Sample Exam Question #2 - Model Answer

Your neighbor, Justin Thyme, comes to you for some friendly advice about a problem he is having with Debbie Little, who owns a vintage Volkswagen dealership. Justin, who collects Volkswagens as a hobby, made a “handshake deal” with Debbie to purchase four 1966 Volkswagen Beetles for $5,000 each. Debbie and Justin agreed that Justin could pick up the cars at any time in the next 30 days, and that payment for each car would be due when he picked the car up from Debbie’s lot.

The day after Justin and Debbie made their deal, Debbie sent Justin a signed letter purporting to confirm their oral agreement. Debbie’s letter, however, described the agreement as the sale of two 1966 Volkswagen Beetles for $7,500 each. After receiving the letter, Justin tried for two weeks to reach Debbie to clear up the matter, but she was out of town on vacation. When Justin finally reached Debbie, she insisted that the terms of the letter were the only ones on which she would agree – even though Justin told her that his friend Magda, who went with him to Debbie’s dealership the day the Justin and Debbie made their oral agreement, overheard their agreement and would testify that Debbie had agreed to sell Justin four 1966 Beetles for $5,000 each, not two cars for $7,500 each.

If Justin sues Debbie for breach of contract:

A. Should Justin’s and Magda’s testimony regarding the terms of the oral agreement be admissible despite the signed writing? Please explain.

Yes, because there is no writing that was intended by both Justin and Debbie to be a final expression of their agreement, even with respect to the terms included therein. The only writing that exists here is Debbie’s confirmation, and that writing is clearly not intended by Justin to be a final expression of his agreement with respect to anything. And, because Justin is not a merchant (see UCC § 2-104 cmt. 2), he is not bound by Debbie’s written “confirmation” due to his failure to timely object in writing to the terms thereof.

B. How many Beetles should Justin be able to prove he is entitled to purchase from Debbie, and at what price per car? Please explain.

Under § 2-207, if you have a single confirmation to an already concluded oral agreement, different terms in the confirmation should not become part of the agreement unless they are expressly agreed to by the other side. If the rule were otherwise, then you would give a party the ability to unilaterally change the terms of an already concluded agreement. Using the standard
approach to different terms in a single confirmation, then the price of each Beetle should be $5,000, not $7,500.

The standard approach to different terms in a single confirmation breaks down, however, when the different term is quantity. You can’t talk about terms until you first have an enforceable contract. And, because § 2-201 deals with enforceability, its requirements will supersede those of § 2-207. (Official Comment 6 to § 2-207 tells us that “[t]he written confirmation is also subject to Section 2-201.”) One of the enforceability requirements in § 2-201 is quantity. § 2-201(1) provides: “A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.” In this case, then, Justin would not be able to enforce a contract with Debbie beyond the two cars mentioned in her signed letter to him. That letter will qualify as the writing he needs to enforce the contract under § 2-201(1), since it is signed by the party to be charged (Debbie), it is sufficient to indicate that a contract for sale has been made, and it contains a quantity. Because he must rely on that letter as the basis for enforcing the contract, Justin will be stuck under § 2-201(1) to no more than two cars.