



# CONTRACTS

Florida Bar Exam

Essay Testing

### GENERAL

- Frequency
  - Tested on 40-45% of Florida essay exams (and increasing).
- Crossovers with other subjects
  - Approximately half of Contracts essay questions include an Ethics sub-question.
  - Contracts has been tested with other main subjects (torts, property, and others).
- Rule Scripts
  - Many rules are repeatedly tested. Rule scripts are essential.
- Call of the question
  - Usually open but can be well-defined.
- Mostly Open-Ended Questions
  - Open-ended questions test issue spotting ability and organization.
- Common Testing Patterns
  - Memorandum Format.
  - Common answer progression includes applicable law, formation, defenses, terms, performance, breach, remedies, etc.
  - Some essays add sub-questions testing specific rules (e.g., assignment, remedies).
- Using IRAC
  - Use IRAC to maximize points.
  - IRAC forces you to demonstrate tested skills.
  - Use headings to show grader you spotted issues:
    - “Governing Law”
    - “Formation”
    - “Offer”
    - “Statute of Frauds”
    - “Specific Performance”
    - “Unjust Enrichment”

## TESTING HISTORY

	FREQUENCY	FEBRUARY-24	JULY-23	FEBRUARY-23	JULY-21	OCTOBER-20	FEBRUARY-20	JULY-18	JULY-16	JULY-15	JULY-14	JULY-14	JULY-13	FEBRUARY-13	JULY-12	JULY-11	JULY-09	FEBRUARY-09	FEBRUARY-08	FEBRUARY-07
CONTRACTS		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ETHICS	5	x		x	x			x		x	x	x			x		x			
TORTS	1	x					x													
PROPERTY	1		x																	
FL CONLAW	1														x					
UCC 3/9	0					x					x		x							

## TYPICAL ANSWER PROGRESSION

Most Florida contracts essay questions can be answered by working through the progression of the life of a contract:

1. **Create the organizational structure** of your answer by reading the call of the question and fact pattern. Prior questions have split up one contractual relationship into multiple parts including: 1) formation; 2) defenses; and 3) potential remedies. Other questions have split up the answer into separate parties including: 1) Party A vs. Party B; 2) Party A vs. Party C; 3) Party B vs. Party C. Once you organize your answer, you can begin plugging the applicable rules into the relevant part of your answer.
2. **Identify the Applicable Law:** Start by identifying whether the contract is governed by common law or the Uniform Commercial Code (UCC). This is important because different rules apply depending on the type of contract.
3. **Formation:** Discuss whether a valid contract was formed. This involves analyzing whether there was an offer, acceptance, and consideration. Set out articulate rules and apply the facts of the question to demonstrate whether these elements were present.
4. **Defenses to Formation:** Discuss any potential defenses to formation of the contract. This could include issues like statute of frauds, incapacity, duress, undue influence, misrepresentation, mistake, or illegality.
5. **Performance (and Defenses):** Discuss whether both parties have performed their obligations under the contract. If not, discuss whether there are any valid reasons for non-performance, such as impossibility, impracticability, or frustration of purpose.
6. **Breach:** If one party has not performed, discuss whether this constitutes a breach of contract. Analyze the severity of the breach and its impact on the other party.
7. **Remedies:** Discuss potential remedies available to the non-breaching party. This could include expectation damages, specific performance, rescission, or restitution, and more.

Have “rule scripts” ready for all commonly tested rules.

# MOST COMMONLY TESTED ESSAY TOPICS

## CONTRACTS



- Governing Law
- Formation – Offer, Acceptance, Consideration
- Breach of Contract
- Statute of Frauds



- |   |   |
|---|---|
| <input type="checkbox"/> UCC – Sale of Goods              | <input type="checkbox"/> Mistake                  |
| <input type="checkbox"/> Modification                     | <input type="checkbox"/> Rescission               |
| <input type="checkbox"/> Counteroffer – Mirror Image Rule | <input type="checkbox"/> Anticipatory Repudiation |
| <input type="checkbox"/> Specific Performance             | <input type="checkbox"/> Damages – Consequential  |
| <input type="checkbox"/> Types of Contracts               | <input type="checkbox"/> Damages - Mitigation     |



- |  |  |
|--|--|
| <input type="checkbox"/> Divisible Contract            | <input type="checkbox"/> Collateral Agreement  |
| <input type="checkbox"/> Promissory Estoppel           | <input type="checkbox"/> Parol Evidence Rule   |
| <input type="checkbox"/> Unjust Enrichment             | <input type="checkbox"/> Definite Terms        |
| <input type="checkbox"/> Excuse                        | <input type="checkbox"/> Misrepresentation     |
| <input type="checkbox"/> Voidable – Minor’s Contract   | <input type="checkbox"/> Waiver                |
| <input type="checkbox"/> Option Contract – Irrevocable | <input type="checkbox"/> Damages - Incidental  |
| <input type="checkbox"/> UCC – Firm Offer Rule         | <input type="checkbox"/> Damages - Actual      |
| <input type="checkbox"/> Time of the Essence           | <input type="checkbox"/> Damages - Punitive    |
| <input type="checkbox"/> Late Performance              | <input type="checkbox"/> Damages - Expectation |



- |   |  |
|---|--|
| <input type="checkbox"/> Installment Contract         | <input type="checkbox"/> Illegality                                      |
| <input type="checkbox"/> Adequate Assurances          | <input type="checkbox"/> <i>Laches</i>                                   |
| <input type="checkbox"/> Invitation for Offer         | <input type="checkbox"/> Failure to Cure                                 |
| <input type="checkbox"/> Condition Precedent          | <input type="checkbox"/> Accord and Satisfaction (and Discharge/Release) |
| <input type="checkbox"/> Third Party Beneficiary      | <input type="checkbox"/> UCC – Perfect Tender Rule                       |
| <input type="checkbox"/> Fraudulent Misrepresentation | <input type="checkbox"/> Damages – Lost Profits                          |
| <input type="checkbox"/> Non-Compete Agreement        | <input type="checkbox"/> Damages – Lost Rent                             |
| <input type="checkbox"/> Verbal Agreement             | <input type="checkbox"/> Damages - Incidental                            |
| <input type="checkbox"/> Implied Agreement            | <input type="checkbox"/> Damages - Special                               |
| <input type="checkbox"/> Assignment                   | <input type="checkbox"/> Everything Else is Fair Game                    |
| <input type="checkbox"/> Novation                     |  |



# FLORIDA ESSAY TESTING

## CONTRACTS

### CALLS OF THE QUESTION (Ethics issues in yellow)

#### July 2004 (Contracts and Ethics)

Magazine has retained you to evaluate the possibility of filing suit against Company to collect the \$15,000. Discuss this potential litigation including the likely defenses that Company would assert and the probable outcome of the suit.

In preparing your evaluation of Magazine's case, you discovered that Carol no longer is employed by Company. You wish to contact Carol to discuss the facts of the case without obtaining permission from Company's attorney. Include in your discussion whether you are permitted to do so.

#### July 2005 (Contracts)

Please discuss:

1. the issues in a suit for damages by Carrie against Paul; and,
2. the issues in a suit for damages by Paul against Cakes and Things, Inc., including any counterclaim Cakes and Things, Inc., may have.

#### February 2006 (Contracts and Ethics)

Did Bill ever have a valid contract for the purchase of the land?

If Bill had a valid contract for the purchase of the land, was that contract validly assigned to Lois, so that Sam, Bill, and Lois all must honor the assignment?

What legal theories should Bill assert if he wants to rescind the purported assignment to Lois?

Also discuss and analyze any ethical issues raised by the conduct of Lois.

#### February 2007 (Contracts)

Discuss the causes of action that Bea could raise against Steven and any defenses available to Steven. Discuss also the remedies available to Bea.

#### February 2008 (Contracts)

In April 2007, Senior Partner requests that you prepare a memorandum of law regarding this matter. In your memorandum, discuss the claims of Airline and Oil Company, as well as any defenses they might have. Do not discuss any issues related to damages.

#### February 2009 (Contracts)

Your firm has been contacted by Albert. Albert wants to know the following:

- what causes of action he may have against Mindy;
- what defenses might be raised; and
- what damages would be available to him.

Please prepare a legal memorandum addressing these points.

**July 2009 (Contracts and Ethics)**

Please discuss:

1. The validity of the contract to purchase the car.
2. Claims of Mary and Dad; and counterclaims of Seller.
3. Any ethical issues concerning Attorney.

**July 2011 (Contracts)**

In preparation for mediation between the parties, you have been asked to write a memo for the mediator. As to Contractor, Banker, and Mother, discuss their potential claims, defenses, and the likely outcomes of their claims. Do not discuss any causes of action against the bank and regulatory issues concerning the note and the mortgage.

**July 2012 (Contracts, Ethics and Florida Constitutional Law)**

The contract's remedies provision entitles Seller to keep Buyer's deposit (with interest) if Buyer defaults, however, upon Seller's default, Buyer is entitled to either a return of the deposit (with interest) or specific performance.

Seller has refused to proceed with the sale. Please discuss Buyer's potential claims, Seller's defenses, and the likely outcome on this matter. Please also address any ethical issues presented in this case.

**July 2013 (Contracts)**

Discuss the causes of action, claims, and damages that are available to Bud's. Discuss any defenses and counterclaims that are available to Sayles. Discuss the enforceability of provision 4 of the contract pertaining to attorney's fees.

**July 2009 (Contracts and Ethics) UCC Art. 9 (UCC 3/9 now tested in MC format)**

A senior partner at your firm asks you to draft a memorandum that discusses the following issues:

1. Contractor's rights, if any, against Developer and any defenses.
2. Contractor's rights, if any, against Paver and any defenses.
3. Any rights of Bank and Lender in the grader purchased by Paver.

**July 2014 (Contracts and Ethics)**

Prepare a memo discussing the civil claims that Buyer may bring against Seller, Seller's defenses, possible remedies, and which party should prevail. Include in your response a discussion of the ethical issues involved in whether Attorney should represent Seller in the civil suit brought by Buyer. Do not include any issues of criminal law.

**July 2015 (Contracts and Ethics)**

Senior Partner asks you to draft a memorandum that discusses:

1. the causes of action that Colleen may have against Amy, the legal theories Colleen may use to support these causes of action, the likelihood that Colleen's causes of action will prevail, and the measure of damages for these causes of action;
2. the causes of action that Amy may have against Dawn, the legal theories Amy may use to support these causes of action, and the likelihood that Amy's causes of action will prevail;
3. the causes of action that Edwin may have against Amy, the legal theories that Edwin may use to support these causes of action, and the likelihood that Edwin's causes of action will prevail; and,
4. whether your law firm can acquire any of these properties at a discount as compensation for rendering legal services.

**July 2016 (Contracts)**

After the first year, the University fires Professor without notice. In the termination letter, the University refers to the marketing controversy but also claims ownership of the patent for the DNA test kit. Professor finds a buyer for 25 percent of the company, but Bill denies that she has any ownership interest. Without income from the University or the company, Professor accepts a job with a different company to produce DNA test kits for pets. Bill threatens to sue Professor if she works for this company.

Professor consults you for advice. She is uncertain about her rights and responsibilities with regard to the University, Bill's company, and the patent for the DNA test kit.

Write a memo analyzing the likely claims, defenses, and outcomes for each of the parties.

**July 2018 (Contracts and Ethics)**

From these facts, discuss the possible claims, the elements of such claims, and the possible defenses. Include a discussion of whether Addie can recover attorney's fees if she wins in a suit against Laurie. Also discuss whether Laurie faces any ethical issues if she is bound by the agreement, and any professionalism issues raised by Laurie's communication with Cal.

**February 2020 (Contracts and Torts)**

Prepare a memorandum evaluating the claims that WLAW could assert against Rodney or WDEF, and the claims that Jack could assert against Rodney. Your memorandum should discuss the remedies, if any, that are available to WLAW and Jack.

**October 2020 (Contracts and UCC 3/9 [now tested in multiple choice format])**

Prepare a memorandum for a senior lawyer in your firm that discusses: (1) Abby's claims against SunCo; (2) Bob's claims against SunCo; and (3) SunCo's claims against Bob. You should assume that Bob had authority to enter into an agreement with Abby and disregard any issues related to FTC regulations on sponsored social media posts.

**July 2021 (Contracts and Ethics)**

Prepare a memorandum discussing Bella's potential claims, any arguments that Sharon may raise, and the likely outcome of the matter. Also discuss any ethical issues posed by Laura's representation of Bella.

**February 2023 (Contracts and Ethics)**

Prepare a memorandum as follows:

1. Discuss whether ToyCo and ChipCo entered into an enforceable contract. Also, discuss ToyCo's potential claims against ChipCo, any defenses that ChipCo may assert, and any remedies that may be available to ToyCo.
2. Discuss any ethical considerations raised by your firm's representation of ToyCo.





# FLORIDA ESSAY TESTING

## CONTRACTS

### HEAVILY TESTED RULES

*These are mere starting points for your rule scripts. Make them your own through practice.*

#### **Applicable Law**

A contract is governed by either the common law or the Uniform Commercial Code (UCC). The UCC governs contracts for the sale of movable goods. The common law governs all other contracts including those for services, real estate, and intangibles. If a contract involves both goods and services, Florida courts apply the predominant purpose test to determine which law governs. If the primary purpose of the contract is the sale of goods, the UCC applies; otherwise, the common law applies.

#### **Contract Formation**

A valid contract requires mutual assent (offer and acceptance), consideration, and no valid defenses to formation. Under the UCC, a contract for the sale of goods must include a quantity term. Under common law, all essential terms must be definite.

#### **Offer**

An offer is an objective manifestation of intent to be bound by specific terms. A valid offer creates the power of acceptance in the offeree. The offer must be sufficiently definite to allow a court to enforce it.

#### **Acceptance**

Acceptance is a manifestation of assent to the terms of the offer. Under common law, acceptance must mirror the terms of the offer (mirror image rule). Under the UCC, acceptance can include additional or different terms unless they materially alter the contract, are objected to, or the offer limits acceptance to its terms.

#### **Consideration**

Consideration is a bargained-for exchange of legal benefit or detriment. In Florida, consideration can be a legal benefit to the promisor or a legal detriment to the promisee.

#### **Statute of Frauds**

Under Florida's statute of frauds, certain contracts must be in writing to be enforceable. These include contracts for the sale of goods over \$500 (UCC), contracts for the sale of land, and contracts that cannot be performed within one year. The writing must be signed by the party to be charged and include essential terms.



## **Parol Evidence Rule**

When a written contract is intended as a complete and final expression of the parties' agreement, prior or contemporaneous oral or written statements that contradict or modify the contract are inadmissible, except to clarify ambiguities, show fraud, or establish a condition precedent.

## **Anticipatory Repudiation**

When one party unequivocally indicates they will not perform their contractual obligations before performance is due, the non-breaching party may treat the contract as breached and seek remedies.

## **Breach of Contract**

A breach occurs when a party fails to perform as promised under the contract without a valid legal excuse. Remedies include expectation damages, reliance damages, restitution, and specific performance for unique goods or land.

## **Modification**

Under common law, contract modifications require new consideration. Under the UCC, modifications do not require consideration but must be made in good faith.

## **Equitable Remedies**

Specific performance is available when monetary damages are inadequate, such as for unique goods or real property. Rescission and reformation may also be available to address issues like fraud or mutual mistake.

## (SLIGHTLY LESS) HEAVILY TESTED RULES

### **Unilateral and Bilateral Contracts**

A unilateral contract involves a promise in exchange for performance. Acceptance occurs only upon full performance.

A bilateral contract involves mutual promises. Acceptance occurs when both parties exchange promises.

### **Defenses to Formation**

Defenses to contract formation include lack of capacity, duress, undue influence, fraud, misrepresentation, mistake (mutual or unilateral), illegality, and unconscionability. These defenses can render a contract void or voidable.

### **Mistake**

A mutual mistake occurs when *both* parties are mistaken about a material fact at the time of contract formation, making the contract voidable. A unilateral mistake (only one party is mistaken) is generally not a defense unless the non-mistaken party knew or should have known of the mistake.

### **Promissory Estoppel**

Promissory estoppel applies when a promise, reasonably expected to induce reliance, does induce reliance, and injustice can only be avoided by enforcing the promise. It is a substitute for consideration in certain cases.

### **Third-Party Beneficiaries**

A third-party beneficiary is someone who is not a party to the contract but has rights under it because the contract was intended to benefit them. Only intended beneficiaries, not incidental beneficiaries, can enforce the contract.

### **Assignment and Delegation**

Contractual rights can generally be assigned unless the contract prohibits it or the assignment materially changes the obligor's duty. Duties can be delegated unless they involve personal skill or judgment.

### **Conditions**

A condition is an event that must occur before a party's performance is due. Conditions can be express, implied, precedent, subsequent, or concurrent. Failure of a condition can excuse performance.



### **Impossibility, Impracticability, and Frustration of Purpose**

Performance may be excused if it becomes objectively impossible, commercially impracticable, or if the contract's purpose is substantially frustrated due to unforeseen events.

### **Liquidated Damages**

Liquidated damages clauses are enforceable if the amount is reasonable in light of anticipated harm and actual damages are difficult to ascertain. A liquidated damages clause acting as a penalty clause is not enforceable.

### **General Remedies for Breach**

Remedies include expectation damages (to put the non-breaching party in the position they would have been in if the contract was performed), reliance damages (to reimburse expenses incurred in reliance on the contract), and restitution (to prevent unjust enrichment).

*You should have separate “rule scripts” for each of these remedies.*