

Mock Midterm Student Essay Example #2

In this situation, the issue is whether the occurrence between Abel and Cameron constitutes a contract where Abel wanted to have grass grown on his lawn and Cameron put in the topsoil and seeds for the lawn. [Great use of specific facts] According to R2d §1, “A contract is a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes a duty.” Described differently, a contract is the manifestation of mutual assent, which includes offer and acceptance (with the power of acceptance), plus consideration. [This rule serves as an effective umbrella paragraph that maps out subsequent IRACs]

[Before “first” perhaps some umbrella paragraph or road map is necessary?]

First, it must be determined if this constitutes a valid offer where Abel said “I would like to hire you to grow grass in my lawn”. According to R2d §24, “An offer is the manifestation of willingness to enter a bargain, so as to justify another person in understanding that his assent to that bargain is invited and will conclude it.” In the instant circumstance, Abel’s offer does constitute an offer [note this is a conclusion in the middle at the beginning of the analysis] since he showed a willingness to enter a bargain with Cameron by offering to hire him to grow grass in his lawn and Cameron would have been justified in understanding that him agreeing to this bargain would make it a contract, as long as there is acceptable consideration. Thus, Abel’s offer does constitute an offer. [note how the conclusion is repeated here because it was misplaced above] However, there is also a counter-offer at play that will be addressed in “acceptance”. [Good lead in]

[This analysis of offer is missing critical evaluation of whether the statement was merely preliminary negotiations. This likely occurred because the student concluded before analyzing both sides of the argument.]

Next, it must be determined if it constitutes a valid acceptance where Cameron first stated that he would need to provide a quote tomorrow but then gave an additional term after the quote. [Good use of specific facts. Note how the specific facts drive the issue.] Under R2d §35, “A contract cannot be created by acceptance of an offer after the power of acceptance has been terminated in one of the ways listed in §36R2d.” R2d§36 states, “An offeree’s power of acceptance may be terminated by (a) rejection or counter-offer by the offeree, or (b) a lapse of time, or (c) revocation by the offeror or (d) death or incapacity of the offeror or offeree.” Finally, since this is the sale of services rather than goods, it operates under the Mirror Image Rule which requires that an offeree’s acceptance mirror the offer by matching its terms exactly. The acceptance must comply with the terms of the offer. [Signal words make it clear that student is transitioning from rules to analysis] In this instant circumstance, the original offer made by Abel was to hire Cameron to “grow grass in my lawn”. When Cameron came to the property the next day to provide a quote, he created a counter-offer [the prior clause appears to be a conclusion and not analysis] to the offer that Abel made. Instead of growing the grass he stated “I won’t take responsibility” for ensuring that the grass actually grows per the original offer and then drove away. This constitutes a termination of the power of acceptance since [this essay would become more effective simply by “flipping” the order of the conclusion and the

analysis; what comes after the “since” should come before] he offered a counter-offer of simply putting the seeds into the ground, and thus, the acceptance is invalidated. While someone [who? Cameron? Abel? Only parties make arguments] may argue that there was an implied understanding that this meant that Cameron would do this and that Abel’s lack of protest to this fact is enough to constitute acceptance to the counter offer, this notion is disproven [overstated. Lucy doesn’t specifically address this. Better to say that this argument is undermined by analogy to] in Lucy v Zehmer, which requires that one must look at the outward expressed intentions rather than a secret or unexpressed intention. In other words, if Abel wanted to accept the counter-offer offered by Cameron, he would have to expressly accept it rather than Cameron driving off without allowing Abel to accept the counter offer. [Zehmer does not require acceptance by verbal promising and the R2d says offers can be accepted by performance, so this claim is overstated] Additionally, even if this did constitute an acceptance by either parties in the offer or counter-offer, this would still violate the Mirror Image Rule which would apply since this is the sale of services. The terms do not match each other exactly as mandated by the Mirror Image Rule and thus, this is not a valid acceptance. [excellent example of strong analysis on this last sentence]

Finally, it must be determined if it constitutes valid consideration where Abel offers to hire Cameron to grow grass on his lawn. Under R2d §71, “(1)To constitute consideration, a performance or return promise must be bargained for. (2) A performance or return promise is bargained for if it is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.” In other words, performance must be bargained for and sought for. [Again, good use of signal words to mark transitions] In the instant circumstance, there was not valid consideration in the first offer [but the conclusion should not arrive until after the analysis] by Abel of hiring Cameron to grow grass on his lawn since Cameron did not bargain for the price [but bargain does not require bargaining, and it seems implied that hiring someone to do work will cost money] of how much it would cost to hire him and he did not seek it out until after the quote. The next day after the quote was done, Cameron offered Abel a counter offer which did not have valid consideration either. While it could be argued that Cameron bargaining for the cost of labor and materials and seeking to be hired is valid enough consideration, this is terminated when Cameron suggests a counter offer and does not give Abel the opportunity to seek out or bargain for the consideration (the return promise). Essentially, Abel did not bargain for only having the service include the placing of the seeds and did not seek that out. Abel was still seeking out having the grass grown per his original offer to Cameron. Thus, there was no valid consideration. [This analysis mistakes a flaw in the offer for a lack of consideration. The parties clearly intended to exchange money for services, so there was consideration here]

Therefore, since this occurrence between Abel and Cameron did not have valid acceptance or consideration, this was not a valid contract and Abel does not owe Cameron anything. [Good umbrella conclusion]

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 4- (“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 3 (“Identified many relevant facts and applied them to rules, but did not mention all the facts or inadequately considered both sides of relevant arguments, and/or failed to consider relevant case law.”)

Conclusion: Level 3 (“Correctly concluded as to one or more issues, but did not correctly answer the question presented and all sub-issues therein, or offered conclusions without supporting them (i.e., conclusory conclusions).”)

Quality: Level 4- (“Wrote clearly and concisely, reflecting careful editing for spelling and grammar.”)

SCORE: 88.5/10