

## ESSAY QUESTION NO. 9

### Answer this question in booklet No. 9

*Safe Skies* was a domestic manufacturer of the X1000 airport security screening system, which was designed to identify nonorganic substances on the traveler's body through a combination of x-ray and thermal imaging technology. Throughout 2009, *Safe Skies* met with representatives from *Frigid International Airport (F.I.A.)*, in Frigid, Alaska. *Safe Skies* extolled the X1000, provided drawings of renovations needed at F.I.A. to accommodate the new equipment, explained additional labor requirements, and told F.I.A. that two X1000s, which would be adequate, had a market price of \$1.6 million.

On January 1, 2010 *F.I.A.*'s president received a letter by facsimile signed by *Safe Skies*' president offering to sell two X1000 systems to *F.I.A.* for a total cost of \$1.2 million, delivery to take place no later than February 1, 2010. All equipment would be under warranty for five years and payment for the equipment would be in 66 monthly installments, commencing on March 1, 2010. The offer was to remain open for a period of seven days.

Recognizing a great deal when he saw one, the president of *F.I.A.* promptly picked up the telephone and called the *Safe Skies* office. When he found that the office was closed, *F.I.A.*'s president left the following message on *Safe Skies*' president's answering machine: "Your proposal looks great. We accept. Give me a call when you get back so we can discuss the details."

On January 2, 2010, *F.I.A.* began work on renovations suggested by *Safe Skies*, including removal of two walls and some of the flooring materials in the airport and hired eight new security personnel to begin training on the new equipment and security procedures.

On the morning of January 4, 2010, *F.I.A.*'s president received a facsimile from *Safe Skies* stating: "All outstanding offers are hereby rescinded." *Safe Skies* later offered by telephone to sell *F.I.A.* two X1000 systems for \$1.7 million.

1. Was a valid contract formed for the sale of two X1000 airport security screening systems for \$1.2 million? Explain.
2. Assume a valid contract was formed, what are *F.I.A.*'s potential remedies for *Safe Skies*' breach?

## GRADER'S GUIDE

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

#### SUBJECT: CONTRACTS

**1. Was there a valid contract for the sale of two X1000 airport security screening systems for \$1.2 million? Explain. (50 points)**

Yes, there was a valid contract because all of the elements necessary for the formation of a contract were satisfied, as was the statute of frauds.

a. The Elements of Contract Formation Were Satisfied. (35 points).

The four elements of contract formation are: “an offer encompassing all essential terms, unequivocal acceptance by the offeree, consideration, and an intent to be bound.” *Wyatt v. Wyatt*, 65 P.3d 825, 828 (Alaska 2003) (quoting *Davis v. Dykman*, 938 P.2d 1002, 1006 (Alaska 1997)). The letter faxed to the president of F.I.A. included all essential terms, including product identification, price, delivery schedule, warranties, and payment terms. Examinees may argue that the acceptance by F.I.A.’s president was not unequivocal, due to the last clause in his response that they would “discuss the details.” He started his message with general affirmation of the terms and the words “we accept.” It is also apparent that at the time of the offer and acceptance, both parties intended to be bound by the contract and the sales price of \$1.2 million constitutes the required consideration.

The U.C.C. applies to this particular sale. AS 45.02.102 provides that unless the context otherwise requires, Chapter 45 applies “to transactions in goods . . .” which are defined by AS 45.02.105 as “all things, including specially manufactured goods that are movable at the time of identification to the contract for sale other than money . . . .”

b. The Statute of Frauds Was Satisfied. (15 points).

AS 9.25.010(a) provides that where “an agreement that by its terms is not to be performed within a year from the making of it,” the agreement is unenforceable unless “it or some note or memorandum of it is in writing and subscribed by the party charged . . . .” Likewise, under AS 45.02.201, a contract for the sale of goods for the price of \$500 or more “is not enforceable by action or defense 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 or by an authorized agent or broker of that party.”

The statute of frauds has been uniformly interpreted to place substance over form. It has not been construed to require a formal or complete written contract and should be flexibly applied on a case-by-case basis to accept any writing that realistically dispels the danger of fraud. 2 Arthur Linton Corbin, *Corbin on Contracts* § 498, at 681 (1950) (citations omitted), as quoted in *Fleckenstein v. Faccio*, 619 P.2d 1016, 1020 (Alaska 1980).

In the scenario set forth in this exam question, there is a writing executed by the party to be charged – the party against whom the contract is sought to be enforced. There is no basis for objecting to the writing, which clearly signals intent by *Safe Skies* to be bound by the offer. The statute of frauds is satisfied.

## **2. What are F.I.A.’s potential remedies? (50 points)**

An injured party “has a right to damages based on his expectation interest ... plus ... any other loss, including incidental or consequential loss, caused by the breach.” *American Computer Institute, Inc. v. State*, 995 P.2d 647 (Alaska 2000).

### a. Expectation interest (20 points)

The ordinary measure of damages in contract law is the expectation interest, which strives to give the benefit of the bargain to the non-breaching party. *Alaska Const. Equipment, Inc. v. Star Trucking, Inc.*, 128 P.3d 164 (Alaska 2006). See also *Restatement (Second) of Contracts* § 347 & cmt. a (1981) (“Contract damages are ordinarily based on the injured party’s expectation interest and are intended to give him the benefit of his bargain by awarding him a sum of money that will, to the extent possible, put him in as good a position as he would have been in had the contract been performed.”).

Alaska’s U.C.C., AS 45.02.715, provides incidental damages resulting from the seller’s breach that include “expenses reasonably incurred in inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions in connection with effecting cover and other reasonable expense incident to the delay or breach.”

Expectation damages may be in the form of (1) the difference between the cost of obtaining a replacement from another source and the contract

price; (2) the difference between market price at the time and place of delivery and the contract price.

b. Consequential damages (15 points)

AS 45.02.715 provides consequential damages resulting from the seller's breach that include "loss resulting from general or particular requirements and needs of which the seller at the time of contracting had reason to know and that could not reasonably be prevented by cover or otherwise; and injury to person or property proximately resulting from a breach of warranty."

*F.I.A.* may recover consequential damages based on actions it took in reasonable reliance on the contract. At a minimum they will have expenses associated with the renovations at the airport in preparation for the installation of the two X1000s and expenses for the new employees they had already hired. Prejudgment interest is also a form of consequential damages. *Farnsworth v. Steiner*, 638 P.2d 181, 184 (Alaska 1981).

c. Specific Performance (15 points)

The examinee should discuss specific performance. Specific performance is an equitable remedy which historically has been available only where money damages were inadequate, but the modern trend is to relax that requirement. *Gudenau v. Bierria*, 868 P.2d 907 (Alaska 1994). Specific performance is available in Alaska "where the goods are unique or in other proper circumstances." AS 45.02.716. "The decree for specific performance may include such terms and conditions as to payment of the price, damages, or other relief as the court considers just." *Id.* Finally, the buyer has a right to enforce the contract "if after reasonable effort the buyer is unable to effect cover for the goods or the circumstances reasonably indicate that such effort will be unavailing . . . ." *Id.*

The legal remedies are probably not inadequate, here. But as the statute above demonstrates, this is no longer a strict requirement. Specific performance may be pursued by *F.I.A.*

Because specific performance is an equitable remedy, standard equitable defenses such as unclean hands or laches may be relied on where specific performance is sought. Unclean hands is an equitable defense that requires a showing of "wrongdoing" by the other party: "In order to successfully raise the defense of 'unclean hands,' the defendant must

show: (1) that the plaintiff perpetrated some wrongdoing; and (2) that the wrongful act related to the action being litigated.” *Knaebel v. Heiner*, 663 P.2d 551, 554 (Alaska 1983). There does not appear to be a basis for claiming *F.I.A.* has unclean hands as there is no evidence of wrongdoing by *F.I.A.*

The doctrine of laches creates an equitable defense when a party delays asserting a claim for an unconscionable period. *State, Dept. of Commerce and Economic Development, Div. of Ins. v. Schnell*, 8 P.3d 351, 358 (Alaska 2000) citing *Concerned Citizens of South Kenai Peninsula v. Kenai Peninsula Borough*, 527 P.2d 447, 457 (Alaska 1974). To bar a claim under laches, “[a] court must find both an unreasonable delay in seeking relief and resulting prejudice to the defendant.” *Id.* at 358-59. In this matter there are no facts identifying a delay in seeking relief.

The examinee may also discuss restitution, but in order to obtain restitution, the plaintiff must prove that *Safe Skies* has been unjustly enriched. Restitution damages would be in the amount of the benefit conferred on the seller. Here there is no indication that *Safe Skies* has been unjustly enriched, other than attempting to sell the systems at a higher price.