

Beginning Law Essay Writing — Part 2

Professor Mary Schofield

The following pages provide hard copies of the hypothetical used during this session, as well as a copy of the sample answer discussed. I suggest that you print the pages and have them handy as you view the video.

However, I believe the video will be most effective if you do not read the hypothetical until instructed to do so during the video presentation. So print out the pages, but keep them face down until you need them.

The following approach is used in the video presentation. I highly recommend Professor Jeff Fleming's Baby Bar Review course, which uses the same approach. By learning the approach at the beginning of law school, you will be familiar with it when it is time to begin review for the Baby Bar Exam. Thus, it is my hope that you will be better positioned to gain maximum benefit from Professor Fleming's review program since you will already be accustomed to writing in this format.

Essay Exam Approach

1. Read call.
2. What subject?
3. Fast read hypo.
4. Outer outline.
5. Prep paper for outline.
6. Slow read and mark.
7. Make outline.
8. Determine timing.

California First Year Law Students Exam
October 2005, question 1

Ed is the owner of the newly opened Ed's Custom Car Wash, where car washes cost \$25. While he was grocery shopping in his home town, which is located 20 miles from Ed's Custom Car Wash, he was greeted by his friend Alice. After they chatted for a moment, Ed said, "Come by my new car wash and I'll give you a free car wash tomorrow." Alice replied, "Thanks. By the way, we've got a few extra tickets for the game tonight. If you want them, they're yours."

A few minutes later, Ed ran into police officer Brown, who worked in Ed's home town. Ed said, "Officer Brown, if you will drive by my house soon and make sure everything is OK, I'll give you a free car wash tomorrow." Officer Brown, who was about to begin his job of patrolling Ed's neighborhood, replied, "I accept your kind offer." Officer Brown then left the store and began his routine patrol, which, as always, promptly took him by Ed's house, where everything was in order.

When Ed returned home from shopping, he saw his next door neighbor, Charlie. Ed said, "Charlie, I'll give you a free car wash tomorrow at my new car wash." Charlie replied, "Thanks, I'll take you up on that."

As soon as Ed arrived at work the next day, he found a long line of cars at the car wash. He phoned Alice and Officer Brown, and told them that he would not give them free car washes. Then he saw Charlie, who had left work and driven for one-half hour to get to the car wash and was waiting in line. Ed immediately told Charlie, "I am not going to give you a free car wash."

Does Ed have an enforceable obligation to Alice, Officer Brown, or Charlie?
Discuss.

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Does the UCC apply?

The Uniform Commercial Code covers all contracts involving the sale of goods.

Here, the contract deals with a service (washing cars).

Thus, the common law will apply.

Alice v. Ed.

Does Ed have an ENFORCEABLE OBLIGATION to Alice?

An enforceable obligation will exist where a valid contract is found. This requires a valid offer, acceptance, and consideration.

Did Ed make a VALID OFFER?

An offer is a manifestation of present contractual intent which includes certain and definite terms and which proposes a bargain in which act, forbearance to act, or promise by the offeror is exchanged for an act, forbearance to act, or return promise by the offeree.

Here, Ed was not in a setting which would indicate he was intending to handle business such as an offer. Instead, he was grocery shopping, 20 miles from work, and greeted by Alice, his friend, with whom he chatted. The setting indicates a casual conversation, not an intent to contract.

Nevertheless, Ed's statement to Alice did include clear terms:

- subject: a car wash,
- time of performance: tomorrow
- price: free
- parties: Ed and Alice.

However, it does not appear that there was a proposal for a bargain since Alice wasn't to provide any consideration (infra). Ed's statement appears more likely to be an offer for a gift.

Did Alice ACCEPT?

An acceptance is an unequivocal assent to the terms of an offer.

When Alice said "thanks," it could be argued that this was an assent. However, in casual conversations, people may say thanks for an offer of a future gift without actually accepting it. Thus, Alice's response does not seem clear enough to be unequivocal.

Therefore, Alice did not accept.

Was there valid CONSIDERATION?

Consideration is that which is bargained for and given in exchange for a promise. It may be an act, a forbearance to act, or a return promise on the part of the promisee, but must include a legal detriment to both parties in order to be valid.

Here, Ed's consideration is the giving of a car wash. Alice may argue that she was giving tickets for tonight's game in exchange; however, the context of the conversation does not prove this. Alice offered the tickets after Ed had told her she could have a car wash, and after she had thanked him. Also, Alice told Ed he could have the tickets if he wanted them. The tickets do not seem to be an exchange for the car wash, but simply as another favor that friends often do for each other.

Thus, there was not valid consideration.

Did Ed REVOKE his offer?

Revocation results from the canceling, annulling, or otherwise voiding of an offer. An offer may freely be revoked by the offeror unless 1) the offer was for a unilateral contract and the offeree has already begun performance, 2) the offer was a firm offer, in which case it terminates at the end of the time stated without the need for further action by any party, or 3) the offeree detrimentally relied on the offer.

Even if Ed's communication was a valid offer, Ed called Alice on the phone the next day and revoked it because he told her he would not give her a free car wash. This was a cancellation of his offer.

Since Alice had not begun any performance, there was no firm offer, and Alice had not relied on the offer, the revocation is allowed.

So Ed revoked any offer he may have made.

CONCLUSION as to Alice and Ed

Therefore, since there was no valid offer, acceptance, nor consideration, Ed does not have an enforceable obligation to Alice.

Officer Brown v. Ed.

Does Ed have an ENFORCEABLE OBLIGATION to Officer Brown?

Rule: supra.

Did Ed make a VALID OFFER?

Rule: Supra

As with Alice, when Ed ran into Officer Brown, Ed was not in a setting which would indicate he was intending to handle business such as an offer. He was still grocery shopping and far from work. However, his statement included the same terms as discussed supra under Alice, as to subject matter, time of performance, and price.

However, Officer Brown's case is different because Ed did propose a bargain: a free car wash in exchange for Officer Brown checking out Ed's house.

Thus, Ed made a valid offer.

Did Brown ACCEPT?

Rule: Supra

Here, Brown made a clear acceptance by saying "I accept ..." because it was unequivocal.

Thus, there was an acceptance.

Was there valid CONSIDERATION?

Rule: Supra

Ed's consideration is the giving of a car wash and Brown's is the patrolling past Ed's house. However, there is a problem with Brown's consideration in that there was no legal detriment.

A legal detriment is a promise to do something that one is not legally obligated to do or to refrain from doing something that one is legally privileged to do.

In this case, Brown is already legally obligated to patrol Ed's neighborhood. In fact, Brown's very job was to patrol Ed's neighborhood, he always did so, and it was part of his routine. Thus, Brown didn't really agree to do anything different than what he was already obligated to do.

So there was no valid consideration.

Did Ed REVOKE his offer?

Rule: Supra

For the same reason as discussed under Alice, supra, Ed revoked his offer to Brown.

CONCLUSION as to Brown and Ed

Therefore, although Ed made a valid offer and Brown accepted, there was no consideration and the offer was properly revoked. So Ed does not have an enforceable obligation to Brown.

Charlie v. Ed.

Does Ed have an ENFORCEABLE OBLIGATION to Charlie?

Rule: supra.

Did Ed make a VALID OFFER?

Rule: Supra

Ed saw Charlie, his neighbor, at home, which is still not a setting in which one would be expected to make business deals such as offers. However, Ed's statement included the same terms as discussed supra under Alice, as to subject matter, time of performance, and price.

As with Alice, Ed didn't propose any exchange or bargain with Charlie, so the offer was for a gift, not a contract.

Thus, Ed made a valid offer.

Did Charlie ACCEPT?

Rule: Supra

Here, when Charlie said "thanks" it was more clear than when Alice said thanks because Charlie made his appreciation an unequivocal communication of acceptance when he added, "I'll take you up on that."

Thus, there was an acceptance.

Was there valid CONSIDERATION?

Rule: Supra

Ed's consideration is the giving of a car wash but Charlie provided no consideration. Lack of consideration would cause a contract to fail; however, an exception is made where there is detrimental reliance on the promise of a gift (infra).

Will PROMISSORY ESTOPPEL substitute for the missing consideration?

The doctrine of Promissory Estoppel provides a substitute for the element of consideration when there has been a foreseeable and detrimental reliance by the promisee upon a gratuitous promise

made by the promisor.

Here, Charlie relied on Ed's promise of a free car wash by leaving work, driving half an hour, and waiting in line. These were foreseeable acts in response to an offer of a free car wash by one's neighbor who is opening a new business. Additionally, they were detrimental to Charlie because it cost him time and some gas money to leave, drive there, and wait.

So Charlie's detrimental reliance on Ed's offer will provide a substitute for consideration.

Did Ed REVOKE his offer?

Rule: Supra

As with the others, Ed tried to revoke his offer to Charlie when he told Charlie he wouldn't give him the car wash. However, unlike the situation with the others, Ed had a valid contract with Charlie because there was an offer, acceptance, and consideration. Under the rule, Ed cannot revoke if Charlie has already relied on the promise, which, as already discussed, Charlie did.

So Ed's revocation is not valid.

CONCLUSION as to Charlie and Ed

Therefore, Ed has an enforceable obligation to Charlie.

Can Ed defend his refusal to perform under the defense of COMMERCIAL IMPRACTICABILITY?

An obligor will be freed from an obligation to perform even in situations where performance has not become totally impossible, yet unanticipated difficulties have made the performance vastly different than that intended by the parties.

Ed may argue that with a long line of cars and a new business, it was not commercially feasible to give out free car washes to neighbors while paying customers waited. However, one car wash is not different at all from what was promised, and one car wash does not use a lot of time or business resources. So the giving of the car wash is not likely to have a negative impact on Ed's new business.

Thus, the defense will not apply to Ed.