

OUTLINING: AN ESSENTIAL ELEMENT OF LAW SCHOOL SUCCESS

Gerry W. Beyer

*Governor Preston E. Smith Regents Professor of Law
Texas Tech University School of Law*

A. INTRODUCTION

- 1. 6-P Philosophy**
- 2. Importance of Outlining**
- 3. Outline Defined**

B. PURPOSES OF OUTLINING

- 1. Long Term**
- 2. Short Term**
- 3. Generally**

C. WHEN TO OUTLINE

D. HOW TO OUTLINE

- 1. General Suggestions**
- 2. How to Organize**
- 3. Synthesis**

- 4. What to Stress**
- 5. Analytical Framework**
- 6. Use of Flow Charts**
- 7. Things to Avoid**
- 8. Create Issue Checklist**
- 9. Cross References**
- 10. Back Up**

E. USING YOUR OUTLINE

- 1. Review Technique**
- 2. Examination Study Guide**

F. USE OF NON-SELF PREPARED OUTLINES

G. QUESTIONS & ANSWERS

H. CONCLUSION

SAMPLES

The following samples are excerpts from materials prepared by first year law students. These samples should *not* be used as guides, but rather as sources of ideas. Remember, a good outline is a personalized study tool and as long as it helps you to learn, it is a good outline.

Note that the contents of these samples have not been checked for accuracy so do *not* rely on their legal substance.

Samples 1, 2, and 3 reflect traditional outlines.

Sample 4 demonstrates a flow chart.

Sample 5 shows the flash card approach.

b. When are Irrevocable Offers Terminated?

1. They are terminated by:

- a) Lapse of time (the specified time)
- b) Death or destruction of a person or thing essential for the performance
- c) Supervening legal prohibition of the proposed K.

2. An irrevocable offer is not terminated by:

- a) rejection
- b) revocation
- c) supervening death or incapacity of offeror or offeree
 - 1. Offeree's estate can exercise option

c. When is an Option Contract Accepted:1. When received rather than when put out of offeree's control.2. Acceptance must be unequivocal and in accordance with the terms of the option contract. 5?

- a) If no mode is specified, a reasonable mode is required

14. When does Duty to Pay Arise: When Conditions are met

- a. Carlil V. Carbolic Smoke Ball: K was formed when lady bought product as advertised. Conditions were that she
 - 1) used the product as directed, & 2) that she catch the flu - then duty to pay arose.

- b. Insurance Contracts - duty to pay doesn't arise until damage occurs but the contract is formed earlier.

II. CONSIDERATION

A. Definition:

- 1. Consideration is a bargained-for detriment incurred in exchange for the promise. Makes the promise enforceable.

- a) The consideration must arise as part of the bargaining process (offer, acceptance, preliminary negotiations).

- 1. Bard v. Kent: Promise was to grant an option to extend a lease in exchange for \$10.00. \$10 wasn't paid. Promisor asked that an architect be commissioned to decide if lease should be extended. Architect fee was paid but was not consideration because it wasn't bargained for.

- b) Detriment is doing something you don't have to or refraining from something you have a right to do.

- c) A benefit does not have to result.

- d) The detriment must induce the promise and the promise must induce the detriment

2. When determining if there was bargained for consideration, ask, "What is the party really bargaining for?" Often, although it is recited that \$1 is given for consideration, the \$1 is not what is bargained for. If what was really bargained for is received then the promise is supported by consideration.
- B. Past Consideration does not make a promise enforceable.
1. Consideration must be a bargained-for exchange which is induced by the promise. If the alleged consideration has already occurred, it cannot be consideration because it was not bargained-for: Past conferring of a benefit is not consideration.
- C. Conditions to Gifts distinguished from Bargained-for Detriment.
1. A gratuitous promise is not enforceable.
 - a) Must distinguish between a bargained-for detriment & a detriment which is merely a necessary pre-condition to obtaining a gift.
 1. Test: is the happening of the contingency a benefit to the promisor? (Willston's test) This will evince a gift-making or a contractual state of mind.
 - a. Kirksey v. Kirksey: D felt sorry for P and said "if you move here I will give you a place to live forever." D later kicked P off. D's promise wasn't enforceable because it was only gratuitous. P hadn't suffered a detriment, was really better off.
 - b. Thomas v. Thomas: D's motives for conveying a house to P were gratuitous but the promise was enforceable because there was detriment flowing from P. She paid rent & up-keep in return for D's promise to convey. This was more than a gift.
- D. Sham & Nominal Consideration and Cases Where the Promise is only in Part Induced by the Detriment.
1. The use of consideration in name but not in fact will not make a promise enforceable. There must be bargained for detriment:
 - a) Fisher v. Union Trust Co.: Father conveyed some land to his incompetent daughter. Her brother gave her a dollar to give as consid. The \$1 wasn't bargained for - promise not enforceable.
 2. The detriment surrendered by the promisee need not be the sole inducement but it must be enough of an inducement that it is bargained for.
 - a) A is moved by friendship to sell his horse to B for \$100. If B pays A's promise is binding even though his primary motive was friendship.
 - b) *Restatement § 91*

INTENT TO BE BOUND

K = offer + acceptance

OBJECTIVE STANDARD → REAS. MAN →

K = an enforceable promise

WORDS + ACTS.

In the absence of evidence to the contrary the presumption is:

FAMILY SETTING → NO INTENT FOR LEGAL CONSEQUENCES (BALFOUR V BALFOUR)

SOCIAL SETTING → NO INTENT FOR LEGAL CONSEQUENCES (LUCY V ZEHMER ^{look at evidence first})

BUSINESS SETTING → INTENT TO HAVE LEGAL CONSEQUENCES (LADY DUFF GORDON)

OFFER

def: a promise by one party to another manifesting a present intention to be bound and granting power to that party to put himself in a legally binding situation by saying "I ACCEPT" — creates power of acceptance in offeree

must be a promise to do what for whom in ret for what.

Basic requirements

- (1) present intent to K
- (2) certainty / definiteness
- (3) communicated to the offeree
- (4) power of acceptance created in the offeree

Bid + Order = Offer

not offers

○ (1) expressions of opinion

I (2) statements of ^{+ letters of} intention (I'm going to sell my car for \$500)

MP E P (3) * price quotation, prediction or estimate, or statement of minimum price ^{MP} (ads. etc.)

A (4) advertisement - unless clear, explicit & directed at a particular person

PN (5) preliminary negotiations

~~form letters~~

F (7) form letters

"OPEN FLIMP"

* if price quote used in context to make it an offer ex. "for immed. acceptance."

PURPOSE ~~FLIMP~~ FLIMP

PQA

II. Impossibility, Impracticability and Frustration

A. Impossibility- means " I can't do it, but neither can anyone else."

1. It is an exception to the general rule that a promisor is liable for not completing K. Impossibility will excuse performance.
2. Impossibility applies in three situations:
 - a. Destruction of a thing essential to the K
 - b. Death of a person essential to the K.
 - c. Supervening illegality.
3. Taylor v. Caldwell: P promised to pay \$100 a month to rent D's music hall. Hall burnt down. Court said parties were excused because there was an implied condition that duty to perform was contingent on the Hall being in existence.
4. Who bears loss in real estate contracts?
 - a. Majority- buyer, is equitable owner
 - b. Minority- unless title passed, seller bears risk
 - c. Buyer bears risk of loss if he has possession or title.
5. If S promises to sell something, he will not be excused if his source is destroyed unless it was intended that his source be the source.
 - a. If S doesn't specify his crop, he assumes risk he will be able to perform regardless of what happens to his crops. Becomes a question of the intent of the parties.
6. Distinguish between repairing and building
 - a. One who promises to build is not excused when construction is destroyed. He assumes the risk.
 - b. One who promises to repair does not assume the risk of destruction and may be excused for impossibility.
 - 1) When one promises to repair there's an assumption by the parties that thing to be repaired will remain in existence.
 - 2) He could recover fair market value of benefit conferred in quasi-contract.
7. Performance is impossible if it can be done only w/ extreme or unreasonably difficulty- if its impossible to perform and P insists, he immediately promises to pay the extra costs,

B. Impracticability: Extreme and unreasonable expense.

1. An unexpected event must prevent performance at a reasonable cost.
2. Questions to be asked:

- a. Was risk unexpected?
- b. Was risk allocated?
 - 1) Allocation may be in K
 - 2) Look at customs of trade-when buying and selling both parties assume risk of variation in prices
- c. Did occurrence of risk result in unreasonable expenses?(usually requires 100% increase). If an unexpected occurrence arises, the risk of which is not allocated in the K and performance becomes financially impractical, promisor is excused.

3. Sale of Goods

- a. UCC 2.615 Excuse by failure of presupposed conditions.(increased cost alone does not excuse performance). *when promisor has anticipated a particular event by providing for it in the contract he should be relieved of liability for the occurrence regardless of foreseeability.*
 - 1) excuses the seller
- b. UCC 2.614 Substantial performance
 - 1) covers buyer
 - 2) substantial performance: applies to either party(seller or buyer must substitute if reasonable)
 - 3) being broke- no excuse for not paying
- c. UCC 2.616 Procedure on Notice Claiming excuse.

If K is divisible, you still must do part possible & excused from impossible part.

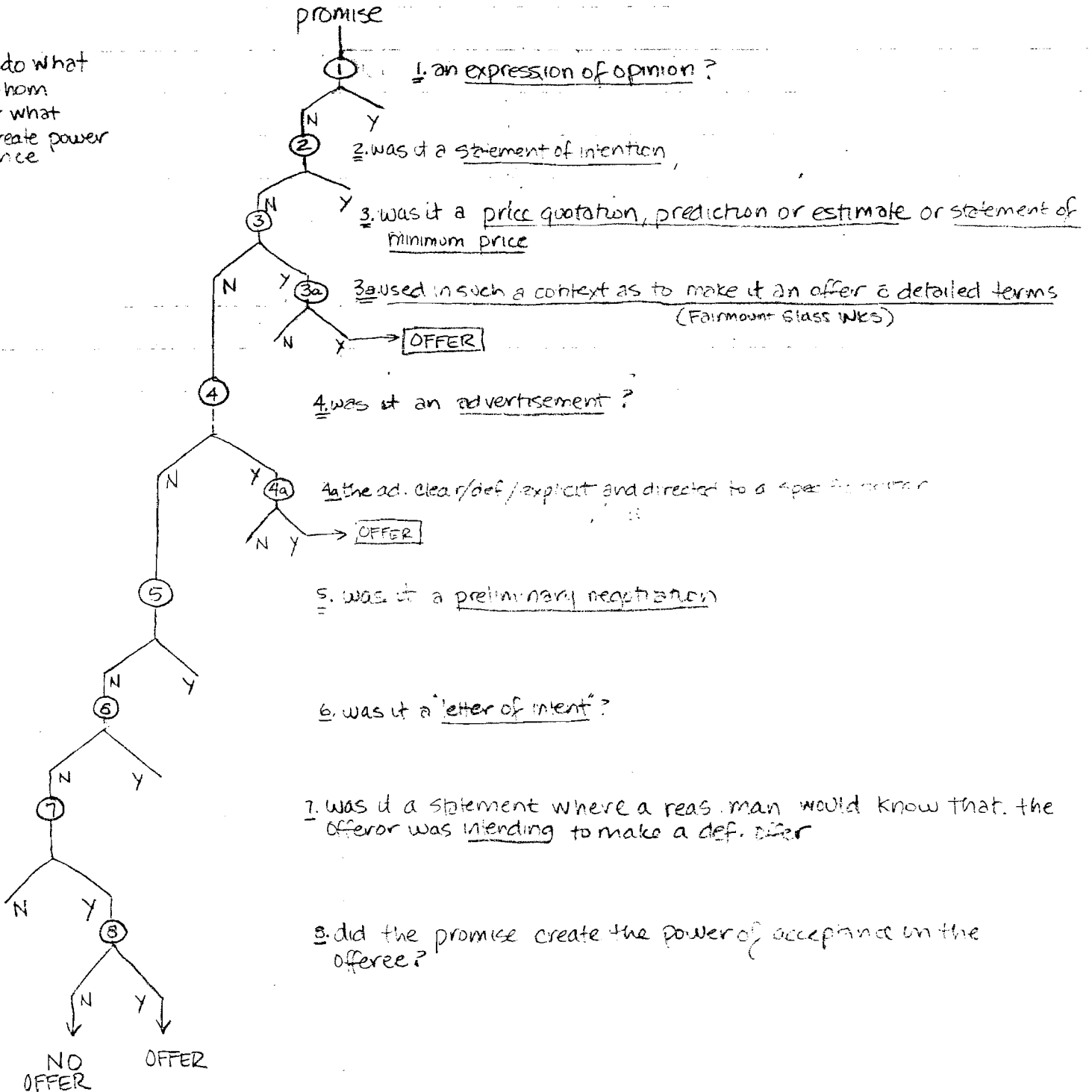
Steps Questions to ask

OFFER

- ① Was there a promise
- ② Was it a sale of goods? → UCC considered for rules

OFFER

promise to do what
made to whom
in return for what
made to create power
of acceptance



BATTERY -

intentional, unconsented harmful or offensive touching

1. Intent to make contact
2. Offensive or harmful touching
3. absence of consent

ASSAULT

intentionally creates a well grounded apprehension of imminent unconsented bodily contact

1. Intent to cause apprehension of contact
2. present apparent ability
3. threatening gesture (usually)
4. Well grounded apprehension of imminent contact