

Mock Midterm Student Essay Example #3

Issue:

Has a valid contract been formed between Cameron and Abel, where [dispositive facts]-

NTD: It is hard to state “dispositive facts” when the issue is framed this broadly in part because the issue is too broad to be addressed or raised by any given set of facts. Rather, the issue arose at this general level because of the prompt and not because of the facts, indicating there must be sub-issue at play and inviting sub-IRAC analysis structure.

Rules:

The controlling doctrine for contracts is determined by a test for the primary purpose of the contract; If the contract is primarily for the sale of goods, the Uniform Commercial Code will control, if for the service, the Restatement of Contracts (2d) will control.

R2d §17 states that a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.

R2d §26 states that a manifestation of willingness to enter a bargain is not an offer if the person to whom the manifestation is addressed knows or has reason to know the person making it does not intend to conclude the bargain.

R2d §59 States that a reply to an offer which purports to accept but is conditional on the offeror's assent to additional or different terms is not an acceptance, but is a counter-offer.

These rules are relevant but they are “smooshed” together into a single rule statement that actually pertains to several sub-issues. Each of these rules merits its own analysis, so I suspect the analysis that follows this rule block will be fact-laden and analysis-poor. Let's see...

Moreover, the rule block omits rules about consideration.

Analysis:

The primary purpose of a contract may be discerned by the relative importance of the services as compared to the goods. This can be strongly swayed by the consideration required for each. In the case at hand, the goods, 8 yards of topsoil and 50 pounds of seed, were valued at \$400. The services, spreading the topsoil and seeds, were valued at \$600. In addition, Abel would argue that he could have bought the soil and seeds at any garden store and only contacted Cameron for his expertise and effort in laying the soil and seeds. As such, the Restatement of Contracts 2d would likely determine the validity of the contract.

111 words in this analysis which is likely too much for a clear cut analysis. Before spending this amount of time on determining whether the R2d or UCC applies, consider whether the distinction matters. It turns out that only the matter of acceptance would vary if this were a contract for a sale of goods, so perhaps this is too much focus on a minor point.

Under the Restatement of Contracts 2d §17, a contract is formed when 2 or more parties manifest mutual assent to exchange and some consideration is contemplated. Consideration is not at issue in this case as Cameron's act of laying the soil and seed, and Abel's \$1000 would both satisfy consideration element.

This analysis is accurate insofar as it quickly dispenses with the non-issue of consideration, but the citation is not apt to the analysis. This is one problem that commonly arises when students "smoosh" all the rules into one block: the resulting analysis is "muddy" and confuses which facts go to which rule to which issue.

Manifestation of mutual assent can be broken down into 2 elements, offer and acceptance. [This seems like the start of an umbrella paragraph for two sub IRACs, but there are not two IRACs that follow.] Under R2d §24, an offer is made when one party manifests a willingness to enter into a bargain in such a way as to justify another in understanding that assent to the offer will conclude the bargain. [Isn't this a repetition of the Rule above? Again, this is a problem that often shows up when students "smoosh" too much analysis into one IRAC: it becomes necessary to repeat the rules. It would be better to unpack the analysis into separate IRACs each only stating a rule once.] Cameron could argue two points where a bargain may have been made. [Making arguments for parties is a good approach to the analysis section.] First, in the initial call where Abel stated "I would like to hire you." [Incomplete sentence? Also, note this sentence just states a fact but does not actually provide Abel's position on the matter.] However, this statement would fall under R2d §26 as part of preliminary negotiations, [Note the preceding clause is a conclusion, not analysis – one could ask "why" and that question is not answered.] prescribing that a manifestation of willingness to enter a bargain is not an offer when the purported offeree should reasonably know that the purported offeror does not intend to conclude the bargain on the offeree's assent. [The preceding clause is a rule; again, no analysis yet.] Abel would be the purported offeror, but Cameron's reliance on that offer would be misplaced as Cameron should be aware [why?] that the vague desire to employ him in landscaping is merely an invitation for Cameron to perform and inspection and offer a price. Cameron could not assent to this first offer as it was a part of preliminary negotiations.

The second point wherein [legalese – "where" makes more sense here] Cameron may argue that an offer was made was after Cameron completed his inspection and gave Abel the cost estimation for the job. At this point Cameron would be the offeror and the bargain would conclude with Abel's assent. Cameron would argue that Abel's "OK" was an assent. [Yes, but, again, why or on what grounds?] However, Abel continued to ask if Cameron could guarantee that he would have a nice lawn. This brings the assent under R2d §59 stating that a purported acceptance which is conditional on the offeror's assent to additional terms is not an acceptance, but is a counter-offer. The request for guarantee was an additional term which was not part of the original offer, thus making it a counter-offer. [This analysis is mistaken it omits a key fact: Abel framed his "if" in the form of an inquiry and not a demand, making it appear more like a request than a directive. Again, the distance between the rule on this and the analysis makes it harder for the writer to analyze facts under law, which could have resulted in this mischaracterization of the fact.]

As the purported acceptance is a counter-offer, the power of acceptance returned to Cameron. Cameron clearly rejected the counter-offer by saying he won't take responsibility for the grass after he has laid it. [This analysis is apt.]

No contract was formed between Cameron and Abel. [Apparently the student ran out of time before looking at other offer/acceptance pairs. Since Abel made a request but did not require Cameron to guarantee the nice lawn, the offer may still be open, and Cameron may have accepted it by performing it later.] The first potential offer was part of preliminary negotiations. The second potential offer was met with a counter-offer. The counter-offer was rejected. There is insufficient evidence of all parties mutually manifesting assent.

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 3- ("Generally stated the legal rule correctly, and identified the source of law, but did not explain and/or cite it thoroughly, and/or included irrelevant rules.")

Analysis: Level 1 ("Made conclusory statements unsupported by the facts, misstated case law.")

Conclusion: Level 2 ("Incorrectly concluded as to one or more issues, thus incorrectly answering the question presented.")

Quality: Level 3- ("Wrote clearly but not necessarily concisely and/or had few but notable spelling and grammar error.")

SCORE: 56/100