not even know they made a contract
2. Makes a contract void

D. Fraud in the Inducement

1. Party makes a contract, but is lied to about one or more terms.
2. Makes a contract voidable
3. Injured party has a choice.
 - a. Disaffirm and get money back
 - b. Accept the deal and sue for money damages

E. Innocent Misrepresentation

1. All fraud elements except scienter
2. Injured party can disaffirm only.

Example 1: Actual Fraud

Know house has no well. Say house has well

Example 2: Constructive Fraud

Don't know whether house has well or not and have not investigated matter. Say house has well

Example 3: Innocent Misrepresentation

Rely on expert's statement that the house has a well, not realizing that the house has no well. Say house has well

Notes: _____

ILLEGALITY

- A. Illegal contracts are void. Court won't aid either party.
- B. Covenants Not to Compete: Covenants not to compete in sale of business or employment contracts are okay if reasonable. (If not reasonable, it is restraint of trade.)
 - 1. Must be reasonably needed
 - 2. Must be reasonable as to time (3 years or less)
 - 3. Must be reasonable as to distance (geographical area)
- C. License: Failure to have a required license makes all contracts void (even if client knows).
 - Exception: License was a mere revenue-raising measure
- D. Exculpatory Clauses
 - 1. Contract states that you're not liable if negligent
 - 2. Usually void as against public policy

Notes: _____

STATUTE OF FRAUDS

A. Required Writing

1. Any writing that states the major terms is okay.
2. Need only be signed by **one** party, but can only be enforced against the one who signed
 - Exception: Sales contracts when both parties are merchants

B. Contracts that require a writing

GRIPE + Marriage	
G	Sale of Goods of \$500 or more
R	Real estate contracts
I	Impossible to perform in 1 year
P	Promise to pay the debt of another
E	Promise of an Executor to be personally liable
+	
Marriage	Contracts where Marriage is the consideration

C. Exceptions

1. Contract fully performed by both parties (executed contract)
2. Contract fully performed by one party and the other is required only to pay money
3. Buyer has entered land and made substantial improvements.
4. Sale of goods exceptions

Notes: _____

LACK OF CAPACITY

- A. Minors: Can disaffirm most contracts anytime while a minor or any reasonable time thereafter.
 - 1. Need only to return what they possess or control at that time
 - 2. Can ratify after reaching majority by words or actions
 - 3. Cannot disaffirm necessary contracts: Necessary means food, clothing, shelter. Not necessary until actually received and if available from parents.
 - 4. Liable for torts (civil wrongs; for example, minor lies about age)
 - 5. Cannot disaffirm real estate contracts while a minor
- B. Drunk: Can disaffirm only if they were so drunk that they didn't understand what they were doing
- C. Insane
 - 1. Usually can disaffirm
 - 2. Once adjudicated insane, all future contracts are void (no meeting of minds).

Notes: _____

MISTAKES, DURESS, UNDUE INFLUENCE

- A. Most mistakes have no effect on contract.
 - 1. With unilateral mistakes, when other party knew or should have known that a mistake was being made, mistaken party can disaffirm.
 - 2. Mutual mistakes of a material fact make a contract void.
- B. Duress: Forcing someone into a contract by threat of violence or criminal action. Contract is voidable.
 - Injured party can disaffirm or accept contract and sue for damages.
- C. Undue influence: Forcing someone into a contract by overcoming their free will through use of a position of love, confidence, or affection. Contract is voidable.

Notes: _____

PAROL EVIDENCE RULE

- A. Cannot contradict a written contract in court with oral or written evidence.
- B. Watch for the following
 - 1. Evidence that occurred after the writing is admissible.
 - 2. Evidence relating to things before or during the writing is inadmissible.
 - 3. Evidence must contradict the writing directly.
 - 4. Contract must have been intended to be the parties' entire deal.

Notes: _____

BENEFICIARY CONTRACTS

- A. A and B make contract intending to benefit C.
- B. Beneficiaries Types
 - 1. Donee Beneficiary: Person who the gift is made to
 - 2. Creditor Beneficiary: Person who is owed money
 - 3. Incidental Beneficiary: Gets no rights
- C. If there is a breach, C can sue either A or B, but only one recovery.

Notes: _____

ALTERATIONS

- A. Novation
 - 1. A substitution of debtors
 - 2. Creditor agrees to release the old debtor.

- B. Rescission
 - 1. Cancellation of contract
 - 2. Return parties to pre-contract conditions

- C. Assignment: Most contract **rights** can be **assigned** and **duties delegated**.
 - Cannot assign or delegate
 - a. If it would alter performance materially
 - b. Personal service contracts calling for special skill

Notes: _____

PERFORMANCE

A. Substantial Performance Doctrine: Generally involves construction contracts

1. Builder unintentionally departs from contract in a minor or trivial area.
2. Builder still can collect under the contract, but less damages for the minor defect.

B. Specific Performance

1. Injured party gets court order requiring breaching party to specifically perform their part of the deal.
2. Can only be used with unique property (land and other one-of-a-kind items)
3. Can not be used with personal service contracts.

Notes: _____

CONTRACT TERMINATION

- A. Breach
- B. Agreement
- C. Novation: Creditor releases the debtor.
- D. Rescission: Cancels contract (returns parties to pre-contract conditions)
- E. Death or Illness: Personal service contracts are the only type of contract death eliminates.
- F. Impossible to perform
- G. Illegal
- H. Anticipatory Breach
 - 1. Before time of performance, one party says it will not perform.
 - 2. Injured party has two choices.
 - a. Sue immediately
 - b. Wait until the time for performance and then sue if there is a breach
- I. Liquidated Damages
 - 1. Stipulated in advance in contract
 - 2. Must be reasonable

Notes: _____

CONSIDERATION

- A. Generally, must be present for both parties
- B. Giving up of a legal right
- C. No consideration needed on a promise to donate to charity.
- D. Courts are not concerned with **adequacy** of consideration.
- E. Must be mutually bargained for and legally sufficient
- F.. No Consideration
 - 1. Past consideration: Promise made after act completed.
 - 2. Preexisting Duty: Already obligated to perform
 - 3. Undisputed Claim

Notes: _____

1. Carson Corp., a retail chain, asked Alto Construction to fix a broken window at one of Carson's stores. Alto offered to make the repairs within three days at a price to be agreed on after the work was completed. A contract based on Alto's offer would fail because of indefiniteness as to the

- a. Price involved
- b. Nature of the subject matter
- c. Parties to the contract
- d. Time for performance

2. On September 10, Harris, Inc., a new car dealer, placed a newspaper advertisement stating that Harris would sell 10 cars at its showroom for a special discount only on September 12, 13, and 14. On September 12, King called Harris and expressed an interest in buying one of the advertised cars. King was told that five of the cars had been sold and to come to the showroom as soon as possible. On September 13, Harris made a televised announcement that the sale would end at 10:00 p.m. that night. King went to Harris' showroom on September 14 and demanded the right to buy a car at the special discount. Harris had sold the 10 cars and refused King's demand. King sued Harris for breach of contract. Harris' best defense to King's suit would be that Harris'

- a. Offer was unenforceable.
- b. Advertisement was **not** an offer.
- c. Television announcement revoked the offer.
- d. Offer had **not** been accepted.

(5/92, Law, #21, 2834)

3. On June 15, Peters orally offered to sell a used lawn mower to Mason for \$125. Peters specified that Mason had until June 20 to accept the offer. On June 16, Peters received an offer to purchase the lawn mower for \$150 from Bronson, Mason's neighbor. Peters accepted Bronson's offer. On June 17, Mason saw Bronson using the lawn mower and was told the mower had been sold to Bronson. Mason immediately wrote to Peters to accept the June 15 offer. Which of the following statements is correct?

- a. Mason's acceptance would be effective when received by Peters.
- b. Mason's acceptance would be effective when mailed.
- c. Peters' offer had been revoked and Mason's acceptance was ineffective.
- d. Peters was obligated to keep the June 15 offer open until June 20. (11/92, Law, #13, 3095)

1. (a) The contract based on Alto's offer would fail because of indefiniteness as to the price. The contract clearly was definite as to the nature of the subject matter, the parties to the contract, and the time for performance.

2. (b) Communications sent to large numbers of people such as newspaper advertisements, are normally only invitations. However, when an ad limits the quantities, it probably is an offer. In this case, the advertisement does not constitute an offer because it does not offer 10 cars at specific prices, only at a "special discount" and is, in effect, only an invitation to negotiate. The usual form of business with car dealers is one of negotiation.

3. (c) Peters' offer had been revoked. Since revocation notice can be received either directly or indirectly, Mason, in effect, received the revocation notice when he was told the mower had been sold to Bronson; therefore, Mason's acceptance was ineffective, even though the specified time of the oral contract had not expired. Peters' offer had been revoked prior to Mason's acceptance. There was no obligation on the part of Peters to keep the offer open, since there was no consideration for him to do so.

4. On June 15, Year 1, Alpha, Inc. contracted with Delta Manufacturing, Inc. to buy a vacant parcel of land Delta owned. Alpha intended to build a distribution warehouse on the land because of its location near a major highway. The contract stated that: "Alpha's obligations hereunder are subject to the vacant parcel being rezoned to a commercial zoning classification by July 31, Year 2." Which of the following statements is correct?

- a. If the parcel is **not** rezoned by July 31, and Alpha refuses to purchase it, Alpha would **not** be in breach of contract.
- b. If the parcel is rezoned by July 31, and Alpha refuses to purchase it, Delta would be able to successfully sue Alpha for specific performance.
- c. The contract is **not** binding on either party because Alpha's performance is conditional.
- d. If the parcel is rezoned by July 31, and Delta refuses to sell it, Delta's breach would **not** discharge Alpha's obligation to tender payment.

(11/92, Law, #25, amended, 3107)

5. On February 12, Harris sent Fresno a written offer to purchase Fresno's land. The offer included the following provision: "Acceptance of this offer must be by registered or certified mail, received by Harris no later than February 18 by 5:00 p.m. CST." On February 18, Fresno sent Harris a letter accepting the offer by private overnight delivery service. Harris received the letter on February 19. Which of the following statements is correct?

- a. A contract was formed on February 19.
- b. Fresno's letter constituted a counteroffer.
- c. Fresno's use of the overnight delivery service was an effective form of acceptance.
- d. A contract was formed on February 18 regardless of when Harris actually received Fresno's letter.

(11/92. Law, #11, 3093)

4. (a) The contract between Alpha and Delta contained the condition that the land be rezoned. Since the nonoccurrence of a condition can terminate the existing obligation and, if the condition was not met when the vacant parcel was not rezoned by the deadline set forth in the contract, then the contract was in effect terminated on July 31. If the parcel were rezoned by the deadline and Alpha refused to purchase it, Delta would be able to sue for breach of contract, but not specific performance. Specific performance typically is granted only when damages (usually, money) is insufficient. Under the contract, Delta would receive money (not a unique property) in exchange for land. (A land purchaser probably would be granted specific performance if a seller refused to honor a contract.) The rezoning was a reasonable condition set forth in the contract. The condition of the contract could have been met, and Delta's refusal then to sell the property would have breached the contract, negating any obligation of Alpha.

5. (b) The letter from Fresno (the offeree) constituted a counteroffer, because it was received by Harris (the offeror) on February 19, a day late. If the offeror specifies a time for acceptance, the offer automatically terminates upon the expiration of that time period. The termination of the offer ends the offeree's power to accept it. If acceptance is attempted after the offer has terminated, the acceptance constitutes a new offer. The offer specifically stated that the acceptance must be by registered or certified mail and received by February 18.

6. In negotiations with Andrews for the lease of Kemp’s warehouse, Kemp orally agreed to pay one-half of the cost of the utilities. The written lease, later prepared by Kemp’s attorney, provided that Andrews pay all of the utilities. Andrews failed to carefully read the lease and signed it. When Kemp demanded that Andrews pay all of the utilities, Andrews refused, claiming that the lease did not accurately reflect the oral agreement. Andrews also learned that Kemp intentionally misrepresented the condition of the structure of the warehouse during the negotiations between the parties. Andrews sued to rescind the lease and intends to introduce evidence of the parties’ oral agreement about sharing the utilities and the fraudulent statements made by Kemp. The parol evidence rule will prevent the admission of evidence concerning the

	<u>Oral agreement regarding who pays the utilities</u>	<u>Fraudulent statements by Kemp</u>
a.	Yes	Yes
b.	No	Yes
c.	Yes	No
d.	No	No

(11/92, Law, #22, 3104)

7. West, an Indiana real estate broker, misrepresented to Zimmer that West was licensed in Kansas under the Kansas statute that regulates real estate brokers and requires all brokers to be licensed. Zimmer signed a contract agreeing to pay West a 5% commission for selling Zimmer’s home in Kansas. West did not sign the contract. West sold Zimmer’s home. If West sued Zimmer for nonpayment of commission, Zimmer would be

- a. Liable to West only for the value of services rendered
- b. Liable to West for the full commission
- c. Not liable to West for any amount because West did **not** sign the contract
- d. Not liable to West for any amount because West violated the Kansas licensing requirements

(5/92, Law #25, 2838)

8. Kay, an art collector, promised Hammer, an art student, that if Hammer could obtain certain rare artifacts within two weeks, Kay would pay for Hammer’s post-graduate education. At considerable effort and expense, Hammer obtained the specified artifacts within the two-week period. When Hammer requested payment, Kay refused. Kay claimed that there was no consideration for the promise. Hammer would prevail against Kay based on

- a. Unilateral contract
- b. Unjust enrichment
- c. Public policy
- d. Quasi-contract

(5/91, Law, #16, 8009)

6. (c) The parol evidence rule will prevent the admission of evidence concerning the oral agreement regarding who pays the utilities, since the rule excludes evidence of prior or contemporaneous oral agreements which would vary the written contract. However, the parol evidence rule will *not* prevent the admission of the fraudulent statements by Kemp during the original negotiations.

7. (d) There are two types of licensing statutes—those intended primarily for revenue raising and those intended primarily to protect the public against dishonest or incompetent professional (regulatory). An individual without a license can collect the total compensation if the primary purpose of the statute was to raise revenue. However, if the purpose was regulatory in nature (intended to protect the public), the individual can collect nothing since the contract is voidable. An unlicensed individual who enters into a contract to provide regulated services will not be allowed to enforce the contract or recover even the value of the services rendered.

8. (a) The offeror made a promise for an act. When the act was performed, a unilateral contract was created and the offeror is bound to pay. Unjust enrichment generally is considered only if there was no contract and the court wishes to provide an “equitable solution.” There are no public policy issues involved. A quasi-contract applies only if there was no contract to begin with and the law implies one to prevent an unjust enrichment. Since there was a unilateral contract, there can be no quasi-contract.

9. On June 1, Year 2, Decker orally guaranteed the payment of a \$5,000 note Decker's cousin owed Baker. Decker's agreement with Baker provided that Decker's guaranty would terminate in 18 months. On June 3, Year 2, Baker wrote Decker confirming Decker's guaranty. Decker did not object to the confirmation. On August 23, Year 2, Decker's cousin defaulted on the note and Baker demanded that Decker honor the guaranty. Decker refused. Which of the following statements is correct?

- a. Decker is liable under the oral guaranty because Decker did **not** object to Baker's June 3 letter.
- b. Decker is **not** liable under the oral guaranty because it expired more than one year after June 1.
- c. Decker is liable under the oral guaranty because Baker demanded payment within one year of the date the guaranty was given.
- d. Decker is **not** liable under the oral guaranty because Decker's promise was **not** in writing.

(11/92, Law, #17, amended, 3099)

10. Nolan agreed orally with Train to sell Train a house for \$100,000. Train sent Nolan a signed agreement and a down payment of \$10,000. Nolan did not sign the agreement, but allowed Train to move into the house. Before closing, Nolan refused to go through with the sale. Train sued Nolan to compel specific performance. Under the provisions of the Statute of Frauds,

- a. Train will win because Train signed the agreement and Nolan did **not** object.
- b. Train will win because Train made a downpayment and took possession.
- c. Nolan will win because Nolan did **not** sign the agreement.
- d. Nolan will win because the house was worth more than \$500. (5/91, Law, #14, 0451)

11. Kram sent Fargo, a real estate broker, a signed offer to sell a specified parcel of land to Fargo for \$250,000. Kram, an engineer, had inherited the land. On the same day that Kram's letter was received, Fargo telephoned Kram and accepted the offer. Which of the following statements is correct under the common law statute of frauds?

- a. No contract could be formed because Fargo's acceptance was oral.
- b. No contract could be formed because Kram's letter was signed only by Kram.
- c. A contract was formed and would be enforceable against both Kram and Fargo.
- d. A contract was formed but would be enforceable only against Kram.

(R/05, REG, 0054L, #5, 7851)

9. (d) Decker is not liable because his promise was not in writing. When the promisor, Decker, is not benefiting directly in the transaction, but acting as the surety for another person's debt, then the promise must be in writing and signed by the person to be charged. The June 3rd letter is irrelevant. The contract length is not relevant here.

10. (b) Generally, an oral contract for the sale of real property is not enforceable under the Statute of Frauds. However, there are certain exceptions. For example, if the purchaser takes possession of the property or makes a partial payment on the property, an unwritten contract would be enforceable. Under the Statute of Frauds, the contract must be signed by the party to be charged. It is irrelevant that Train signed the agreement; in this case, the contract was enforceable without a signing. The sale of real estate is not affected by a \$500 benchmark.

11. (d) The Statute of Frauds provides that contracts for the sale of real estate be evidenced by a writing or writings and signed by the party to be charged.

12. On May 25, Fresno sold Bronson, a minor, a used computer. On June 1, Bronson reached the age of majority. On June 10, Fresno wanted to rescind the sale. Fresno offered to return Bronson's money and demanded that Bronson return the computer. Bronson refused, claiming that a binding contract existed. Bronson's refusal is

- a. Not justified, because Fresno is **not** bound by the contract unless Bronson specifically ratifies the contract after reaching the age of majority
- b. No justified, because Fresno does **not** have to perform under the contract if Bronson has a right to disaffirm the contract
- c. Justified, because Bronson and Fresno are bound by the contract as of the date Bronson reached the age of majority
- d. Justified, because Fresno must perform under the contract regardless of Bronson's minority
(R/05, REG, 0395L, #14, 7860)

12. (d) A contract made by an infant is voidable by the infant. A non-infant party to a contract with an infant has no power to void the contract on the basis of infancy.

13. Miller negotiated the sale of Miller's liquor store to Jackson. Jackson asked to see the prior year's financial statements. Using the store's checkbook, Miller prepared a balance sheet and profit and loss statement as well as he could. Miller told Jackson to have an accountant examine Miller's records because Miller was not an accountant. Jackson failed to do so and purchased the store in reliance on Miller's financial statements. Jackson later learned that the financial statements included several errors that resulted in a material overstatement of assets and net income. Miller was not aware that the errors existed. Jackson sued Miller, claiming Miller misrepresented the store's financial condition and that Jackson relied on the financial statements in making the decision to acquire the store. Which of the following statements is correct?

- a. Jackson will prevail if the errors in the financial statements were material.
- b. Jackson will **not** prevail because Jackson's reliance on the financial statements was **not** reasonable.
- c. Money damages is the only remedy available to Jackson if, in fact, Miller has committed a misrepresentation.
- d. Jackson would be entitled to rescind the purchase even if the errors in the financial statements were **not** material.

13. (b) Jackson will not prevail. If there are any means whereby the accuracy of the statement can be verified and it would be reasonable to do so, justifiable reliance requires such verification. Miller told Jackson to have an accountant examine Miller's records, which should have indicated to Jackson that verification was in order. Therefore, Jackson could not claim justifiable reliance. To recover, Jackson must not only prove that the errors were material, but also that his reliance on the misstatements was reasonable. If an innocent misrepresentation had occurred, Jackson could rescind the contract but generally would be unable to seek monetary damages.

14. If a person is induced to enter into a contract by another person because of the close relationship between the parties, the contract may be voidable under which of the following defenses?

- a. Fraud in the inducement
- b. Unconscionability
- c. Undue influence
- d. Duress

15. When there has been **no** performance by either party, which of the following events generally will result in the discharge of a party's obligation to perform as required under the original contract?

	<u>Accord and satisfaction</u>	<u>Mutual rescission</u>
a.	Yes	Yes
b.	Yes	No
c.	No	Yes
d.	No	No

(R/05, REG, 0060L, #3, 7869)

16. Under a personal services contract, which of the following circumstances will cause the discharge of a party's duties?

- a. Death of the party who is to receive the services
- b. Cost of performing the services has doubled
- c. Bankruptcy of the party who is to receive the services
- d. Illegality of the services to be performed

(5/95, Law, #24, 5358)

14. (c) Undue influence is defined as the mental coercion of one person by another person so that the will of the influencing party is substituted for that of the victim. Consequently, the unduly influenced party's assent to the contract is not voluntary. The result is that the contract is voidable by the victim. Fraud in the inducement is a knowing misrepresentation or omission of a material fact with the intent to induce someone to enter into a contract, and in fact, that person does rely upon that fraud to enter into the contract. Unconscionability is a doctrine wherein a court will deny enforcing a contract because of the unfair bargaining power held by one of the parties to the contract. Duress is mental or physical pressure against a party such that their free will is overcome and they enter into a contract as a result of such duress; a court will deny enforcing such a contract.

15. (a) Mutual rescission is the undoing of a contract that places both the parties in their original position. An accord and satisfaction is an agreement to accept a different performance in substitution for that required under an existing contract.

16. (d) When a contract is or becomes illegal, that contract becomes void, thus unenforceable. The death of the obligee will not discharge the obligor's duties because the decedent obligee's estate still may receive the services. The fact that the cost of performance has doubled does not render performance impossible and will not discharge the obligor's duties. Although the bankruptcy of the obligor may discharge the obligor's duties; the bankruptcy of the obligee will not discharge the obligor's duties.

17. Wren purchased a factory from First Federal Realty. Wren paid 20% at the closing and gave a note for the balance secured by a 20-year mortgage. Five years later, Wren found it increasingly difficult to make payments on the note and defaulted. First Federal threatened to accelerate the loan and foreclose if Wren continued in default. First Federal told Wren to make payment or obtain an acceptable third party to assume the obligation. Wren offered the land to Moss, Inc., for \$10,000 less than the equity Wren had in the property. This was acceptable to First Federal and at the closing Moss paid the arrearage, assumed the mortgage and note, and had title transferred to its name. First Federal released Wren. The transaction in question is a(an)

- a. Purchase of land subject to a mortgage
- b. Assignment and delegation
- c. Third party beneficiary contract
- d. Novation (5/90, Law, #25, 0475)

18. Wilcox Co. contracted with Ace Painters Inc. for Ace to paint Wilcox's warehouse. Ace, without advising Wilcox, assigned the contract to Pure Painting Corp. Pure failed to paint Wilcox's warehouse in accordance with the contract specifications. The contract between Ace and Wilcox was silent with regard to a party's right to assign it. Which of the following statements is correct?

- a. Ace remained liable to Wilcox despite the fact that Ace assigned the contract to Pure.
- b. Ace would **not** be liable to Wilcox if Ace had notified Wilcox of the assignment.
- c. Ace's duty to paint Wilcox's warehouse was nondelegable.
- d. Ace's delegation of the duty to paint Wilcox's warehouse was a breach of the contract.

19. Dye sent Hill a written offer to sell a tract of land located in Newtown for \$60,000. The parties were engaged in a separate dispute. The offer stated that it would be irrevocable for 60 days if Hill would promise to refrain from suing Dye during this time. Hill promptly delivered a promise not to sue during the term of the offer and to forego suit if Hill accepted the offer. Dye subsequently decided that the possible suit by Hill was groundless and therefore phoned Hill and revoked the offer 15 days after making it. Hill mailed an acceptance on the 20th day. Dye did not reply. Under the circumstances,

- a. Dye's offer was supported by consideration and was **not** revocable when accepted.
 - b. Dye's written offer would be irrevocable even without consideration.
 - c. Dye's silence was an acceptance of Hill's promise.
 - d. Dye's revocation, **not** being in writing, was invalid.
-

17. (d) The arrangement in question is novation, with Moss completely replacing Wren under the terms of the Wren-First Federal contract. Moss assumed liability on the mortgage. Wren has been released from liability, something an assignment and delegation does not accomplish.

20. Carson agreed orally to repair Ives' rare book for \$450. Before the work was started, Ives asked Carson to perform additional repairs to the book and agreed to increase the contract price to \$650. After Carson completed the work, Ives refused to pay and Carson sued. Ives' defense was based on the Statute of Frauds. What total amount will Carson recover?

- a. \$0
- b. \$200
- c. \$450
- d. \$650

21. Green was adjudicated incompetent by a court having proper jurisdiction. Which of the following statements is correct regarding contracts subsequently entered into by Green?

- a. All contracts are voidable.
- b. All contracts are valid.
- c. All contracts are void.
- d. All contracts are enforceable.

22. Which of the following statements is correct regarding the effect of the expiration of the period of the statute of limitations on a contract?

- a. Once the period of the statute of limitations has expired, the contract is void.
- b. The expiration of the period of the statute of limitations extinguishes the contract's underlying obligation.
- c. A cause of action barred by the statute of limitations may **not** be revived.
- d. The running of the statute of limitations bars access to judicial remedies.

20. (d) The contract between Carson and Ives does not fall under the Statute of Frauds. The fact that the contract price was renegotiated for an amount over \$500 is irrelevant because the contract is not for the sale of goods. Hence, Carson is entitled to the full \$650 of the contract in exchange for his repair work.

21. (c) All contracts entered into by Green after adjudicated incompetent are void. Contracts entered into when Green was incompetent, but previous to such adjudication, are voidable.

22. (d) The expiration of the statute of limitations does not technically discharge a party's performance, but operates to bar the bringing of an action against a nonperforming party. The expiration of the period of the statute of limitations does not void the contract, nor does it extinguish the contract's underlying obligation. A cause of action barred by the statute of limitations may be revived. If a party makes a new promise to pay the debt discharged by the statute of limitations, the contract is revived, even without new consideration.

Contracts Ver. 1K

1. Ans. A
金額が明確ではないため契約にはならない。 **A contract must be definite in its terms.**
2. Ans. B
広告は **Offer** ではなく **Invitation** になります。契約が成立しているためには **offer** がなくてははいけません。
3. Ans. C
これは **indirect revocation**。 **Offer** を **acceptance** する前に、 **Offeree** は **subject** が別の人物に売却されたことを知っています。
4. Ans. A
期日まで、 **Rezone** (土地の再区分) されなくて、 **alpha** が購入しない場合には契約違反にはならない。 **B**、 **specific performance** は土地を売却する **delta** には使用できない。 **Delta** は代金をもらう側だからです。 **Specific performance** は土地など **unique property** の場合 適応されますが、土地を購入する側に対して適応されます。 **D**、この場合であれば、 **Alpha** には **Specific performance** を要求できます。
5. Ans. B
Offeror が条件を **Stipulate** している場合、受託するにはその条件を守らないといけません。 **Mail box rule** は使用できません。この問題では、 **acceptance letter** を書留ではなく、 **overnight delivery** を使用して しかも 期日の一日遅れで 到着しています。これは **Counter offer** になります。
6. Ans. C
the parol evidence rule prevent the admission of evidence concerning prior or contemporaneous agreements which contradicts the written contract. The parol evidence rule will not prevent admission of the fraud evidence.
7. Ans. D
Failure to have a required license makes all contract void (even if client knows)
8. Ans. A
The offeror made a promise for an act. When the act was performed, this is called = unilateral contract. The contract is bound and the offeror must pay.
9. Ans. D
保証人契約は **must be in writing**.
10. Ans. B
不動産契約は通常、 **must be in writing**.しかし、例外は、このように購入者が住み着いている場合です。
11. Ans. D
書面にサインした **offer** に **Oral** で **acceptance** している場合、契約は成立しています。しかし、サインをしていない **Fargo** に対しては訴訟を起こせません。つまり、契約違反 (やっぱり土地は買わないなどの)が発生した場合、 **Fargo** に対して 裁判を起こしても負けてしまいます。

12. Ans. D

契約の解除を言い出したのは Minor ではない Fresno の方です。できません。 **A contract made by the minor is voidable by the minor.** Minor ではない当事者が相手を minor だからとゆう理由で契約解除することはできません。

13. Ans. B

会計士に財務諸表を見てもらうことをしないでお店を購入しています。これでは **reasonable reliance on the financial statement** とはいえません。 Jackson が勝つためには、 **material error** プラス、 **reasonable reliance** が必要です。合理的に信用できる要素は会計士が作成した財務諸表。

14. Ans. C

友人関係を利用した場合や、病気で弱っている人との契約で被害を受けた被害者は契約解除できます。被害者は **undue influence** を **defense** にします。

15. Ans. A

mutual rescission (両者キャンセル) , **accord and satisfaction** (オリジナル契約を解除して別の契約を結ぶ) とともにオリジナルの契約を **discharge** (解除) します。

16. Ans. D

illegal な契約は **discharge of duty** になります。

17. Ans. D

債権者 (Creditor) が債務者 (debtor) の債務を外すことを **Novation** といいます。ここで注意するのは、 **Creditor** がするのであって工場の購入者ではない。工場の購入者は **creditor** ではありません。 **Purchaser** です。

18. Ans. A

契約を **assignee** に丸投げしてもオリジナルの契約者である **ACE** には契約を遂行する責任があります。

19. Ans. A

Option contract. 別件で揉めている件で訴訟しないと記載されています。ここが **consideration** に該当します。60日間 **revocation** できません。

20. Ans. D

追加の修繕する (**additional service**)。このように、オリジナルの契約を変更した場合、追加の代金 (**additional consideration**) が必要になります。

21. Ans. C

incompetent であれば 契約は **void** です。

22. Ans. D

時効成立で法的に訴訟できなくなります。 契約は **Void** ではなく法的に縛れない (訴訟できない)。