

Practice Exam Question

You have 10 minutes. In that time, 1) read the call of the question, 2) read the fact pattern carefully, and 3) use the left margin to list the issues you see, in the order you would analyze them in your full answer.

Baker is a renowned pastry chef. Café, a sole proprietorship, is a well-known restaurant in need of hiring a pastry chef. Baker and Café's Owner had extensive conversations regarding Baker coming to work at Café. On May 1, a week after those conversations occurred, Baker sent Café a signed letter dated May 1 stating, "I will work for Café as a head pastry chef for two years for an annual salary of \$100,000."

On the morning of May 7, Café's Owner telephoned Baker and said, "The \$100,000 is pretty stiff. Could you possibly consider working for less"? Baker replied: "I am a renowned pastry chef. I will not work for any less."

Later that morning, Café's Owner sent Baker a signed letter by regular mail stating: "You obviously think you are too good for my restaurant. I am no longer interested in hiring you to work at Café."

Later that afternoon, Café's Owner had a change of heart and sent Baker a registered, express-mail signed letter stating: "Okay, if you really won't work for less, I agree to pay you the \$100,000 a year you demand to work as head pastry chef at Café for two years."

On May 10, the registered, express-mail letter was delivered to Baker's office. The regular mail letter containing the rejection was still on its way. Baker accepted delivery of the registered, express-mail letter from the postal carrier and placed it on his desk without opening it.

On May 11, before Baker read the registered, express-mail letter on his desk, he accepted an offer to work for Restaurant. As a courtesy, Baker called Café's Owner and said, "Sorry, I just took a job at Restaurant. Too bad you couldn't afford me." Café's Owner responded, "You can't work for Restaurant, I already accepted your offer to work for Café for \$100,000 a year."

Does Café have a contract with Baker? Explain.

Answer A

Issue: This issue here is whether the baker and the owner of the café formed a valid contract, including whether they had any defense, whether the statute of frauds applies, and whether promisee really accepted.

Rule: The Restatement provides:

An Agreement is a manifestation of mutual assent on the part of two or more persons. A bargain is an agreement to exchange promises or to exchange a promise for a performance or to exchange performances. . . . Except as stated in Subsection (2), the formation of a contract requires a bargain in which there is a manifestation of mutual assent to the exchange and a consideration. . . . Manifestation of mutual assent to an exchange requires that each party either make a promise or begin or render a performance. . . . The manifestation of mutual assent to an exchange ordinarily takes the form of an offer or proposal by one party followed by an acceptance by the other party or parties.

Therefore, to be valid, a contract must include a valid offer, a valid acceptance, and consideration. An offer is valid if it clearly expresses a promise or the offeror undertakes a performance that can be seen as an offer and a valid offer must contain the terms of the promise and those terms must be definite and certain. Also, the offer must be communicated to the offeree. Assuming there is an offer, the next requirement is that the offer be accepted. To accept an offer validly, the offeree must manifest assent to the offer's terms, in the way prescribed by the offer. Another way to put the rule for offer and acceptance is that there must be a "meeting of the minds" between the parties. Next, a valid contract must be supported by consideration. As the Restatement quote above points out, consideration is "The manifestation of mutual assent to an exchange ordinarily takes the form of an offer or proposal by one party followed by an acceptance by the other party or parties." More rules that are important include: contracts are not valid if they are formed under duress, which is when one party "improperly threatens the other party in a way that leaves the victim no reasonable alternative than to agree to the contract. Other defenses to contract formation include fraud or lack of capacity. Finally, a very important consideration that must be addressed is whether the Statute of Frauds applies. The SF applies to contracts that are for the buying of property, or are related to debts, or in contemplation of marriage, or are for contracts that can be completed within a year. If the SF applies, then the contract must be in writing and signed by the party making the promise. The writing must include the essential terms of the agreement, including the identity of the party who charged and a description of the contract's subject matter. Also, remember that acceptance is valid on dispatch while rejection is valid on receipt, which is the mail box rule. But it's important to know that the mail box rule changes if the offer sends out both an acceptance and a rejection. In that case, whichever letter the offeror reads first is valid.

Application: In this case, they probably have a valid contract. The mail box rule doesn't apply because the owner sent two letters. The baker got the acceptance letter first. It may be a problem that he didn't read the letter before taking another job. He could argue that he didn't accept the contract until reading the second letter, and he could win that argument. If he loses then they have a contract because the offeror's letter passes the Statute of Frauds test. It puts the contract in writing and is signed by the Baker, so the SF is satisfied. If the owner's response was actually a counteroffer than no valid offer because the counteroffer ended the offer and so there was no meeting of the minds every.

Conclusion: Unless the baker can show that the owner's acceptance letter wasn't effective until he actually read it, the parties have a valid contract.

Answer B

Was a contract formed?

Because restaurant work is an agreement for services, it is governed by the common law and the Restatement of Contracts. Under the common law, a valid contract requires an offer, acceptance of the offer, and consideration.

The first issue is whether Baker made an **offer** to work for Owner. The Restatement of Contracts defines “offer” as “the manifestation of a willingness to enter a bargain.” An offer also requires terms that are definite, and communication to the offeree. Baker’s letter was an offer because it expressed a promise to work for the Cafe. Its terms were definite as to job title, length of employment, and salary. It was communicated to owner via the mail, and we know it was received and read because of Owner’s phone call asking about the salary it proposed. Baker’s letter met all the requirements to be an effective offer.

The second issue is whether Owner **accepted** Baker’s offer. Acceptance is “a manifestation of assent to the terms of the offer.” An offer can be accepted (or rejected) until it is terminated. An inquiry is a mere question about the offer that does not terminate it. An offeree expressly rejects an offer when he clearly communicates his intent not to accept it.

Owner’s first response to Baker about whether he would “consider working for less” was an inquiry. It did not reject the offer, either explicitly or by making a counteroffer.. Thus, Baker’s offer remained open despite Owner’s inquiry.

Owner then sent Baker two letters: a rejection letter by regular mail, followed by an acceptance letter by express mail. Owner’s first letter as written was potentially an adequate, express rejection of the offer (“I am no longer interested in hiring you.”). Owner’s second letter was potentially an effective acceptance because it manifested assent to the terms of the offer: “I agree to pay you the \$100,000 a year . . . to work . . . at Café.” Owner didn’t change anything about the terms of Baker’s offer in his second letter, so it was an acceptance, not a counter offer.

Ordinarily, under the mail box rule, an acceptance is effective at dispatch while rejection is effective upon receipt. However, Owner sent a rejection and then an acceptance. In such cases, whichever communication the offeror receives first is effective. It does not matter when Baker opened or read the letters, it only matters which letter was received first. Baker received the acceptance letter first, on May 10. As soon as he accepted delivery, a valid contract was formed.

Finally, a valid contract requires **consideration**, which is a “bargained for exchange” of promises or performances. Under the Restatement, a promise or performance is “bargained for” if it is “is sought by the promisor in exchange for his promise and is given by the promisee in exchange for that promise.” The Baker-Owner contract is supported by consideration because Baker sought money in exchange for his promise of labor and Owner in return promised money in exchange for the labor Baker offered to perform.

Thus, a valid contract was formed between Owner and Baker.

Does the Statute of Frauds apply?

Baker could still argue that the contract is unenforceable because of the Statute of Frauds, which requires that contracts that cannot be performed within a year must be supported by written evidence of that contract signed by the offeror. Baker’s offer was to work for Owner for 2 years, so the Statute of Frauds applies. The Statute of Frauds requires the contract be memorialized in a writing that states the agreement’s essential terms and is signed by the party to be charged.

Here, however, the SoFF was fulfilled by Baker’s letter. The letter identifies Baker as the person to be hired, describes the position and salary and was signed by Baker. These are probably the contract’s “essential terms,” which must be in the writing. Thus, Baker’s Statute of Frauds argument is weak and will probably lose. The letter is probably a sufficient writing to satisfy the statute of frauds.

No other defenses (duress, fraud, etc.) are suggested by the facts given.

In sum, the Baker-Owner contract was validly formed, no defenses apply, and it satisfies the Statute of Frauds. If Baker refuses to take the job, he will have breached the contract. However, it’s important to note that this was a contract for services, so if Baker breaches it, a court would not award specific performance; the court can’t force Baker to work in a job if he refuses. The remedy for breach here would instead be money damages. In the alternative, a court could bar Baker from working for another restaurant during the two-year period.

The Chart Below Compares Answers A and B

Skill	Answer A	Answer B
Preparation	Gets the law wrong. (Under the relevant rule, it doesn't matter when Baker read the acceptance, only when he received it.)	Gets the law right.
Analysis	Regurgitates black letter law, including block quotes. Coping down long rules won't earn points! Use the law, don't just recite it.	<i>Uses</i> the black letter law to analyze the facts; emphasizes the <i>reasons</i> for writer's conclusions, using the facts
Analysis	Application section is underdeveloped. Application of law to facts should be most of your answer.	If you highlight all sentences of application in B, you can see application is most of the answer. Writer uses facts with <i>specificity</i> .
Analysis	Misses some of the smaller issues. (Doesn't address remedies or start by saying the common law, not U.C.C., applies to service contracts	Sees and addresses all relevant issues. Gives small issues short treatment, but includes them.
Organization	Answer is one huge IRAC. IRAC should be used for single issues.	Writer identifies the various legal issues presented by the facts and IRACs each one <i>individually</i>
Organization	Writer uses very long paragraphs so individual issues and points are hard to find. The only headings are organization headings for the parts of IRAC	Writer uses short paragraphs and headings to flag issues, not the parts of IRAC.
Writing	Labels for parties are confusing and inconsistent	Labels for parties are clear, easy to spot, consistent
Writing	Writing has many careless errors, and at least one potentially impacts the writer's grade (can instead of can't when referencing contracts that <i>can't</i> be completed within a year. Bad impression hurts you.	Writing is more polished. Most professors won't focus on writing and will work to see what you understood, but clear writing maximize odds that what you know will get across

EXAM DOs:

Preparation

Start studying early
Study effectively and actively
Know the law well so you can spot all legal issues in fact patterns and recall and use the relevant rules

Analysis

Briefly but accurately state the relevant rules
Make application of law to facts your primary focus
Articulate the reasons for your conclusions
Spot and address all relevant issues, even if only briefly for easy issues
Explore both sides if there are two sides

Organization

IRAC individual issues
Use short substantive headings
Use short paragraphs

Writing

Write in short sentences and use simple words
Save some time to reread and edit out bad writing errors
Pick and consistently use clear labels for parties

EXAM DON'Ts:

Preparation

Start too late
Spend too much time (re)reading
Assume “open book” means you don’t need to know law well before exam

Analysis

Regurgitate the law in quotes or long passages
Assume professor can read your thoughts
Recite rules not relevant to fact pattern
“Kitchen sink” all the law you know, relevant or not
Treat application as an afterthought
Miss relevant issues
Ignore significant counter arguments

Organization

IRAC the whole essay answer
Make “IRAC” parts your headings
Have long, hard-to-read paragraphs

Writing

Use long wordy sentences and fancy words
Manage time so that you can’t fix bad writing errors
Be inconsistent/sloppy/unclear with party labels