Contracts

Sample*

Checklist/Outline

...A “must have” for exam practice as BME’s Checklist/Outlines are concise, easy to work with, and structured to help you identify more issues on an exam. Each Checklist/Outline includes a list of the issues you need to know for the subject, approaches how to write on these issues for exam organization, rules of law and mnemonics for easy memory retention.

...Identifying just one or two more issues per essay can make all the different between passing and failing your exam.
*Sample Checklist/Outline for Contracts includes the Major Issue Checklist for the entire subject and Inner Issue Spotting Checklist and Outline for a portion Formation of the Contract only.

### A. CONTRACTS: Major Issue Checklist

1. Formation of the Contract
2. Covenant, Conditions & Excuses
3. Third Party Beneficiary
4. Assignments & Delegations
5. Breach
6. Remedies
B. CONTRACTS: Inner Issue Spotting Checklist

1. **Formation of the Contract** *(Unless Mom Provides Only Two Apples, Call Dad)*
   - **UCC**
   - **Merchants**
   - **Preliminary Negotiations**
   - **Offer**
   - **Termination of Offer:** *(OLD RR)*
     - Counter **Offer**
     - Lapse of Time
     - Death or Destruction
   - **Rejection**
   - **Revocation**
   - **Acceptance**
   - **Consideration**
   - **Defenses:** *(FARM MUSIC D)*
     - **Fraud**
     - **Ambiguity**
     - **Parole Evidence Rule**
     - **Mistake**
   - **Modification**
   - **Unconscionable**
   - **Statute of Frauds:** *(RED GYM)*
     - **Realty & Exceptions**
     - **Employment & Exceptions**
     - **Debt of Another & Exceptions**
   - **Sale of Goods & Exceptions**
   - **One Year & Exceptions**
   - **Marriage & Exception**
   - **Illegality**
   - **Capacity**
   - **Duress**
C. CONTRACTS: Outline

1. FORMATION OF THE CONTRACT

   **Exam Approach:**
   A valid contract is comprised of an offer, acceptance and consideration. Always look to see if the UCC applies first. If the contract is a common law contract then omit the issues of UCC and Merchants.

   **Testable Issues:** Unless Mom Provides Only Two Apples, Call Dad

   - Transaction In Goods: Identifiable at the formation of the contract
     (goods include unborn animals, unsevered crops and minerals to be severed from the land)

   **UCC**

   - Predominant Factor:
     If the predominance of the contract is the good, then the UCC applies

   - Transaction In Goods & Services: or

   - Gravamen Test:
     What caused the injury or complaint?
     If the good caused the injury then the UCC applies

   **Merchants:**
   - Deal in goods of the kind in the contract or has special knowledge or skill
     (must act in good faith, be reasonable and be honest)

   **Preliminary Negotiations:**
   - Invitation to deal
     (advertisements are an invitation rather than an offer)

   **Offer:**
   - Outward manifestation of present contractual intent

     - Definite and certain terms* (QTIPS)
       - Quantity
       - Time
       - Identity of Parties
       - Price
       - Subject Matter
*If terms are missing, under UCC the court will use gap fillers (e.g., a reasonable time or amount or course of performance, course of dealing, trade usage)

- Communicated to the offeree
  (a reward is generally construed as an offer)

**UCC Offer:** - An offer can be made in any reasonable manner and if there are missing terms, the court will look to course of performance, dealings, trade usage & gap fillers

**Firm Offer:** - A signed written offer by a merchant giving assurance that the offer will remain open for a reasonable period of time, not to exceed 90 days

**Terminations Of Offer:** **OLD RR**

**Counter Offer:** - Rejection of original offer and creation of new offer
  (a counter offer made during the option period does not terminate an option contract)

**Lapse Of Time:** - Offer open for reasonable time for acceptance by Offeree

**Death Or Destruction:** - Where either party dies before acceptance, or subject matter is destroyed

**Rejection:** - Statement by offeree showing intent not to accept can be either expressed, by conduct or by a counter offer

**Revocation:** - **Direct:**
  Statement by offeror prior to acceptance

  - **Indirect:**
    Offeree learns from reliable source offeror can’t perform

  Note: Offeror cannot revoke:
  - option contracts
  - unilateral contracts
  - contracts where party detrimentally relies on the offer