

法律英语证书(LEC) 全国统一考试 真题解析

法律英语证书(LEC)全国统一考试委员会 编
BEN ARMOUR 主审



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前 言

外语能力一直是衡量法律职业者素质和专业水平的一个重要方面,特别是经济全球化和我国对外开放不断深入的新形势对法律工作者的英语能力提出了更高的要求。然而,由于法律英语的特殊性,国内一直没有一个科学的考核指标衡量法律从业人员专业英语的掌握程度。法律英语证书(Legal English Certificate,简称LEC)全国统一考试的推出填补了国内相关领域的空白。

法律英语证书全国统一考试委员会依托中国政法大学和北京外国语大学具体组织考试工作,旨在为从事涉外业务的企业、律师事务所提供招募国际性人才的客观标准,同时督促国内法律从业人员提高专业英语水平。

法律英语证书考试的题型、考察内容与美国的律师资格考试相近,同时又突出了法律英语语言运用的特色,并结合中国的实际增加了法律英语翻译测试。公检法机关和企事业单位从事涉外法务工作人员,从事涉外法务的律师,公司法律部门的从业人员,高等院校法律、英语、经贸等专业学生,愿意从事法律英语教学的教师以及社会上一切法律英语爱好者均可参加法律英语证书(LEC)考试。该考试证书是从事涉外法律服务工作人员专业英语水平权威证明,通过考试并取得LEC证书也是赴美攻读法学专业及取得美国律师职业资格的可靠保证。

法律英语证书考试每年举行两次,分别在5月和12月的最后一个周六举行,目前已在北京、上海、广州、重庆、杭州、济南等城市设主考点,法律英语证书(LEC)全国统一考试委员会全面负责组考工作。具体考试时间、考点设置等信息请考生随时查阅法律英语证书全国统一考试官方网站:www.lectest.com。

本书收录了自法律英语证书(LEC)全国统一考试推出以来的三套真题,并给出了全面详尽的解题分析。全部内容都经过法律英语证书(LEC)全国统考委所聘的美国专家 Ben Armour 律师的审读;中国政法大学张法连教授、希肯知识产权代理有限公司唐海龙先生等也为该书的出版做了大量工作。在此谨对诸位所付出的辛勤劳动表示衷心感谢!

预祝广大考生取得好成绩!

法律英语证书(LEC)全国统一考试委员会
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2008 年 5 月法律英语证书(LEC)
全国统一考试试卷

试 卷 一

提示:本试卷为选择题,由计算机阅改。请将所选答案填涂在答题卡上,勿在卷面上直接作答。

本卷为单项选择题,每题所给的选项中只有一个正确答案,每题 1 分,共 100 分。

1. Which of the following is/are required in order to have a “tender” of goods?
- A. The seller must put and hold conforming goods at the buyer's disposal.
 - B. The seller must give notice to the buyer that the goods are available.
 - C. The seller must give notice to the buyer and hold the goods for a reasonable time.
 - D. All of the above are required for tender.

【答案】D

【解析】U.C.C. § 2 - 503 provides:

“Manner of Seller's Tender of Delivery

(1) Tender of delivery requires that the seller put and hold conforming goods at the buyer's disposition and give the buyer any notification reasonably necessary to enable him to take delivery. The manner, time and place for tender are determined by the agreement and this Article, and in particular:

(a) tender must be at a reasonable hour, and if it is of goods they must be kept available for the period reasonably necessary to enable the buyer to take possession...”

2. A buyer can accept goods by:

- A. Stating an intention to take them.
- B. Failing to reject them.
- C. Treating the goods as if the buyer owned them.
- D. All of the above.

【答案】D

【解析】本题考查的是承诺的形式。承诺可以通过多种方式做出。通常情况下,承诺必须由受要约人向要约人通过语言明确表达(acceptance must be communicated),如选项 A,买方明确表示接受货物。承诺也可以默示的方式做出(acceptance without communication),包括通过行为表示接受要约(act as acceptance),如选项 C,把货物当作自己的,以及以沉默方式表示接受要约(silence as acceptance),如选项 B,没有表示拒绝,即可认为接受要约。因此选项 A、B、C 均可以表示买方接受货物,故选项 D 正确。

3. Rescission may be defined as:

- A. The substitution of one contract party for another.
- B. The revision of a contract's terms to reflect trade usage.
- C. The full performance of a contract.
- D. The unmaking of a contract to return the contract parties to the positions they were in before the contract was formed.

【答案】D

【解析】Rescission 意为合同的废除。选项 A 是合同的转让;选项 B 是合同的修改;选项 C 是合同的履行;选项 D 意为撤回合同,使合同双方恢复到合同订立之前的状态,是对 Rescission 的正确理解,故选项 D 正确。

4. In order for a court to apply the doctrine of promissory estoppel, which of the following elements is not required?

- A. Justice must not be served by enforcing the promise.
- B. There must be a clear and definite promise.
- C. Justice must be served by enforcing the promise.
- D. The promisee must have relied on the promise.

【答案】A

【解析】“promissory estoppel”的含义是,如果允诺人在作出允诺时,应当合理地预料到受允诺人会信赖其允诺而做出某种实质性的行为或放弃做某种

行为,并已在事实上引起了这种后果,只有强制执行该项允诺才能避免产生不公平的后果,则即使该项允诺缺乏对价,亦应与强制执行。本题考查的是允诺禁止反言的适用条件。因此,选项 B 有清楚明确的承诺,选项 C 依法可以强制执行该承诺,选项 D 受允诺人已信赖该允诺,这三项均为允诺禁止反言的要素。

5. Suppose that you purchase a purebred Scottish Terrier puppy. You pay \$800 for the dog because you think it comes from champion stock. The dog's owner did not discuss the dog's pedigree with you. If you discover later that the dog is not worth \$800, but only \$400, can you have the contract rescinded or canceled based on your mistake?
- A. Yes, if the owner knew the dog was clearly not worth \$800.
B. Yes, because you had a duty to investigate.
C. Probably not, because you made a mistake about the dog's value, not a mistake of a material fact.
D. Probably so, because you made a mistake of an immaterial fact.

【答案】A

【解析】Here, the owner knew of the buyer's unilateral mistake as to the dog's value, and thus there was no "meeting of the minds".

6. Nancy's stepdaughter Jane tells Nancy that unless she gives Jane a check for \$20,000, Jane will no longer take her to the doctor or get her medicine from the pharmacy. Nancy is old, can no longer drive, and has no other friends or relatives close by. Furthermore, she needs her medicine and medical care. If she gives Jane the check and then has second thoughts about having done so, she may:
- A. Do nothing; it's too late.
B. Claim that she defrauded Jane.
C. Ask that the contract be avoided based on undue influence.
D. Rescind the contract because it is void based on illegality.

【答案】C

【解析】"undue influence"指不正当的施压,是阻止或妨碍个人作出独立思考而作出决定的行为,最常见用于夫妇关系上,妻子因受到丈夫的不正当施压而向银行大量借贷最后无法偿还。"undue influence"适用于占优势地位的一方利用自身的影响力说服弱势一方使之订立合同,并使占优势一方

直接或间接受益的情况。该规则制定的目的在于保护老、幼、残障群体的利益。本题 Nancy 的继女 Jane 利用 Nancy 年老多病向她索要 20,000 美元的行为即可适用该规则,因此本题选 C。

7. Liz contracts with Brian. Liz agrees to cook 20 dinners for Brian, in exchange for which Brian will repair all of the plumbing in Liz's house. Is this consideration legally sufficient?
- A. No, because it is clear that one dinner is not worth as much as repairing all of the plumbing in Liz's house.
 - B. No, because this kind of bargain violates public policy.
 - C. Yes, based on the clear lack of any bargain.
 - D. Yes, because Liz has promised something of value.

【答案】D

【解析】本题考查的是合同的对价。普通法中合同的三个要素为要约、承诺和对价。合同的对价必须满足真实(real)、有价值(value)、合法(legal)、可履行(possible to perform)等条件,而“充分(adequate)”不是对价合法有效的必要条件(consideration need not be equal to the promise)。因此选项 A 错误,选项 D 正确。选项 B“做晚餐”不违反公共政策。选项 C 对价是否合法有效不依赖于是否经过讨价还价。

8. Reggie Rugg owns the Spartacus He-Male Hair-Augmentation Emporiun, an enterprise dedicated to selling wigs and toupes and providing hair-weaving services to balding men. Reggie's most outstanding employee is Hortense Herrseut. One day upon which business has been unusually brisk, Reggie tells Hortense, "You have done really good lately. If you can keep it up until Christmas, you'll get a \$500 bonus." Reggie's promise; could be best characterized as:
- A. Valid consideration.
 - B. An illusory promise.
 - C. An output contract.
 - D. A requirements contract.

【答案】B

【解析】“A 'promise becomes consideration for another promise only when it constitutes a binding obligation.' [cit. omitted] Unlike a binding obligation, an 'illusory promise' appears to be a promise, but it

does not actually bind or obligate the promisor to anything.' ”. *Hill v. Peoplesoft Usa Incorporated*, 412 F3d 540 (4th Cir.2005) ,quoting *Cheek v. United Healthcare of Mid-Atlantic, Inc.* , 378 Md.139, 835 A.2d 656, 661 (2003).

9. Eddy Malestrom is a wholesale seller of home whirlpool baths (jacuzzis) and Vercingetorix Voortekx is a retailer of the same .They conclude an agreement for the purchase of 100 whirlpool bath sets for delivery on May 5th.Eddy duly delivers 99 sets on May 5th conforming in all particulars to contract specifications.
- A. Vercingetorix may not reject Eddy’s performance because Eddy has substantially performed.
 - B. Vercingetorix may not reject Eddy’s performance unless Eddy’s breach was intentional.
 - C. Vercingetorix may reject Eddy’s performance based on Eddy’s material breach.
 - D. Vercingetorix may reject Eddy’s performance because it was not precisely what their agreement demanded.

【答案】D

【解析】This would be a “non-conforming tender” under, UCC § 2 - 503 (1) which “requires that the seller put and hold conforming goods at the buyer’s disposition ...” UCC § 2 - 508 , however, permits a seller to “cure” such a non-conforming tender.The terms of UCC 2 - 307 would also apply to this transaction. It provides: Delivery in single lot or several lots.Unless otherwise agreed all goods called for by a contract for sale must be tendered in a single delivery and payment is due only on such tender but where the circumstances give either party the right to make or demand delivery in lots the price if it can be apportioned may be demanded for each lot.?

The Official Comment to 2 - 307 amplifies the meaning of the above thusly: In such cases, a partial delivery is not subject to rejection for the defect in quantity alone, if the circumstances do not indicate a repudiation or default by the seller as to the expected balance or do not give the buyer ground for suspending his performance because of insecurity under the provisions of

Section 2 - 609. However, in such cases *the undelivered balance of goods under the contract must be forthcoming within a reasonable time and in a reasonable manner according to the policy of Section 2 - 503 on manner of tender of delivery. This is reinforced by the express provisions of Section 2 - 608 that if a lot has been accepted on the reasonable assumption that its nonconformity will be cured, the acceptance may be revoked if the cure does not seasonably occur* [emphasis added].

10. Assume that Carol Rogers (a local millionaire) promises to donate \$500,000 to the Springfield Humane Society, which the society plans to use to build a new animal hospital. Based on Carol's promise, the society begins work on the hospital. Carol, however, reneges on her offer. In this case:
- A. Carol may be sued for the money under a theory of promissory estoppel.
 - B. Carol has clearly violated the terms of a formal contract.
 - C. Nothing can be done. Carol's donation was a gift.
 - D. Carol will suffer from a bad conscience, but not from any lawsuit.

【答案】A

【解析】本题考查的是赠与受益人 (donee beneficiary) 的权利。因赠与是无偿的, 故受益人不得起诉赠与人。但如果赠与人预知受益人将信赖该赠与合同, 且受益人有理由信赖该赠与合同, 则受益人可依允诺禁止反言原则起诉该赠与人。赠与人的赠与行为不仅受道德的约束, 同时也受法律的约束。此种情况下, 大多数法院会判决赠与人依约履行 (specific performance)。因此选项 A 正确, 选项 C、D 错误。本题并没有涉及格式合同的问题, 因此选项 B 没有根据。

11. Andronicus, an international dog dealer, offers to pay Justinian, a professional dog breeder, \$40,000 on August 12th to buy Justinian's Tibetan mastiff "Gyatso", to be delivered on July 12th that year. Justinian delivers the dog to Andronicus on July 12th. On August 1, Andronicus repudiates. Justinian's cause of action against Andronicus will accrue:
- A. Immediately (on August 1st).
 - B. Anytime between July 12th and August 12th.

C. Either A or B.

D. August 12th.

【答案】A

【解析】UCC 2 - 610 allows the seller the option to a) either wait until the time of performance is due and hope the buyer will perform notwithstanding the repudiation, or b) to immediately seek the remedies available under UCC § 2 - 703, 2 - 711, or (implicitly) to do both.

12. Mary agrees to sell a used car to Bill for \$5,000. After Bill pays, Mary tells him to come over and pick up the car on Monday. However, Bill waits until Wednesday to pick up the car. In the meantime, the car is stolen. Who bears the loss here? Assume that we have neither a shipment contract nor a destination contract, and that Mary has never sold a car before.

A. Mary.

B. Bill.

C. Neither Mary nor Bill.

D. Both Mary and Bill.

【答案】B

【解析】Bill 购买 Mary 的汽车,形成了买卖关系,双方没有约定交货方式, Mary 告知 Bill 周一自行将车取走,但 Bill 周三才来取车,汽车被盗,本案由于 Bill 迟延履行,因此应当承担汽车丢失的责任。

13. The Statute of Frauds is:

A. A codification of the equitable doctrine of quantum meruit.

B. The statute providing for criminal sanctions for fraud in international transactions.

C. The statute providing civil remedies for the tort of fraud.

D. The statute providing that certain agreements are so important that they must be in writing and signed to be enforceable.

【答案】D

【解析】在大多数情况下,不要式契约是有效的。但某些类型的契约,基于法律的规定,应以书面为之。防止欺诈法的立法目的,在于避免当事人所合意的契约内容,在将来发生争议时,发生诈欺或做伪证的情形。同时,在当事人

就契约条款发生争议时,该契约亦可作为证据之用。选项 D 是对 Statute of Frauds 的正确理解。

14. Detrimental reliance is:

- A. Political or social union of contracting parties.
- B. Repudiation of a contract obligation.
- C. Relief from forfeiture of property held as security under a surety contract.
- D. Reliance that may result in promissory estoppel.

【答案】D

【解析】合同法中,信赖损害(detrimental reliance)是指由于一方当事人对合同另一方当事人的行为或陈述产生信赖,从而导致自己处于不利的地位,该种信赖即属于信赖损害。信赖损害一方可依允诺禁止反言原则,要求强制执行合同。当满足如下要素时即可使用允诺禁止反言原则:(1) A promise was made;(2) Relying on the promise was reasonable or foreseeable;(3) There was actual and reasonable reliance on the promise;(4) The reliance was detrimental;(5) Injustice can only be prevented by enforcing the promise。

15. Shaw-Shoddey Construction, Inc. was preparing a bid for the construction of a new civic center. It received a price quote of \$280,000 from Incubus Interiors, Inc., who proposed to carry out all the work of installing anti-terrorism facilities in the new civic center, a bid which is \$19,000 lower than Shaw-Shoddey's next lowest one. Shaw-Shoddey accordingly dropped its bid by \$19,000 before tendering it to the city council. Shaw-Shoddey was awarded the bid, and accepted Incubus' offer, whereupon Incubus' president, Bella Blackwater, discovered that in her compilation of the quote specifications she overlooked some temporary detention facilities mandated by the plans. If Incubus Interiors sues seeking a declaratory judgment rescinding the contract, Incubus should:

- A. Succeed, because of the unilateral mistake.
- B. Not succeed, unless Shaw-Shoddey knew or should have known of Incubus' error.
- C. Succeed, because the mistake was a material one.

D. Not succeed, since the mistake occurred prior to acceptance of the bid.

【答案】B

【解析】It is an axiom of common law contract law that unilateral mistake is insufficient grounds for the avoidance of a contract, unless such mistake by one party is known to the other.

For an interesting little case which is “the exception that proves the rule” see *Gamewell Manufacturing v. HVAC Supply, Inc.*, 715 F.2d 112 (4th Cir.1983) (Holding that, under federal law, “avoidance for unilateral mistake is generally allowed if two conditions concur: (1) enforcement of the contract against the mistaken party would be oppressive, or, at least, result in an unconscionably unequal change of values and (2) rescission would impose no substantial hardship on the other.”).

16. A crime may be defined as:

- A. A wrong committed only against persons.
- B. A wrong prohibited by the common law, but not statutory law.
- C. A wrong prosecuted by a private attorney.
- D. A wrong committed against society as a whole.

【答案】D

【解析】选项 A, 犯罪是对人实施的侵害行为。选项 B, 犯罪被普通法禁止, 但是不被成文法禁止。选项 C, 犯罪行为必须由律师提起诉讼。 *Black's Law Dictionary* (6th Edition) defines “crime” as “A *social* [emphasis added] harm that the law makes punishable; the breach of a legal duty treated as the subject-matter of a criminal proceeding.”

17. Which of the following torts provides a basis for a criminal prosecution as well as a tort action?

- A. Slander.
- B. Battery.
- C. Invasion of privacy.
- D. Libel.

【答案】B

【解析】在普通法中, defamation 既可以是刑事犯罪也可以是民事侵权,

defamation 作为民事侵权可以分为两类,一类是口头诽谤(slander),另一类是发表文字诽谤(libel)。这两者区别在于:slander 是口头的,除非本质上诽谤(slander per se),需要证明损害事实的;而 libel 是书面的,无须证明损害事实的。assault 和 battery 既可以构成刑事犯罪,也可以构成民事侵权,简单的 assault 和 battery 属于轻罪(misdemeanor);选项 C 是侵犯隐私权的意思,是侵权行为而非刑事犯罪。

18. In order for someone to be convicted of a crime, which of the following elements must be present?
- A. The defendant had a socially maladjusted childhood.
 - B. The defendant had no intent to commit the act.
 - C. The defendant performed a prohibited act.
 - D. The defendant performed a morally questionable act.

【答案】C

【解析】在美国刑法中,犯罪行为通常包括以下四个要件:犯罪行为(actus reus = “guilty act”),犯罪意图(mens rea = “guilty mind”),犯罪行为和意图并存(concurrence)以及危害结果(harmful result and causation)。选项 A 童年不幸,选项 B 非故意行为,选项 D 有精神问题,这三项均不是犯罪的构成要件。选项 C,从事法律禁止的行为是刑事犯罪构成要件之一。

19. With regard to corporations:
- A. They may be held liable for crimes, just as individuals may be.
 - B. They may never be held liable for crimes.
 - C. They do not really exist, so they cannot be liable for crimes, only for torts.
 - D. They may only be held liable for crimes if they are privately owned.

【答案】A

【解析】美国公司法中,任何性质的公司都可以作为公司犯罪的主体,因此选项 A 正确。选项 B、D 错误。公司既可以构成犯罪主体也可以构成侵权主体,故选项 C 错误。

20. Bob often left his friend Mark in charge of his bicycle store. One Saturday evening, after Mark had left for the week, Bob discovered

that he was missing \$9,000 in cash. Mark may be guilty of:

- A. Robbery.
- B. Embezzlement
- C. Misappropriation.
- D. Conversion.

【答案】B

【解析】选项 A 抢劫罪,是指使用暴力、胁迫或者其它方法,使财产所有人或看管人无法抗拒,从而强行非法占有公私财物的行为。选项 B 侵占罪,是指以非法占有为目的,将他人交给自己保管的财物、遗忘物或者埋藏物非法占为己有拒不交还的行为,或者盗窃、贪污、侵吞雇主或政府资金的犯罪行为,数额可大可小。Embezzlement is the crime of stealing the funds or property of an employer, company or government or misappropriating money or assets held in trust. 选项 C 非法挪用,通过非法转移资金、伪造文件等方式将作为某一具体目的资金非法转为他用。Misappropriation is the wrong application or utilization of funds allocated for any specific purposes, by illegally diverting the money, forging the documents or otherwise misleading the beneficiaries and owners of the fund. Misappropriation is a felony crime punishable by imprisonment. 选项 D 非法转移并占有(动产), conversion by taking a chattel out of the possession of another with the intent of exercising a permanent or temporary dominion over it, despite the owner's entitlement to use it at all Black's Law Dictionary. From Wikipedia: A conversion is a voluntary act by one person inconsistent with the ownership rights of another. Its criminal counterpart is theft. Examples are seen in cases where trees are cut down and the lumber hauled from the land by someone not having clear ownership; or removing furniture belonging to another from a cohabited dwelling, placing it in storage and not telling the owner of the whereabouts. Traditionally, a conversion occurs when some chattel is lost, then found by another who appropriates it to his own use without legal authority to do so. 根据抢劫、侵占、非法挪用及非法转移并占有的概念可知, Mark 在看管 Bob 的自行车店时侵占了 Bob 9000 美元。

21. When profits earned illegally are channeled through a legitimate business for the purpose of giving the funds the appearance of legitimacy, the act of _____ occurs:
- A. Insider trading.
 - B. Economic espionage.
 - C. Money laundering.
 - D. Burglary.

【答案】C

【解析】选项 A 是内部人员交易；选项 B 是经济间谍活动；选项 C 是洗钱；选项 D 是入室盗窃。洗钱罪是指明知是毒品犯罪、黑社会性质的组织犯罪、走私犯罪的违法所得及其产生的收益，为掩饰、隐瞒其来源和性质，通过提供帐户、协助将财产转换为现金或者金融票据等方法使非法所得财产合法化的行为。根据题干可知选项 C 正确。

22. If James takes Ellen's diamond-studded watch from her desk at work while Ellen is at lunch and does not return it, he may be guilty of the crime of:
- A. Battery.
 - B. Larceny.
 - C. Arson.
 - D. Forgery.

【答案】B

【解析】选项 A 是殴打罪，选项 B 是盗窃罪，选项 C 是纵火罪，选项 D 是伪造罪。根据题干 James 在 Ellen 离开办公室午餐时，将她的手表偷走，可构成盗窃罪。

23. A homicide committed without malice towards the victim is known as:
- A. First-degree murder.
 - B. Manslaughter.
 - C. A misdemeanor.
 - D. Extortion.

【答案】B

【解析】First-degree murder 是指事先策划好的谋杀 (premeditated murder)；选项 B 是过失杀人罪，指无预谋的，由于一时愤怒而杀人之罪；选项 C 是轻罪，美国联邦和州刑法将重罪以外的犯罪均归属于轻罪，一般处以罚金、没