Mind Music – Or What Should Be Going Through Your Mind as You Read the Fact Pattern

To improve skills of essay writing you need to work on fact-identification and issue-analysis. One way to expand these skills is to develop the mindset of "critical reading." This is easier to demonstrate than it is to describe. What follows is the text of the fact pattern, interspersed with the mental dialogue a good legal analyst will have with the facts and text. If you practice aloud often enough, this dialogue will soon become second-nature, and you will able to process the material silently.

Buyco & Sellco: Model X Generator

What’s the Call of the Question?

[This should be the very first thing you look for. It is usually at the end of a question. Therefore, start at the end. You decide that this is a Contracts Question. That’s an important start, not to be minimized on the FYLSE.]

Here it is:

What are Buyco’s rights, if any, against Sellco? Discuss.

I know it’s vital to read the call of the question first before reading the fact pattern. This will give me an idea of the substantive area(s) of law to be covered and the things I need to consider while reading the hypothetical. Moreover, the call line helps me mentally begin formatting my response under IRAC.

Contracts is a difficult subject for me, so I think I’ll read the call of the question again:

What are Buyco’s rights, if any, against Sellco? Discuss.

The word “rights” in the call of the question can be misleading. It does not really mean rights as in Constitutional rights, etc. It is simply a legal essay way of saying discuss all pertinent issues and sub-issues. I need to stay alert here. Many essay questions provide insight through the names of the parties. In this instance, “Buyco” and “Sellco,” provide the clue of a buyer-company and seller-company, so the issue most likely revolves around a
purchase contract. Therefore, I will look to discuss contract formation-related issues and defenses. [Common law or UCC? Mutual assent (offer + acceptance)? Revocation? Consideration? Detrimental Reliance?] With this framework in mind, I am ready to read the essay question in its entirety.

Since I am having trouble with Contracts, it helps me to have listed these critical issues before I begin.

I have learned that I should never judge the difficulty level or required depth of a response by the length of the essay question. The shorter essay questions are often deceptive and just as likely, if not more likely, to be difficult than questions with longer fact patterns.

Buyco, a conglomerate, wished to purchase a Model X generator of unique design, recently introduced to the market. Demand for the generator was high. Buyco was able to locate a seller who would guarantee delivery within six months.

Initially, the terms "generator" (sale of goods = UCC applies !!!) and "unique design" stand out. I am glad that I noticed this. These are hints that the question provides that I can use to do my best job. First, I know the question involves the sale of goods, so the UCC governs. Secondly, the use of the adjective "unique" may involve questions of demand, detrimental reliance, and possible damages (unable to mitigate by replacing goods for same price). I wonder if the word "conglomerate" has any legal significance? Maybe it just serves to indicate that it is a "merchant." Otherwise, I am not sure if it will make a difference in the outcome here. I am sure, however, that the term "unique" is going to be critical.

Buyco received a letter from Sellco stating: "Sellco can obtain a new Model X generator and hereby offers to sell the generator to Buyco for one million dollars. Sellco promises delivery within three months from acceptance. This offer will be held open for one month."

It is apparent by this second paragraph that Buyco's rights, if any, will be based upon contract under the UCC. As a result, I must be looking for facts that support the elements for a valid contract [mutual assent]. I know from this paragraph that the letter (a "writing") provides "quantity" and "subject matter" (1 generator), price ($1 million), and "time" for performance (delivery within 3 months). This is a valid offer because it contains all essential terms and invites acceptance. Any promise to hold an offer "open" should immediately raise the issue of irrevocability of Sellco's offers (UCC: merchant's firm offer; detrimental reliance). I should make a note of this in the margin. It helps me to circle, underline, or otherwise identify facts or words that will help jog my memory (or assist in issue spotting) and help me prepare my outline before drafting my response.
In contracts, in particular, I know myself: I can’t hope to write a sensible response without a pre-outline. I tend to get lost in the issues.

Sellco has dealt regularly with one of the subsidiaries of Buyco, but Sellco does not in the normal course of business sell generators. Knowing of Buyco’s urgent need for the generator, Sellco believed that it could increase its goodwill by selling it to Buyco.

"In the normal course of business" is part of the UCC definition of "merchant." I am glad I remembered that. These "code" phrases can make a big difference in issue spotting for me. Because Sellco does not sell generators, it is probably not a merchant for the issue of irrevocability under the UCC merchant "firm offer" rule [merchant + writing (letter) + signed + offer to keep open (not more than 3 months)]. Just because Sellco may not be a merchant under UCC 2-205, however, that does not indicate that I should not discuss the issue of merchant’s firm offer, only that I should probably indicate in the body of the discussion of 2-205 that it probably will not apply because Sellco is not a merchant under 2-205.

Buyco responded immediately in writing to Sellco’s letter, stating: "We are delighted that you can furnish the Model X generator in time to fill our needs. We will begin immediately to construct facilities to house the generator, but in the meantime we will continue to shop around. We wish to hold your offer under advisement for a couple of weeks to see if we can get a better price."

This raises the issue of detrimental reliance – that is, building a generator-housing facility in reliance on Sellco’s keeping the offer open for a couple weeks (reasonable period of time?). Detrimental reliance is used as a substitute for consideration, and I need to be alert to these kinds of nuances. I often have trouble with the concept of "detrimental reliance," but here it all seems to make sense to me in the context of the full factual picture. Looking back at the text, however, I see no evidence that Buyco provided (spoke? wrote?) any words that might constitute an acceptance of Sellco’s offer. And, I know that acceptance is a necessary element to a valid contract between Buyco and Sellco. Okay. I feel that I can handle this question as long as I take it slowly.

Sellco wrote back saying: "We acknowledge your letter."

What does this mean? Acknowledgement of the letter is like getting one of those tracking notices that the express-mailed package has been signed for. This show that Sellco received the letter, but it gives no further insights. What should I do with this information? This may support Buyco’s potential claim of detrimental reliance because Sellco acknowledged receipt of letter in which Buyco said it would begin to incur costs toward the generator. Hmm. That makes sense so far.
It soon became apparent to Buyco that the price of Model X generators had increased dramatically, and that none could be purchased for less than $1,200,000, regardless of delivery date. In the meantime, Buyco expended $100,000 on facilities to house the generator.

$100,000 in costs raises the possibility of proof of detrimental reliance (possibly rendering the offer irrevocable), if these costs were foreseeable (Sellco knew from letter that Buyco was going to begin building the facility). I need to take notes as I go along to ensure that I identify and analyze all of these issues in my answer.

Ten days after receipt of the initial letter from Sellco, Buyco decided to accept Sellco’s offer. On that same day Buyco received a letter from Sellco stating: “Because of the dramatic increase in the market price of the generator, we hereby revoke our offer.”

I need to read this paragraph very carefully. Any time there are facts that may support a contemporaneous acceptance and possible revocation, timing is everything. The rule is that “a revocation is effective when received,” but “an acceptance is effective upon dispatch.” Here, Buyco “decided to accept,” but never conveyed (“dispatched”) its intent to be bound to Sellco. Accordingly, Sellco’s written revocation of his written offer is effective, unless prior or subsequent facts demonstrate that the offer was rendered irrevocable (Firm offer? Detrimental reliance?). My friends tell me that they find Contracts easy. Not me! I find this very difficult and confusing! Give me Torts any day!

Buyco learned that Sellco had obtained the generator and was about to sell the generator to Thirdco for $1,300,000, and that Thirdco, aware of the existence of Sellco’s offer to Buyco, had persuaded Sellco to revoke it.

I would have considered these facts to be relevant only if the call of the question had asked if Buyco had any rights against Thirdco (interference with contract/economic advantage). Nevertheless, now I should reread and review the “call,” my margin notes and highlights, and draft or fill in my outline. I need to be sure to cover the elements for valid contract formation (mutual assent + consideration). Although it looks like Buyco never accepted Sellco’s offer, I need to address in depth the issues of effective revocation and irrevocability of Sellco’s offer (Detrimental reliance? Merchant firm offer?).

What are Buyco’s rights, if any, against Sellco? Discuss.

Okay. I have now worked myself back to the call of the question. Upon first reading, I was worried whether I could handle this, but, now, after reading slowly and carefully through the facts, I am more confident. I remember that each of the legal concepts I spotted above should have its own IRAC
formatted paragraph (issue, rule, analysis, conclusion), even though the facts seem interrelated. So, on my issues checklist, I highlight:

Offer, Acceptance, Revocation/Irrevocable Offer/UCC 2-205, Consideration, and Detrimental Reliance.

I will read the facts once more, looking to fill in my list of issues, then begin writing. I will do this quickly because I have used almost 7 minutes in getting this far -- and that is about the limit, under ordinary circumstances, for getting set up to begin writing the answer.