ESSAY QUESTION NO. 6

Answer this question in booklet No. 6

Bob Buyer wishes to purchase one thousand white lawn chairs for Bob's extravagant wedding in Alaska. After contacting several distributors and discussing his requirements, Bob called Sara Seller (the owner of Seller Chairs, Inc.) and told her that he wanted to purchase the chairs from her, and that Sara should "fax him a contract."

Sara faxed Bob a form contract a few hours later, titled "Final Contract." The contract was dated June 1, 2009, and stated that Sara would deliver 1,000 plastic lawn chairs to Bob on July 3, 2009, at a cost of $5 per chair. The form contract included various boilerplate clauses, and also stated "This offer is open for 48 hours. If Buyer does not respond by fax within the required timeframe, this offer is no longer valid." Included at the bottom of the page was a signature block for Bob and a return fax number for Sara.

The next morning, Sara received a phone call from another potential buyer who needed 5,000 chairs by June 30, and who stated he would pay a premium for the chairs. The only way Sara could meet this order would be to revoke the offer she sent to Bob the night before. Sara sent Bob a second fax stating, "My offer dated June 1, 2009 is hereby revoked."

Bob checked his fax machine when he woke up and found two faxes from Sara. He reviewed the form contract and added a handwritten statement that "As per our discussions, the lawn chairs will be white." Bob signed the form contract and faxed it back to Sara on June 2.

Although Bob had reviewed the second fax wherein Sara had attempted to revoke her offer, he ignored it because Sara's prices were much lower than the other chair distributors Bob had spoken with. Sara never delivered any chairs to Bob.

1. Analyze whether the requirements for valid contract formation were met, and discuss the arguments for and against finding an enforceable contract between Bob and Sara.

2. Was Sara's attempt to revoke her offer effective? Why or why not?

3. At trial, Sara argues that the parties had not discussed the color of the chairs. Bob wishes to introduce parol evidence of his conversations with Sara. Discuss whether the requirements of the parol evidence rule in Alaska have been met, and whether Bob should be permitted to introduce parol evidence at trial.

GRADER'S GUIDE

***** QUESTION NO. 6*****

SUBJECT: CONTRACTS

1. Contract Formation (50 points)

Under Alaska law, the following are required to form a valid contract: (1) an offer including all essential terms; (2) an unequivocal acceptance of those terms by the offeree; (3) consideration; and (4) intent to be bound by the contract. *Young v. Hobbs*, 916 P2d 485, 488 (Alaska 1996). *See also Ford v. Ford*, 68 P.3d 1258 (Alaska 2003). Examinees should recognize that this offer is for a sale of goods, and is therefore covered by the UCC as codified by Alaska in AS 45.02.

a. Offer

AS 45.02 does not include a definition of an offer, and therefore, the common law must be consulted to resolve the question. *Armco Steel Corp. v. Isaacson Structural Steel Co.*, 611 P.2d 507 (Alaska 1980). An "offer" is an expression by one party of an assent to certain terms. *Government Employees Ins. Co. v. Graham-Gonzalez*, 107 P.3d 279, 283 (Alaska 2005). The Restatement defines an offer as "the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." Restatement (Second) of Contracts § 24 (1981).

Here, Sara tells Bob that she will sell him 1,000 lawn chairs for $5,000 (or $5 per chair). In her offer, Sara sets forth the delivery date, notes that the chairs will be plastic, and includes boilerplate contract terms.

An agreement is unenforceable if its terms are not reasonably certain. *Davis v. Dykman*, 938 P.2d 1002, 1006 (Alaska 1997); *Hall v. Add-Ventures, Ltd.*, 695 P.2d 1081 (Alaska 1985); Restatement (Second) of Contracts § 33 (1981). There is no indication in the facts that the terms of the offer are unclear, although some examinees may argue that the faxed offer form did not state that the chairs were to be white, and therefore the offer was not "reasonably certain."

b. Acceptance

In order to form a valid contract in Alaska, a party's acceptance of an offer must be unequivocal and in exact compliance with the terms of the offer. *Thrift Shop, Inc. v. Alaska Mut. Sav. Bank*, 398 P.2d 657 (Alaska 1965). Under AS 45.02.206(a)(1), "[u]nless otherwise unambiguously indicated by the language

or circumstances an offer to make a contract shall be construed as inviting acceptance in any manner and by any medium reasonable in the circumstances." When an offer for a sale of goods prescribes the only method of acceptance, acceptance of the offer must be achieved by utilizing that mode. *Spenard Plumbing & Heating Co. v. Wright*, 370 P.2d 519, 523 (Alaska 1962).

Here, Sara's offer stated that the acceptance must be by return fax within 48 hours. Bob faxed his acceptance to Sara within the required timeframe.

Some examinees may argue that Bob's faxed response constitutes a rejection and counteroffer because the acceptance was contingent upon the plastic lawn chairs being white as opposed to some other color. Under AS 45.02.207(a), a "written confirmation that is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is made conditional on assent to the additional or different terms." The facts tend to indicate that Bob's note regarding the specific color of the chairs is merely a clarification of an existing term of the contract, rather than an additional or different term that would transform Bob's acceptance of Sara's offer into a rejection and counteroffer.

c. Consideration

Bob's agreement to pay Sara $5,000 in exchange for Sara providing certain goods constitutes valid consideration for their agreement.

d. Intent to be Bound

In order to form a valid contract, the parties thereto must objectively manifest an intent to be bound. *Brady v. State*, 965 P.2d 1, 8 (Alaska 1998); *Zeman v. Lufthansa German Airlines*, 699 P.2d 1274, 1281 (Alaska 1985); AS 45.02.204(a). Examinees should recognize that both Bob and Sara have manifested an intent to be bound by the terms of the offer. Although Sara may have changed her mind and attempted to revoke her offer, the examinees should confine their analysis to the original offer.

e. Statute of Frauds

Examinees may note that this contract falls under the Statute of Frauds. Pursuant to AS 45.02.201(a), a contract for the sale of goods for the price of $500 or more is not enforceable "unless there is a writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought...." In *Fleckenstein v. Faccio*, 619 P.2d 1016 (Alaska 1980), the Court explained that the writing required by the Statute of Frauds need not be formal or complete, and that a "writing may be

sufficient even though it is cryptic, abbreviated, and incomplete." *Id.* at 1020, 1022 n.18 (citing Corbin on Contracts § 498, at 683 (1950)).

Here, if the examinee finds that the terms of the offer are reasonably certain, as discussed above, the faxes exchanged between the parties appear to satisfy the Statute of Frauds.

Some examinees may note that the Statute of Frauds requires that requires that the writing be signed. AS 45.01.201(40) defines "signed" as "a symbol executed or adopted by a party with a present intention to authenticate a writing." The facts indicate that Bob signed the offer and faxed it back to Sara. It is unclear from the facts whether or not Sara signed the offer.

f. Good Faith & Fair Dealing

The covenant of good faith and fair dealing is implied in all contracts as a matter of law. *Alaska Pacific Assurance Co. v. Collins*, 794 P.2d 936, 947 (Alaska 1990). The purpose of the implied covenant is to give effect to the reasonable expectations of the parties, preventing each party from interfering with another party's right to receive the benefits of the agreement. *Hawken Northwest, Inc. v. State, Dep't of Admin.*, 76 P.3d 371, 381 (Alaska 2003). The implied covenant has both a subjective and an objective component. The subjective component prohibits one party from acting to deprive the other of the benefits of the contract. The objective component requires both parties to act in a way that a reasonable person would consider fair. *Id.*

The facts do not indicate that either party acted in bad faith, but examinees may be awarded points for discussing the good faith obligation.

2. Revocation (20 points)

Sara's revocation has no effect. Sara is a merchant -- one who "deals in goods of the kind or otherwise by occupation holds oneself out as having knowledge or skill peculiar to the practices or goods involved in the transaction...." AS 45.02.104(a). "An offer by a merchant to sell goods in a signed writing that by its own terms gives assurance that it will be held open for a period of time is not revocable, for lack of consideration, during the time stated." AS 45.02.205. Although it is unclear from the facts whether or not Sara signed the offer, it is unlikely that her attempt to revoke the offer for another, more favorable transaction would be permissible under the statute.

3. Parol Evidence (30 points)

The terms of the Uniform Commercial Code in AS 45.02.202 provide the following direction with regard to the admission of parol evidence:

> Terms with respect to which the confirmatory memoranda of the parties agree, or that are otherwise set out in a writing intended by the parties as a final expression of their agreement with respect to the terms included in the writing, may not be contradicted by evidence of a prior agreement or of a contemporaneous oral agreement, but may be explained or supplemented ... (2) by evidence of consistent additional terms unless the court finds the writing was intended also as a complete and exclusive statement of the terms of the agreement.

Under Alaska law, parol evidence may be introduced to explain or supplement the writing through evidence of consistent additional terms, unless the court finds that the writing was intended as a complete and exclusive expression of the terms of the contract; no finding of ambiguity is necessary in order to permit the introduction of additional testimony. *Braund, Inc. v. White*, 486 P.2d 50, 55-56 (Alaska 1971).

In order to exclude parol evidence testimony regarding the inclusion of additional terms into a sale agreement, a trial court must make a specific finding either that (a) the parties intended the agreement to be a complete and exclusive statement of the terms of the contract, *i.e.* the contract is integrated, or (b) as a matter of law, the additional terms asserted are such that, if they had been agreed upon, "they certainly would have been included in the documents of sale." *Id.* at 56 (citing Uniform Commercial Code § 2-202, Official Cmt. 3; *Crispin Co. v. Delaware Steel Co.*, 283 F.Supp. 574, 575 (E.D.Pa. 1968)).

The Alaska Supreme Court has opined:

> The parol evidence rule is implicated when one party seeks to introduce extrinsic evidence which varies or contradicts an integrated contract. Once the rule is triggered, the parties' reasonable expectations are determined by applying a three-step test. The first step is to determine whether the contract is integrated. The second step is to determine what the contract means. Determining the meaning of a contract is treated as a question of law for the court except where there is conflicting extrinsic evidence on which resolution of the contract's meaning depends.... If the language is susceptible to [two] asserted meanings, then interpreting the contract is a question of fact for the jury. Extrinsic evidence may always be received in resolving these first two inquiries. The third step is to determine whether the prior agreement conflicts with the integrated writing. Whether there is conflicting extrinsic evidence depends on

> whether the prior agreement is inconsistent with the integration. Inconsistency is defined as "the absence of reasonable harmony in terms of the language and respective obligations of the parties." … While extrinsic evidence is important, nonetheless after the transaction has been shown in all its length and breadth, the words of an integrated agreement remain the most important evidence of intention. *Froines v. Valdez Fisheries Dev. Assoc., Inc.*, 75 P.3d 83, 87 (Alaska 2003) (citations omitted).

The facts do not clearly indicate whether or not the contract is integrated or, in other words, whether Bob and Sara intended that the Final Contract faxed by Sara and signed by Bob (with handwritten notes) was to be a complete and exclusive statement of the terms of the contract. Some examinees may argue that the contract was integrated because the offer included the phrase "Final Contract," while others may argue that the contract was not integrated because Bob added additional language to the "final" contract. If the examinee finds that the contract is not integrated, he or she may argue that the original conversations between Bob and Sara constituted an additional agreement that was made prior to or contemporaneously with the written contract, and that evidence of additional terms within that conversation which are consistent with those contained in the written contract are admissible.