

Contracts Practice Midterm Mock Midterm Student Essay Example #1

GREEN = ISSUE

YELLOW = RULE

TEAL = ANALYSIS

MAGENTA = CONCLUSION

To assess whether Abel and Cameron formed a contract I will start by addressing if there was an offer, if there was acceptance to that offer within the bounds of power of acceptance, and if there was consideration. [Good umbrella paragraph structure, but would be improved by addition of a legal rule which explained why these three elements are to be analyzed]

The first issue is whether Cameron and Abel's conversation about lawn services equates to an offer where there was only brief oral exchanges about the services. [Good attempt to use specific facts but in this instance there are several manifestations which could be offers, each of which need to be evaluated, and that is not indicated by the dispositive facts clause of the issue statement] Per R2d §24, an offer is defined as the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it. In this case, Cameron can argue that by giving details of amounts and price of material, combined with the price of his labor to do the job was bolstering his "offer" with certainty. [Is there a counter-argument(s)?] The R2d § 33 says [here is a new rule before analysis and its conclusion, this can result in confusion] that even though a manifestation of intention is intended to be understood as an offer, it cannot be accepted so as to form a contract unless the terms of the contract are reasonably certain. Abel's best defense [defense to what? What is Cameron's argument on this point?] to the presence of an offer is that Cameron's "offer" was not in fact an offer at all since they were in preliminary negotiations. Abel may have believed they were merely negotiating the potential of an offer [what follows appears to be a conclusion, but there are no signal words or other indication that the writer means this to be a conclusion and not more analysis] since Cameron's proposal thus far lacked specificity in terms, for example the time of the lawn service. As per R2d § 26, a manifestation of willingness to enter a bargain is not an offer if the person to whom it is addressed knows or has reason to know that the person making it does not intend to conclude a bargain unless he has made a further manifestation of assent. If ~~able~~-Abel believed they were in preliminary negotiations, there was no offer. [The prior sentence appears to be a restatement of the rule, just with one party's name, but not analysis] **CONCLUSION?**

The second issue is whether there was acceptance of the offer where Abel said okay and then asked if Cameron could guarantee quality and if this acceptance was within the bounds of power of acceptance during their conversation. Per R2d §59, a reply to an offer which purports to accept it but is conditional on the offeror's assent to terms addition to or different from those offered is not acceptance but a counteroffer. And per R2d §39 (1) and (2) a counteroffer is an offer made by the offeree to the offeror that proposes a substituted bargain differing from the original offer, this in turn terminates the original offer unless the offeror has manifested a contrary intention, or the counteroffer manifests a contrary intention. Cameron could argue that by Abel saying "Okay..." he had accepted the offer within the power of acceptance, per the conversation rule. However, Abel's best defense to this is that he had purported acceptance with a condition and thus made a counteroffer. Although it seems there may be acceptance by him saying "okay..." Abel is asserting a counteroffer that just relates to the same matter, which in

turn terminates the first offer. CONCLUSION? [This last sentence has the inklings of a conclusion, although it is not framed that way nor stated with confidence.]

The third issue is whether there was consideration where Cameron wanted to hire Abel for his service to his lawn and Abel wanted to get paid for his lawn services. According to R2d § 71, consideration is present if a performance or return promise is bargained for, this is true when the performance or promise is sought by the promisor in exchange for his promise. Cameron can prove that there was consideration [note this appears like a conclusion] since Abel had reached out to him saying he wanted to hire him to grow grass in his lawn. And in exchange, Cameron obviously wished to give his service in return for payment. Abel's best defense for this is that what he sought for was a guaranteed nice lawn without the condition of watering it twice a day, every day. And because Cameron explicitly said he cannot provide this, Abel no longer sought the service. [The order of analysis and conclusion are flipped in this paragraph, but the elements are present.]

Thus, there is likely no contract found to have been formed since from the start of the offer there is inconclusiveness to whether they were in mere preliminary negotiations or not. And even if the courts found there was a valid offer, Abel's specific language in their conversation points to a counter offer which terminates the original offer, and there is then evidence that Cameron terminated Abel's counter offer and thus there was no valid acceptance. Further, if the courts came down to looking at consideration. There is clear signs of consideration, however I believe [personal beliefs are not relevant to legal analysis of this nature] Abel has a valid argument for the specific performance not being sought after. [the last sentence goes off the rails a bit; the prompt specifically said not to address damages].

Issues not addressed: [voice] mailbox rule; acceptance by silence

Cases not addressed: Lucy

## SCORES:

ISSUE: Level 3 ("Correctly identified the main issue, but missed some ancillary issue, or dwelt on irrelevant issues; and/or included unimportant facts.")

RULE: Level-43+ ("Specified all the relevant rules in appropriate detail, and explained specific rule as pertinent, with citations as needed, without "rule dumping" or otherwise including irrelevant rules.")

Analysis: Level 2 ("Did not address all the elements, missed some material facts, failed to deal with key counter-arguments, or failed to address critically important or dispositive binding case law.")

Conclusion: Level 4- ("Correctly concluded on all relevant issues by answering the question presented.")

Quality: Level 2 (“Wrote unclearly, reflecting a lack of organization, or with numerous spelling and grammar errors or excessive verbosity..”)

SCORE: 7.5/10