

LAW SCHOOL EXCELLENCE SKILLS WORKSHOPS

© Professor Bryan K. Fair
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INTRODUCTION

I developed these academic support workshop materials over the past two decades. Initially, I worked on academic support and writing exercises for three years at UCLA School of Law where I served as co-director of the Academic Support Program between 1988-1991. Some of my materials draw from exercises that appeared on the California Bar Exam. For the past sixteen years, I have taught Constitutional Law and conducted academic support workshops at The University of Alabama School of Law.

I have been significantly influenced by my former colleague, Kris Knaplund, who is now a professor of law at Pepperdine, and by Professor Kenney Hegland, the author of Introduction to the Study and Practice of Law. Hegland is also a former law school dean. While Knaplund and Hegland have taught me so much, the following ideas and suggestions reflect my thinking and my errors. I am a big fan of Hegland's work and at times borrow his ideas and illustrations. I have tried to attribute such use at all times, but if there is an inadvertent omission, my intent is to inform my readers that Hegland has had a profound impact on my thinking about academic support and studying law.

The materials are designed for self-study, reflection, and practice. Some units can simply be read. Others require you to do something, such as spot issues, outline, or draft an answer. I recommend that you purchase and read Professor Hegland's Introduction to the Study and Practice of Law at your first opportunity. Then, in the summer before you begin law school, I recommend you complete each workshop.

Good luck with your skills development and with law school.

Bryan Fair
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LAW SCHOOL EXCELLENCE SKILLS WORKSHOPS

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WORKSHOP I

I. Study Skills

What is the purpose of your study?

- short term — learn language
- — learn legal categories
- long term — exam success
- — client preparation

What skills does one need for success in legal analysis and writing?

- critical reading skills
- issue-spotting skills
- rule recall — memory skills
- sorting skills: analysis of aspect of the rule in question or at issue
- effective/efficient writing under time pressure deadlines (one hour, three hours, week)

How does one develop legal analysis skills during the semester?

- reading legal materials (cases, statutes, law review excerpts and hornbooks)
- briefing cases and notes
- class participation (following the discussion and not permitting yourself to become lost)
- review (daily, weekly)
- synthesis (summarizing the essential principles in each course)

What type of problems might one encounter during reading? (Why should you read the cases?)

- reading comprehension
 - dissecting the text
 - understanding the terms
 - identifying what is important in the reading
- reading too slowly/quickly
- reading too little/much

What types of problems might one encounter during briefing? (Why should you brief?)

- Briefing — as a reading comprehension tool
- — as a class preparation tool
- — as a synthesis tool
- Briefs too long or too short?

What should go into a brief? That depends on how you will use the brief.

- (a) issue
- (b) rule
- (c) holding
- (d) rationale/reasoning

- (e) implications of decision

What types of problems might one encounter during class preparation or in class? (Why should you go to class?)

Class Preparation/Participation

- reading and briefing before class
- notetaking
- preparing problems for discussion
- volunteering
- fear of being called on

What goes on in class?

- discussion of principal cases
- discussion of policy (why have set of rules)
- discussion of changes in direction of laws
- discussion of hypothetical problems [Teachers are not in class to terrorize you. We are there to exchange ideas and to critique law both substantively and procedurally.]

What types of problems might one encounter during synthesis?

- Synthesis — Reviewing and outlining
reading materials
notes from reading/or class
supplemental materials - hornbook/study aids
- Reducing materials to essential principles and examples
- Memorizing details
- Developing overview of subject

What types of problems might one encounter with study groups?

- Study groups — forming study groups
- group work vs. individual work (what works best for you)

Why do people form study groups?

Benefits?

- support group through difficult experience
- 2 minds are better than 1
- compare notes/understanding of principles

When should you form a study group?

- During the first month of school, after you observe some of your classmates
- find people who have similar work habits
- avoid social study groups

WORKSHOP II

II. Time Management - Making Your Time Work For You

Creating a schedule —

- Scheduling time for:
- class reading
 - review
 - synthesis
 - exam preparation
 - co-curriculars and extra-curriculars
 - yourself

Monitoring schedule and making adjustments

How many hours each week? 168

- hours in class (18)
- hours eating and sleeping (70) (avoid 2 hour lunches)
- hours studying (50) (or more)
- personal time-errands, exercise, etc. (20-30)

QUESTIONS:

HYPOTHETICAL SCHEDULE

(See attached “Time Management Schedule”)

III. Co-Curricular and Extra-Curricular Activities

- student organizations
- journals
- externships
- clinical opportunities
- judicial clerkships
- part-time/summer employment
- research assistantships

TIME MANAGEMENT SCHEDULE

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
7:00							
8:00	Reading/Reviewing	Contracts		Contracts			
9:00	Contracts		Criminal Law	Criminal Law	Criminal Law	Criminal Law	Read Torts
10:00	Reading/Reviewing	Torts	Torts	Torts	Torts	Review CL	Read Torts
11:00	Contracts		Read Torts	Read Torts	Read CP	Review CL	Read Torts
noon		Read CP				Review CL	
1:00	LRW	Civil Procedure	Civil Procedure	Civil Procedure	Civil Procedure		
2:00		Legal Writing/ Research				Legal Writing/ Research	LRW
3:00	Reading/Reviewing		Read Torts	Read Torts	Read CP		LRW
4:00	Torts	Review CP	Read Torts	Read Torts	Read CP	Read CP	LRW
5:00	Torts					Read CP	
6:00		Read CL	Read Contracts			Read CP	
7:00		Read CL	Read Contracts	Read CL	Read CL	Read CP	
8:00	Read CP	Read CL	Read Contracts	Read CL	Read CL	Read CP	
9:00	Read CP			Read CL	Read CL		
10:00		LRW	LRW				
11:00							
midnight							

TIME MANAGEMENT SCHEDULE

	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
7:00							
8:00							
9:00							
10:00							
11:00							
noon							
1:00							
2:00							
3:00							
4:00							
5:00							
6:00							
7:00							
8:00							
9:00							
10:00							
11:00							
midnight							

Note: Fill in the above-provided schedule indicating both class and study times for your fall semester. I want you to allow for 3 hours of study time for each hour of class. Thus, for each 4 hour class you should indicate 12 hours of study time. For Legal Writing, you must sometimes work more than 3 hours per class meeting. Discuss time management with your Legal Writing faculty.

WORKSHOP III

Issue Spotting

One of the skills you must develop in law school is the ability to read facts and to understand what issue is raised by the facts. In each class, you will read perhaps 100 cases. In each, there is a factual story and an identification of the legal issue presented.

Based on reading all those cases, you will be expected to read new hypotheticals and to recall the issues raised based on what you have learned through your prior cases. For example, in Torts, you will read cases about battery and assault. In those cases, the courts will tell you what rules apply in such cases. Later, you will have similar practice questions in which you try to apply the rules to the new situation. Your job is to identify the issue, state the controlling rules, make plausible arguments for each side, and decide who should win.

For each course, you must learn how to spot the issues raised in the various cases. Ask yourself – what facts do you need to raise each issue? Remember, in real life clients will come to you to tell you a story. They need you to translate the story, that is, to tell them what issues are raised, what rules apply, what arguments each party can make, and who is likely to win.

Possible issues

robbery

assault

battery

false imprisonment

negligence

trespass

transferred intent

negligent infliction of emotional distress

intentional infliction of emotional distress

doctrine of necessity

duty to rescue

murder

felony murder

manslaughter

attempted murder

adverse possession

Read the following hypotheticals and try to identify the issue(s) raised in each.

1. John Mac, a world class tennis player is known for his fiery temper and competitiveness. Recently, during a tennis match he became so upset about a call that he threw his tennis racquet in the direction of a line judge. Although Mac did not hit the line judge, he came very close.
2. Steve Avery, the MVP of the National League Championship Series, is only 21 years old. By all accounts he is one of the best pitchers in baseball. Just three years ago he was pitching in a high school game. Earlier this season Avery was less successful. During one game he lost his cool when a fan behind home plate kept distracting him. Avery decided that he would throw a "wild" pitch toward the fan and try to hit him. Avery missed his intended target but hit a small child sitting near the fan.
3. Delores Woods was visiting her daughter in Los Angeles. During the visit Woods went shopping on several occasions, including one trip to Beverly Hills. While shopping in Macy's, she was approached by someone she thought was a store clerk, but who in fact was a security person. The security person had been observing Woods since she entered Macy's. The security person asked Woods to follow her to a back room that contained racks of special bargains. Woods followed the security person. Once they were away from other persons, the security person identified herself and requested to search Woods' purse. When Woods refused, the security person told Woods that she would have to stay in the back room until the police arrived. Woods said she would not wait for anyone since she had done nothing wrong. As she started to leave, three other store employees approached and asked the security person if she needed any help. Woods began to cry. When the police arrived, they searched Woods' purse and found nothing except personal items. The store employees apologized for the inconvenience and told Woods she was free to come to the store anytime.
4. A storage shed on the suburban yard of Construction Co. ("Conco") caught fire on a Sunday morning. Ken, Conco's draftsman at its downtown office, happened to be jogging by during his regular morning run. Ken broke into the yard office through a closed window and notified the local volunteer fire department. He next located ignition keys and moved several pieces of heavy equipment onto an adjacent field. The heavy equipment included four bulldozers, which were threatened with imminent destruction if they were not moved. Unknown to Ken, the adjacent field belonged to a wholesale florist, Tim. Although the field appeared to be vacant and unused, Tim had planted it with valuable tulip bulbs. Bulbs valued at \$10,000 were destroyed under the weight of the heavy equipment.
5. A four-year-old girl stumbled and fell into the deep water of a swimming pool. Five adults, all expert swimmers, observed her struggles, and though fully capable of assisting the child, none went to her rescue. As a result the child drowned. Are the adults, none of whom was related to the child, criminally liable for the child's death?
6. D, a somnambulist, fell into a sound sleep while sitting in a train station lobby. P, an employee at the station, shook D to awaken him and announce the arrival of the train. Before regaining consciousness, D pulled a gun from his coat pocket, shot and killed P. Is D guilty of a crime?
7. Al, Bill, Chuck, and Dave decided to commit a robbery. According to their plan, Al, Bill, and Chuck would enter a jewelry store while Dave waited near the car as both look-out and getaway driver. Al told the others he had a water gun that closely resembled a 9mm pistol that could be used to threaten the jewelry store operator. Al, Bill, and Chuck entered the store. Bill and Chuck watched Al approach the store operator. Suddenly, Al pulled out a knife and killed the store operator so that there would be no witnesses. Al, Bill, and Chuck left the store with an undisclosed amount of cash and jewelry. As they drove away, Al, Bill, Chuck, and Dave were

surrounded by police officers. Please discuss what forms of murder, or any lesser offenses Al, Bill, Chuck, and Dave may be convicted of on the above facts.

8. D shoots at X who he believes is Z. X dies of his injuries.
9. D decided that he could no longer live with his lover P. He decided that the best way to kill P was to slowly poison him. D went to the hardware store and purchased rat poison. As was D's habit, he made P an ice cream smoothie for dessert. This time D put poison in the drink. When P came home P and D had a bad argument. Later, P went to the kitchen and noticed the smoothie dessert. The dessert had a peculiar consistency and odor. P suspected the worst and called the police. After the police arrived they questioned D and arrested him. Is D criminally liable for any offense?
10. Leticia Aguirre owned 700 acres of grazing land near San Luis Obispo, California, which she rarely used. Josh Bornstein discovered the beautiful unsettled land while traveling through central California. Josh inquired about the land and learned it was owned but rarely used by Leticia. Josh decided that since the land was rarely used, he would use it. Josh built a comfortable cabin for himself, fenced in about 400 acres and raised sheep on it. He stayed in possession of the land for over five years. Then, Leticia, through her attorneys, brought an action to force Josh off the land. What result? Why? Discuss.

WORKSHOP IV

Examination Analysis and Writing Tips

Use the following techniques to improve the substance and quality of your exam writing:

1. Try to spend no more than one-fourth or one-third of your allotted time reading and organizing, and the remaining time writing your answer. Do not spend too much time on any one question. Follow the guidelines provided for each question by your instructor. Many points are lost when students do not follow the suggestions for time.
2. Read your question, interrogatory, or task first. Note the specific questions you must address as stated in the parts of the question. You will use the parts of the question to organize your written response.
3. Read the facts (no matter the length) at least twice. (If necessary read more times.) First, read for familiarity as quickly as possible. Then read for detailed issue-spotting and articulation. Sort the facts according to question(s) presented, or major transactions. By sorting the facts it will be easier to incorporate them into your written analysis.
4. Write a separate list of issues presented and organize the list into some logical order. Frame your issues in the form of questions that include specific facts. Use the list to guide your writing.
5. Read questions again to remind yourself of your task(s). If you don't answer the question(s) presented, you will lose points. You answer the question by intelligently discussing all relevant subissues raised by the facts, in light of the controlling rules. Try to compare or distinguish cases you have read with the facts in the hypo. Write explicitly. Tell the reader what facts are most significant.
6. Write (or type) as clearly and quickly as you can moving down the list of issues you have created. Don't choose sides. Acknowledge facts that support arguments for each party. (Even if you represent one side, identify weaknesses to the party's argument.) Take a stand in light of your analysis. Your conclusion should follow your analysis.
 - Paragraph frequently as you move from issue to issue. This will help you carefully develop each issue.
 - Use headings.
 - Use facts from the hypo in your analysis.
 - Follow IRAC + T.

APPLYING PRINCIPLES TO FACTS

(from KENNEY HEGLAND, INTRODUCTION TO THE STUDY AND PRACTICE OF LAW (4th ed. 2005))

Rules of Law to Apply in Answers to Questions

1. In order for there to be an enforceable contract, there must be a valid offer and acceptance. The law protects the *reasonable* expectations of the person accepting an offer. How does the law judge what a reasonable person would believe? By looking at the circumstances surrounding the offer.
2. The statute of frauds requires that some, but not all, agreements be in writing. For example, an agreement for the sale of real property must be in writing. Cases interpreting the statute of frauds have indicated that it fulfills two purposes: (a) to protect against false claims; a writing is good evidence that the parties actually agreed and that no one is making things up; (b) cautionary; people should not enter into important legal transactions orally; written contracts ensure greater reflection on the part of the contracting parties.
3. Contracts for an illegal purpose are void and unenforceable.

Exam Question

Sleazy Sam and Billy Bigmouth ran into each other at the Lazy J Bar. After several drinks, Billy says, "You know, I think I'll blow this town and get into pictures."

"Oh, yeah? How are you going to support yourself in Hollywood until they discover your major talent?" asked Sam.

"Why, I'll sell my house. You can have it for \$60,000. Last week it was appraised at \$120,000."

"You must be joking, that deal is too good to be true," replied Sam, having another drink.

"Man, it's just that you don't have the money."

"Look, I can have \$60,000 cash at the end of the week."

"Bring it by."

"Are you serious?"

"Sure," laughed Bigmouth.

"Well, I need a new place for my bookmaking activities."

"That's illegal but what you do with the place is your business," said Bigmouth. "Let's shake." The men shook hands and left the bar.

Three days later Sam received the following letter from Bigmouth:

ORGANIZING AN ANSWER

(adapted from KENNEY HEGLAND, INTRODUCTION TO THE STUDY AND PRACTICE OF LAW
(4th ed. 2005))

Introduction

Issue one:

Controlling law:

What will plaintiff argue?

What will defendant argue?

Who has better argument?

Next issue and its relationship to previous issue:

Controlling law for this issue:

What will plaintiff argue?

What will defendant argue?

Who has better argument?

Next issue/relationship to previous issue:

Controlling law:

What will plaintiff argue?

What will defendant argue?

Who has better argument?

[Repeat above for each of the remaining issues.]

APPLYING PRINCIPLES TO FACTS

Sample Answer

In order to decide if Billy must make good on his promise to Sam, we must evaluate several issues. First, was it reasonable for Sam to think Billy was serious? Second, does Billy's letter to Sam saying he was joking about selling his house for \$60,000 satisfy the Statute of Frauds? Third, was the contract for an illegal purpose?

Was it reasonable for Sam to think Billy was serious about selling his house? The law protects the reasonable expectations of the person accepting an offer. Judges determine what a reasonable person would believe by looking at the surrounding circumstances.

Here Sam will argue it was reasonable for him to think Billy was serious. First, Billy initiated the conversation about selling his house. He indicated a price and that he had had the house appraised recently. When Sam asked if Billy was serious, Billy said he was. He told Sam to bring the \$60,000 by. They shook on the deal. And Sam will argue that Billy's letter indicates that there was some doubt in Billy's mind whether Sam thought Billy was serious. The letter probably would not have been written if Billy thought there was no way Sam could have thought Billy was serious.

On the other hand, Billy will argue that it was not reasonable for Sam to think he was serious. They ran into each other. They had not planned to meet about selling the house. They were drinking (although it is not clear what). Billy will say no one would believe a seller would sell a house for half the appraised value. Billy will say he was joking and laughing, indicating he was not serious.

I do not think it was unreasonable for Sam to think Billy was serious in light of all the facts. I think Sam should win on this issue.

Even if Sam wins on the first issue, a court may decide that the agreement is not enforceable because of the Statute of Frauds. The Statute of Frauds requires that contracts for the sale of real property to be in writing. The requirement serves both evidentiary and cautionary policies. If there is a writing, the parties have evidence of their agreement. Also, a writing assures some measure of reflection by the parties.

Here, Sam will argue that the Statute of Frauds is met by Billy's letter. Although it was written three days later, it contains evidentiary information about their agreement. It indicates a price and a date for performance. Billy will argue, on the other hand, that there was no writing when they left the bar. Billy will say that the parties did not reflect on their deal by reducing it to a writing while at the bar.

This question seems close. The underlying policy rationales for the rule seem to split for the parties. A court could go either way on this issue.

Finally, even if Sam wins on the first two issues, a third obstacle is that he intended to use the house for illegal bookmaking activities. The general rule is that contracts for an illegal purpose are void. A court would have to decide if this was a contract for an illegal purpose. Sam will argue that his agreement with Billy did not require the house to be used in any way. Indeed, Billy said to Sam, "What you do with the place is your business." Sam will say the agreement was for the sale only, not how the place would be used. For example, a contract requiring that the place be used for illegal activities like drug dealing would probably not be enforced nor would an agreement to kill another person be enforced. Billy will argue that his agreement with Sam should not be enforced because Sam said he would use the property for bookmaking. Again, it seems that courts here could split. One might say that Sam's intent is enough to void the contract. On the other hand, a court might refuse to let Billy

out of the agreement based on what Sam allegedly said he would do with the house. I think many courts would not void the contract for the sale of this house since Sam's underlying purpose seems unrelated to this dispute.

Critique:

Your answers need to be longer. Make sure you include legal standards and that you apply those standards. Please compare your answer with the one above.

Practice Exercise #1
(One Hour)

On November 8th the following notice was posted in a privately operated law school in Southern Pacifica:

The administration, seeking to encourage more law students to enter the teaching profession and to publish in the area of law regarding voting rights, invites any student enrolled at this school to enter the National Should I Vote Writing Competition sponsored by the ACLU and the ABA. Any student who wins the writing competition will be awarded the additional prize of \$500 by the law school. All competing papers must be submitted to the Dean's office before next April 30th. If you have any questions about the additional prize, you may make an appointment with the Dean.

George Danforth, a student at the law school who believes in peace through strength, had entered the writing competition in September. When George read the notice, he thought the additional prize money would help him finance a trip to Washington, D.C., so on November 15th he intensified his effort to make his paper on voting rights a winner. After reflecting on the November 8th notice, George left a note with the Dean's secretary saying, "I accept the administration's offer," signed George Danforth.

Michael Lloyd, another law student at the school, also read the November 8th notice and decided to enter the competition. Michael thought the competition would enable him to learn more about voter behavior. He started his paper on January 20th, his birthday. He went by the Dean's office several times to say he was entering the competition, but he was never able to catch the Dean free. By March 10th, Michael had a rough draft that he was sure would please the sponsors of the competition.

On March 15th, the day before spring break was to begin, the administration removed the November 8th notice and posted a second notice which read:

The administration regrets that our invitation regarding the National Voting Rights Writing Competition must be withdrawn.

Michael submitted his paper to the Dean's office on April 1st. George submitted his to that office on April 29th. On May 15th it was announced that Michael had won the national writing competition and the prize of \$1,000. The administration congratulated Michael but refused to pay anything.

Michael and George come to see you regarding their rights against the administration. How would you advise them?

Principles of Law Which May or May Not Apply to Exercise #1

I. An offer is 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. Restatement of Contracts 2d, § 24.

An offer is an expression by one party of his assent to certain definite terms, provided that the other party involved in the bargaining transaction will likewise express his assent to the identically same terms. An offer looks forward to an agreement--to mutual expressions of assent. Corbin on Contracts, § 11.

From the above, we might conclude that there are at least three elements to an offer:

1. Intent of offeror.
2. Essential terms of offer.
3. Communication to offeree.

II. Some contracts are called bilateral contracts. Others are called unilateral contracts. In bilateral contracts the offeror makes a promise and seeks from the offeree a return promise. "I promise to pay you \$10.00 each week if you promise to shovel the snow from my driveway." In unilateral contracts the offeror makes a promise and seeks from the offeree performance. "I will pay you \$200.00 if you drive me to San Francisco."*

One accepts an offer for a bilateral contract by promising to perform. One accepts an offer for a unilateral contract by performance. Once the offeree begins performance, s/he has an option to complete performance. See Restatement of Contracts 2d, § 45. Acceptance is effective when the offeree promises to perform or performs the terms of the offer.

There are at least three elements of an acceptance:

1. Offeree's intent.
2. Agreement/assent to essential terms of offer.
3. Communication to offeror.

III. An offeror may revoke the offer at any time prior to acceptance by the offeree. The offeror can limit the power of acceptance in the offeree by the terms of the offer. The offeror usually retains a power of revocation. Corbin on Contracts, § 38.

IV. For promises to be enforceable, there must be a bargained-for exchange between the offeror and offeree. This bargained-for exchange is called consideration. If I promise to give you my tennis racquet for your birthday, you cannot enforce that promise because there is no bargained exchange.

On the other hand, if I promise to give my racquet to you if you earn an "A" in Contracts, and you earn an "A" in Contracts, the contract should be enforceable because you have performed your part of the bargain. Corbin on Contracts, §§ 109 et seq.

* The language of the contract is not always clear. Read the offer language carefully. A unilateral contract is one wherein the offer invites acceptance by performance. On the other hand, in a bilateral contract the offer calls for a return promise to perform.

V. If acceptance is made by mail, it is effective upon dispatch of the letter. Revocations or counteroffers sent by mail are effective upon receipt.

VI. The Statute of Frauds requires that certain agreements be evidenced by a writing, including, among others, agreements for the sale of real property.

VII. It is generally held that acts of part performance by a party may excuse the absence of a writing and thus avoid the Statute of Frauds defense.

VIII. If a party to an enforceable contract fails to perform according to the terms of the agreement, the non-breaching party may sue the other party for breach of contract.

IX. A non-breaching purchaser may sue the breaching party for money damages. The standard measure of such damages is the market price minus the contract price. (Usually, a seller breaches in a rising market when the market price is greater than the contract price.) If damages cannot be reasonably calculated or are uncertain, purchasers can pursue other possible remedies.

X. Alternatively, a non-breaching purchaser may sue the breaching party for restitution, that is, the value of the benefit conferred on the breaching party. For example, if I agree to do work on your home, such as painting or other home repairs, and a court were to determine that we did not have a contract, I could recover the reasonable value of the benefit conferred on you.

XI. Specific performance is an equitable remedy. Equitable remedies are available only when legal remedies, such as money damages, are inadequate. In order to obtain specific performance, the non-breaching party must satisfy several requirements:

- a) Specific contract.
- b) Inadequate legal remedy.
- c) Feasibility of court decree.
- d) Mutuality and substantial performance.
- e) No equitable defenses that bar remedy.

Pre-Writing

Read the call of the question. Use the call to help focus your reading and to organize your writing. Then read the facts once. Read the facts again; make marginal notes of legal issues presented. (Here you must sort relevant and irrelevant facts.)

To spot issues, look closely at the transactions between the parties. Most issues will arise from the conduct or actions by one party against another. Look at what parties say and do.

Said differently, try to cluster key facts or phrases that you believe have some legal significance.

After you have gone through all the facts and have made your list of issues, ask yourself if there is a logical order to the issues presented. Before you begin writing, read the call of the question again. Ask yourself if the issues you have identified will enable you to resolve the call of the question.

You should try to spend only 10-15 minutes reading, issue-spotting, and outlining per hour question. If you have a longer question, adjust the pre-writing phase upward proportionately.

Time Management

Some of you will spend too much time in the pre-writing phase, or some of you will spend too much time on one question. Be smart. Stay close to the suggested time.

Suppose the issue checklist looks something like the following:

notice = offer?
acceptance by M? by G?
was there consideration?
revocation by administration?
breach by administration?
remedy?

Now, review the list and ask whether it can be reorganized? Then ask if other issues should be included in the list.

Notice that facts about revocation come into the hypo toward the end. Yet, in your discussion it seems more logical to talk about revocation in closer proximity to your discussion of whether there is an offer. Thus, you might restructure your outline to reflect that change. So, your issue list might now read:

I. Offer?
II. Revocation?
III. Acceptance?
IV. Consideration?
V. Breach?
VI. Remedy?

Writing

Starting to write:

You score points by writing a reasoned response to the question(s) presented. Remember your basic expository writing. An introduction, transitions between issues and a short conclusion can enhance the quality of your response.

Try to write explicitly so that the reader does not have to guess what you intended to write. Identify legal issues clearly and use issue headings where appropriate. Identify the applicable rule or legal standard necessary to resolve the legal issue. Apply the pertinent part of the rule to the relevant facts presented and identify possible exceptions or limitations to the rule that might apply in light of the facts. Be careful to use all the facts and not to choose sides. If, as is often the case, facts are in conflict, demonstrate that you recognize the implications of all the facts. Use your judgment in light of the rules, facts, and relevant policies to suggest a likely result. Move on to the next issue and repeat IRAC. (While you do not have to use IRAC, you must demonstrate essential legal analysis skills, including issue spotting, rule articulation, application of rule(s) to fact(s), and judgment in reaching plausible conclusions.)

Sample Answer #1 — Practice Exercise #1

I would advise M and G that any rights they have against the administration depend on several issues, including whether the November 8th notice is an offer, whether the offer was revoked prior to acceptance and whether there was consideration stated in the terms of the offer.

Whether November 8th Notice Was an Offer?

An offer is a manifestation by the offeror of a willingness to enter into a bargain made in such a manner which justifies the offeror to believe that her assent is requested and will complete the bargain. (Restatement 2d, § 24 or leading case reference.)

This notice could possibly be construed as an offer since it appears to contain the requisite elements of the rule. First, the administration (offeror) invites any student at school (offerees) who wins the writing competition (subject matter), the additional prize of \$500 (price). The basic terms appear in the notice. The act of posting the notice suggests intent to bargain. When M and G read the notice, the offer was communicated and it does not appear from any facts that it was unreasonable for them to believe their assent would complete the bargain. [If you have read similar cases, you might compare or contrast them here.]

Was There a Revocation of the Offer?

A revocation of an offer is a withdrawal of an offer prior to its acceptance by the offeree. (Cite relevant authority.)

Our facts suggest that the administration on March 15 substituted a second notice that attempted to withdraw the offer of November 8th. If at that time the offer was not yet accepted by a student at the school, then the revocation should be effective. Thus, we must determine when any acceptance of the offer was effective.

When Was Acceptance Effective by M and G?

An acceptance is an assent by the offeree to the essential terms of the offer. An acceptance of an offer for a bilateral contract is effective when the offeree promises to perform the terms of the offer. An acceptance of an offer for a unilateral contract is effective when the offeree begins performance of the terms. In unilateral contracts when the offeree begins performance, she has the option to complete performance. (Cite case law or Restatement.)

In view of our facts, I would tell M and G that the November 8th notice appears to be an offer which sought performance from the offeree, thus it is a unilateral contract. Acceptance for M was effective on or about January 20th and for G when he intensified his effort to write a winning paper. Since both of those dates were before March 15th, I would advise them that the revocation by the administration was untimely.

[At some point, I would share the view with G that since only M won the writing competition G probably has no claim against the administration.]

Was There Consideration?

In order for an agreement to be enforceable, there must be adequate consideration. Consideration is a bargained-for exchange stated in the terms of the agreement.

Sample Answer #2 — Practice Exercise #1

1. The first issue is whether the notice on Nov. 8 was a valid offer.

For an offer to be valid, it must be specific in its description of the proposed agreement. It should contain the amount and length of time it will be held open.

This notice contained the amount, \$500, and the length of time the offer was valid. Therefore, since the notice looks specific in its description of the agreement, it was an offer. The prize of \$500 was offered to any student who won the competition and submitted his paper before May 1.

2. Was there a revocation of the offer?

The offer was revoked before it was accepted by the offeree. An offer may be revoked by the offeror before it has been accepted. Mailbox rule: once mailed, valid acceptance.

The offer was revoked by the offeror on April 1. The student's acceptance was not received by the offeror before the offer was revoked. But if the mailbox rule applies, the offer was accepted before revocation because it was delivered by the offeree.

There was a revocation of the offer if the mailbox rule does not apply to hand-delivered acceptances not sent by mail. If the mailbox rule applies, then the offer was accepted before it was revoked and there is an agreement.

The offer was for a unilateral contract because it was an offer which sought performance, specifically the agreement was to be completed if the offeree won the competition.

3. Was there was an acceptance by the student?

An acceptance must specifically relate to the terms of the offer. An express offer requires express acceptance.

The student stated clearly that he accepted the faculty's offer of \$500 for the competition. The student's acceptance was expressly written and delivered.

There was clearly an acceptance of the offer made by the student. He returned his acceptance on time and addressed the material elements of the offer.

4. Was there consideration for the contract?

A contract must be supported by at least nominal consideration to be valid.

The consideration for this contract was the \$500 prize for the student and the increased amount of research for the school.

There was adequate consideration for this agreement. The student would gain financially from the \$500 award and the school would encourage more legal research by students and also gain prestige from the fact that one of its students won a national writing competition.

Write a critique of Sample Answer #2 explaining its strengths and weaknesses.

Sample Answer #3 — Practice Exercise #1

1. Is Nov. 8th notice an offer?

According to (case, statute, or treatise), an offer is the manifestation by the offeror of a 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 the bargain.

The facts indicate that the faculty's Nov. 8th notice manifests an intent to enter into a bargain with any student at the law school who wins the writing competition. The terms of the offer are clear: The faculty (offeror) will pay \$500 (price) to any student (offeree) who wins the writing competition (subject). All papers must be submitted before May 1st (time for performance). Finally, since the notice was posted in the school and refers to the students in that law school, the potential offerees are designated.

Since all the essential elements of an offer are present in the Nov. 8th notice, a court would probably conclude it constitutes an offer.

2. As to student, was there a revocation of the offer?

The offeror retains the power to revoke or withdraw an offer until acceptance by the offeree. To accept an offer, the offeree must manifest his/her agreement to the terms of the offer. The offeree must promise to perform or perform the terms of the offer. Once there is an acceptance by the offeree, the offeror cannot revoke or withdraw the offer.

On April 1st when the faculty replaced the original notice, the faculty attempted to revoke or withdraw their offer. Such revocation or withdrawal is effective, unless a student has already accepted the offer. Once the student has accepted the offer, there can be no revocation or withdrawal by the faculty.

(i) Was there an acceptance?

The facts suggest that on Nov. 9th the student read the first notice, intensified his efforts to make his paper a winner, and left a note on the counter in the Dean's office saying, "I accept . . . faculty's \$500 offer." The note was never seen by the faculty and was filed away improperly. By his conduct, student will contend that he manifested his agreement to the terms of the offer and thereby accepted same.

Even if we conclude that student's conduct constitutes an acceptance, for the acceptance to be effective the relevant rule requires that it precede the revocation. Thus, a question left to answer is when was the acceptance effective?

(ii) Time of acceptance

Acceptance is effective when the offeree promises to perform or performs according to the terms of the offer. If it is an offer for a bilateral contract, acceptance is effective when the offeree promises to perform the terms. If it is an offer for a unilateral contract, acceptance is effective when the offeree performs.

Here the student accepted the offer by beginning performance on Nov. 2nd (see above 2(i)) and submitting his paper to the Dean's office on April 15th. This acceptance is effective on Nov. 9th because the offer was for a unilateral contract. The faculty's offer sought in return for the offer performance by student, not a promise to perform.

Practice Exercise #2

Clark is a wholesale distributor of office supplies. Jones operates a novelty supply company. On May 1, Clark received a written order from Jones for 30,000 pens at 50 cents each, the price listed in Clark's catalogue. The order from Jones stated that the pens were to be specially imprinted by Jones with a political slogan and were being purchased for resale by Jones to Davis, a candidate for the United States Senate. The order specified for delivery of half of the pens by August 1 and the remainder by October 1.

On May 5, Clark sent to Jones a written confirmation which acknowledged the quantity, price, delivery dates, and purpose of the purchase. Both the order and the confirmation were on forms containing a number of printed clauses. The printed clauses were substantially the same on both forms, except that Clark's confirmation included an additional clause stating that all disputes about the transaction were to be resolved by arbitration.

On June 30, Jones telephoned Clark and told him that another distributor had offered Jones the same pens at 45 cents each and that Jones intended to switch his order to the other distributor unless Clark agreed to lower his price. Rather than lose the sale, Clark grudgingly agreed to lower the price to 45 cents for Jones' order.

On July 30, Clark shipped the first 15,000 pens and, on August 2, Clark accepted Jones' payment for them at 45 cents each. On August 10, Jones wrote to Clark cancelling the second half of the order because Davis had withdrawn from the senatorial race due to poor health. When he received the letter of cancellation, Clark had not yet ordered the second shipment of pens from the manufacturer.

Clark sued Jones for breach of contract in state court, seeking damages based on the original 50 cent price for the remaining 15,000 pens.

What arguments should each party make and how should the case be decided? Discuss.

Possible issues

UCC/sale of goods

offer

acceptance

consideration

Statute of Frauds

modification

battle of the forms

anticipatory repudiation

breach

damages for nonbreaching parties

specially imprinted goods

Sample Answer — Practice Exercise #2

The transaction between Clark and Jones is governed by Article II of the Uniform Commercial Code since it involves the sale of goods (pens). Additionally, since both Clark and Jones are merchants within the meaning of Article II, those provisions relating specifically to merchants will also be operative with respect to the rights and liabilities of Clark and Jones.

Jones' order form received by Clark on May 1 constituted a valid offer by Jones to purchase pens from Clark. An offer is generally effective where it manifests a present intent to contract, sufficiently identifies the subject matter and is communicated to the offeree (Clark). All three elements are present here including price (50 cents each), quantity (30,000), and the communication to Clark.

Clark's May 5 written confirmation constituted a valid acceptance of Jones' offer. Since the offer was made by mail, Clark could also accept by mail. The contract also complied with the requirement that contracts for the sale of goods for \$500 dollars or more be in writing.

The only substantial question at the formation stage of the contract between Clark and Jones is the terms of the agreement. Under the UCC, where the parties exchange printed forms and the offeree's acceptance contains additional terms not included in the offer, the offeree's acknowledgment or acceptance operates to form a contract notwithstanding the additional terms. Between merchants, the additional terms become part of the contract unless they materially alter the agreement or are objected to within a reasonable time. (Additionally, if the offer expressly conditioned acceptance to the terms in the offer, such additional terms will not become part of the contract, and the offeree's acknowledgment will be deemed a counteroffer, rejection.)

In this case, the inclusion of a clause to resolve all disputes by arbitration is a material alteration of the agreement and thus does not become part of the Clark/Jones contract. A provision altering the method for determining the risk of loss or the risk of loss is generally a material alteration. Most courts examining the issue have found arbitration clauses to constitute a material alteration.

In Clark's suit against Jones, Jones will argue that, assuming Jones is liable to Clark, Jones is only liable for the 45 cent price. Clark, on the other hand, will argue that the 45 cent modification was ineffective because it was not in writing.

Under the UCC, the common law preexisting duty rule has been abolished. The UCC permits parties to modify an existing contract without the giving of new consideration, provided the modification is requested in good faith. In the present case, Jones' request was apparently in good faith since Jones received a substantially lower price and, had Clark not consented to the modification, would have been better off by breaching his contract with Clark and paying damages and purchasing the remaining 15,000 pens at the lower 45 cent price. Therefore, the 45 cent modification was effective subject to Clark's affirmative defense that the statute of frauds prohibits such modification from being effective.

Under the UCC, Clark will assert, contracts for \$500 or more must be in writing, and any modification of a contract, where the contract as modified would be for \$500 or more, must also be in writing. Since the Clark/Jones contract would still be for \$500 or more, even as modified, the modification must be in writing. Therefore, assuming Jones is liable to Clark, liability will be at the 50 cent price since the modification needed to be in writing to be effective.

Jones' August 10 letter constituted a present material breach by anticipatory repudiation. Jones will defend his actions by asserting the doctrine of "frustration of purpose." Under the doctrine of frustration of purpose, a party's performance obligations under a contract are excused where the purpose of the contract to the party has been totally frustrated and will therefore render the contract

of no value to such party. In order for a party to succeed under the doctrine of frustration of purpose, the party must establish four elements:

- (1) That the purpose of the contract was known to both parties at the time of entering into the contract;
- (2) That an event which was unforeseeable at the time of entering into the contract rendered the contract of no value to the party;
- (3) That the unforeseeable event occurred after the formation of the contract; and
- (4) That the risk of the unforeseeable event was not assumed by the party who seeks to have his performance excused.

It is clear that the purpose of Jones in entering into the contract was known to both parties when the contract was formed: Jones' order form of May 1 contained a clause stating that the pens were to be specially imprinted by Jones with a political slogan in connection with Davis' senatorial campaign, and Clark's May 5 acknowledgment/ confirmation also acknowledged Jones' purpose.

Davis' withdrawing from the race can be deemed unforeseeable and such unforeseeable event occurred after the formation of the contract.

The contract between Clark and Jones does not suggest that Jones bore the risk of Davis' withdrawing from the senatorial race, and the state court will not likely draw such an inference.

Therefore, if Jones can establish the above four elements to establish that his purpose in entering into the contract had been completely frustrated, Jones should not be liable for the remaining 15,000 pens at the 50 cent price.

The state court will rule in favor of Jones based on the foregoing analysis.

Even though the provision regarding resolution of disputes by arbitration did not become part of the Clark/Jones agreement, it is curious that Clark seeks to sue Jones in state court when it was he who inserted the arbitration clause. An estoppel principle might be availed of by Jones to prevent Clark from proceeding in state court since Clark should not be entitled to deny the validity of his written instrument. (Jones would only pursue this course of action if he wanted arbitration rather than a judicial determination.)

Per the above frustration of purpose analysis, the state court is more likely to find frustration of purpose since Clark had not yet ordered the second shipment of pens from the manufacturer, and Clark would therefore not be out of pocket any damages. (Clark's only claim would be expectation or benefit of the bargain.)

Below write a critique of the Sample Answer explaining its strengths and weaknesses.

WORKSHOP V

Outlining by Topic or Syllabus

- i) A summary of each brief including:
 - case name
 - facts and issue(s)
 - rule
 - holding and rationale
 - implications of case
(broad vs. narrow application)
- ii) Class notes about case including:
 - similar hypos
 - outside reading by professor
 - why is case significant
- iii) Study aid re: issue or specific case for clarity:
 - Hornbook
 - commercial outline
 - Nutshell
- iv) Practice questions and answers regarding same issue.
- v) How does each case in each unit relate to others in the unit?
- vi) How does each unit relate to subsequent units?
- vii) Organize by
 - table of contents
 - syllabus
 - or topic headings
- viii) Set out rules and statutes in outline (MPC, UCC, Restatement, Federal Rules of C.P.); dissect each rule into its components or elements; identify the kinds of facts that implicate each element of the rule.

Outlining by Table of Contents

- Chapter 1. Basis for Enforcing Promises**
1. The Meaning of “Enforce”
 2. Consideration as a Basis for Enforcement
 3. The Problem of Action in the Past
 - (a) “Past” Consideration and “Moral Obligation”
 - (b) Restitution as an Alternative Basis for Recovery
 4. The Problem of Unsolicited Action
 - (a) Reliance and the Requirement of Bargain
 - (b) Reliance as an Alternative Basis for Enforcement
 5. Promise for Promise
- Chapter 2. The Bargaining Process**
1. The Nature of Assent
 2. The Offer
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 4. Termination of the Power of Acceptance
 5. Acceptance Varying Offer: The “Battle of the Forms”
 6. Precontractual Liability
 7. The Requirement of Definiteness
- Chapter 3. The Requirement of a Writing for Enforceability: The Statute of Frauds**
1. Introduction
 2. Problems of Statutory Scope
 - (a) The Suretyship Clause
 - (b) Contracts Not to Be Performed Within One Year
 3. Requisites of Writing and Signing
 4. Dispensing With the Requirement of a Writing
- Chapter 4. Policing the Bargain**
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 2. Unfairness: Conventional Controls
 3. Overreaching: Conventional Controls
 - (a) Pressure in Bargaining
 - (b) Concealment and Misrepresentation
 4. Unconscionability and Problems of Adhesion Contracts
 5. Illegality
- Chapter 5. Remedies for Breach**
1. Measuring Expectation
 2. Limitations on Damages
 - (a) Avoidability
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 - (c) Certainty
 3. “Liquidated Damages” and “Penalties”
- Chapter 6. Finding the Law of the Contract**
1. Determining the Subject Matter to Be Interpreted
 2. Interpreting Contract Language
 3. Filling Gaps
- Chapter 7. Performance and Breach**

1. Conditions
 - (a) Effects of Conditions
 - (b) Problems of Interpretation
 - (c) Mitigating Doctrines
2. Constructive Conditions of Exchange
3. Mitigating Doctrines
 - (a) Substantial Performance
 - (b) Divisibility
 - (c) Restitution
4. Breach in the Course of Performance
5. Prospective Nonperformance
 - (a) Anticipatory Repudiation
 - (b) Assurance of Due Performance

Chapter 8. Basic Assumptions: Mistake, Impracticability and Frustration

1. Mutual Mistake
2. Impracticability of Performance
3. Frustration of Purpose
4. Half Measures

Chapter 9. Third Party Beneficiaries

Chapter 10. Assignment and Delegation

1. General Principles
2. Assignment and Delegation in Connection With the Sale of a Business
3. Financing Consumer Credit
4. Financing Commercial Credit

THE LAW OF CONTRACTS (4th ed. 1998)
by Calamari & Perillo

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 - A. Intent to Contract
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 - B. The Parol Evidence Rule
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 - D. Course of Dealing, Course of Performance and Usage
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5. Informal Contracts Without Consideration or Injurious Reliance
 - A. Past Consideration and Moral Obligation as Consideration
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 - B. Constructive Conditions and Related Topics
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WORKSHOP VI

Practice Exercise #3 (One Hour)

The following principles of law may or may not apply to the question below. In addition to these rules, you may use any materials from your torts class.

1. A battery is a harmful or offensive contact with the plaintiff's person, caused by defendant's act intended to produce such a result.
2. Any act of such a nature to excite an apprehension of a battery is an assault.
3. The victim of a battery or assault can recover money damages for actual injuries caused by the defendant.
4. An employer is liable for the intentional tortious acts of an employee where the employee commits the tort within the course and scope of employment. A corporate employer is liable for such torts if a manager directs, authorizes, or participates in the tortious acts.
5. Punitive damages may be awarded to a tort victim if the defendant's wrongful act is outrageous or anti-social.

Fisher, a law professor with Pacifica Law School, was invited by the Young Turks to attend a one-day meeting regarding computer research skills at the Pico Marquis in Pacifica. After the morning session, the group of twenty guests adjourned to the hotel dining room for a buffet-style lunch. As Fisher was about to be served, he was approached by the Marquis manager, who snatched the plate from Fisher's hand and shouted that he, a Negro, could not be served in the dining room. Fisher reported that he was not actually touched. He reported that he was highly embarrassed and upset by the manager's conduct in the presence of his associates. The Marquis had not directed that the manager confront Fisher in the manner he had. Fisher comes to your office. Please advise him of his rights. Discuss the theories of his case.

Practice Exercise #4

Tort principles which may apply to the question below:

1. Battery is the result of a person's intentional harmful and offensive contact with the plaintiff's person.
2. Trespass is the result of a person's intentional act which interferes with the plaintiff's property, without the plaintiff's consent.
3. There are four elements to a negligence action:
 - a) duty
 - b) breach of duty
 - c) causation
 - d) damages

In order to be liable for negligence, the defendant must have a duty to the plaintiff; the defendant must breach his duty; the breach must be the proximate cause of plaintiff's injuries; and, the plaintiff must suffer actual damages.

With regard to duty, there are two views regarding whether one person has a duty to another person. According to Justice Andrews each person has a duty to the world or all other persons. However, according to Justice Cardozo a person has a duty only to persons who are within the reasonably foreseeable zone of danger.

With regard to causation, if an independent event occurs between the defendant's conduct and the plaintiff's injuries, the court can find that the chain of causation has been broken and the defendant is not liable for negligence. But, if the independent event is reasonably foreseeable, the defendant would likely remain liable to the plaintiff.

Alan purchased a new home in a winter resort called Fair Valley. Fair Valley is located in Northern Pacifica. Alan purchased the resort home from Bildfast, a national developer. During the first winter following Alan's purchase and decorating, after a heavy but not unusual snowfall, a portion of the roof collapsed from the weight of the snow. Ruth, a friend of Alan's, was using the house for that weekend and was injured. She suffered multiple bruises and a broken arm.

The plans and specifications which had been used in building the house had previously been prepared by Matt, an independent architect, for one of Bildfast's developments in a part of the state where it never snowed. Matt was not consulted prior to use of the plans and specs in Fair Valley because Bildfast was free to use the plans and specs anywhere. Matt knew that Bildfast had developments around the country and throughout Pacifica.

Ruth has come to your office for advice regarding her rights, if any, against Matt. Discuss. Would you advise her to sue anyone else?

Practice Exercise #5

In 1980, at the wedding of Tom and Mary, Tom's father, Frank, told them that he wanted them to live with and care for him for the rest of his life. He said, "If you agree to do this, I will deliver to you, within a year, a deed to my home." Tom and Mary told Frank they accepted his offer and promised to look after Frank with loving care in Frank's home. They immediately moved in with him.

Soon after moving into Frank's home, using their own money, Tom and Mary added a new wing to the house, paid the outstanding property taxes, and paid off an existing mortgage of \$25,000.

One year after Tom and Mary moved into the home, Tom reminded Frank of his promise to convey the property to them. Frank became angry, refused to execute the deed, and ordered Tom and Mary to leave the premises.

Tom and Mary consult you concerning their rights and the remedies that may be available to them.

How would you advise them? Discuss.

