



CONTRACTS

Main Issue Spotting Checklist

- 1. Formation of the Contract**
- 2. Covenant, Conditions & Excuses**
- 3. Third Party Beneficiary**
- 4. Assignments & Delegations**
- 5. Breach**
- 6. Remedies**

This sample **Contracts Checklist** includes the Main Issue Spotting Checklist for Contracts and most of the Inner Issue Spotting Checklist to Formation of the Contract. Concise checklists help you to identify more issues easily on an exam and also provide approaches how and what to write on these issues. Identifying one or two more issues on your exam using a checklist can make all the difference between failing and passing the essay exam. Therefore, they are a must for every bar tested class in law school. Checklists are available for purchase from Bar Made Easy.

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

CONTRACTS Outline

1. FORMATION OF THE CONTRACT

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

Transaction In Goods: Identifiable at the formation of the contract

UCC

or

Predominant Factor:

Predominance of the contract

Transaction In Goods & Services:

or

Gravamen Test:

What caused the injury/complaint?

Merchants: Deal in goods of the kind in the contract or have special knowledge or skill

Preliminary Negotiations: Invitation to deal

Offer: Outward manifestation of present contractual intent

Definite and certain terms* (QTIPS)

- *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

Terminations Of Offer: **OLD RR**

Counter Offer: Rejection of original offer and creation of new offer

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

Acceptance:

Unequivocal: Mirror image required by Common Law – beware of Forms/Last Shot Doctrine

Method Of Acceptance: Offeror can dictate how offer should be accepted

Mailbox Rule: Offer is accepted upon dispatch. Doesn't apply to option contracts

UCC: Any reasonable manner

Battle Of The Forms: Between non-merchants: new terms are proposals.

Battle Of the Forms: Between merchants: new terms become part of the contract unless:

New terms: Materially alter the contract
 Offeree objects within a reasonable time
 Offer expressly limited acceptance to the terms of the offer

Different terms: Where acceptance is different than the offer:

Knockout Majority follows **Knockout** rule: terms in Acceptance that conflict with the Offer cancel each other – only agreed on terms apply plus gap fillers court may add.

Drop out 2 Minority Views:
either different terms are considered additional terms
or different terms in the acceptance always **Drop out**; thus, terms of Offer govern

Consideration*: A Bargained-For Exchange and Legal Detriment/Benefit to both (includes forbearance to sue and new promise to pay past existing debt)

Illusory: Output: Whatever Seller produces, Buyer must buy - Look to good faith
or

Requirements Contract: Whatever Buyer requires, Seller must supply – Look to good faith

or

Substitutions: Promissory Estoppel: Party can foresee reliance of other-Party did rely to his detriment

or

Detrimental Reliance: Party relies to his detriment

*Beware of Pre-Existing Duty Rule

Defenses: **FARM MUSIC D**