

Phone Tag

BarWinners Model Answer + Self-Grading + Retest Plan

Answer access

Use this packet only after completing the Phone Tag essay. Compare issue selection, rule accuracy, factual analysis, counterarguments, organization, and timing.

Governing Law

The first question is whether common law or UCC Article 2 governs. The transaction includes both materials and construction services. Courts generally apply the law governing the predominant purpose of a mixed contract. The cedar estimate assigns the larger portion of the price to labor, while the redwood estimate assigns the larger portion to materials. Nevertheless, Owner sought a completed fence rather than redwood standing alone, and Builder was engaged to construct it. The better conclusion is that common law governs because the predominant purpose was construction. A strong answer should acknowledge the UCC alternative because the redwood materials represented \$4,500 of the \$7,000 price.

No Contract on May 1

An offer is an objective manifestation of present intent to contract, communicated to an identified offeree, with sufficiently certain terms. A preliminary negotiation, estimate, or price quotation ordinarily is not an offer when further assent remains necessary.

Builder gave Owner two estimates, stated that he still needed to verify redwood availability, and said he would respond later. Owner expressly said she wanted to think before deciding. These facts show that neither party objectively manifested present intent to be bound on May 1. Owner also never accepted either estimate. Therefore, no contract formed on May 1.

No Contract Through the May 2 Voicemail

Builder's May 2 voicemail is more likely an offer. It identified the redwood fence, the \$7,000 price, and Builder's willingness to begin within days. Even though Builder described the arrangement as already agreed, the objective facts show that Owner had not previously assented.

Acceptance requires an objective manifestation of assent made in the manner invited by the offer. Owner heard the message but did not respond. Silence ordinarily is not acceptance unless the offeree takes offered benefits with reason to know compensation is expected, the offeror indicates silence may operate as acceptance and the offeree intends it, or prior dealings make silence reasonable. None clearly applies. Builder specifically requested a return call, and Owner had already stated that she wanted time to decide. Her silence therefore did not accept the offer.

Builder may argue that his completion of the fence accepted or completed a unilateral contract. That argument is weak because Owner had not offered to pay Builder in exchange for performance. Builder was the offeror, not the offeree. His voluntary performance could not accept an offer Owner never made.

Consideration and Statute of Frauds Alternatives

If a May 2 contract were found, the exchange of the completed fence for Owner's promise to pay would supply consideration. Under the stronger common-law classification, the agreement would not ordinarily fall within the one-year provision or transfer an interest in land. If UCC Article 2 controlled, however, the \$7,000 price would bring the transaction within the UCC Statute of Frauds. A complete answer should then discuss whether a signed writing or an exception satisfies the requirement rather than assuming enforceability.

Frustration of Purpose

Owner may argue that cancellation of the charity event frustrated the agreement's purpose. Frustration requires an unforeseen event that substantially destroys a mutually understood principal purpose of the contract. The fence remained permanently useful to Owner, and the facts do not establish that Builder accepted the event as the transaction's shared principal purpose. The defense is therefore weak even if a contract existed.

The May 25 Settlement

Owner's May 25 letter objectively offered to settle the dispute for \$5,500. Builder received the offer and communicated acceptance before Owner attempted to revoke. Under ordinary bilateral-contract principles, that acceptance formed an agreement unless consideration was absent.

The completed fence is past consideration and, standing alone, cannot support Owner's later promise. The stronger consideration theory is Builder's good-faith forbearance from pursuing a genuinely disputed claim. Builder believed he could sue for the fence price, and Owner disputed any obligation. Builder's promise to let the dispute go in exchange for \$5,500 supplies consideration if asserted in good faith. The parties therefore formed an enforceable settlement or accord.

Owner never paid, so there was no satisfaction. Builder should nevertheless be able to recover the promised \$5,500 for breach of the settlement agreement. A strong answer should distinguish the enforceable accord from the uncompleted satisfaction.

Restitution

Builder may alternatively seek restitution for the reasonable value of the benefit conferred. Owner will argue that Builder imposed an unrequested benefit after receiving no acceptance and therefore acted as a volunteer. Builder will respond that Owner heard his proposal, knew he intended to begin shortly, failed to object, retained the completed fence, and would otherwise receive a valuable improvement without payment.

The result is fact dependent. Owner's silence and Builder's decision to proceed without confirmation weigh against restitution, while Owner's knowledge and retention of the fence support it. If recovery is allowed, the measure is the reasonable value of the benefit, not automatically the \$7,000 estimate.

Conclusion

Builder probably cannot recover the full \$7,000 on the original communications because Owner never accepted Builder's offer. Builder's strongest contractual recovery is \$5,500 under the later settlement. Restitution remains an alternative theory for the reasonable value of the fence if the settlement is found unenforceable.

Self-Grading Rubric

Issue selection and organization	5		Logical headings; May 1, May 2, settlement, restitution, and alternatives.
Accurate rule statements	5		Offer, acceptance, silence, consideration, settlement, and restitution rules stated accurately.
Fact-based analysis and counterarguments	7		Both sides use the precise facts; conclusions follow from identified triggers.
Timing control and completion	3		Answer finished with proportional time and no abandoned major issue.
TOTAL	20		

Point-Loss Diagnosis

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|---|---|--|
| ☐ Missed trigger fact | ☐ Missing or inaccurate rule | ☐ Weak application |
| ☐ Failed counterargument | ☐ Overwriting | ☐ Poor organization |
| ☐ Slow rule recall | ☐ Excessive outlining | ☐ Failure to finish |

My most important if/then instruction:

Retest Schedule

Tomorrow	Rewrite the weakest Memorize First rule from memory.	☐
In 3 days	Re-outline Phone Tag in 10 minutes without notes.	☐
In 7 days	Complete five mixed Formation questions closed book and review every answer.	☐

Exit Ticket

Three rules selected for retesting:

One timing behavior I will change:

One issue I will recognize faster next time:
