



ДОНСКОЙ ГОСУДАРСТВЕННЫЙ ТЕХНИЧЕСКИЙ УНИВЕРСИТЕТ
УПРАВЛЕНИЕ ДИСТАНЦИОННОГО ОБУЧЕНИЯ И ПОВЫШЕНИЯ
КВАЛИФИКАЦИИ

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Учебное пособие

по дисциплине
«Иностранный язык»

«Английский язык»

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Аннотация

Учебное пособие предназначено для студентов 1 и 2 курсов, проходящих подготовку по специальности 38.05.01 «Экономическая безопасность», изучающих дисциплину «Иностранный язык» (английский), для формирования и развития навыков устной и письменной речи.

Состоит из разделов по сферам подготовки обучающихся по специальности «Экономическая безопасность». Включает в себя профессионально-ориентированные тексты, посвященные ключевым аспектам специальности. Разнообразные тексты и задания к ним ориентированы на изучение профессиональной лексики, на коммуникацию в сфере профессиональной деятельности, позволяют интенсифицировать когнитивную деятельность обучающихся.

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ВВЕДЕНИЕ

Данное учебное пособие рассчитано на студентов 1-2 курсов высших учебных заведений, обучающихся по специальности 38.05.01 «Экономическая безопасность». Пособие также может быть использовано для работы со студентами других экономических специальностей.

Учебное пособие состоит из трех модулей. Первый модуль включает в себя 6 текстов общей экономической направленности. Второй модуль состоит из 6 текстов юридической направленности. Тексты предназначены для аудиторного и внеаудиторного чтения. Каждый текст сопровождается набором необходимой лексики и блоком упражнений, которые способствуют формированию и развитию навыков устной и письменной речи. Третий модуль предназначен для внеаудиторной работы студентов. Он представляет собой оригинальный текст, целью которого является развитие у студентов навыков извлечения, обработки и передачи информации по своей специальности на английском языке.

MODULE 1 ECONOMICS

Unit 1 ECONOMY AND ECONOMICS

Economy – экономика, народное хозяйство, экономия, выгодный, экономичный

- a system according to which the money, industry, and trade of a country or region are organized.
- a country's economy is the wealth that it gets from business and industry.
- careful spending or the use of things
- large-size packages of goods which are cheaper than the normal sized packages on sale.

Economic – экономический

- concerned with economics and with the organization of the money, industry, and a trade of a country, region, or social group.
- relating to services, businesses, etc. that produce a profit.

Economical – экономичный, экономный

- something that is economical does not require a lot of money to operate.
- using the minimum amount of time, effort, language, etc. that is necessary.

Economics – экономика, экономическая наука

the study of the production of wealth and the consumption of goods and services in a society, and the organization of its money, industry, and trade.

Economist – экономист

an expert or student of economics.

Economize – экономить

save money by spending it very carefully and not buying expensive things.

Vocabulary

labour – труд

cause – причина

to derive from – происходить от чего-либо

household management – управление домашним хозяйством

to make contributions – делать вклад

society – общество

dwelling – строение, здание

economic forces – экономические силы

wants and needs – желания и потребности

to satisfy – удовлетворять
shortage – нехватка
goods and services – товары и услуги
enterprise – предприятие
to produce – производить
scarcity – ограниченность
to give up – отказываться
resources of production – ресурсы производства
to face the problem – сталкиваться с проблемой
distribution – распределение
consumption – потребление
thrifty use – бережное использование
income – доход

The word “the economy” we hear or read almost every day. But what is meant by the economy? What happens in one? How does an economy work?

The economy is a social, constantly changing mechanism. **The economy** means a system for the management, use and control of **labour**, land, natural resources, money, goods and other resources of a country, community or household.

And what is economics?

Economics is a social science studying economy.

The word “economics” **derives from** the Greek word “oikonomika” that means **household management**. As a scholarly discipline economics is more than two hundred years old. The first scientist who **made** extraordinary **contributions** in economics was Adam Smith. His work “The Wealth of Nations” which was published in 1776 founded economic sciences.

Why should we study economics? There are several very good reasons, all of which involve us. Some of them have to do with us as individuals, some with us as earners or as spenders, some with us as citizens and finally as future economists. As members of the **society** we live in, there is no escaping economics. The food we eat, the **dwelling** we live in, the clothes we wear and the way we spend our leisure time are all affected by **economic forces**.

Everyone goes through life having to make choice. We can't have everything because our wants are unlimited. Neither individuals, nor societies can have all the things they would like to have. Why are there so many **wants and needs** that we cannot **satisfy**? Most people will answer these questions by saying, “Because there is not enough money”. Is the **shortage** of money the real ECONOMIC

PROBLEM? The answer to this question is "No". The real **cause** of the shortage of **goods and services** in a country is not having too little money, It is too few FACTORS OF PRODUCTION.

These are four factors of production: **land, labour, capital** and **enterprise**.

In any one country, and in the world as a whole, these factors of production *are limited in supply*. As there is never enough land, labour, capital or enterprise to produce all of the needs and satisfy unlimited wants of a whole population, there is an economic problem of **scarcity**.

If the resources of production were not scarce, there would be no need to choose and we would have everything we wanted.

To summarize: human wants are *unlimited* but the resources necessary to satisfy those wants are *limited*. Thus, economics deals with the problems which every society is **faced** with – **the problem of scarcity** and **choice**.

With this in mind we can define economics as **the social science that reveals and analyses how society chooses from among scarce resources to satisfy its needs**. In other words economics is the science that deals with production, **distribution** and **consumption** of commodities, while economy is a careful or **thrifty use** or management of resources, such as income, materials or labour.

Exercise 1. Ответьте на вопросы.

1. What does the economy mean?
2. What is economics?
3. What word does the word "oikonomika" derive from?
4. Who made extraordinary contribution in economics?
5. Why should we study economics?
6. Why can't we have everything?
7. What is the real cause of the shortage of goods and services in a country?
8. What factors of production do you know?
9. Why are the factors of production limited in supply?
10. What problem does economics deal with?
11. What is economics and what is economy in terms of the problem of scarcity and choice?

Exercise 2. Найдите неправильные утверждения и исправьте их.

1. As a scholarly discipline economics is more than two hundred

years old.

2. The first scientist who made extraordinary contributions in economics was David Ricardo.

3. We can't have everything because our wants are unlimited.

4. The real cause of the shortage of goods and services in a country is having too little money.

5. These are four factors of production: land, labour, capital and enterprise.

6. Human wants are unlimited and the resources necessary to satisfy those wants are unlimited too.

7. If the resources of production were not scarce, we would have everything we wanted.

8. Everyone goes through life having to make choice.

Exercise 3. Найдите правильный вариант перевода.

1. The Greek word "oikonomika" means "household management."

Греческое слово «ойкономика» означает

a) «управляющий домом»;

b) «управление домашним хозяйством»;

c) «хозяйство и менеджмент».

2. Everyone goes through life having to make choice.

a) Каждый живет, чтобы делать выбор.

b) Каждому приходится выбирать как жить.

c) Каждому на протяжении жизни приходится делать выбор.

3. Economics deals with the problem of scarcity and choice.

a) Экономика имеет дело с проблемой ограниченности и выбора.

b) Экономика не имеет ничего общего с проблемой ограниченности и выбора.

c) Экономика стоит перед проблемой ограниченности и выбора.

4. Economics reveals and analyses how society chooses from among scarce resources to satisfy its needs.

a) Экономика выявляет и анализирует, как общество выбирает среди неограниченных ресурсов, чтобы удовлетворять свои потребности.

b) Экономика выявляет и анализирует, как общество выбирает среди ограниченных ресурсов, чтобы удовлетворять свои потребности.

c) Экономика выявляет и анализирует, как общество вы-

бирает среди ограниченных ресурсов, чтобы удовлетворять свои желания.

Unit 2 TYPES OF ECONOMICS

Vocabulary

- to provide answer** – давать ответ
planners – плановики
goods and services – товары и услуги
to pass orders – отдавать приказы
available resources – имеющиеся ресурсы
raw materials – сырьевые материалы
to satisfy the demands – удовлетворять спрос
to interfere – вмешиваться
the government – правительство
private enterprise – частное предприятие
rural areas – сельская местность
private ownership – личная собственность
tribal chief – вождь племени
means of production – средства производства
large landowner – землевладелец
to make a profit – получать прибыль
the remains – остатки
intermediate system – промежуточная система
to own – владеть
mixed – смешанный
to allocate – распределять, размещать
competitor – конкурент
supply and demand – спрос и предложение
to charge the price – устанавливать, назначать цену
consumer – потребитель
effective demand – платежеспособный спрос
an influence – влияние
willingness and ability – готовность и способность
relationship – связь, взаимоотношение
to be in (great) demand – пользоваться (большим) спросом

COM

- to meet (to satisfy) the demand** – удовлетворять спрос
cost (n) 1. цена, стоимость
 2. себестоимость
cost (v) 1. стоить
 2. назначать цену, оценивать
unit cost – себестоимость единицы продукции

- below cost** – ниже стоимости
cost of living – прожиточный минимум
costs of production – издержки производства, себестоимость продукции
at the cost of – стоимостью в; за счет чего-либо
at one's cost – за чей-либо счет

- Every society must **provide answers** to the same three questions:
- **What goods and services** are to be produced and in what quantities are they to be produced?
 - **How** are those goods and services to be produced?
 - **Who** will receive and consume them?

Societies and nations have created different economic systems to provide answers to these fundamental questions.

An **economic system** is the way in which a country uses its **available resources** (land, workers, natural resources, machinery, etc.) **to satisfy the demands** of its population for goods and services. There are three main economic systems:

- traditional economy which looks to customs and traditions;
- planned or command economy in which **the governments** provide the answers;
- marked economy in which market prices answer most of What, How and Who questions.

The traditional economy. In a traditional economy most of the people live in **rural areas** and their main activities are agriculture, fishing or hunting. The questions of what and how the traditional societies produce and who gets what is produced are determined by traditions in these economies. The most part of the product may go to **a tribal chief** or large landowner, while the remains are distributed according to customs. Most individuals in such societies live very poor, they have enough to sustain them but not more than that. The most part of the product goes to a tribal chief or large **landowner**, while **the remains** are distributed according to customs.

Command or planned economy. In command economy the state plans and controls the use of resources (such as labour and factories) that are used to produce goods and services because the state **owns** factories, land and natural resources. All the resources **are allocated** through a system of planning.

For example, in the former Soviet Union state **planners** decided what was to be produced. They **passed orders** down to factories, allocating **raw materials**, workers, and other factors of production to them, Factories were then told how much they should

produce with these resources and where they should be sent. The market mechanism plays little role in a command economy.

Free market economy. In a true market economy the government plays no role in the management of the economy, the government does not **interfere** in it. The system is based on **private enterprise** with **private ownership** of the **means of production**. All major means of production (companies, farms, factories, etc) are owned by private individuals. There is no government control over land, capital and labour. Businesses produce goods **to make a profit**.

Market economies are directed by prices. In a market economy *consumers* decide what is to be produced.

There are no "pure" market economies in the world today. Both market forces and government participation play a certain role in the economy of a country. This mixture of market forces and government participation has led to an **intermediate** system, known as **mixed** system.

A mixed economy contains elements of both market and command economies. At one extreme we have a public sector and at the other extreme we have a private sector. Technically, all the economies of the world are mixed.

Exercise 1. Выберите правильный вариант ответа.

1. Individuals and businesses have the greatest say about what is produced in

- a. market economies.
- b. traditional economies.
- c. command economies.
- d. all economic systems.

2. In this country goods and services are produced in much the same way as long as anyone can remember. Occupations are determined at birth. The country has

- a. market economy.
- b. traditional economy.
- c. command economy.
- d. mixed economy

3. In another country, privately owned business firms can produce goods or service in any lawful manner that they choose. This country has a

- a. market economy.
- b. traditional economy.
- c. command economy.
- d. mixed economy.

4. An economy is "mixed" when
 - a. goods and services are produced by both publicly and privately owned businesses.
 - b. government owns or controls all businesses.
 - c. economic decisions are made by tradition.
 - d. there is a "mixture" of rich and poor people.
5. Which of the following is a reason for government participation in the economy
 - a. to reduce competition in the marketplace.
 - b. to provide goods and services more cheaply than private enterprise.
 - c. to regulate harmful externalities.
 - d. to guarantee that all business firms earn the profit.

Exercise 2. Соедините глаголы в правой колонке с существительными в левой колонке.

to satisfy	orders
to provide	goods and services
to allocate	a profit
to produce	a role
to create	natural resources
to pass	economic systems
to own	answers
to make	factories

Unit 3 WHAT IS MANAGEMENT?

Vocabulary

- to make decisions** – принимать решения
objectives – задачи, цели
to make a profit – получать прибыль
to consider the environment – принимать во внимание окружающую обстановку
to possess the ability – обладать способностью
to predict – предугадывать, предусматривать
directing – управление, руководство
to set objectives – ставить (устанавливать) цели, задачи
subordinates – подчиненные
to allocate resources – распределять ресурсы
to communicate objectives – доносить цели, задачи
responsible for – ответственный за что-то
promotion – продвижение (по службе)
to measure the performance – оценивать выпол-

нение работы

to carry out – выполнять, исполнять

to provide – обеспечивать, предоставлять

benefits – выгода, польза

share (n) 1) доля, часть; квота

2) участие; роль

3) акция; доля, пай

share (v) 1) делить, распределять; разделять

2) делиться

3) разделять (что-л. с кем-л.);

использовать совместно

4) разделять (мнения, вкусы и т. п.)

to have a share in the profits – иметь долю в прибыли

lion's share – львиная доля

shares are rising – акции поднимаются (в цене); курс акций растёт [поднимается]

shares are down – акции падают (в цене); курс акций снижается [падает]

to issue shares – выпускать акции

to manage 1) руководить, управлять, заведовать;

стоять во главе

2) управлять, уметь обращаться

managerial – административный

management – управление; заведование, руководство,

менеджмент

manageable – выполнимый, осуществимый

manager – глава, директор, топ-менеджер; руководитель, управляющий

manageress – заведующая

Management is the art and science of making appropriate choices. To one degree or another, we are all involved in managing and are constantly **making decisions** concerning how to spend or use our resources.

Like most things in our modern, changing world, the function of management is becoming more complex. The role of the manager today is much different from what it was one hundred years or even twenty-five years ago. At the turn of the century, the business manager's **objective** was to keep his company running and **to make a profit**. Most firms were production oriented. The modern management demands much knowledge of economics and business. The modern manager must now **consider the environment** in

which the organization operates, must have a good understanding of the total economic, political, social, and ecological system in which we live, and he must **possess the ability** to analyze complex problems.

Managing is a hard work, for there is a lot to be done and little time to do it. A major part of the manager's work will be **to predict** what the environment needs and what changes will **occur** in the future.

General functions of any managerial system at any managerial level are planning, organizing, **directing** and controlling.

First of all, managers **set objectives**, and decide how their organizations can achieve them. The **subordinates** and the manager discuss the objectives and make plans for achieving them. This involves developing strategies, prices tactics, and **allocating resources** of people and money.

Secondary, managers organize. They divide the work into manageable activities and then into individual jobs. They select people to manage these units and perform the jobs.

Thirdly, managers have **to communicate objectives** to the people **responsible for** achieving them. They help people who are responsible for performing individual jobs form teams. They make decisions about pay and **promotion**.

Fourthly, managers have **to measure the performance** of their staff to see whether the objectives set for the organization are being **carried out**.

The manager can help in some way, perhaps by **providing** more training for the subordinate or buying more modern machines. From time to time, the subordinate and the manager meet to discuss progress.

Such system of management is known as *management by objectives* (MBO). There are many **benefits** of MBO. The system helps the subordinates to see clearly their role in the organization. People are judged on result and thus workers feel more responsible and motivated.

Excercise 1. Ответьте на вопросы.

1. Is the role of the manager today the same as it was one hundred years or even twenty-five years ago?
2. What was the business manager's objective at the turn of the century?
3. What must the modern manager consider now?
4. Why is management a hard work?
5. What are general functions of any managerial system?

6. Who makes decisions about pays and promotion in the organization?
7. Are there any benefits of MBO?

Excercise 2. Соедините начало предложения с его окончанием.

1. The modern management demands much knowledge	a. are planning, organizing, and controlling.
2. Managers set objectives, and decide	b. by providing more training for the subordinate.
3. General functions of any managerial system at any managerial level	c. of economics and business.
4. The manager can help in some way,	d. as management by objectives.
5. Such system of management is known	e. of making appropriate choices.
6. Management is the art and science	f. how their organizations can achieve them.

Excercise 3. Соедините глаголы в правой колонке с существительными в левой колонке.

to possess	decisions
to allocate	jobs
to perform	progress
to provide	objectives
to measure	resources
to set	the ability
to discuss	training
to make	people
to select	the performance

Excercise 4. Изучите значения слова *business* и составьте предложения

- business** *n*
- 1) дело, занятие; работа
 - 2) бизнес, предпринимательская деятельность
 - 3) предприятие; фирма, компания
 - 4) торговля
- business** *adj*
- 1) деловой; коммерческий

Ознакомьтесь со словосочетаниями со словом *business*.

<i>be in business</i>	– заниматься делами, быть в деле
<i>be out of business</i>	– обанкротиться, выйти из дела
<i>business partner</i>	– партнер по бизнесу, компаньон
<i>domestic business</i>	– отечественный бизнес
<i>foreign business</i>	– иностранный бизнес
<i>get down to business</i>	– заняться делом, приступить к делу
<i>go into business</i>	– заниматься торговлей
<i>go out of business</i>	– прекратить свою деятельность; обанкротиться
<i>go on business</i>	– ездить по делам (в командировку)
<i>international business</i>	– международная торговля
<i>monkey business</i>	– жульничество, афера
<i>profitable business</i>	– доходное дело, выгодное дело
<i>put out of business</i>	– разорить
<i>run a business</i>	– вести дело, управлять предприятием
<i>set up a business</i>	– учредить предприятие
<i>wind up a business</i>	– ликвидировать (свернуть) предприятие, дело

Unit 4 MARKETING

Vocabulary

production	– производство
distribution	– распределение
consumption	– потребление
goods and services	– товары и услуги
a term	– термин
to satisfy customer needs	– удовлетворять потребности покупателя
advertising	– реклама, рекламная кампания
promotion	– продвижение
business activities	– коммерческая (деловая) активность
storing	– хранение
a producer	– производитель
marketing research	– исследование рынка
concept	– понятие, идея
to find out	– выяснять
to carry out	– выполнять, проводить
to supply	– поставлять
to cause	– заставлять
for what purpose	– с какой целью

to predict – предсказывать

to influence – влиять

expensive – дорогой

touches everyone's life – затрагивает жизнь каждого

a standard of living – уровень жизни

to promote (v)

1. выдвигать; продвигать;

повышать в чине / звании

2. способствовать, помогать,

содействовать

3. побуждать, стимулировать;

активизировать

4. учреждать

(to promote a company)

5. создавать благоприятные

условия для продажи,

рекламировать; содействовать

продаже товара

promotion (n)

1. продвижение

Ознакомьтесь со словосочетаниями со словом *promotion*

promotion program – программа содействия развитию

sales promotion – продвижения товаров

promotion of health – укрепление здоровья, оздоровление

Marketing is closely related to economics, the social science connected with the **production, distribution** and **consumption of goods and services**. Marketing is a key factor in business success. The **term** marketing must be understood not in the old sense of making a sale ("selling") but in the new sense of **satisfying customer needs**. In recent years marketing has become a driving force in most companies.

Marketing is not just **advertising, promotion** and selling. Marketing includes all the **business activities** connected with the movement of goods and services from producers to customers. Sometimes it is called distribution. On the one hand, marketing is made up of such activities as transporting, **storing** and selling goods and, on the other hand, a series of decisions you make during the process of moving goods from **producer** to user. Marketing operations include product planning, buying, storage, pricing, promotion, selling, credit, traffic and **marketing research**.

The main principle of the marketing **concept** is – "we must

produce what people want, not what we want to produce". This means that we put the consumer first. We must **find out** what the consumer wants. We **carry out** market research. We must **supply** exactly what the customer wants. We can do this by offering the right Marketing Mix – the four Ps:

Product – the goods or services that you are marketing;

Price – what is exchanged for the product;

Place – getting the product to the customer;

Promotion – presenting the product to the customer.

Business can make products and hope that they will sell but this is very risky. Nowadays we must have a clear idea of: what the customers need, what the customers want, what **causes** them to buy. Producers must know why, where, **for what purpose** the consumers buy. Market research helps the producer **to predict** what people will want. And through advertising he tries to **influence** the customer to buy. Marketing operations are very **expensive**. They take more than half of the customer's dollar.

To sum up – marketing **touches everyone's life**. It is the means by which **a standard of living** is developed and delivered to people.

Exercise 1. Ответьте на вопросы.

1. What is economics connected with?
2. Has marketing become a driving force in most companies?
3. What business activities does marketing include?
4. Does marketing include making decisions?
5. What do marketing operations include?
6. What is the principle of marketing concept?
7. What is the Marketing Mix (four Ps)?
8. What must producers know about the customers in order to make their business successful?
9. Does advertising help the producer to influence the customer to buy?
10. How much of a dollar does marketing take?

Exercise 2. Составьте предложения.

1. business/ marketing/ success/ in/ a key factor/ is
2. what/ we/ the customer/ must/ wants/ find
3. advertising/ and/ marketing/ just/ promotion/ is not/ selling
4. the customers/ why/ buy/ producers/ where/ must know/ for what purpose

5. have/ the customers/ nowadays/ must/ a clear idea/ we/ of what/ want

Exercise 3. Вставьте слова из текста. Начальные буквы слов вам даны.

1. The term m_____ must be understood in the new sense of satisfying c_____ n_____.

2. Sometimes it is called d_____.

3. We carry out m_____ r_____.

4. Through a_____ the p_____ tries to influence the c_____ to buy.

5. Marketing is the means by which a s_____ of l_____ is developed and delivered to people.

Unit 5 MONEY AND ITS FUNCTIONS

Vocabulary

efficient – эффективный, действенный

medium of exchange – средство обращения, обмена

barter – меновая торговля

to swap – обменивать, менять

trading – торговля

scarce resources – ограниченные ресурсы

permanent – постоянный

checking account deposits – чековые вклады

a transaction – сделка

goods and services – товары и услуги

to repay debts – выплачивать долги

a bank deposit – вклад в банке

payment – платеж

a unit of account – единица учета, мера стоимости

in terms of – с точки зрения

to state the price – обозначать цену

to enable – давать возможность

value – стоимость, цена

standard of value – масштаб цен

currency – валюта

a store of value – средство сбережения (средство сохранения стоимости)

purchases – покупки

purchasing power – покупательная способность

temporary – временный

to save – сберегать, со- хранить

to carry out – выполнять
wealth – благосостояние, состояние
accumulated savings – накопленные сбережения
real estate – недвижимость
a stock – акция
a bond – облигация
capacity to retain – способность сохранять
safeguarding – гарантия
money supply – денежная масса [количество денег] (в обращении), предложение денег

It is common knowledge that money rules the world. Why does it and why do people need money – these are questions everyone would like to answer.

What is money? Money is anything that is generally accepted by people for the things they sell or the work they do. Money is the medium through which people exchange goods and services. Money makes the trading process simpler and more **efficient**.

Almost every society now has a money economy based on coins and paper notes of one kind or another. However, this has not always been true. In primitive societies a system of **barter** was used. In barter economy there is no **medium of exchange**. Goods are traded directly or **swapped** for other goods. **Trading** is very expensive in barter economy. People must spend a lot of time and effort to find others with whom they can make mutually satisfactory swaps. If you wanted, for instance, a car, you would have to find a car owner willing to sell a car. Suppose the car owner wanted a scooter in exchange for the car and you didn't have the scooter. You would then have to find something that a scooter owner wanted and swap it for the scooter in order to give it to the car owner, a barter economy is wasteful.

People needed a more practical system of exchange. Before paper and coins were introduced as **permanent** forms of paying, people used a variety of other objects to serve as money for selling goods. Examples of early forms of money are the following: rice, dog teeth, grains, shells, salt, tobacco. However, today money consists mainly of paper bills, coins made of various metals, and **checking account deposits**.

Functions of money. Money, in general, performs three functions. The first, and the most important is *a medium of exchange*. A medium of exchange, or a **transactions** medium, is anything generally acceptable as a means of payment in the exchange of **goods and services**, in **repaying debts**. **Bank deposits** are also a

medium of exchange because they are generally accepted as **payment**.

The second function of money is to serve as a *unit of account*. The unit of account is the unit in which people **state the price** of goods and services **in terms of** money. Historically societies choose a single item to serve as a unit of account, say, a kilogram of wheat. In this way, each good could be priced at so many kilograms of wheat per unit. In modern times, paper money is the unit of account. For example, the dollar is the unit of account in the United States. Knowing that a pound of apples costs one dollar and a pound of peaches costs two dollars **enables** us to compare their **value**. Thus, money becomes a **standard of value**. Normally, the same item serves as the unit of account and the medium of exchange: the dollar in the United States, the pound sterling in Great Britain, the euro in many European countries, the yen in Japan, the rouble in Russia and Belarus. The money in use in a country is called **currency**.

The third function of money is a *store of value*. Money is a store of value because it can be used to make **purchases** in the future, it is a reservoir of future **purchasing power**. Money is both a **temporary** and a permanent store of purchasing power. For example, an individual earns \$700 a week but plans to spend \$560 on goods and services and **save** \$140 every week. Usually this individual will not spend the entire \$560 on a day. Instead, he may spend \$90 on a day and hold \$470 in the form of money to be spent over the course of the week. This \$470 held in money is a temporary store of purchasing power.

Money can also serve as a permanent store of purchasing power. People hold money to **carry out** their future transactions. The **wealth** of individuals is their **accumulated savings**. Money is one form in which people may keep their wealth. Gold, jewels, **real estate**, paintings, **stock** and **bonds** are other forms. Of course, when wealth is held in money, in the future it will not need to be exchanged to buy goods and services. The ability of money to serve as a store of value depends on its **capacity to retain** its purchasing power.

These three functions of money – medium of exchange, unit of account and store of value – can only be fulfilled if there is great confidence in its stability of value. **Safeguarding** monetary stability is the primary task of the central banks all over the world. Moreover, the central bank has the function of regulating the **money supply** in order to guarantee a smooth functioning of the monetary system.

Exercise 1. Найдите в тексте подходящие слова и закончите высказывания.

money rules . . .	a store of . . .
a money economy based on . . .	a temporary store of . . .
medium of . . .	the function of regulating . . .
since time and effort are . . .	the euro in many . . .
money performs . . .	over the course . . .

Exercise 2. Выберите подходящие определения к словам из левой колонки.

_____ price	a) a medium of exchange that functions as legal tender
_____ a debt	b) to trade (goods, services, etc.) in exchange for other goods, services, etc., rather than for money
_____ bond	c) the act of buying and selling goods and services either on the domestic markets or on the international markets
_____ currency	d) something that is owed, such as money, goods, or services
_____ wealth	e) an institution offering certain financial services
_____ purchase	f) the cost at which anything is obtained
_____ bank	g) a metal or paper medium of exchange that is in current use in a particular country
_____ money supply	h) something that is bought with money
_____ money	i) a large amount of money and valuable material possessions
_____ trading	j) a certificate of debt issued in order to raise funds
_____ barter	k) the total amount of money in a country's economy at a given time

Exercise 3. Заполните пропуски.

inherit,	well-off,	pocket money,	food bill,	charities,
live on,	buy,	luxuries,	spend,	in bulk,
earn,	donate,	credit cards		money,

1. I _____ about \$2000 a year on clothes.

2. I think there will be enough money for the next generation to keep the house, but they won't _____ much more than that.

3. As a child I used to get only \$3 dollar a week _____.

4. If you have a big house, people think you must be _____, but it just isn't true.

5. My monthly _____ came to about \$500, and towards the end of the month we had beans on toast three nights out of seven.

6. He _____ \$36,000 per annum.

7. We always buy food _____ so it's cheaper.

8. He generally gives \$50 a month to animal _____, but he doesn't _____ to beggars wearing \$150 trainers.

9. I have four _____, but one is never used.

10. I never buy _____.

11. I can _____ \$40 a week.

12. He is always worrying about _____.

13. Sometimes when I get wild I go and _____ something just to cheer myself up.

Exercise 4. Переведите следующие выражения:

- to earn money –
- to spend money –
- to save money –
- to make money –
- to borrow money –
- to lend money –
- to owe money –
- to accumulate money –
- to donate money –
- to raise money –
- to pay money –
- to invest money –
- to waste money –
- to charge money –

Unit 6 STABILIZATION POLICY

Exercise 1. Прочитайте и переведите текст (устно).

Stabilization policy, or demand management, is the control of the level of aggregate demand in economy using fiscal policy in order to eliminate fluctuation at the national level. The general aim of stabilization policy is to regulate aggregate demand so as to make it as big as the gross national product in order to maintain the existing level of output and employment. It is also essential to keep aggregate demand low enough to avoid inflation.

An unregulated economy will tend to go through periods of depression and boom. Governments try to avoid such fluctuations by stimulating aggregate demand when the economy is depressed and reducing aggregate demand when the economy is overheating. Ideally, aggregate demand should be managed in such a way so as to grow as much as the GNP.

There exist two main problems: (a) correct timing of a government injection or withdrawal; (b) correct magnitude of an injection into or withdrawal from the economy to eliminate depressions and booms.

If the government can get the timing and magnitude correct, it will be able to eliminate the effects of depression. For the government to be able to reduce the intensity of the depression to follow, it is necessary to forecast accurately its beginning, perhaps while the economy is still growing actively.

Much government action is inaccurate in timing and magnitude. Where the government has not been successful in avoiding strong fluctuations in business activity, it can make injections into a growing economy, which then overheats, and withdraw too much at the wrong time, braking too hard.

Exercise 2. Выберите правильный вариант ответа на вопросы к тексту.

1. What is stabilization policy?
 - a) non-market economic activity
 - b) the control of the level of total demand in economy using fiscal policy
 - c) an amount of money freely circulating in economy
2. Which fluctuation periods will an unregulated economy tend to go through?
 - a) of inflation and devaluation
 - b) of depression and boom

- c) of injection and withdrawal
3. What actions does the government have to take to reduce the intensity of the depression to follow?
- to keep aggregate demand low enough
 - to satisfy cash demand
 - to forecast accurately the beginning of recession

Exercise 3. Закончите предложения согласно содержанию прочитанного текста.

- The general aim of stabilization policy is _____.
 - to regulate aggregate demand
 - to make injections into a growing economy
 - to reduce aggregate demand
- It is greatly important to keep aggregate demand low enough to _____.
 - check the magnitude of an injection
 - prevent inflation
 - maintain the existing level of output and employment
- If the government can get the timing and magnitude of the injection correct, it will be able to _____.
 - control business activity
 - reduce aggregate demand
 - avoid the effects of depression
- Much government action is inaccurate in _____.
 - making injections or withdrawal
 - timing and magnitude of injections and withdrawal
 - eliminating the effects of depression
- Ideally, aggregate demand should be regulated in such a way so as _____.
 - to rise as much as the gross national product
 - to reduce the intensity of depression
 - to grow as much as the gross domestic product

Exercise 4. Подберите эквивалент.

- устранять

a) to stimulate	b) to regulate	c) to eliminate
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- колебание

a) depression	b) fluctuation	c) boom
---------------	----------------	---------
- поддерживать

a) to maintain	b) to control	c) to follow
----------------	---------------	--------------
- избегать

a) to manage	b) to tend	c) to avoid
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5. изъятие
 a) withdrawal b) reduction c) injection
6. уменьшать
 a) to withdraw b) to reduce c) to keep
7. предсказывать
 a) to tell b) to brake c) to forecast

Exercise 5. Выберите предложение, наиболее точно передающее смысл предложенного.

1. An unregulated economy will tend to go through periods of depression and boom.

- a) Нерегулируемая экономика будет склонна к депрессии.
 b) В нерегулируемой экономике будет наблюдаться тенденция к чередованию периодов спада и резкого подъема.
 c) Нерегулярная экономика будет иметь тенденцию к прохождению через периоды депрессии и бума.

2. Ideally, aggregate demand should be managed in such a way so as to grow as much as the GNP.

- a) Совокупный спрос следует соотносить с валовым национальным продуктом.
 b) В идеале, регулирование совокупного спроса должно осуществляться таким образом, чтобы он вырос до величины валового национального продукта.
 c) Валовой национальный продукт должен вырасти до величины совокупного спроса.

3. Governments try to avoid such fluctuations by stimulating aggregate demand when the economy is depressed and reducing aggregate demand when the economy is overheating.

- a) Правительства пытаются избежать таких колебаний, т.е. внезапных спадов и подъемов развития, стимулируя агрегатный спрос, когда экономика депрессивна, и редуцируя агрегатный спрос, когда экономика "перегрета".
 b) Правительства пытаются избежать таких колебаний в экономике, стимулируя и уменьшая совокупный спрос.
 c) Правительства пытаются избежать таких колебаний, стимулируя совокупный спрос, когда экономика в упадке, и сокращая совокупный спрос, когда экономика развивается слишком быстрыми темпами.

Exercise 6. Выберите предложение, наиболее точно передающее смысл предложенного.

1. There exist two main problems: correct timing of a govern-

ment injection or withdrawal and correct magnitude of an injection into or withdrawal from the economy to eliminate depressions and booms.

a) Two main troubles exist here: to make choice between the periods of the government supporting or neglecting the economy development.

b) There are two main economic problems to be settled by the government: the right moment and the necessary amount of money and resources to be supplied or taken from the economy to avoid recessions or sudden increase in economic activity.

c) To choose the right time and the amount of money to put in or take from the economy, that is the way to solve all the economic problems.

2. If the government can get the timing and magnitude of the injection and withdrawal correct, it will be able to eliminate the effects of depression.

a) If the government can get rid of the effects of depression, it will be able to control the time and the rate of inflation.

b) The government should take the right decision when and how to finance the economy, which will have an effect on its further development.

c) The economy will face no recession if the government chooses the time and the amount of the injection or withdrawal correctly.

3. Where the government has not been successful in avoiding strong fluctuations in business activity, it can make injections into a growing economy which then overheats and withdraws too much at the wrong time braking too hard.

a) When the government is able to avoid depressions and booms, it might always speed up economic growth.

b) The government might promote rather fast economic development, or slow it down dramatically.

c) Injections into and withdrawals from the growing economy to avoid fluctuations are the key to its successful regulation.

MODULE 2 LAW

Unit 1 TORT LAW

Vocabulary

actual malice – злой умысел, установленный по фактическим обстоятельствам дела

comparative negligence – относительная небрежность совместная вина

contributory negligence – небрежность (неосторожность) истца, вызвавшая несчастный случай; вина потерпевшего; небрежность, предполагающая возмещение доли ответственности

damage cap – предел возмещения

damages – возмещение вреда

defamation – разглашение правдивых сведений позорящих другое лицо

defective condition – юридически порочные условия

false imprisonment – неправомерное лишение свободы

infliction of emotional distress – причинение эмоционального расстройства

injunction – судебный запрет

interference with a contract – вмешательство в контракт

invasion of privacy – нарушение личной жизни

legal duty – правовая обязанность, договорная обязанность

libel – клевета письменно или через печать

misuse of legal procedure – злоупотребление судопроизводством

negligence – небрежность

nuisance – нарушение покоя, вред, источник вреда, «зловредность» (в частности, причинение собственнику недвижимости помех и неудобств в пользовании ею)

proximate cause – непосредственная причина

punitive damages – штрафные убытки, убытки, присуждаемые в порядке наказания

doctrine respondeat superior – доктрина «пусть принципал отвечает»

slander – устная клевета

strict liability – строгая ответственность; объективная ответственность (независимо от наличия вины)

survival statute – закон о признании основания иска действительным независимо от смерти стороны

tort – деликт, гражданское правонарушение
tortfeasor – причинитель вреда, делинквент; правонарушитель

A tort is a private wrong that injures another person's physical well-being, property, or reputation. A person who commits a tort is called a tortfeasor. The other party is alternately referred to as the injured party, the innocent party, or the victim. If a lawsuit has been filed, the injured party is called the plaintiff and the tortfeasor is called the defendant.

The primary purpose of tort law is to compensate the innocent party by making up for any loss suffered by that victim. Another objective is to protect potential victims by deterring future tortious behavior. Criminal law involves a public wrong, that is, a wrong that affects the entire society. When a crime is committed, government authorities begin legal actions designed to remove the offender from society. It is possible, however, for a single act to be both a tort and a crime.

Businesspeople must be especially aware of tort law because of the doctrine of respondent superior (let the master respond). That doctrine may impose legal liability on employers and make them pay for the torts committed by their employees within the scope of the employer's business.

No legal liability can be imposed against an individual unless two elements are present: the first element is duty, which is an obligation placed on individuals because of the law; the second element is a violation of that duty. A duty can be violated intentionally, through negligence, or under the theory of strict liability.

Legal duties arise corresponding to each right within each member of our society.

Intentional violations of duty include a variety of intentional torts, all of which have their own individual elements. The principal intentional torts are assault, battery, false imprisonment, defamation, invasion of privacy, misuse of legal procedure, infliction of emotional distress, nuisance, and interference with a contract.

People and property are sometimes injured even when no one intends that the injury occur. Such an occurrence is usually labeled «an accident.» Justice demands that the injured party be compensated. That part of tort law that is concerned with the compensation of accident victims is called negligence.

Under what circumstances can the actions of an alleged tortfeasor be labeled negligent so that the tortfeasor will be held

liable? Four elements must be present to establish negligence: (1) legal duty, (2) breach of duty through a failure to meet the appropriate standard of care, (3) proximate cause, and (4) actual injury.

A breach of duty owed to the victim occurs if the tortfeasor has not met the appropriate standard of care under the circumstances. To determine if the alleged tortfeasor has met the standard of care, the court uses the reasonable person test. This test compares the actions of the tortfeasor with those of a reasonable person in a similar situation. The reasonable person test is objective.

Determining this test may require the use of expert witnesses to testify as to the reasonable professional's conduct under the circumstances.

In order for the tortfeasor to be held liable, the unreasonable conduct must be the proximate cause of the victim's injuries. Proximate cause (sometimes referred to as legal cause) is the connection between the unreasonable conduct and the resulting harm.

The injured party in a lawsuit for negligence must show that actual harm was suffered. In most cases, the harm suffered is a physical injury or in a form of property damage, and is, therefore, visible. Harm suffered due to fright or humiliation is difficult to demonstrate.

Several defenses can be used by the defendant in a negligence case. These defenses include contributory negligence, comparative negligence, and assumption of the risk.

The defense of contributory negligence involves the failure of the injured party to be careful enough to ensure personal safety. Contributory negligence completely prevents recovery by the injured party. The injured party's defense to a charge of contributory negligence is called last clear chance. Under this doctrine, a tortfeasor may be held liable if the injured party can show that the tortfeasor had the last chance to avoid injury.

The doctrine of comparative negligence requires courts to weigh the relative degree of wrongdoing in awarding damages, and to assign damages according to the degree of fault of each party.

Another defense to negligence is assumption of the risk, which involves the voluntary exposure of the victim to a known risk.

Under the doctrine of strict liability or absolute liability, the court will hold a tortfeasor liable for injuries to a victim even though the tortfeasor did not intend the harm and was not, in any way, negligent. Strict liability is generally applied when the harm results

from an ultrahazardous or very dangerous activity.

Product liability is a legal theory that imposes liability on the manufacturer and seller of a product produced and sold in a defective condition (unreasonably dangerous to the user, to the consumer, or to property). Anyone who produces or sells a product in a defective condition is subject to liability for the physical or emotional injury to the ultimate consumer and for any physical harm to the user's property.

When a wrongdoer has injured another person by committing a tort, the victim can usually be compensated with monetary damages. Damages can include compensation for the repair or replacement of involved property, or for lost wages, medical bills, and any pain and suffering that the victim was forced to endure. If the tortfeasor's acts are notoriously willful and malicious, a court may impose punitive damages (exemplary damages), which are damages above and beyond those needed to compensate the injured party. Punitive damages are designed to punish the tortfeasor so that similar malicious actions are avoided by others.

If a tort involves a continuing problem the injured party may ask the court for an injunction. An injunction is a court order preventing someone from performing a particular act. If the company failed to satisfy an order, it would be in contempt of court. Contempt of court is a deliberate violation of the order of a judge that can result in a fine or in incarceration for the wrongdoer.

Exercise 1. Ответьте на вопросы.

1. What are the kinds of violation of a duty?
2. What is done to determine if the alleged tortfeasor has met the standard of care?
3. What are the forms of the actual harm?
4. When do the courts deny damages in actions for negligence?
5. When is the strict liability applied?
6. What are the punitive damages designed for?
7. Explain what an injunction is.

Exercise 2. Найдите эквиваленты в тексте.

Относительная небрежность; совместная вина; небрежность, предполагающая возмещение доли ответственности; предел возмещения; разглашение правдивых сведений позорящих другое лицо; юридически порочные условия; судебный запрет; вмешательство в контракт; нарушение личной жизни; правовая обязанность; клевета письменно или через печать; небрежность;

источник вреда; непосредственная причина; убытки, присуждаемые в порядке наказания; устная клевета; объективная ответственность.

Exercise 3. Воспользуйтесь словарем и подберите подходящие слова и выражения.

Обязательства из причинения вреда; моральный вред; меры ответственности; вред причиненный источником повышенной опасности; вред причиненный актами власти; вред причиненный несовершеннолетними лицами; вред, причиненный недееспособными лицами; вред, причиненный жизни и здоровью гражданина; право регресса; способы и размеры компенсации вреда.

Exercise 4. Выскажите по одной из предложенных тем.

1. Differentiate between the objectives of tort law and those of criminal law.
2. Discuss the element of duty and explain how duties relate to rights.
3. Identify the principal intentional torts and outline the elements of each.
4. Determine the four elements of negligence.
5. Contrast contributory negligence, comparative negligence, and assumption of the risk.

Exercise 5. Составьте диалог на заданную тему.

To prove that the plaintiff died of lung cancer caused by smoking the defendant's cigarettes or that plaintiff's scalp rash was caused by the defendant hair dye will often be a tricky and difficult task. Not only must the plaintiff disclose that the breach of warranty was the cause «in fact», but he must show, that the «breach of the warranty was the proximate cause of the loss sustained.» The lawyer must prove a sufficiently close causal connection to convince the court that it ought to be defined as proximate.

Post hoc propter hoc is not normally enough; the plaintiff must show more that the goods injured the plaintiff in a certain way.

Unit 2 CHARACTERISTICS, AND STATUS OF CONTRACTS

Vocabulary

contract of record – договор, облеченный в публичный акт
executed contract – договор с исполнением в момент заключения

executory contract – договор с исполнением в будущем

express contract – явно выраженный договор

implied-in-fact contract – подразумеваемый договор

implied-in-law contract – квази-договор (вытекающий из предписаний закона)

obligee – лицо, по отношению к которому принято обязательство; кредитор по обязательству

obligor – лицо, принявшее на себя обязательство; должник по обязательству, дебитор

privity – имущественные отношения (основанные на договоре, правопреемстве и других личных отношениях)

promisee – кредитор по договору

promisor – должник по договору

quasi-contract – квазидоговор

unenforceable contract – договор, не могущий быть принудительно осуществленным в исковом порядке

unilateral contract – односторонняя сделка

valid contract – надлежаще оформленный, надлежаще совершенный договор

voidable contract – оспоримая сделка

void contract – не имеющая юридической силы, ничтожная сделка

A contract is an agreement based on mutual promises between two or more competent parties to do or to refrain from doing some particular thing that is neither illegal nor impossible. The agreement results in an obligation or a duty that can be enforced in a court of law.

The contracting party who makes a promise is known as the promisor; the one to whom the promise is made is the promisee. The party who is obligated to deliver on a promise or to undertake some act is called the obligor. The contracting party to whom the obligor owes an obligation is called the obligee.

A legally complete contract will arise between two parties when all six elements of a contract are present: offer, acceptance, mutual assent, capacity, consideration, and legality. If any one of the six

elements is missing, the transaction is not a legally complete contract.

1. An offer is a proposal made by one party to another indicating a willingness to enter into a contract. The person who makes an offer is called the offerer. The person to whom the offer is made is the offeree. Making the offer is actually the first step in creating the contractual relationship between the two parties. The offer must be seriously intended, clear and definite, and communicated to the offeree.

2. In most cases, only the specifically identified offeree has the right to accept an offer. Acceptance means that the offeree agrees to be bound by the terms set up by the offerer in the offer. In many situations, if the offeree changes any of those terms, the acceptance is not really an acceptance but a counteroffer.

3. If a valid offer has been made by the offerer and a valid acceptance has been made by the offeree, then the parties have agreed to the terms, and mutual assent exists between them. Mutual assent is sometimes called a meeting of the minds.

4. Capacity is the legal ability to enter into a contractual relationship. The law has established a general presumption that anyone entering a contractual relationship has the legal capacity to do so.

5. Consideration, i.e. the mutual exchange of benefits and sacrifices, is the thing of value promised to one party in exchange for something else of value promised by the other party. This exchange of valued items or services binds the parties together. If no consideration passes between the parties, then no contract exists.

6. The final element of a binding contract is legality. Parties cannot be allowed to enforce a contract that involves doing something that is illegal. Some illegal contracts involve agreements to commit a crime or to perform a tort. Other activities that are neither crimes nor torts have been made illegal by specific statutes. Among these activities are usurious agreements, wagering agreements, unlicensed agreements, unconscionable agreements, etc.

All contracts are agreements, but not all agreements are contracts. An agreement may or may not be legally enforceable. For example, an agreement to take a friend to a football game would not be legally enforceable because the friend has not given anything in exchange for that promise. To be enforceable, an agreement must conform to the law of contracts.

The general rule of contract law is that the parties to a contract must stand in privity to one another. Privity means that both parties must have a legally recognized interest in the subject of the contract if

they are to be bound by it. Outside parties who do not have such an interest in the subject matter of the contract may not be bound by it. Their right to sue in the event of breach (i.e., broken or violated) of contract would also be called into question. An exception to the general rule of privity exists in cases involving warranties and product liability.

Contractual characteristics are divided into four different categories:

- valid, void, voidable, and unenforceable;
- unilateral and bilateral;
- express and implied; and
- informal and formal.

Any given contract could be classifiable in all four ways. Thus, a single contract could be said to be valid, bilateral, express, and formal.

A valid contract is one that is legally binding and fully enforceable by the court. In contrast, a void contract is one that has no legal effect whatsoever. A contract to perform an illegal act would be void. A voidable contract is one that may be avoided or canceled by one of the parties. A contract made by minors and one that is induced by fraud or misrepresentation are examples of voidable contracts. An unenforceable contract is one that, because of some rule of law, cannot be upheld by a court of law. An unenforceable contract may have all the elements of a complete contract and still be unenforceable.

A unilateral contract is an agreement in which one party makes a promise to do something in return for an act of some sort. In contrast, a bilateral contract is one in which both parties make promises. A bilateral contract comes into existence the moment the two promises are made. A breach of contract occurs when one of the two parties fails to keep the promise.

A contract can be either express or implied. An express contract requires some sort of written or spoken expression that indicates the desire of the parties to enter the contractual relationship. An implied contract is created by the actions or gestures of the parties involved in the transaction.

In some situations, laws require certain types of contracts to be in writing. A written contract does not have to be a long, formal, preprinted agreement. A written contract may take the form of a letter, sales slip and receipt, notation, or memorandum. A written contract may be typed, printed, scrawled, or written in beautiful penmanship.

One who knowingly accepts benefits from another person may be obligated for their payment, even though no express agreement has been made. Agreements of this type can be either implied in fact or implied in law.

Contracts implied by the direct or indirect acts of the parties are known as implied-in-fact contracts.

An implied-in-law contract can be imposed by a court applying reasons of justice and fairness when someone is unjustly enriched at the innocent expense of another. It is used when a contract cannot be enforced or when there is no actual written, oral, or implied-in-fact agreement. An implied-in-law contract is also called a quasi-contract. It does not result from the mutual assent of the parties such as an express or implied-in-fact contract.

Under common law principles, a formal contract differs from other types in that it has to be written; signed, witnessed, and placed under the seal of the parties; and delivered.

A special type of formal contract – contract of record – is not a contract in the true sense of the word because it is court created, and it does not have all the elements of a valid contract. Often, such a contract is one that has been confirmed by the court with an accompanying recorded judgment giving the successful litigant the right to demand satisfaction of the judgment.

An oral or written contract that is not under a seal or is not a contract of record is considered an informal contract (also known as a simple contract). An informal contract generally has no requirements as to language, form, or construction. It comprises obligations entered into by parties whose promises are expressed in the simplest and, usually, most ordinary nonlegal language.

After a contract has been negotiated, all obligations must then be satisfactorily performed in order for the contract to be executed. A contract that has not yet been fully performed by the parties is called an executory contract. When a contract's terms have been completely and satisfactorily carried out by both parties, the contract becomes an executed contract. Such a contract is no longer an active agreement and is valuable only if a dispute about the agreement occurs.

Exercise 1. Ответьте на вопросы.

1. How are the two contracting parties called?
2. What are the requirements of an offer?
3. Can it be called an acceptance when the offeree changes the terms?
4. What does the mutual assent suppose?

5. In what cases do people have the right to abandon their contracts?
6. What is a consideration and why is it an important element of a contract?
7. What makes the contract illegal?
8. Can quasi-contract be called a contract in the true sense of the word?
9. What is the contract of record?

Exercise 2. Найдите эквиваленты в тексте.

Явно выраженный договор; подразумеваемый договор; лицо, по отношению к которому принято обязательство; кредитор по обязательству; лицо, принявшее на себя обязательство; должник по обязательству, дебитор; кредитор по договору; должник по договору; договор, не могущий быть принудительно осуществленным в исковом порядке; оспоримая сделка; ничтожная сделка.

Exercise 3. Воспользуйтесь словарем и подберите подходящие слова и выражения.

Возмездный договор; безвозмездный договор; публичный договор; предварительный договор; договор в пользу третьего лица; толкование договора; простая письменная форма договора.

Exercise 4. Выскажите по одной из предложенных тем.

1. Identify the six elements of a contract.
2. Distinguish contracts from other agreements made between different parties.
3. Explain the nature of valid, void, voidable, and unenforceable contracts.
4. Contrast unilateral and bilateral contractual arrangements.
5. Outline the difference between express and implied contracts.
6. Contrast the nature of a formal contract with that of an informal contract.
7. Explain how executory contracts differ from executed contracts.

Exercise 5. Составьте диалог на заданную тему.

In *Kunian v. Development Corp. of America*, the seller of plumbing and heating materials entered into an installment contract with the buyer. Several months later the buyer was \$38,000 behind in

payments for installments of goods delivered. After the seller demanded assurance of performance from the buyer, the buyer promised that he would pay the outstanding indebtedness if the seller would continue his performance. When a month passed and the buyer had made no further payments, the seller informed the buyer that no further deliveries would be made unless the buyer deposited in escrow a sufficient amount of cash to pay for the delivered goods. The court held that the seller had «reasonable ground for insecurity» and that his suspension of performance was justified.

Unit 3 OFFER AND ACCEPTANCE

Vocabulary

- acceptance** – акцепт, акцептование
- cost-plus contract** – договор на условиях оплаты фактических расходов с начислением определенного процента от этих расходов
- counteroffer** – встречное предложение; контроферта
- current market price contract** – договор на условиях оплаты по текущим рыночным ценам
- firm offer** – предложение товара или ценных бумаг по твердой цене; твердое предложение
- invitation to trade** – приглашение сделать оферту
- mirror image rule** – правило зеркального отображения
- offer** – предложение; оферта
- offeree** – адресат оферты; лицо, которому делается предложение
- offerer** – offerent; лицо, делающее предложение
- option contract** – опционный контракт
- output contract** – договор о продаже всей произведенной продукции
- public offer** – оферта, обращенная к неопределенному кругу лиц
- rejection** – отклонение, отказ
- requirements contract** – контракт «на все потребности покупателя» (предусматривающий закупку покупателем только у одного поставщика)
- revocation** – отмена, аннулирование; ревокация

The first element of a valid contract is the existence of an offer. An offer is a proposal made by one party to another indicating a willingness to enter into a contract. The person who makes an offer is called an offeror. The person to whom the offer is made is called

the offeree. An offer is valid only if it has serious intent, has clear and reasonably definite terms, and has been communicated to the offeree.

An offer is invalid if it is made as an obvious joke, during an emotional outburst of rage or anger, or under circumstances that might convey a lack of serious intent. The offerer's words or actions must give the offeree assurance that a binding agreement is intended. Serious intent is determined by the offerer's words and actions and by what the offeree believed was intended by those words and actions.

The offerer's words must give the offeree assurance that a binding agreement is intended.

The terms of an offer must be sufficiently clear to remove any doubt about the contractual intentions of the offerer.

The communicated terms of an offer must be sufficiently clear to remove any doubt about the contractual intentions of the offerer. No valid offer will exist when terms are indefinite, inadequate, vague, or confusing.

In general, an offer should include points similar to those covered in a newspaper story – who, what, when, where, and how [much] – if it is to be clear, definite, and certain. In other words, the offer should identify the parties involved in the contract, the goods or services that will be the subject matter of the contract, the price the offerer is willing to pay or receive, and the time required for the performance of the contract.

Sometimes laws permit offers to omit certain information. They can state that even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy. For example, cost-plus contracts, output contracts, requirements contracts, and current market price contracts are enforceable even though they are not complete in certain matters. A cost-plus contract does not include a final price. Instead, that price is determined by the cost of labor and materials plus an agreed percentage markup. An output contract is an agreement in which one party consents to sell to the second party all the goods that party makes in a given period of time. A requirements contract is an agreement in which one party agrees to buy all of the goods it needs from the second party. Finally, a current market price contract is an agreement in which prices are determined with reference to the market price of the goods on a specified date.

An offer must be communicated to the offeree to be valid. The communication of the offerer's intentions may be by whatever means is convenient and desirable. It may be communicated orally or by

letter, telegram, or any other means capable of transmitting the offerer's proposal. It may also be implied. Acts and conduct of the proposing party are, in many cases, successful in communicating an intention to make an offer to another party witnessing them. When acts and conduct are sufficient to convey an offerer's intentions, an implied offer results.

At times, an offer must be communicated to a party whose name, identity, or address is unknown. In such cases, a public offer is made. A public offer is made through the public media but is intended for only one person whose identity or address is unknown to the offerer. The classic example of a public offer is an advertisement in a lost-and-found column in a newspaper.

By contrast, invitations to trade are not offers. An invitation to trade is an announcement published for the purpose of creating interest and attracting a response by many people. Newspaper and magazine advertisements, radio and television commercials, store window displays, price tags on merchandise, and prices in catalogs are included within this definition. In the case of an invitation to trade, no binding agreement develops until a responding party makes an offer that the advertiser accepts.

The second major element in a binding contract is acceptance of the offer. An acceptance means that the offeree agrees to be bound by the terms set up by the offerer in the offer. Only the offeree, the one to whom the offer is made, has the right to accept an offer. If another party attempts to accept, that attempt would actually be a new and independent offer.

Unilateral contracts do not usually require oral or written communication of an acceptance. When the offerer makes a promise in a unilateral contract, the offerer expects an action, not another promise in return. Performance of the action requested within the time allowed by the offerer and with the offerer's knowledge creates the contract.

In bilateral contracts, unlike unilateral ones, the offeree must communicate acceptance to the offerer. Bilateral contracts consist of a promise by one party in return for a promise by the other. Until the offeree communicates a willingness to be bound by a promise, there is no valid acceptance.

An offer may be accepted by either express or implied means of communication. In an express acceptance, the offeree may choose any method of acceptance, unless the offer states that it must be made in a particular manner. A stipulation such as «reply by Federal Express» or «reply by certified mail» in the offer must be carried out

to complete an acceptance.

To be effective, an acceptance must be unequivocal, which means that the acceptance must not change any of the terms stated in the offer. Under common law, this stipulation is known as the mirror image rule.

Under the mirror image rule, the terms stated in the acceptance must duplicate the terms in the offer. If the acceptance changes or qualifies the terms in the offer, it is not an acceptance but a counteroffer. A counteroffer is a response to an offer in which the terms of the original offer are changed. No agreement is reached unless the counteroffer is accepted by the original offerer.

In contracts for the sale of goods, as long as there is a definite expression of acceptance, a contract will result even though an acceptance has different or additional terms. If both parties are not merchants, the different or additional terms are treated as proposals for amendment to the contract. If the parties are both merchants, however, the different or additional terms become part of the contract unless (a) they make an important difference, (b) the offerer objects, or (c) the offerer limits acceptance to its terms.

Acceptance may result from the conduct of the offeree. Actions and gestures may indicate the offeree's willingness to enter into a binding agreement.

As a general rule, silence is not an acceptance. If, however, both parties agree that silence on the part of the offeree will signal acceptance, then such an acceptance is valid.

Another exception to the general rule occurs when the offeree has allowed silence to act as acceptance. The offerer cannot force the offeree into a contract by saying silence will mean acceptance. The offeree, however, can force the offerer into a contract if the offerer established the silence condition.

A rejection comes about when an offeree expresses or implies refusal to accept an offer. Rejection terminates an offer and all negotiations associated with it. Further negotiations could commence with a new offer by either party or a renewal of the original offer by the offerer. Rejection is usually achieved when communicated by the offeree.

A revocation is the calling back of the offer by the offerer. With the exception of an option contract and a firm offer, an offer may be revoked anytime before it has been accepted. The offerer has this right, despite what might appear to be an emphasis on moral obligation to continue the offer. An offer may be revoked by communication, automatic revocation, passage of time, death or insanity of the

offerer, destruction of the subject matter, or the subsequent illegality of the contract.

An offer may be revoked by the offerer communicating that intention to the offeree before the offer has been accepted. Revocation is ineffective if the acceptance has already been communicated, as by mailing the acceptance in response to a mailed offer. Direct communication of revocation is not required if the offeree knows about the offer's withdrawal by other means.

When the terms of an offer include a definite time limit for acceptance, the offer is automatically revoked at the expiration of the time stated.

An option contract is an agreement that binds an offerer to hold open an offer for a predetermined or reasonable length of time. In return for this agreement to hold the offer open, the offerer receives money or something else of value from the offeree. Parties to an option contract often agree that the consideration may be credited toward any indebtedness incurred by the offeree in the event that the offer is accepted. Should the offeree fail to take up the option, however, the offerer is under no legal obligation to return the consideration.

Option contracts remove the possibility of revocation through death or insanity of the offerer. The offeree who holds an option contract may demand acceptance by giving written notice of acceptance to the executor or administrator of the deceased offerer's estate or to the offerer's legally appointed guardian.

A special rule has emerged in international law. This rule holds that no consideration is necessary when a merchant agrees in writing to hold an offer open. This is called a firm offer.

Exercise 1. Ответьте на вопросы.

1. What is an offer?
2. What is to be done in order to remove any doubt about contractual intentions of the offer?
3. What information should the offer include?
4. What is a cost-plus contract?
5. What does a current market price contract suppose?
6. What are the ways to transmit the offerer's proposal?
7. What is a public offer?
8. In what cases are acts and conduct of the proposing successful?
9. Who has a right to accept an offer/ how is an offer rejected?

Exercise 2. Найдите эквиваленты в тексте.

Договор на условиях оплаты фактических расходов с начислением определенного процента от этих расходов; договор на условиях оплаты по текущим рыночным ценам; предложение товара или ценных бумаг по твердой цене; приглашение сделать оферту; адресат оферты; оферент; оферта, обращенная к неопределенному кругу лиц; отклонение; аннулирование.

Exercise 3. Воспользуйтесь словарем и подберите подходящие слова и выражения.

Отзыв акцепта; публичная оферта; извещение об отзыве оферты; безотзывность оферты; приглашение делать оферту; акцепт, полученный с опозданием; отказ от акцепта.

Exercise 4. Выскажите по одной из предложенных тем.

1. Identify the three requirements of a valid offer.
2. Differentiate between a public offer and an invitation to trade.
3. Explain acceptance of an offer in the cases of a unilateral contract and a bilateral contract.
4. Discuss the mirror image rule.
5. Relate the various means by which an offer can be revoked.
6. Explain what is meant by a firm offer.

Exercise 5. Составьте диалог на заданную тему.

In *Universal Oil Products. v. S.C.M. Corp.*, the seller sent a written offer to the buyer that did not contain a provision for arbitration of any disputes. The buyer responded with a written purchase order that did contain a provision for arbitration. The court treated the buyers order as a counteroffer, rather than as an acceptance with a proposal for additional terms. Since the seller shipped the goods pursuant to the buyers order, the court found that the seller thereby accepted the counteroffer and became bound to arbitrate.

Unit 4 CONTRACTUAL CAPACITY

Vocabulary

- abandon** – отказываться (например, от права притязания)
affirmance – утверждение, подтверждение
capacity – правоспособность; дееспособность
disaffirm – отменять; отказывать в подтверждении
emancipated – эмансипированный

majority – совершеннолетие

minority – несовершеннолетие

necessaries – необходимые предметы или услуги

ratification – ратификация; последующее одобрение

rebuttable presumption – опровержимая презумпция

The law has established a general presumption that anyone entering into a contractual relationship has the legal capacity to do so. This statement means that someone enforcing an agreement does not have to prove that when the contract was entered into the other party had contractual capacity. However, this is a rebuttable presumption; that is, a defending party (a minor, mental incompetent, or intoxicated person) has the right to attack the presumption in order to rescind a contract. Minors are generally excused from contractual liability due to their incapacity; their contracts are voidable.

Under common law, the term minority described persons who had not reached the age of 18 or 21 depending on jurisdiction. Upon reaching that age, a person attained majority.

In some jurisdictions, minors who become emancipated and are no longer under the control of their parents are responsible for their contracts. Emancipated minors include those who are married and those who leave home and give up all rights to parental support. These minors are said to have abandoned the usual protective shield given them.

Minors sometimes lie about their ages when making contracts. Despite the misrepresentation of age, most jurisdictions allow minors to disaffirm or void contracts. Executory contracts, those that have not been fully performed by both parties, may be repudiated by a minor at any time.

Goods and services that are essential to a minor's health and welfare are necessaries. Necessaries include food, clothing, shelter, and medical and dental services. In determining whether goods and services qualify as necessaries, the court inquires into the minor's family status, financial strength, and social standing or station in life. A minor's contract covering only the fair value of necessaries is enforceable against the minor.

An individual may disaffirm an agreement made during minority before or within a reasonable time after reaching adulthood. Failure to disaffirm within a reasonable period of time after reaching adulthood would imply that the contract had been ratified. The method of disaffirmance is fundamentally the same as that of ratification. Disaffirmance may be implied by the acts of the individual after

achieving majority, as by a failure to make an installment payment.

Ratification, or affirmance, the willingness to abide by contractual obligations, may be implied by using the item purchased, making an installment payment, paying off the balance of money owed on a previously voidable contract, or continuing to accept goods and services provided under a contract after becoming of full age. Affirmation may also result from the person's oral or written declaration to abide by the contract. These and other acts ratify an existing agreement and elevate it to the status of one that is enforceable against an adult.

Individuals who buy something from a minor have voidable ownership rights because the minor has the right to disaffirm the contract. The law permits a person having voidable ownership rights to transfer valid ownership rights to an innocent third-party purchaser of those goods. Thus, disaffirmance by a minor will not require the innocent purchaser to return the goods (real estate is an exception).

Persons deprived of the mental ability to comprehend and understand contractual obligations have the right to disaffirm their contracts.

A contract made by a person who is mentally infirm or who suffers from mental illness may be valid, if the person's infirmity or illness is not severe enough to rob that person of the ability to understand the nature, purpose, and effect of that contract. Thus, mental retardation or mental illness does not necessarily reduce a person's ability to enter into contracts. The legal question to be answered is whether the mental problem is so serious that the person did not understand the nature of the contract. If that is the case, the mentally infirm or mentally ill person may disaffirm any contract except one for necessities. The person judged incompetent must return all consideration received, if he or she still has it.

Persons declared to be insane by competent legal authority are denied the right to enter contracts. Any contractual relationship with others results in a void agreement. In most jurisdictions, persons who knowingly take advantage of someone who is declared insane are subject to criminal indictment and prosecution.

Contracts agreed to by persons under the influence of alcohol or drugs may be voidable. Incompetence related to either alcohol or drug use must be of such a degree that a contracting party would have lost the ability to comprehend or to be aware of obligations being accepted under the contract. Disaffirmance in such cases requires the return to the other party of all consideration that had been received. However, such a return may be refused if evidence

indicates that one party took advantage of the other's drunken or weakened condition.

Exercise 1. Ответьте на вопросы.

1. When a minor disaffirms a contract what is he entitled to?
2. Give definition of minority and majority.
3. In what cases are the minors liable on their contracts?
4. What privilege do the minors have?
5. Explain what necessaries are.
6. When are the parents liable for contracts executed by minors?
7. When may people ratify contracts made during minority?
8. What rights do people who suffer from mental illnesses have when they make a contract?

Exercise 2. Найдите эквиваленты в тексте.

Отказываться; утверждение; правоспособность; дееспособность; отказывать в подтверждении; эмансипировать; ратификация; опровержимая презумпция; последующее одобрение.

Exercise 3. Воспользуйтесь словарем и подберите подходящие слова и выражения.

Правоспособность; дееспособность; имущественная ответственность гражданина; недопустимость лишения и ограничения правоспособности и дееспособности; опека; попечительство; распоряжение имуществом подопечного; юридическое лицо.

Exercise 4. Выскажите по одной из предложенных тем.

1. Describe the general legal presumptions with regard to a party's capacity to create a contract.
2. Explain why the law allows minors to void contracts for anything other than necessaries.
3. Distinguish between emancipation and abandonment and explain the meaning of each concept.
4. Assess the potential liability of minors who lie about their age when entering into a contract.
5. Contrast the legal liability of minors in contracts involving necessaries with their legal liability in contracts that do not involve necessaries.
6. Identify types of contracts that the law may except from the general rule that contracts by minors are voidable by the minor.

7. Contrast the contractual capacity of persons declared legally insane with that of those not declared legally insane.

8. Discuss the contractual capacity of drugged or intoxicated persons.

Exercise 5. Составьте диалог на заданную тему.

In *Jefferson Credit Corp. v. Marcano*, a buyer who had «at best a sketchy knowledge of English language» signed an automobile installment sales contract which waived the implied warranties of merchantability and fitness for a particular purpose. The court found «it can be stated with a fair degree of certainty» that the buyer neither knew nor understood that he had made such waivers, even though they were printed in large black type.

Thus, the assumption of consumer ignorance may, among other things, be based upon his proven inability to read the language, in which the contract was printed, his proven lack of education or upon his status as a poor person. Seller's guile often takes the form of a clause difficult to understand and placed in fine print on the rear of the contract. However, it may also take the form of fraud, sharp practice, high-pressure salesmanship, and so on.

Unit 5 LEGALITY

Vocabulary

conspiracy – сговор (о совершении преступления)

exculpatory agreement – оправдательное, оправдывающее соглашение

in pari delicto – равная вина

local option – право жителей округа контролировать или запрещать

public policy – публичный порядок

restraint of trade – ограничение свободы торговли

usury – ростовщичество

An agreement may involve a valid offer, an effective acceptance, mutual assent, competent parties, and valid consideration and still be void because of illegality. Parties cannot be allowed to enforce agreements that are contrary to the law. The most obvious type of illegal contract is one in which the parties agree to perform some unlawful activity.

Some activities that are neither crimes nor torts have been made illegal by specific statutory enactments. Chief among these activities are usurious agreements, wagering

agreements, unlicensed agreements, unconscionable agreements.

The illegal practice of charging more than the amount of interest allowed by law is called usury. To protect borrowers from excessive interest charges, jurisdictions have passed laws that specify the rate of interest that may be charged in lending money.

Any agreement or promise concerning gambling or a wager is invalid and may not be enforced. States make exceptions when bets are placed in accordance with laws that permit horse racing, lotteries, church-related or charitable games of bingo, and gambling casinos regulated by government authority.

Certain businesses and professions must be licensed before they are allowed to operate legally. One reason for requiring a license is to provide a source of revenue, part of which is used to supervise the business or profession being licensed. Another objective of licensing is to provide supervision and regulation of businesses and professions that might inflict harm on the public if they were allowed to operate without such controls. In this category are physicians, nurses, dentists, attorneys, engineers, architects, and others in public service who must be closely supervised for the protection of the public. Courts distinguish between a license for revenue and a license for protection of the public. If a license is required simply to raise revenue, the lack of a license will not necessarily void a contract. In contrast, if a licensing requirement is designed to protect the public, it is likely that unlicensed people will not be able to enforce their contracts.

A court is not required to enforce a contract or any part of a contract that it feels is unconscionable. An agreement is considered unconscionable if its terms are so grossly unfair that they shock the court's conscience. If the court so desires and if it can do so to avoid the unfair consequences, it can also limit how the unconscionable clause in an agreement is carried out.

The government has the power to regulate the health, safety, welfare, and morals of the public. Any action that tends to harm the health, safety, welfare, or morals of the people is said to violate public policy. Public policy is a general legal principle that says no one should be allowed to do anything that tends to injure the public at large. Agreements most commonly invalidated, as contrary to public policy are those to obstruct justice, interfere with public service, defraud creditors, escape liability, and restrain trade.

Agreements to obstruct justice include agreements to protect someone from arrest, to suppress evidence, to encourage lawsuits, to give false testimony, and to bribe a juror. The category also includes a

promise not to prosecute someone or not to serve as a witness in a trial. Any agreement promising to perform any of these activities would be void.

Agreements interfering with public service are illegal and void. Contracts in this group include agreements to bribe or interfere with public officials, obtain political preference in appointments to office, pay an officer for signing a pardon, or influence a legislature illegally for personal gain.

Agreements to defraud creditors, that is, those that may remove or weaken the rights of creditors, are void as contrary to public policy. Thus, a debtor's agreement to sell and transfer personal and real property to a friend or relative for far less than the actual value would be void if it were done for the purpose of hiding the debtor's assets from creditors who had a legal claim to them.

A basic policy of the law is that all parties should be liable for their own wrongdoing. Consequently, the law looks with disfavor on any agreement that allows a party to escape this responsibility. One device frequently used to escape legal responsibility is the exculpatory agreement. An exculpatory agreement is usually found as a clause in a longer, more complex contract or on the backs of tickets and parking stubs. The exculpatory clause states that one of the parties, generally the one who wrote the contract, is not liable for any economic loss or physical injury, even if that party caused the loss or injury.

The law tries to be a constant protector of the rights of persons to make a living and to do business freely in a competitive market. If persons enter into contracts that take away these rights, the law will restore the rights to them by declaring such contracts void. A restraint of trade is a limitation on the full exercise of doing business with others.

Agreements made with the intent to suppress competition, fix prices, and the like are void as illegal restraints of trade.

When the entire agreement is tainted with illegality, no valid contract results. Even though specific sections of the agreement may be legally enforceable if standing alone, illegality of any part of the entire contract renders it void.

When an agreement is divisible and the illegal promises and acts are completely segregated from other sections that are not tainted by illegality, courts may enforce those parts that are legal and rescind those parts ruled illegal and invalid. Enforcement of parts determined to be valid and enforceable, of course, is tempered by the extent of illegality of the other divisible parts.

When both parties to an illegal agreement are equally wrong in the knowledge of the operation and effect of their contract, they are said to be in *pari delicto* (in equal fault). In such cases, the court will not give aid to either party in an action against the other and will not award damages to either.

When the parties are not in *pari delicto*, relief will often be allowed if sought by the more innocent of the two. Although this rule is not applicable when one party may be less guilty of premeditation (plotting or planning an illegal act) and intent to achieve a gain through known illegal acts, it may be applied when one party is unaware that a law is being broken and has no intent to do a wrong.

Exercise 1. Ответьте на вопросы.

1. What is the most obvious type of illegal contract?
2. Explain the term usury.
3. What has been done to protect borrowers from excessive interest charges?
4. What are the objectives of licensing?
5. What does the term in *pari delicto* mean?
6. What does the exculpatory clause state?
7. What may be the consequences of illegal contracting?

Exercise 2. Найдите эквиваленты в тексте.

Сговор; оправдывающее положение; равная вина; публичный порядок; ограничение свободы торговли; ростовщичество.

Exercise 3. Воспользуйтесь словарем и подберите подходящие слова и выражения.

Оспоримая сделка; притворная сделка; мнимая сделка; последствия недействительных сделок; двусторонняя реституция; сделка совершенная под влиянием заблуждения; сделка совершенная под влиянием обмана; сделка совершенная под влиянием угрозы; ограничение полномочий на совершение сделки; выход за пределы ограничений; пределы правоспособности; цель деятельности юридического лица; лицензия организации; недействительность по иску.

Exercise 4. Выскажите по одной из предложенных тем.

1. Distinguish between licenses designed to raise revenue and those designed to provide supervision and regulation of a business or profession.

2. Determine the legal effect of a contract made by parties who are not licensed in a particular business or profession.

3. Describe when the courts might consider an agreement unconscionable and indicate how a party might defeat a claim of unconscionability.

4. Explain the legal principle of public policy and note how the courts usually treat agreements found contrary to public policy.

5. Distinguish between the application and effect of *in pari delicto* when an illegal contract is entire and indivisible and when it is divisible.

Exercise 5. Составьте диалог на заданную тему.

In *Toker v. Westerman*, the defendant had purchased a refrigerator-freezer for a cash price of \$899.98. The total price including interest, insurance, etc. was \$1,299.76. At trial, an appliance dealer had testified that the freezer in question was known in the trade as a «stripped unit» and that a reasonable price at the time of the sale would have been between \$350.00 and \$400.00. The holding of the court rests exclusively on excessiveness of the price, and it reads as follows:

Suffice it to say that in the instant case the court finds as shocking and therefore unconscionable, the sale of goods for approximately two and one-half times their reasonable retail value. This is particular so where, as here, the sale was made by a door-to-door salesman for a dealer who therefore would have less overhead expense than a dealer maintaining a store or showroom.

Unit 6 DISCHARGE AND REDEMIES

Vocabulary

- actual damages** – фактический, реальный ущерб
- anticipatory breach** – прекращение (договора) до наступления срока исполнения
- compensatory damages** – компенсаторные, реальные, фактические убытки
- complete performance** – оконченное исполнение; совершение
- condition concurrent** – взаимозависимые условия (подлежащие одновременному исполнению)
- condition precedent** – предварительное условие
- condition subsequent** – последующее, резолютивное, отменительное условие
- consequential damages** – косвенные убытки

general release – отказ от настоящих и будущих притязаний, общий отказ

incidental damages – побочные, случайные убытки

injunction – судебный запрет

liquidated damages – заранее оцененные убытки; оценочная неустойка; ликвидные убытки

mutual rescission – взаимное аннулирование, прекращение

nominal damages – номинальные убытки; номинальное возмещение, имеющее символическое значение

performance – исполнение; совершение

punitive damages – убытки присуждаемые в качестве наказания

reasonable time – разумно необходимый срок

satisfactory performance – достаточное, убедительное исполнение

specific performance – исполнение в натуре, реальное исполнение

speculative damages – предполагаемые убытки

substantial performance – исполнение всех существенных условий договора

tender of payment – предложение платежа

tender of performance – предложение исполнения

termination by waiver – отказ правообладателя от чего-либо

Most contracts are discharged by performance, which means that the parties do what they agreed to do under the terms of the contract. When performance occurs, the obligations of the parties end. Sometimes, however, the parties do not perform in a timely or satisfactory manner. At other times, they perform partially but not completely. At still other times, they do not perform at all.

When the time for performance is not stated in the contract, the contract must be performed within a reasonable time. A reasonable time is the time that may fairly, properly, and conveniently be required to do the task that is to be done, with regard to attending circumstances.

When either personal taste or objective standards have determined that the contracting parties have performed their contractual duties according to the agreement, satisfactory performance exists. Satisfactory performance is either an express or implied condition of every contract.

When both parties fully accomplish every term, condition, and promise to which they agreed, complete performance occurs. When a party, in good faith, executes all promised terms and conditions with the exception of minor details that do not affect the real intent of their agreement, substantial performance occurs. Complete performance terminates an agreement, discharging the parties of any further obligation to one another. Ordinarily, substantial performance also serves to discharge the agreement but with a difference. A party, who complains that performance has been substantial, but not complete, has the right to demand reimbursement from the offending party to correct those details that prevented complete performance.

Failing to fulfill or accomplish a promise, contract, or obligation according to its terms defines nonperformance.

Parties to a contract may stipulate the time and conditions for termination and discharge as part of their agreement. They also may subsequently agree not to do what they had originally promised. The latter is the case when there is a mutual rescission of the contract, a waiver of performance by one or more of the parties, a novation, or an accord and satisfaction to liquidate an outstanding debt or obligation.

During contract negotiation, parties may agree to certain terms that provide for automatic termination upon the occurrence or nonoccurrence of stated events. These terms are categorized as conditions subsequent.

Contracting parties may, either before or after performance commences, rescind their contract as a result of further negotiation and by their mutual assent. Mutual rescission requires both parties to return to the other any consideration already received or to pay for any services or materials already entered.

When a party with the right to complain of the other party's unsatisfactory performance or nonperformance fails to complain, termination by waiver occurs. It is a voluntary relinquishing (waiver) of one's rights to demand performance. A waiver differs from a discharge by mutual rescission in that a waiver entails no obligation by the parties to return any consideration that may have been exchanged up to the moment of rescission. Discharge by waiver, when made, is complete in itself.

By novation, the parties to a contract mutually agree to replace one of the parties with a new party. The former, original, party is released from liability under the contract.

An accord and satisfaction is a resulting new agreement arising from a bona fide dispute between the parties as to the terms of their

original agreement. The mutual agreement to the new terms is the accord; performance of the accord is the satisfaction. The accord, although agreed to, is not a binding agreement until the satisfaction has been made. The original agreement is not discharged, therefore, until the performance or satisfaction has been provided as promised.

A general release is a document expressing the intent of a creditor to release a debtor from obligations on an existing and valid debt. A general release terminates a debt and excuses the debtor of any future payment without the usual requirement that consideration be given in return.

Occasionally, it becomes impossible to perform a contract. Conditions that arise subsequent to the making of a contract may either void the agreement or make it voidable by one of the parties. Discharge through impossibility of performance may, in some situations, be allowed only if the specific and anticipated impossibility has been made a condition to the agreement.

The performance of a promised act may be discharged by operation of law. Some law that causes the parties to be discharged from their obligations, such as bankruptcy or the statute of limitations, comes into play.

A discharge in bankruptcy from a court will be allowed as a defense against the collection of most, but not all, debts of the bankrupt. Therefore, most contractual obligations to pay money come to an end when a party files for bankruptcy.

Statutes providing time limits within which suits may be brought are known as statutes of limitations. The statute of limitations does not technically void the debt, but it gives the debtor a defense against any demand for collection.

When contractual obligations terminate by agreement or by operation of law, no liability falls to either party. When one of the parties fails to carry out the terms of a contract, a breach of contract occurs and liability falls to the party who has not done what was promised. Breach of contract comes from negligent or intentionally wrongful performance, expressed repudiation of contractual obligations, or an abandonment of performance sometimes after performance has begun. When there is a breach of contract, the injured party has the right to a remedy in court.

Wrongful performance or nonperformance discharges the other party from further obligation and permits that party to bring suit to rescind the contract or to recover money to compensate that party for any loss sustained. Such compensation is known as damages.

An anticipatory breach (also called constructive breach) occurs

when a party to a contract either expresses or clearly implies an intention not to perform the contract even before being required to act. The repudiation must be clear and absolute. It must also indicate a deliberate and complete refusal to perform according to the terms of the contract. Injured parties may seek damages by showing that by relying on the contract.

Damages describe money awarded to parties who have been victimized or have suffered injury to their legal rights by others. Damages are of different kinds, and the nature of a claim usually determines what type of damages will apply.

A sum of money equal to the real financial loss suffered by the injured party defines actual damages. Since they are intended to compensate the injured party, actual damages are also called compensatory damages. Thus, damages awarded for nondelivery of promised goods or services would be an amount equal to the difference between the price stated in the contract and what the promisee would have to pay elsewhere.

Incidental damages and consequential damages are awarded for losses indirectly, but closely, attributable to a breach. Incidental damages cover any expenses paid out by the innocent party to prevent further loss. Consequential damages result indirectly from the breach because of special circumstances that exist with a particular contract. To recover consequential damages, the injured party must show that such losses were foreseeable when the contract was first made.

Damages awarded in excess of actual, incidental, or inconsequential damages where it is shown that the wrongful party acted with malicious intent and willful disregard for the rights of the injured party are punitive damages, also called exemplary damages.

Token damages awarded to parties who have experienced an injury to their legal rights but no actual loss are nominal damages. In today's practice, the award is usually one dollar.

Speculative damages are computed on losses that have not actually been suffered and that cannot be proved; they are damages based entirely on an expectation of losses that might be suffered from a breach. They differ from future damages in that speculative damages are not founded on fact but only on hope or expectation.

A decree of specific performance is a court order calling for the breaching party to do what he or she promised to do under the original contract of the unique subject matter.

An injunction is an order issued by a court directing that a party do or refrain from doing something. An injunction may be either

temporary or permanent.

Exercise 1. Ответьте на вопросы.

1. In what terms must be the contract performed when the time is not stated in the contract?
2. How is satisfactory performance of the contract determined?
3. How may be the contractual conditions classified?
4. What does a condition precedent require?
5. Explain what is a condition concurrent.
6. Think of examples of conditions subsequent.
7. What does tender of performance mean?
8. What does mutual rescission require?
9. Contrast termination by waiver and mutual rescission.

Exercise 2. Найдите эквиваленты в тексте.

Прекращение договора до наступления срока исполнения; компенсаторные убытки; оконченное исполнение; взаимозависимые условия; предварительное условие; общий отказ; побочные, случайные убытки; оценочная неустойка; номинальное возмещение; исполнение; убытки, присуждаемые в качестве наказания; разумно необходимый срок; достаточное исполнение; реальное исполнение; исполнение всех существенных условий договора; предложение платежа; предложение исполнения; отказ правообладателя от чего-либо.

Exercise 3. Воспользуйтесь словарем и подберите подходящие слова и выражения.

Исполнение обязательств надлежащему лицу; исполнение обязательств третьим лицом; исполнение альтернативного обязательства; солидарные обязательства; встречное исполнение обязательства; исполнение обязательств по частям; валюта денежных средств; признание права; взыскание убытков; присуждение к исполнению обязанностей в натуре.

Exercise 4. Выскажите по одной из предложенных тем.

1. Compare the different ways the court enforces performance of a contract.
2. Describe the standards that are used to determine whether or not the performance of a contract is satisfactory.
3. Contrast complete performance with substantial performance.

4. Discuss the ways that contracts are discharged.
5. Identify the remedies that are available to an injured party when a contract is breached.

Exercise 5. Составьте диалог на заданную тему.

In *Grandi v. LeSage*, the buyer purchased a racehorse for breeding purposes. The seller had represented the horse to be a stallion; in fact, the horse was a gelding. The buyer revoked acceptance and brought suit to recover purchase price and incidental damages. The final award included incidental damages for the care, feeding, and maintenance of the horse for about three month at \$1.50 per day.

MODULE 3 EXTRA

Economic security in an era of globalization.

Definition and provision

by Miles Kahler

I

Economic security has preoccupied national governments, in Asia and elsewhere, when economic shocks have been so unexpected and severe that existing social and political arrangements appear threatened. Contemporary globalization – economic integration at the global level that is no longer limited to the industrialized countries – accelerated during the 1980s, as programs of economic liberalization spread throughout the developing world. A sharp increase in capital flows to developing countries in the early 1990s reinforced positive views of globalization. That sunny perspective did not last the decade, however, as successive financial crises affected first Mexico, then East and Southeast Asia, Russia, and Argentina. Financial crises were succeeded in the new century by the international effects of an end to the US high-technology boom and its accompanying stock market bubble, the shock of 9/11 and the insecurity that followed (culminating in the Iraq war), and a US administration that appeared little interested in collaboration to mitigate the effects of globalization on smaller, more open economies.

The recent vicissitudes of societies in an increasingly integrated global economy have spurred renewed interest in economic security and forced its redefinition.

This revised definition in turn has encouraged a search for policy prescriptions that will increase economic security in the new environment. Globalization, after undermining the old definition of economic security, is found at the center of a new definition that emphasizes the risks of unexpected shocks and economic volatility. The new definition must capture the causal consequences of globalization accurately and establish explicit benchmarks for assessing globalization's effects on economic security. The design of national, regional, and global institutions can then be evaluated in light of three available instruments for enhancing economic security: insurance, credibility, and adaptation.

Economic security is not a new concern of governments. Economic instruments have long been part of the toolkit of statecraft, a means to influence other states and their policies. Economic security

in this traditional view was security from manipulation by other governments that wielded these instruments. Insecurity was vulnerability to other states. Economic inter-dependence was viewed with wariness, particularly among developing countries, because it risked an increase in such vulnerability. Industrialized countries gradually overcame their anxieties over economic vulnerability after 1945, a striking development given the past rivalries of these countries and their historic use of economic leverage against one another. Even more remarkable, given the speed of the transformation, was the economic opening of many developing economies after 1980. A complete accounting for that dramatic shift remains to be written; no simple explanation seems adequate for such a global shift to economic liberalization.

The Asia-Pacific economies joined this change in orientation toward the risks of economic vulnerability, a shift all the more striking for those (Taiwan, South Korea) that confronted threatening security environments.

Although this decline in concern over economic vulnerability had domestic political and economic sources, security calculations also promoted economic opening. That calculus still underpins support for globalization. Three considerations were of particular significance. First, governments, even those most wedded to a conventional view of international politics dominated by military force, saw positive gains to their national economic and technological base, and ultimately to their military power, through links to the global economy. Changes in military technology had opened an era of spin-on from the civilian economy rather than spin-off from the military sector. Those that rejected expanded international economic exchange risked conventional military inferiority.

Globalization had a second and more direct effect: reduction in vulnerability through diversification of suppliers and markets. The application of economic leverage and sanctions unilaterally became more difficult, even when the initiator, the United States, was the largest economy in the world. Although the United States has failed to give up its infatuation with economic sanctions, their effectiveness has declined in the absence of multilateral support, mirroring a decline in economic vulnerability on the part of other states. In addition, economic liberalization has meant that all governments have given up some of their leverage over private economic agents, reducing the effectiveness of economic instruments in their statecraft.

Finally, some of the states in the Asia-Pacific region began to accept that economic interdependence and integration might be

promoted because of its positive security effects. Few states in the region endorsed the classical liberal view that growing economic integration would necessarily produce peaceful international outcomes.

Nevertheless, several of the smaller and more economically dynamic countries in the region – South Korea, Taiwan, and Singapore – adopted strategies that deployed economic interdependence to advance their security goals in relation to larger or militarily threatening neighbors. At first, their strategies pointed toward explicit linkage, in which economic benefits were part of bargains to produce specific diplomatic outcomes. South Korea's Nordpolitik with Russia and then China was one successful example of such an exploitation of growing economic ties. As their neighbors also opened to the world economy, however, the ability to impose linkage declined and in some cases, such as those of Taiwan and China, could be reversed.

Economic interdependence could still provide security benefits, however. Domestic political constituencies that benefit from increased trade and investment might serve as a check on political elites that could disrupt those links by the use or threat of military force. In the longer run, economic integration could also aim at more profound regime transformation, inducing elites that endorsed a militarized view of security to accept a redefinition that produced a broader and less threatening assessment of national security. Kim Dae Jung's sunshine policy toward North Korea was based in part on such a long-run view of the effects of economic interdependence.

Anxiety over economic vulnerability to other states in the region – the traditional view of economic security – has declined over the past two decades, in part because of advancing economic integration. Even in the case of energy, a sector that had lain at the heart of traditional concepts of economic security, globalization and the growth in international markets began to undermine the old strategies. As Robert Manning has pointed out, despite national policies driven by concern over dependence and external manipulation, 'energy has the capacity to become an integrative force, creating a larger sense of shared interests and stake in cooperation' through market forces. Even when governments acted to reduce perceived vulnerability, as China appeared to do, their maneuvers could have only a limited effect on either the global oil market or the satisfaction of their country's own energy needs.

Economic security redefined: the (perceived) perils of globalization. If globalization contributed to the erosion of an older definition of economic security, it also fostered a redefined concern over economic threats to national well-being. Recurrent financial crises during the 1990s struck emerging markets in Asia and elsewhere with particular force, to the surprise of both national elites and many financial market observers. These powerful shocks reinforced a more pessimistic view of a globalized world: economic openness might produce more economic insecurity. Renewed attention to the negative effects of globalization was reinforced by additional economic shocks that flowed from the terrorist attacks of 11 September 2001 and the Severe Acute Respiratory Syndrome (SARS) epidemic of 2003. The new century had dawned, it seemed, on an international landscape of diminished economic opportunity and heightened threat.

This swing from exaggerated optimism over the benefits of globalization to a more pessimistic assessment of insecurity in a globalized world was to be expected.

Renewed economic insecurity, however, was not centered primarily on the threat of economic manipulation by rival states, as older anxieties had been. Instead, the new assessment linked globalization to economic security in two ways. Both emphasize the importance of nonstate actors and the new economic environment that they have created and exploited. Rather than concentrating solely on the vulnerability of states, both stress the vulnerability of individuals, groups, and societies as well as the internal political consequences of that vulnerability.

Rather than external manipulation by other states, the undermining of state authority by nonstate networks and economic shocks is central.

The first of these connections between globalization and security was noted in the 1990s, but only became pressing in the wake of the terrorist attacks of 11 September 2001. Globalization had been defined by legitimate economic exchange (trade, investment, migration) and enabled by liberalizing policies. Now a harsh light was shed on the permissive role of globalization in the growth of illicit cross-border exchange. Globalization had led governments to emphasize the opening of borders; sorting desirable from undesirable cross-border exchange and movement had not been a priority. Those malign transactions and movements, parasitic on legitimate ones, encompassed the transport of illegal substances such as drugs and contraband, criminal and terrorist networks, illegal migration,

environmentally damaging exotic species, and cross-border movement of pathogens, such as the SARS virus.

Negative cross-border effects associated with economic globalization can be labeled new security issues in their own right. They also have second-order effects on economic security. First, in response to these security threats, governments may reach for countermeasures that are economically damaging. In their efforts to sort good from bad cross-border flows, legitimate economic exchange may be taxed too heavily or even stifled in an effort to shut off threatening intrusions. The initial reactions of the United States to the 9/11 attacks suggest the possible costs of sharply reducing cross-border movement of people. For example, universities and colleges in the United States have voiced alarm over the threat posed by newly implemented security measures to the free flow of research and to the movement of students and scholars who conduct that research.

Second, these new sources of insecurity may themselves produce economic shocks, magnified through globalized communications and transportation networks and by the growth of sectors that are highly sensitive to such shocks. Air transport and tourism were both severely disrupted by the September 11 attacks of subsequent terrorist attacks in Southeast Asia, and the SARS epidemic.

Agricultural exports have been sharply affected by even the rumor of disease that might affect livestock or plants: global communication networks far outstrip in their speed any collective ability to verify and respond to the outbreak.

Finally, economic insecurity in other societies may also reinforce or encourage illicit economic exchange that then produces further insecurity through avenues that have been widened by globalization. For example, in countries such as Indonesia, deep recession during the Asian financial crisis spurred entry into illegal exchange by those whose employment in the legal economy had disappeared.

Increased sensitivity of societies to illicit cross-border activity is only one of the sources of insecurity attributed to globalization. Even more prominent is added economic volatility that societies face as a result of external shocks. Critics of globalization, such as Dani Rodrik, argue that external openness has increased economic risk overall for developing countries, rather than offsetting domestic sources of economic risk through diversification and the spreading of shocks over a larger market. International economic shocks associated with financial integration had occurred in earlier eras of globalization, but the expectations placed in governments by their societies were

limited. Perhaps the most severe economic shocks suffered by the developing countries – especially the poorest ones – have been declining terms of trade for their natural resource exports, an outcome unrelated to the latest wave of financial globalization.

For the industrializing economies of Asia, however, export-oriented manufacturing was meant to reduce vulnerability to external economic shocks by reducing dependence on exports of natural resource and agricultural products. What was not recognized during the golden years of export-oriented industrialization was vulnerability to financial shocks that could be associated with financial liberalization and the growth of global financial markets. In contrast to Latin America, the debt crisis of the 1980s had affected only a few economies in Asia. South Korea and the Philippines were forced to undertake adjustment programs when that earlier cycle of bank lending came to an abrupt halt. South Korea's rapid return to economic growth, however, stood in contrast to the plight of Latin American economies with weaker export sectors. Latin America's 'lost decade' seemed to reinforce the lesson that flexible, export-oriented, and diversified economies could surmount such financial shocks at relatively low cost. For a region certain of its economic invincibility, the Asian financial crisis of 1997–1998 brought home the hazards of a new international economic environment.

III

Economic vulnerability to other governments no longer loomed large among security threats. Even the new transnational security threats that accompanied more open borders paled in significance when compared to the risks brought home by the crisis. Instead, a new vulnerability to international markets and an awareness of the economic and political volatility imported through those markets became central to a redefinition of economic security.

Debate over the origins of the Asian financial crisis continues: the relative weight to be assigned to the actions of national governments, international market players, such as hedge funds, and international financial institutions (IFIs) remains a source of contention.

In evaluating the causal connection between globalization, particularly financial globalization, and economic insecurity, the record of the crisis and its outcomes merit careful assessment. The economic costs imposed by the crisis on the four most seriously affected Asian economies – Thailand, Malaysia, Indonesia, and South Korea – were large. Asset deflation was remarkable by any historical standard. Like

the Mexican peso crisis that had preceded it, the Asian financial crisis produced sharp and painful recessions in these economies, followed, in all cases but that of Indonesia, by a relatively rapid recovery. Economic rebound was quickly complicated by a succession of events that also exacerbated economic insecurity: sharp decline in the US stock market, an end to the technology sector boom, a shallow US recession, the terrorist attacks of September 2001, and the SARS epidemic.

The effects of the financial crisis on other Asian economies were much less severe, despite regional contagion and globalized financial markets. Japan and China each faced their own internally induced financial crises, but the regional crisis had little effect on their overall economic performance. Australia, like China, transited the crisis with few ill effects on its economy, shielded by a policy mix that included a flexible exchange rate.

A regional financial crisis produced distinct national economic outcomes. The financial markets that had transmitted economic turmoil also served as a partial solution to the crisis. The diversified financial markets of the late 1990s and the first years of the new century were more forgiving of policy missteps than lenders had been in the less globalized financial markets of the early 1980s. Latin America had taken nearly an entire 'lost decade' to regain access to financial markets as its debt crisis persisted. The affected economies in Asia were able, after policy adjustments, to reenter global financial markets in the wake of the crisis, lowering their long-run economic costs. Foreign direct investment flows to the region continued throughout the crisis, marked by an increasing concentration on China.

The record of the Asian financial crisis suggests that the relationship between economic globalization and financial crisis is complex, dependent on national characteristics and policies as well as regional contagion effects. If one ventures beyond financial crisis to other economic and political outcomes that affect economic security, causal connections to globalization must be assessed even more carefully. Globalization has been linked to economic insecurity through its effects on economic inequality and the marginalization of some developing economies.

Recent evaluations of those claims suggest that globalization appears to worsen international inequality when countries are taken as the unit of analysis (what might be called the sub-Saharan Africa effect). When individuals are taken as the unit of analysis, globalization appears to have more positive effects on global

inequality (the China–India effect). Even when one is using countries as the unit of analysis, the question for many of the poor developing countries that have fared badly over the past two decades is why they have been marginalized and unable to participate in a globalized world economy.

Part of the answer to that question lies in institutions – economic and political – that connect international and national economies.

The effects of globalization on political stability are also closely related to economic security through political institutions that provide a stable environment for economic growth. Economic volatility may undermine those institutions and the political basis for their effectiveness. Critics of globalization have pointed to the case of Indonesia, where the political effects of financial globalization and the Asian financial crisis appeared to be particularly severe: the collapse of the Suharto regime following policy changes enacted under external pressure.

Even limiting analysis to the most dramatic consequences of globalization – the risk of financial crises – its effects on domestic political development have often been overstated. Stephan Haggard’s account of the Asian crisis and its political effects notes political trends and structural faults that may have been accelerated or exacerbated by the economic crisis; few were not caused by it, however. Constitutional revision in Thailand was affected by the crisis, but such revision had been broached well before its onset. South Korea confronted the crisis at a time of delicate political transition during the election and inauguration of Kim Dae Jung as president. Yet Korea surmounted the crisis rapidly and without damage to its political institutions. South Korea and Thailand demonstrate what Haggard calls ‘the resilience of the democracies,’ although these two cases also demonstrate that economic management varies across democracies. Even Indonesia, where a succession crisis loomed throughout the 1990s, managed its democratic transition under the worst possible economic circumstances without a political breakdown or civil war. Political violence increased in Malaysia and Indonesia during the crisis, but the relationship of that violence to the economic crisis (when compared to authoritarian regimes that had overstayed their welcome and long-standing separatist pressures) is not clear.

These examples from the Asian economic crisis – taken as a major case of economic volatility imposed by financial globalization – suggest that the causal links between globalization and domestic economic and political outcomes must be specified precisely. Other

economic variables, such as industrialization or the introduction of market reforms, may be more disruptive than the effects of external economic opening and integration with the global economy. When certain domestic policy initiatives or poorly designed institutions, such as haphazard financial deregulation, are combined with economic opening, the effects of external shocks may be magnified. Institutional design at the national level is often the critical connection between positive and negative effects of globalization on economic security.

Careful assessment of competing explanations for observed outcomes must be coupled with an explicit recognition of the benchmark against which those outcomes are compared. Critics of the insecurity imposed by globalization on societies too often posit an implicit benchmark of no change at all. In other words, 'security' is expanded to mean the avoidance of any uncomfortable or politically risky change. The opponents of economic opening to the global market often deploy economic security in this overly expansive sense. Food security, for example, has been a powerful argument advanced for agricultural protection. Alternative strategies for ensuring adequate supplies of food from both domestic and international markets are set aside as economic security once again approaches its old sense of autarky.

Instead of treating economic security as a synonym for the status quo – a status quo that may hold instability in its future and certainly implies continuing economic change – judgments about economic security must weigh the effects of increased volatility (assuming that they cannot be reduced) introduced by globalization against the benefits of increased economic performance over time. The alternative to volatility may not be a smooth and equitably distributed pattern of economic growth, but rather an outcome embodied in its extreme form by North Korea or Myanmar: low volatility coupled with economic stagnation or decline. Rather than assuming that externally induced economic volatility or disturbance is necessarily to be avoided, a more appropriate – and difficult – calculation is determining each society's tolerance such economic risks in light of future economic gain.

Political benchmarks for the calibration of economic security are even more difficult to determine. Estimating a 'politically sustainable' level of economic openness requires a definition of one's political vantage point – who will bear political costs – and, once again, the level and direction of political change. During successive financial crises in Latin America and during the Asian economic crisis of the late 1990s, an often-predicted backlash against globalization did not

emerge as a full-fledged political movement. Indeed, as Haggard recounts, political opposition during the economic crisis often aligned itself, tacitly or explicitly, in favor of economic reforms proposed by the IFIs and other international actors.

Such programs of reform were directed against collusive bargains between government and business that were associated with the onset of the crisis. Overall, publics have been willing to accept some of the costs associated with globalization, unless political paralysis (Indonesia, Argentina) or radical economic inequality and poverty (Venezuela) make those costs seem both interminable and inequitable.

Both the causal relationship between economic globalization and economic insecurity and the benchmarks for measuring that insecurity are closely associated with international and domestic institutions that intermediate between societies and the international economy. Domestic institutions may enhance the economic benefits of international opening and either magnify or reduce the effects of international economic shocks. International institutions, such as the International Monetary Fund (IMF) and World Bank, have been criticized for a prominent and single-minded attachment to international economic integration that omits attention to economic security. Regional institutions, on the other hand, were sharply criticized in the wake of the Asian financial crisis for their ineffectiveness.

As globalization is examined with a new eye to its effects on national economic security, both the appropriate type and the mix – national, regional, global – of institutions become central to the provision of economic security under conditions of globalization.

IV

Institutions and the provision of economic security under conditions of globalization.

Globalization has produced new definitions of economic security centered on two types of unwanted transmissions across national borders: illicit flows that are more difficult to control and easier to disguise as legitimate economic transactions increase (terrorism, crime, pollution); and economic (largely financial) shocks that can undermine economic growth, increase inequality, and threaten political stability. Countering the first type of transmission involves identification, monitoring, and control at the national level, coupled with collaboration at the regional and global levels. Illicit flows often embody security threats independent of their effects on economic

security. Economic security is reduced when countermeasures taken against these threats impose costs on legitimate economic exchange and reduce the levels of legitimate trade and investment.

More difficult to calculate and manage are the costs and risks associated with fluctuations in usually benign cross-border flows of goods, capital, and labor. It is this second dimension of economic insecurity that has drawn the most attention from policymakers. Institutions can offset the economic insecurity associated with globalization in three ways: providing insurance, adding to policy credibility, and encouraging adaptation. In the past, Asian governments managed their links to the international economy through institutions with high credibility: adopting a strategy of incremental economic liberalization and pragmatic economic policies, avoiding wide swings in policy that were more characteristic of Latin America. Policy credibility benefited both internal and external economic agents and encouraged a beneficial cycle of rapid economic growth. Credible economic policies adopted by national governments also reduced the need to borrow credibility from regional or global institutions, one reason that regional economic institutions in Asia were relatively weak.

Unfortunately, economic success encouraged institutional overreliance on credibility. As economic opening proceeded, both insurance and policy adaptation were undersupplied. Insurance against economic insecurity at the individual level in most Asian societies was left to individuals and families or, more broadly, to rapid economic growth and high individual savings rates. For national economies, insurance against economic shocks seemed unnecessary in a region that avoided high levels of external debt, maintained realistic exchange rates, and exercised fiscal prudence. Even when external shocks interrupted economic growth, as the 1982–1983 debt crisis did in South Korea, export-oriented industrial structures permitted rapid adjustment. Economic success during these decades of global economic liberalization bred confidence in existing institutions, and little adaptation of the engines of high-speed growth ensued. Regional and global institutions did not argue with success, generally endorsing the policies and institutions that seemed to produce unparalleled economic performance.

Financial crisis struck the region with particular severity in the late 1990s as policy credibility, the main pillar of economic security, temporarily wavered and, in cases such as that of Indonesia, crumbled. Democratizing societies such as Thailand and South Korea had not foreseen the effects of political opening on this critical

contributor to their economic security. New institutions to add credibility in a democratic setting had not been put in place. Regional institutions such as the Association of Southeast Asian Nations (ASEAN) and Asia-Pacific Economic Cooperation (APEC) were unable to supply either insurance (in the form of financial support) against heightened economic risk, credibility, or pressure for policy adaptation. The crisis opened a new debate on the adequacy of institutions – national, regional, global – and their contribution to economic security.

National institutions will remain essential providers of economic security to their citizens under conditions of globalization. Globalization has not led to obsolescence or 'hollowing out' of national governance in favor of supranational institutions. In order to provide economic security in the new environment, however, national institutions must evolve. As remarked earlier, the optimal design of such institutions is high on the international development agenda.

Institutional links to the international economy are of central importance in determining globalization's negative and positive effects on economic growth and economic security.

Three conclusions of particular importance for economic security follow from the links among globalization, economic growth, and national institutions. First, despite one view of market reforms that emerged in the 1980s (echoed later by the opponents of globalization), external economic liberalization does not imply an overall reduction in the functions of national governments or a shrinking of the public sector. As Peter Katzenstein and David Cameron pointed out in the case of Europe, small, open economies have cohabited with well-developed welfare states and large public sectors.

The insurance functions of national governments may increase under conditions of increasing economic openness.

Second, the institutional balance struck between policy credibility and adaptation to the global economy may change with democratization. Andrew MacIntyre has compared the supply of credible policy commitments and what he labels policy decisiveness during the Asian economic crisis. He emphasizes dispersal of decision-making power as a key institutional variable, one that is likely to increase with democratization. Democratization also changes each of the three instruments for provision of economic security. Individual and group demands for insurance are likely to increase. Policy credibility will require the invention or reinvention of institutions, such as central banks and regulatory bodies, with adequate delegated

powers and broad accountability to the new electorate. Institutional and policy adaptation becomes more complicated under conditions of democratic accountability. Institutional transparency is likely to increase with the transition from authoritarianism to democracy. Using increased transparency to build both credibility and enhanced abilities to adapt to changing international circumstances is a central challenge for new democratic regimes. As Haggard asserts, the key is 'changing institutions of governance to increase both their independence (from narrow interests) and their accountability (to the public at large)'.

Finally, the institutions of national governance do not provide economic security in isolation. Regional and global institutions can also provide insurance, enhance policy credibility, and encourage adaptation. Whether regional or global institutions can best provide economic security to Asia has emerged as an element in debates over the future of the region.

V

Regional and global institutions: substitutes or complements?

The Asian economic crisis revealed the shortcomings of regional institutions constructed over the preceding decades. They offered little economic security at a time of great need. The apparent failure of those institutions at a critical moment forced governments to turn to global financial institutions – particularly the IMF – that pressed politically controversial policy changes during the crisis. That experience in turn led to renewed interest in regional alternatives to the global institutions and their prescriptions. Although framing regional and global institutions as alternatives is understandable in light of this history, a more useful approach appraises the specific strengths and weaknesses of global and regional institutions in the provision of economic security. Multilateral institutions at the regional and global levels may also complement national strategies of economic security.

The original design of the International Monetary Fund included insurance for national governments in the form of short-term balance-of-payments financing.

This insurance was one part of an institutional design that aimed to avoid unnecessary and disruptive adjustments in national economies. Conditionality – an exchange of policy changes for increasing levels of financial support – addressed the problem of moral hazard, a significant issue in any insurance scheme. A key controversy that has long enveloped conditionality – and one that arose again in the Asian financial crisis – is the degree of policy

change required for a given level of financial support. Although the IMF assembled large financial packages for Asian governments, many of those governments felt that the global financial institutions demanded unnecessarily sweeping and abrupt policy changes in exchange for their support.

A second form of insurance directed toward future financial crises was also controversial. The IFIs emphasized financial codes of conduct that encouraged regulatory convergence on what was defined as best regulatory and supervisory practice. These regulatory reforms were meant to insulate fragile financial systems against the type of collapse that had threatened (or ensued) previously.

However, the reforms also threatened the web of political relationships among financial institutions, corporations, and governments that defined economic policymaking in many Asian societies.

Insurance of the latter kind was closely associated with one means of enhancing policy credibility that was endorsed by the IFIs: transparency and accountability to private market participants and to a government's own citizens. The new style of policymaking propounded by the IFIs collided with the collusive and opaque practices of government–business relations that defined for many the Asian model of governance.

Policy credibility could also be strengthened through international surveillance.

Transparency and policy commitment would be guaranteed through external scrutiny by other governments in the framework of international economic organizations. The strengthening of surveillance provided yet another point of conflict between the global economic institutions and Asian governments. Such oversight was highly sensitive for Asian governments that, in their own regional organizations, had resisted what was seen as unwarranted intervention in domestic policy decisions. The norm of noninterference was widely held in the international politics of the region, enshrined in ASEAN and vigorously defended by states intent on defending a particular conception of national sovereignty. Weighing against these long-standing norms was a recognition that domestic policies and practices in neighboring economies could have large, negative spillovers on one's own economy, particularly the financial contagion spawned by weakly regulated banking systems and inappropriate macroeconomic policies.

Adaptation became the most difficult and uncertain territory of debate within the region and among institutions and governments

outside. The IFIs argued for deep, structural policy changes during the Asian financial crisis, demands that were criticized by outside analysts for their timing as well as their content. In the aftermath of the crisis, such changes were recommended for crisis prevention, reducing vulnerability to financial shocks and increasing policy credibility. Given their past, admirable record in making and defending credible policy commitments, Asian governments often preferred to take steps that aimed to restore credibility without changing their underlying model of economic policymaking. With the exception of specific improvements to financial regulation and supervision, no clear consensus had emerged on appropriate and necessary institutional adaptations required for greater economic security.

Although some regional institutions – notably APEC – drifted in the wake of the Asian financial crisis, new regional alternatives have emerged that promise to stake out new modalities of economic security. Most of these institutions did not include the United States or Australia, earlier proponents of Pacific-wide organization.

Institution-building and innovation tended to be 'Asia-only.' The relationship between these new institutions and the cooperative initiatives that they have produced on the one hand, and older regional and global institutions on the other, remains open.

The Asian Monetary Fund (AMF), an initiative by Japan in 1997, might have provided financial insurance on terms less stringent than those imposed by the IMF.

Although the AMF was not implemented, a similar appeal could be seen in the development of an Asian bilateral swap network under the Chiang Mai Initiative (CMI), part of the ASEAN plus Three (APT) process. A link to IMF conditionality in the CMI, however, suggests that this addition to economic security should be seen as a complement rather than a substitute for the IFIs, a useful financial supplement that could be mobilized as a first line of defense by governments in the region. New regional trading initiatives, such as the proliferation of proposed bilateral trade agreements, the China–ASEAN free trade initiative, and the Japan–ASEAN Comprehensive Economic Partnership (CEP) proposal can be seen as insurance against a different threat to economic security. Failure of the current round of global trade negotiations under the World Trade Organization (WTO) could lead to a strengthening of regional trading blocs centered on Europe and North America.

Another new regional institution has recently promoted a different variety of insurance against financial shocks – adaptation of regional financial markets.

The Asian Cooperation Dialogue (ACD) has offered a plan to catalyze the development of a regional bond market. Parallel APEC and APT proposals support the ACD initiative. Deeper bond markets would provide a means of mobilizing Asian savings for regional borrowers. Bond market development would also reduce the dependence of Asian borrowers on bank lending (often centered outside the region), a dependence implicated in past financial crises.

Providing supplemental insurance against financial shocks has been one means for regional institutions to offer greater economic security. So far, regional governments have shown little enthusiasm for using regional institutions to complement their policy credibility. Building stronger (greater sanctioning power) and more intrusive regional institutions will probably be required if an institutional seal of approval is to carry any weight with market participants. Governments in the region have accepted a gradual and modest erosion of the norm of noninterference, defined as excluding any external scrutiny by neighboring governments. Modest steps toward mutual policy review were taken by ASEAN and the Asian Development Bank (ADB) in the wake of the financial crisis. Even more dramatic was the willingness of ASEAN to comment on the Myanmar political situation in the press statement that ended its 2003 summit. This willingness to admit greater collective scrutiny of domestic policies and practices is testimony to the strong regional effects that those internal decisions may have. In part, this movement also returns the norm of noninterference to its narrower and more useful role: banning the forceful interference of one government in the domestic affairs of another. That principle of legitimacy, so critical to the success of ASEAN, had been expanded over the years to encompass a much broader range of comment and scrutiny that was entirely peaceful and collective. Economic integration has forced and will continue to enforce a reexamination and redefinition of that norm in the interests of greater economic security.

Regional institutions have not so far used the third instrument for increasing economic security: promoting policy adaptation in the face of globalization. On the contrary, a minority in the region endorse regional institutions as one element in Asianization as a resistance movement' to globalization and its proponents outside the region. In this view, the new regionalism will permit Asian governments to formulate an alternative to globalization, one that calls for 'network capitalism instead of marketization, emphasizes regional economic integration rather than comparative advantage, stresses Asian Confucian values as compared to Western democratic ideals, and opts

for regional cooperation to avoid global governance. This view of regional institutions as a barrier to globalization and a substitute for global institutions has alarmed observers in the United States as well as others outside the region.

VI

Fears that Asian institutions might serve as an alternative and exclusive mechanism of economic security, buffers for the region against unwanted change and competition from the global economy, are overdrawn. A healthy skepticism toward any claim of radical substitution and exclusion of globalization is justified for two reasons. First, even if Asian economies become less dependent on markets and investors outside the region, sources of economic instability are hardly limited to the global economy. Japan's financial disarray and similar fragility in China's banking system will continue to pose substantial threats to economic security in the region. The withdrawal of Japanese bank lending was responsible for a large share of the decline in private capital available to crisis-affected economies. Policy missteps by neighboring states would be of even greater concern in a region more insulated from the global economy.

To guarantee a higher level of economic security through an 'Asianized' regional system would also require a level of regional institution-building that Asian governments have so far been unwilling to endorse. Rather than attempting to substitute for national or global institutions, the new regionalism will most effectively enhance economic security if it serves as a complement to both national governments and existing global institutions. In an era of globalization, national governments will continue to play an essential role as providers of social insurance against international economic instability. Asian governments have begun to improve their systems of social insurance, although fiscal constraints and aging populations will probably mean a public-private balance different from that in Europe and the United States. Global institutions continue to contribute to the policy credibility of member governments in the eyes of global market participants. It is a credibility supplement that national governments need in the new financial environment and one that regional institutions in Asia cannot provide.

Finally, on the knottiest issue in economic security – how much adaptation of institutions and policy is required for economic well-being in a globalized environment – regional institutions in Asia can insure that Asian views on this controversial issue are reflected in global economic institutions and other international forums. As

important as the question of which adaptations are required, however, is determining the level of governance that is most likely to insure that beneficial adaptation. Here as well, no easy answer presents itself. National constituencies are critical actors in the debate over policy change and essential to the legitimacy of such change. Regional institutions, sensitive to local norms and practices, may provide a less visible and more effective means to influence the actions of neighboring governments. Global institutions can draw on best practice and advice from around the world, advice that, in the best of circumstances, is subjected to critical scrutiny from a wide audience. Developing a constructive means for these three levels of governance to shape the adaptation of policies and institutions is a final task for those who wish to improve economic security in Asia and elsewhere.

Conclusion: economic security or economic management?

In an era that is post-Cold War and post-Asian financial crisis, concerns over economic security have not disappeared; they have been transformed. Governments have become much less wary of economic vulnerability that might be manipulated by their neighbors or economic partners. Instead, governments have become more aware of unwanted and dangerous spillovers from more open borders and the risks of economic volatility posed by economic openness.

Redefinition of economic security has not led to a broader reversal of the region's trend toward greater economic openness. The new perspective on economic security has instead spurred a debate over appropriate measures to reduce costs and risks associated with openness while retaining gains from globalization. The final combination of national, regional, and global policies will vary from country to country, but the mix will remain. National policies will remain central, although those policies and the institutions that produce them will continue to adapt. Regional institutions may take on new life as complements to long-standing national and global institutions. A revived sense of regional identity may insure that global institutions reflect the economic importance of Asia for the first time.

Renewed attention to economic security is not misplaced, but it may be transitory, a preoccupation of societies that have benefited from economic openness but are now grappling with its negative consequences for the first time. What is now seen as economic security may, with the passage of time and the accumulation of institutional means to deal with these challenges, be retired to the more mundane and less alarming category of economic management.

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