

ESSAY QUESTION NO. 9

Answer this question in booklet No. 9

Bridget is a biologist studying whale populations from her home on an island in southwestern Alaska. Bridget wants to purchase a state-of-the-art GPS (Global Positioning System) device to improve her ability to monitor the whales' distribution around the island.

On December 6, 2011, Bridget contacts Stan, the owner of Ocean Supplies, Inc. Stan tells Bridget that he has one of the state-of-the-art GPS devices in stock and available. Bridget tells Stan that she wants to purchase the GPS device so that she will be able to outperform other biologists tracking whales, and she asks him to fax her the necessary paperwork.

On December 9 Bridget slips and falls on the deck of her research vessel, injuring her back. A doctor prescribes a powerful narcotic for the following three days that helps Bridget cope with the pain. Later that day Bridget receives a fax signed by Stan entitled "Final Contract of Sale" and offering to sell her a GPS device for \$4,500. The fax provides that delivery will take place no later than January 2, 2012, via cargo plane. The fax includes various boilerplate clauses and states: "This offer is good for 72 hours. If you do not respond by fax within this time frame, my offer will expire." A signature block for Bridget is included at the bottom.

On December 10 Bridget receives a second fax from Stan, stating: "I have never been impressed by your research, Bridget. My offer of December 9, 2011 is revoked. I have sold the GPS unit to a biologist out of Sitka."

Bridget ignores the second fax and signs Stan's first fax, returning it via fax on the morning of December 11. She adds a handwritten note, stating: "Ocean Supplies, Inc. agrees, per our original discussion, not to sell a GPS device to my research competitor in Sitka, Alaska."

Stan does not ship the GPS device to Bridget.

1. Was Stan's attempt to revoke his offer effective? Why or why not?
2. Now assume that Stan's revocation of his offer was not effective. Analyze and explain whether the requirements for valid contract formation were met, and discuss the arguments for and against finding an enforceable contract between Bridget and Stan.
3. At trial, Stan argues that the parties never discussed whether he would sell a GPS device to Bridget's competitors. Bridget wishes to introduce parol evidence to support her claim that they did. Discuss whether the requirements of the parol evidence rule in Alaska have been met.

GRADERS' GUIDE
***** QUESTION NO. 9 *****
CONTRACTS

1. Revocation (20 points)

Examinees should recognize that Stan's revocation was not effective. Stan 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). Alaska law provides that “[a]n offer by a merchant to ... sell goods in a signed writing that by its terms gives assurance that it will be held open is not revocable, for lack of consideration, during the time stated.” AS 45.02.205.

2. Contract Formation (50 points)

Under Alaska law, the following four elements are required to form a valid contract: (1) an offer encompassing all essential terms; (2) an unequivocal acceptance of those terms by the offeree; (3) consideration; and (4) a mutual intent to be bound by the contract. *Sykes v. Melba Creek Mining, Inc.*, 952 P.2d 1164, 1167 (Alaska 1998). Examinees should recognize that this offer is for the sale of goods and is therefore covered by the Uniform Commercial Code (UCC). AS 45.02 (adopting the UCC in Alaska).

a. Offer

An “offer” is an expression by one party of assent to certain terms. See *Gov't Emps. Ins. Co. v. Graham-Gonzalez*, 107 P.3d 279, 283 (Alaska 2005). The Restatement (Second) of Contracts § 24 (1981) 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.”

Here, Stan tells Bridget that he will sell her a GPS unit for \$4,500. In his offer, Stan includes a delivery date, the method of delivery, and boilerplate contract terms.

Examinees should note that a valid offer must encompass all essential terms. If the terms of the offer are not reasonably certain, the offer cannot be accepted. An agreement is unenforceable if its terms are not reasonably certain. See *Davis v. Dykman*, 938 P.2d 1002, 1006 (Alaska 1997). Here, an examinee may argue that the written offer does not specify that the unit is “state-of-the-art.”

b. Acceptance

In order for a contract to arise, acceptance of an offer must be unequivocal and in exact compliance with the terms of the offer. *See Thrift Shop, Inc. v. Alaska Mut. Sav. Bank*, 398 P.2d 657, 659 (Alaska 1965). Alaska Statute 45.02.206(a)(1) provides: “Unless otherwise ambiguously 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[.]”

Here, Stan’s offer provided that Bridget’s acceptance must be by return fax within 72 hours. Bridget faxed her acceptance to Stan within this time period, thereby successfully accepting Stan’s offer.

Examinees may argue that Bridget’s return fax constituted a rejection and a counteroffer because her acceptance of Stan’s offer was contingent upon his purported promise not to sell a GPS unit to her competitor. Alaska law provides that 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.” AS 45.02.207(a).

Here, the facts are not clear as to whether Bridget’s handwritten note is a clarification of an existing term, or an additional or different term that would transform her acceptance of Stan’s offer into a rejection and counteroffer. Examinees may reach different conclusions but should recognize the controlling rule under Alaska law.

c. Consideration

Bridget’s agreement to pay Stan \$4,500 for the GPS unit is valid consideration for their agreement. *See* Restatement (Second) of Contracts § 71 (1981) (to constitute valid consideration, a return promise must be sought by the promisor in exchange for his promise and given by the promisee in exchange for that promise); *see also Black’s Law Dictionary* 300 (7th ed. 1999) (consideration is defined as something of value – such as an act, a forbearance, or a return promise – received by a promisor from a promisee).

d. Intent to Be Bound

A valid contract under Alaska law requires that the parties objectively manifest an intent to be bound. *Zeman v. Lufthansa German Airlines*, 699 P.2d 1274 (Alaska 1985). A party cannot rely on her subjective intent to defeat the existence of a contract if her words and actions objectively and reasonably led another to believe a contract had been entered. *Id.* at 1281.

Here, Bridget and Stan have each demonstrated an intent to be bound by the terms of the original offer.

e. Statute of Frauds

Examinees may note that this contract falls under the Statute of Frauds because it is a contract for the sale of goods for \$500 or more. Alaska Statute 45.02.201(a) provides that 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.” The Alaska Supreme Court has explained that such a writing need not be formal or complete, and that a “writing may be sufficient even though it is cryptic, abbreviated, and incomplete.” *Fleckenstein v. Faccio*, 619 P.2d 1016, 1021 n.18 (Alaska 1980).

Examinees should note that the Statute of Frauds requires that the writing be signed by the party sought to be charged. AS 45.02.201. The facts show that both parties signed the agreement.

f. Bridget’s Capacity to Contract

The facts indicate that Bridget may have been under the influence of pain medication when she reviewed and signed the contract from Stan. This gives rise to an argument that Bridget was incapacitated and mentally incapable of entering into a contract, and therefore she did not have the requisite capacity to be bound. *See Sykes v. Melba Creek Mining, Inc.*, 952 P.2d 1164 (Alaska 1998); Restatement (Second) of Contracts § 12, cmts. a, c (1981).

The facts do not reveal whether Bridget’s decision-making ability was affected by the medication, but perceptive examinees may analyze her capacity to contract with Stan and may reach any reasoned conclusion.

3. Parol Evidence (30 points)

The Alaska Supreme Court has stated: “The parol evidence rule is implicated when one party seeks to introduce extrinsic evidence which varies or contradicts an integrated contract.” *Froines v. Valdez Fisheries Dev. Ass’n, Inc.*, 75 P.3d 83, 87 (Alaska 2003). In Alaska, parties may introduce parol evidence to explain or supplement a written contract through evidence of consistent additional terms, unless the court finds the writing was intended to be a complete expression of the terms of the contract. *Braund, Inc. v. White*, 486 P.2d 50, 55 (Alaska 1971). An integrated written contract may not be varied or contradicted by prior negotiations or agreements. *See AS 45.02.202.*

Courts analyze parol evidence using a three-part test. First, the court considers whether the contract is integrated. A contract is integrated if it is intended by the parties to be a final expression of some or all of the terms of their agreement. *S & B Mining Co. v. N. Commercial Co.*, 813 P.2d 264, 270 (Alaska 1991). Second, the court determines what the contract means. Oral evidence that comes from outside the document is “extrinsic” evidence and is admissible to show meaning. No threshold showing of ambiguity is required before a court considers extrinsic evidence. *Braund*, 486 P.2d at 55-56. Extrinsic evidence may always be considered in resolving these first two inquiries. *Froines*, 75 P.3d at 87. Finally, the court must determine whether the prior agreement conflicts with the integrated agreement. Extrinsic evidence is admissible to show meaning, but once meaning is determined, contradictory evidence is excluded. *Id.*

Examinees should examine the facts using this three-part analysis. Here, the facts do not indicate whether the contract between Stan and Bridget was integrated – that is, a complete and exclusive statement of the terms of the contract. Examinees may point to Stan’s use of the word “Final” in titling the agreement as evidence of the contract’s integration. Others may argue that Bridget’s handwritten addition to the contract shows that it was not an integrated agreement.

If the examinee finds that the contract is not integrated, he or she should note that the discussion between Bridget and Stan may have given rise to an agreement or term that was created prior to or contemporaneously with the written contract. The examinee should conclude that evidence of terms that are consistent with those terms contained in the written contract should be admitted at trial.