

## GRADER'S GUIDE

### \*\*\* QUESTION NO. 9 \*\*\*

#### SUBJECT: CONTRACTS

#### A. BETH'S ACTION FOR SPECIFIC PERFORMANCE (70 POINTS).

##### 1. Basic contract formation (20 Points).

This question involves a contract to sell Alan's land to Beth, with some oral terms and some that are described in a written receipt. The basic contract elements are satisfied here, in that Alan made an offer to sell his land, Beth accepted the offer without changing any of the terms, and Beth provided a down payment and a promise to pay the remaining balance as consideration in exchange for the land. *See generally Valdez Fisheries Development Ass'n, Inc. v. Alyeska Pipeline Service Co.*, 45 P.3d 657, 665 n.12 (Alaska 2002)(the formation of a valid contract requires an offer encompassing all essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound); *Davis v. Dykman*, 938 P.2d 1002, 1006 (Alaska 1997)(same).

Alan and Beth have mutually agreed on the material terms of the land sale contract including the price, the payment terms and interest rate, and described the land to be sold. Nothing in the question suggests that either Alan or Beth does not have the capacity to contract based on age, mental competence or other factors. Thus, the basic elements of a valid contract appear to be satisfied.

Therefore, the issue in dispute is likely to be whether Alan's receipt is an adequate written document to satisfy the statute of frauds.

##### 2. Statute of Frauds (50 Points).

Alan will argue that the statute of frauds bars an action for specific performance of the land sale contract by Beth. AS 09.25.010(a) provides that in "the following cases and under the following conditions an agreement, promise, or undertaking is unenforceable unless it or some note or memorandum of it is in writing and subscribed by the party charged . . . (1) an agreement that by its terms is not to be performed within a year from the making of it; . . . [and] (6) an agreement . . . for the sale of real property . . . ." Alan's agreement with Beth may not comply with the statute of frauds under AS 09.25.010(a)(1) and (6) because it may not be performed within one year, and because it involves the sale of real property, and Alan's receipt may not be an adequate written

document. However, exceptions exist that take an oral contract out of the statute of frauds and if they apply can make the contract enforceable.

a. The adequacy of the receipt as a writing.

In general, contracts for the sale of land are unenforceable unless the agreement is in writing, or a note or memorandum of it is in writing and signed by the party, or his agent, who seeks to avoid performance. This note or memorandum need not be formal or complete. *Fleckenstein v. Faccio*, 619 P.2d 1016, 1020 (Alaska 1980). As Corbin states: "we should always be satisfied with 'some note or memorandum' that is adequate, when considered with the admitted facts, the surrounding circumstances, and all explanatory and corroborative and rebutting evidence, to convince the court that there is no serious possibility of consummating a fraud by enforcement." 2A. Corbin, Corbin on Contracts § 498 at 681 (1950), *cited in Fleckenstein*, 619 P.2d at 1020.

Beth will argue that Alan's receipt, signed and dated by him, is sufficient to satisfy the statute of frauds. Alan may argue that the receipt does not provide a legal description of the property nor does it provide the payment terms, interest rate, the date that the property will be conveyed, or other information. However, Beth will argue that the description is adequate for the contract to be enforced in that it pertains to Alan's land north of the creek. Since Alan does not own any land north of the creek that is not subject to the contract, it is easy to identify the contract property. Also, the receipt provides the amount of the down payment and the total purchase price. Under these circumstances, a court could find that the receipt satisfied the statute. *Fleckenstein*, 619 P.2d at 1020-1021.

c. Full or part performance of the contract.

Even if Alan does not admit the existence of the agreement, and the court finds that the lack of a written agreement violates the statute of frauds, it may still be enforceable. A party seeking specific performance of an oral contract to convey an interest in real property must first show that the agreement was taken out of the statute of frauds. An oral contract may be taken out of the statute by full performance or by part performance.

Beth cannot show that she fully performed her contractual obligations because she has not tendered the full purchase price of the property to Alan, although she has made a down payment. If Alan had accepted the full purchase price, the contract would have been fully

performed by Beth and therefore the statute of frauds would not bar its enforcement. AS 09.25.020(1)(contract that violates the statute of frauds but that has been fully performed by one side and accepted by the other is enforceable if otherwise valid); *Dressel v. Weeks*, 779 P.2d 324, 331 (Alaska 1989)(oral agreement to convey real property was enforceable, even though it violated the statute of frauds, because the party seeking enforcement had fully performed).

Beth can show that she has partly performed under the contract, by paying the down payment, which may take the oral contract out of the statute of frauds. *King v. Richards*, 584 P.2d 50, 51 (Alaska 1978); *Jackson v. White*, 556 P.2d 530, 533 (Alaska 1976); *Prokopis v. Prokopis*, 519 P.2d 814, 816-818 (Alaska 1974). The court would first determine whether the oral contract existed, and the contract terms, if Alan put such issues in dispute. *Jackson*, 556 P.2d at 532. The receipt for the down payment and Beth's improvements to the property, on which she spent substantial amounts, indicate that an agreement was made. The next question for the court would be whether the contract was specifically enforceable. *Id.* at 533.

d. Specific performance as a remedy.

A party may seek specific performance of a land sale contract. *Currington v. Johnson*, 685 P.2d 73 (Alaska 1984); *Fleenor v. Church*, 681 P.2d 1351 (Alaska 1984). The necessary steps for specific enforcement of an oral contract to convey an interest in real property are first, that the party seeking enforcement must show part performance, and second, that the contract was sufficiently definite and certain. *Jackson*, 556 P.2d at 533. Beth would have to make both showings by clear and convincing evidence rather than a mere preponderance of the evidence. *Jackson*, 556 P.2d at 534. As noted above, Beth has partly performed the contract by making a down payment. Also, the terms of the contract are sufficiently definite and certain in that the land is described and the payment terms and interest rate were specified. Although some of the payment term information was not in the receipt, the court could consider Beth's oral evidence of such terms. *Fleckenstein*, 619 P.2d at 1020-1021 (extrinsic evidence can be considered concerning contract terms). Thus, the statute of frauds should not bar Beth's action to seek specific enforcement of the contract.

e. Contracts that may take more than one year to perform.

Alan may also argue that the contract is not enforceable under AS 09.25.010(a)(1) because Beth may take longer than one year to pay the remaining balance. However, because Beth can pay the remaining

balance within the next year, the statute will not bar enforcement of the contract. A contract is not governed by the requirements of the statute of frauds unless it contains a negation of the right or capability of performance within the year. *Howarth v. First National Bank of Anchorage*, 540 P.2d 486, 491 (Alaska 1975). If the contract, according to the intentions of the parties as shown by the terms of the contract, may be fully performed within a year from the time it is made, it is not within the statute, even though the time of its performance is uncertain, and may probably extend, be expected by the parties to extend, and in fact does extend, beyond the year. *Id.*

**B. BETH'S BASIS FOR RESCISSION OF THE CONTRACT (30 POINTS).**

Beth no longer wants the property because the new zoning law prohibits her from operating a flower shop. Beth told Alan that she wanted the property for the sole purpose of building and operating a flower shop. Neither party knew that the new zoning law prohibited such use. Beth may argue that since there has been a mutual mistake about the zoning laws, she should be able to seek rescission of the contract.

When the parties to an agreement share a mistaken belief about a material fact, the agreement may be voidable. See Restatement (Second) of Contracts § 152 (1981). The Restatement sets forth three requirements for a successful mistake argument. The party seeking to void the contract must prove that (1) the mistake relates to a basic assumption on which the contract was made, (2) the mistake has a material effect on the agreed exchange of performances, and (3) the party seeking relief does not bear the risk of the mistake. Restatement (Second) of Contracts § 152 cmt. a (1981), *cited in Stormont v. Astoria Limited*, 889 P.2d 1059, 1061 (Alaska 1995); *see also Schachle v. Rayburn*, 667 P.2d 165, 168 (Alaska 1983); *Mat-Su/Blackard/Stephan & Sons v. State of Alaska*, 647 P.2d 1101, 1104-05 (Alaska 1982).

Beth told Alan that she wanted to operate a flower shop on the property, and both parties erroneously believed that the zoning laws allowed her to do so. Alan may argue that Beth had a duty to investigate the zoning laws, and if she had done so would have learned of the prohibition on use for a flower shop. However, a court would probably not deny rescission of the contract on this basis, since both parties assumed that the zoning laws permitted Beth to operate a flower shop on the property. *See Matanuska Valley Bank v. Abernathy*, 445 P.2d 235, 239 (Alaska 1968). There is no indication in the contract that Beth assumed the risk that the property was not zoned to operate a flower shop. *See Matanuska Valley Bank*, 445 P.2d at 236 (purchaser obtained

rescission on grounds of mutual mistake where, unknown to both parties at the time that they entered into the real property agreement, an easement in effect for six years prevented operation of the property as a roadhouse).

If Beth can show that her plan for operating the shop was a basic assumption for her entering into the contract, and that the new zoning law has a material effect on her contractual obligation to pay the purchase price, she should be able to rescind the contract pursuant to all three Restatement elements. *Schachle*, 667 P.2d at 168-69 (inequitable to enforce a settlement agreement grounded on a mutually mistaken view of the law regarding platting requirements).

If Beth obtains rescission of the contract, she will be entitled to a refund of the \$10,000 down payment from Alan, and will be relieved from her contractual obligations to pay the remaining balance. *Matanuska Valley Bank*, 445 P.2d at 239. She may also be entitled to reimbursement of the money that she spent for improvements to the property, if they conferred a benefit to Alan. *Id.* Alan will be entitled to the fair rental value of the land from Beth during the time that she occupied it. *Id.*

- 3.** Graders are prepared to award points for a discussion of frustration of purpose and impracticalability.