



UNIVERSITY of CAMBRIDGE  
ESOL Examinations

Experts in Language Assessment

# International Legal English Certificate

## Past Examination Paper Reading

May 2007

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## **ILEC Test of Reading May 2007**

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Test of Reading

Saturday **12 MAY 2007**

Morning

1 hour 15 minutes

Additional materials:  
Answer sheet

**TIME** 1 hour 15 minutes

**INSTRUCTIONS TO CANDIDATES**

Do not open this question paper until you are told to do so.

**Write your name, Centre number and candidate number on your answer sheet if they are not already there.**

There are fifty-four questions in this paper.

Read the instructions carefully.

Answer **all** questions.

Write your answers on the separate answer sheet. Use a soft pencil.

You may write on the question paper, but you must transfer your answers to the separate answer sheet **within the time limit.**

At the end of the examination, hand in both the question paper and the answer sheet.

**INFORMATION FOR CANDIDATES**

Questions **1 – 36** carry one mark.

Questions **37 – 54** carry two marks.

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**This question paper consists of 12 printed pages and 4 blank pages.**

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Part 1

Questions 1 – 6

Read the following extract from a textbook on contracts.

Choose the best word to fill each gap from **A, B, C** or **D** below.

For each question **1 – 6**, mark one letter (**A, B, C** or **D**) on your answer sheet.

There is an example at the beginning (**0**).

**Third party rights**

Where third parties have (**0**) ..... rights over the subject matter of the contract (**1**) ..... to the sale and these rights would be affected by rescission, then this could be a bar. The most obvious example is where goods obtained by fraud from the original owner have been sold on to an innocent third party. In these (**2**) ....., the contract of sale between the rogue and the owner is voidable only and where the rogue having bought the goods sells them to a third party in good (**3**) ..... for valuable consideration, then title passes to that third party.

In the context of third party rights a rule has evolved (**4**) ..... to companies going into liquidation. Normally a person who is (**5**) ..... to become a shareholder by reason of a false representation can rescind the contract against the company. (**6**) ....., when the company has gone into liquidation, rescission would obviously prejudice the claims of the company's creditors. In this case it is not possible to rescind such a contract.

**Example:**

**0**    **A**    acquired            **B**    realised            **C**    collected            **D**    gathered

<b>0</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	A	B	C	D

**1**    **A**    successive            **B**    ensuing            **C**    subsequent            **D**    following

**2**    **A**    positions            **B**    circumstances            **C**    states            **D**    occasions

**3**    **A**    trust            **B**    confidence            **C**    promise            **D**    faith

**4**    **A**    relating            **B**    concerning            **C**    referring            **D**    bearing

**5**    **A**    instigated            **B**    prevailed            **C**    induced            **D**    assured

**6**    **A**    Therefore            **B**    However            **C**    Meanwhile            **D**    Hence

## Questions 7 – 12

Read the following extract from a reference book on contracts.

Choose the best word or phrase to fill each gap from **A, B, C** or **D** below.

For each question **7 – 12**, mark one letter (**A, B, C** or **D**) on your answer sheet.

### 21.5 Liquidated damages

This clause aims to avoid undercompensation by stating the amount of money which shall be payable in the **(7)** ..... of a breach of contract. Such a clause enables those involved to know in advance the extent of their potential liability and to plan **(8)** ..... . In practice, though, the courts have **(9)** ..... a jurisdiction to control the contents of such clauses.

The rules which the courts have established are the following. If the clause represents a genuine pre-estimate of the loss which is likely to be **(10)** ..... because of the breach, then it is a 'liquidated damages clause' and is enforceable. The sum **(11)** ..... in the clause is the sum recoverable, **(12)** ..... that sum may be greater or smaller than the actual loss. But if the sum stated in the clause is not a genuine pre-estimate of loss, it is a 'penalty clause' and is unenforceable.

- |    |          |              |          |                 |          |             |          |              |
|----|----------|--------------|----------|-----------------|----------|-------------|----------|--------------|
| 7  | <b>A</b> | fact         | <b>B</b> | result          | <b>C</b> | incident    | <b>D</b> | event        |
| 8  | <b>A</b> | consequently | <b>B</b> | correspondingly | <b>C</b> | accordingly | <b>D</b> | respectively |
| 9  | <b>A</b> | absorbed     | <b>B</b> | retained        | <b>C</b> | sustained   | <b>D</b> | prolonged    |
| 10 | <b>A</b> | suspended    | <b>B</b> | surrendered     | <b>C</b> | supported   | <b>D</b> | suffered     |
| 11 | <b>A</b> | stipulated   | <b>B</b> | instructed      | <b>C</b> | denoted     | <b>D</b> | postulated   |
| 12 | <b>A</b> | no matter    | <b>B</b> | despite         | <b>C</b> | even though | <b>D</b> | regardless   |

## Part 2

### Questions 13 – 24

Read the following letter of advice from a lawyer to a client.

Think of the best word to fill each gap.

For each question **13 – 24**, write **one** word in CAPITAL LETTERS on your answer sheet.

There is an example at the beginning **(0)**.

**Example:**

0	W	H	E	T	H	E	R										
---	---	---	---	---	---	---	---	--	--	--	--	--	--	--	--	--	--

You have sought advice regarding **(0)** ..... a “comfort letter” you signed in conjunction with a loan facility is contractual in nature, because if **(13)** ..... is, your company is liable to pay the debts of Agra Ltd, **(14)** ..... of your subsidiaries.

The facts you provided are **(15)** ..... follows. You are the CEO of Compravi Inc, which owns Agra. Agra is a member of the Futures Exchange. Two years ago, you entered into negotiations **(16)** ..... the plaintiffs, Seafield Bank Ltd, for the provision of the funds necessary to begin to carry **(17)** ..... trading on the Futures Exchange. Seafield sought assurances with regard **(18)** ..... the liability of Compravi for the repayment by Agra of any sums lent. **(19)** ..... response, Compravi provided a “comfort letter” and Seafield subsequently granted a loan facility to Agra. Last year the commodities market collapsed and Agra ceased trading. Seafield demanded repayment.

In my view, a successful outcome would be dependent on **(20)** ..... the court construes the last sentence in the “comfort letter”, **(21)** ..... states: “It is our policy to ensure that the business of Agra Ltd is **(22)** ..... all times in a position to meet liabilities to you under the above arrangements.” The statements made in the letter do not impose any obligation **(23)** ..... Compravi that is enforceable in law. Indeed, no assurance was given that such a policy would not **(24)** ..... reviewed in the light of changing market conditions. Consequently, Compravi should not face liability in this matter.

### Part 3

#### Questions 25 – 30

Read the following description of a negotiable instrument, taken from a textbook on commercial law. Use the words in the box to the right of the text to form one word that fits in the same numbered gap in the text.

For each question **25 – 30**, write the new word in CAPITAL LETTERS on your answer sheet. There is an example at the beginning (**0**).

**Example:**

0 P R O M I S S O R Y

#### Commercial Paper — A Negotiable Instrument

Commercial paper is an unsecured short-term (**0**) ..... note issued by both financial and other companies. It is often issued by large firms with unused lines of credit at banks, increasing the (**25**) ..... that the loan will be paid off when it becomes due. For this reason, interest rates on commercial paper are relatively low in (**26**) ..... with other corporate fixed-income securities and this has meant that (**27**) ..... it has been one of the most cost-effective means for financing the short-term needs of large, creditworthy business enterprises.

Commercial paper (**28**) ..... are exempt from the Securities and Exchange Commission requirements for registration. This means that commercial paper cannot have a (**29**) ..... of more than nine months.

With the advent of derivatives and new asset-backed structures, commercial paper programs are now available to finance a range of businesses and assets. Commercial paper is sold (**30**) ..... through agents or dealers and is not underwritten by investment banks.

**0** PROMISE

**25** LIKELY

**26** COMPARE

**27** HISTORY

**28** TRANSACT

**29** MATURE

**30** EXCLUDE

**Questions 31 – 36**

Read the following extract from a reference book about breach of contract.

Use the words in the box to the right of the text to form one word that fits in the same numbered gap in the text.

For each question **31 – 36**, write the new word in CAPITAL LETTERS on your answer sheet.

**Self-help remedies**

Self-help remedies may enable a party to obtain redress for a breach of contract without resort to **(31)** ..... ; alternatively, the withholding of performance or the threat of **(32)** ..... of property by one party may act as a **(33)** ..... incentive to the other party to reach a settlement of the dispute. A **(34)** ..... of self-help remedies are available under the general law; for instance, where one party breaks a condition of the contract, the other may simply withhold performance. Any unpaid seller has a lien over the goods and this **(35)** ..... him to withhold delivery until a settlement is reached. The law recognises a limited right of set-off by which it is permissible for a party to a contract to defend an action for breach of that contract on the grounds that he has a claim for payment of money against the **(36)** ..... . However, the express terms of the contract may extend or supplement the self-help remedies available under the general law.

- 31** LITIGATE
- 32** SEIZE
- 33** POWER
- 34** VARY
- 35** TITLE
- 36** CLAIM

## Part 4

### Questions 37 – 42

Read the questions below and the extracts on the opposite page from a website article about Canadian real-estate law.

Which section (**A**, **B**, **C** or **D**) does each question **37 – 42** refer to?

For each question **37 – 42**, mark one letter (**A**, **B**, **C** or **D**) on your answer sheet.

You will need to use some of these letters more than once.

There is an example at the beginning (**0**).

**Example:**

**0** A famous principle of land ownership should not be understood literally.

<b>0</b>	A	B	C	D
	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**37** The court upheld the validity of the purchase.

**38** Work done on the defendant's property was deemed to be legitimate.

**39** A proprietor is at liberty to take action to safeguard property, within reason.

**40** An obligation may continue to exist even when one property is not adjacent to another.

**41** An interested party was unaware of relevant documentary evidence.

**42** The judgment in the case was based on analysis of precedents.

## Canadian real-estate cases

### A ***Atlantic Aviation v. Nova Scotia Light & Power***

This court battle was engaged after Nova Scotia Power built high transmission towers on land adjacent to Atlantic Aviation's flying school. The court reviewed case law that suggested that deliberate or malicious obstruction of airspace was objectionable as a nuisance but other than that a land owner had a right to "erect structures on his land in the exercise of his use and enjoyment of his land, even if the obstructions interfered with the free passage of aircraft taking off and landing on an adjoining airfield. The erection and use of the towers and wires by Nova Scotia Power was a lawful, reasonable and necessary use of the defendant's air space."

### B ***Babcock v. Archibald***

Babcock rented a piece of Beulah Carr's land. At one point, Mrs. Carr offered to sell the land to Babcock and they signed a memorandum to that effect. Mrs. Carr's daughter was informed about the sale and she felt the price was too low. She solicited a better offer from Mr. Clark, accepted it and title was transferred to Mr. Clark. Babcock asked the court to set aside the registration. The court noted that Babcock had not registered the memorandum on the title or taken legal action against Mrs. Carr, putting the action on title. Mr. Clark had never seen the memorandum and so he did not have "the clear and distinct notice necessary to displace his registered interest in the land."

### C ***Bernstein of Leigh v. Skyview & General***

Skyview was a company that took aerial pictures of property and then offered them for sale to the landowners. Baron Bernstein sued Skyview for trespass based on the well-known maxim *cuius est solum eius est usque ad coelum* (who owns the land, also owns up to the heavens). The court threw Bernstein's case out, saying that the maxim was not to be taken at face value. A land owner had rights only so far as practical and necessary to protect their structures or to use their land. To suggest that a person could restrict traffic over their land all the way to the heavens was unacceptable.

### D ***Gallant v. F. W. Woolworth Co.***

Gallant and the Woolworth company owned land on opposite sides of a lane. Excavation of Woolworth's land during building work caused cracks in Gallant's roof and slanted the floor. Gallant sued Woolworth, claiming he had a right to lateral support. In finding for Gallant, this case reaffirmed three principles on the right to lateral support of land: (1) a land owner has a right to the lateral support of the neighboring land owned by another, so far as is necessary to uphold the soil in its natural state at its normal level; (2) when lateral support to land is removed, it is immaterial whether the act which caused it is negligent; and (3) the fact that the land is not contiguous does not preclude liability.

## Part 5

### Questions 43 – 48

Read the following extract from an article about copyright law in the film industry.

Choose the best sentence from the opposite page to fill each of the gaps.

For each gap **43 – 48**, mark one letter (**A – H**) on your answer sheet.

Do not use any letter more than once.

There is one extra sentence which you do not need to use.

There is an example at the beginning (**0**).

#### Protecting Stories: Borrowed Elements or Stolen Ideas?

When scriptwriters submit their work to a film production company, they become vulnerable to theft. What may happen is that although the company does not accept the material, one day the writer stumbles upon a movie which closely resembles it and feels aggrieved, convinced that the work has been stolen. (**0**) .....H..... But often a general similarity between the writer's script and another's work may simply be a case of two minds thinking alike.

In other cases, the production company may have borrowed certain elements from the writer's work, but this type of borrowing is permitted under copyright law. (**43**) ..... These elements are not protected whether they are in a writer's head, written down on paper, or published.

Multiple authors can write biographies about a famous person, and each is free to tell the story of that person's life in their own words. Each may borrow facts mentioned by prior authors. What copyright law protects is the "expression of the author", which encompasses the way the writer tells the story, his approach to the material, and his voice. (**44**) .....

Consequently, writers are free to take non-copyrightable elements from another's work; for example, ideas, concepts, facts and similar elements can be extracted and reused. (**45**) ..... They may, of course, do so unintentionally. It can be difficult to tell when an idea has been embellished upon to the extent that it crosses that line and gains protection. Clearly a one-page story synopsis is not much more than an outline and is unlikely to be protected. (**46**) .....

Several legal cases illustrate the difficulty courts have encountered in determining how much of an author's work is protected under copyright law. In *Sheldon v Metro-Goldwyn Pictures Corp.* ("MGM"), the corporation attempted to secure the movie rights to Edward Sheldon's copyrighted play "Dishonored Lady." (**47**) ..... When MGM was unsuccessful in negotiating to obtain the rights, the studio produced a movie of its own, "Letty Lynton", based on the same factual events.

When the case came to law, the court concluded that, despite the originality of much of the script, certain details and sequences of events were identical to those expressed in the earlier work in matters unrelated to the underlying true story. The court reasoned that this borrowing was more than merely appropriating an idea or a theme, and that elements of Sheldon's play that were not factual events in the public domain were also present in MGM's movie. In other words, it doesn't matter if the plagiarized material comprises only a tiny portion of the film. (**48**) ..... So, while MGM had every right to create a movie based on an actual incident, it had infringed copyright in borrowing copyrightable elements from Sheldon's play.

**Example:**

<b>0</b>	A	B	C	D	E	F	G	H
	<input type="checkbox"/>	<input checked="" type="checkbox"/>						

- A** A detailed script, however, is another matter as it is a lot more than an idea.
- B** In other words, it covers the embellishment of the idea, rather than the idea itself.
- C** However, if they borrow that writer's expression, then they have infringed his copyright.
- D** The work is based, in part, on a true historical incident in the public domain.
- E** As a result, many writers lack a solid understanding of the nature and extent of that copyright law.
- F** Under prevailing US copyright law, it is not acceptable to steal even such a limited amount of material.
- G** While such conduct may be unethical, it is not illegal because a copyright does not extend to a story's ideas, concepts or themes.
- H** If correct in this assumption, he may be able to claim substantial damages for the infringement.

## Part 6

### Questions 49 – 54

Read the following extract from a textbook on commercial law and the questions on the opposite page.

For each question 49 – 54, mark one letter (A, B, C or D) on your answer sheet for the answer you choose.

#### 11.2.4.2 Appearance and finish and freedom from minor defects

One of the main reasons for the introduction of new statutory formulation in this area was that the statutory definition of merchantable quality, with its emphasis on ‘usability’, did not correspond with the wishes of purchasers who want goods not only to be usable but also to be free of ‘minor’ or ‘cosmetic’ defects. Appearance and finish are therefore both included in Section 14 (2B) of the new Act as ‘aspects of quality’.

However, it is clear that even under the old law, minor defects which did not prevent the goods being used for their common purpose could still render them unmerchantable, especially where the buyer was a consumer. This is clearly demonstrated in a line of cases from the 1980s concerned with consumer purchases of motor cars. In *Rogers v Parish (Scarborough) Ltd* B bought a new Range Rover for £16,000. It suffered from a number of small faults, including misfiring, engine noise, leaking oil seals and scratches to the paintwork. The Court of Appeal held that the car was unmerchantable. Mustill LJ said that the purpose for which cars are bought would include not merely driving the car from one place to another but doing so with the appropriate degree of comfort, ease of handling and reliability.

The outcome of such a case would almost certainly be the same under the new law. However, there were cases the other way. For instance, in *Millars of Falkirk Ltd v Turpie* a new car was delivered with a leak in the power steering system; it would cost £25 to fix and the seller offered to repair the leak. The buyer (a solicitor) declined that offer and immediately sought to reject. The court held the car was merchantable despite the leak.

In a commercial case the court would be even more unwilling to hold that minor defects made goods unmerchantable, especially in a sale of commodities or raw materials which, even if defective, often have a commercial resale value. The buyer in such a case may seek to reject for economic reasons – to escape a bad bargain. The court’s aim here seems to be to prevent the buyer rejecting where, in the court’s opinion, to do so would be unreasonable. Thus in *Cehave v Bremer* the Court of Appeal held that citrus pulp pellets which had been damaged by overheating and were ‘far from perfect’, but which could still be used for the buyer’s intended purpose, were merchantable. The court found that an express term requiring the goods to be loaded in ‘good condition’ had been broken, but that term was ‘innominate’ and its breach only entitled the buyer to claim damages.

Section 15A of the Act now restricts the right of a non-consumer buyer to reject for breach of implied condition where the breach is so slight that rejection would be unreasonable. In a case such as *Cehave v Bremer* the court could therefore now find the goods unsatisfactory but still reach the same decision, restricting the buyer to a claim for damages. This option would not be available, however, in a consumer case such as *Millars*. It seems likely that the Law Commission had such cases in mind when it recommended the inclusion of express reference to appearance and finish and freedom from minor defects. There is, however, no guarantee that were similar facts to those in *Millars* to arise, the outcome would be any different under the new law. Section 14 does not impose an absolute requirement that goods should be free from such defects, but only makes finish and freedom from minor defects aspects of quality to be taken into account ‘in an appropriate case’. It would still be possible for a court which considered that the buyer was behaving unreasonably in trying to reject to find that the goods were in satisfactory condition notwithstanding the presence of ‘minor’ defects.

- 49** Why did the law covering merchantable quality need to be rewritten?
- A** to clarify a frequently misunderstood definition
  - B** to bring the law into line with consumer requirements
  - C** to close an unintentional loophole in the law
  - D** to deal with a wave of unprecedented court cases
- 50** The *Rogers* case shows that prior to the introduction of the new law
- A** car manufacturers paid insufficient attention to the finish of their products.
  - B** the consumers of cars were better protected than those of other products.
  - C** as long as a car was roadworthy it was deemed in law to be merchantable.
  - D** people purchasing cars had a right to demand freedom from minor defects.
- 51** In the *Millars* case, the judge ruled that
- A** the buyer did not have the right to a refund on the car.
  - B** the seller of the car should pay for all necessary repairs.
  - C** the buyer should reject the seller's proposed solution.
  - D** the seller had the right to seek redress from his supplier.
- 52** Judges are more reluctant to find goods unmerchantable in commercial cases because
- A** the reason for buyers claiming damages on goods is often unclear.
  - B** buyers can often be found for merchandise even if it is sub-standard.
  - C** suppliers have often been forced to accept low prices for their goods.
  - D** the purpose for which materials were purchased may change.
- 53** In the *Cehave* case, what did the court decide?
- A** The supplier had adhered to the terms of his contract.
  - B** The buyer had not made his requirements clear to the supplier.
  - C** The buyer did not have the right to reject the goods.
  - D** The supplier had failed to draw up an enforceable contract.
- 54** The Law Commission wanted the Act
- A** to be extended to non-consumer cases.
  - B** to include a requirement that defective goods are rejected.
  - C** to contain provisions on the subject of cosmetic imperfections.
  - D** to restrict the level of damages to be awarded.

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## Answer Key

Part 1		Part 2		Part 3	
1	C	13	IT	25	LIKELIHOOD
2	B	14	ONE	26	COMPARISON
3	D	15	AS	27	HISTORICALLY
4	A	16	WITH	28	TRANSACTIONS
5	C	17	OUT	29	MATURITY
6	B	18	TO	30	EXCLUSIVELY
7	D	19	IN	31	LITIGATION
8	C	20	HOW	32	SEIZURE
9	B	21	WHICH	33	POWERFUL
10	D	22	AT	34	VARIETY
11	A	23	ON	35	ENTITLES
12	C	24	BE	36	CLAIMANT(S)
Part 4		Part 5		Part 6	
37	B	43	G	49	B
38	A	44	B	50	D
39	C	45	C	51	A
40	D	46	A	52	B
41	B	47	D	53	C
42	A	48	F	54	C

In Parts 1, 2 and 3, one mark is given for each question answered correctly. In Parts 4, 5 and 6, two marks are given for each question answered correctly. The total score is then adjusted to give a score out of 50.

## Acknowledgements

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