

PEARSON NEW INTERNATIONAL EDITION

Business Law

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Eighth Edition**

Pearson Education Limited

Edinburgh Gate

Harlow

Essex CM20 2JE

England and Associated Companies throughout the world

Visit us on the World Wide Web at: www.pearsoned.co.uk

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PEARSON

ISBN 10: 1-292-02340-6

ISBN 13: 978-1-292-02340-3

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library

Printed in the United States of America

Statute of Frauds and Equitable Exceptions

Example Barney hires Cynthia, a licensed real estate broker, to sell his house. Because a contract to sell real estate must be in writing pursuant to the Statute of Frauds, the equal dignity rule requires that the real estate agents' contract be in writing as well. Some state Statutes of Frauds expressly state that the real estate broker and agents' contracts must be in writing.

Promises Made in Consideration of Marriage

Under the Statute of Frauds, a unilateral promise to pay money or property in consideration for a promise to marry must be in writing.

Example A **prenuptial agreement**, which is a contract entered into by parties prior to marriage that defines their ownership rights in each other's property, must be in writing.

UCC Statutes of Fraud

The Uniform Commercial Code (UCC) establishes statutes of fraud for sales and lease contracts. The UCC statutes of fraud are discussed in the following paragraphs.

UCC: Contract for the Sale of Goods

Section 2-201(1) of the Uniform Commercial Code (UCC) is the basic Statute of Frauds provision for **sales contracts**. It states that contracts for the sale of goods costing \$500 or more must be in writing to be enforceable. If the contract price of an original sales contract is below \$500, it does not have to be in writing under the UCC **Statute of Frauds**. However, if a modification of the sales contract increases the sales price to \$500 or more, the *modification* has to be in writing to be enforceable.

Example Echo enters into an oral contract to sell James her used car for \$10,000, with the delivery date to be May 1. When May 1 comes and James tenders \$10,000 to Echo, Echo refuses to sell her car to James. The contract will not be enforced against Echo because it was an oral contract for the sale of goods costing \$500 or more, and it should have been in writing.

The most recent revision to UCC 2-201 requires that contracts for the sale of goods costing \$5,000 or more must be in writing to be enforceable. A state must adopt this amendment for it to become effective. However, most states have not enacted this change.

UCC: Contract for the Lease of Goods

Section 2A-201(1) of the Uniform Commercial Code (UCC) is the Statute of Frauds provision that applies to the lease of goods. It states that **lease contracts** involving payments of \$1,000 or more must be in writing. If a lease payment of an original lease contract is less than \$1,000, it does not have to be in writing under the UCC Statute of Frauds. However, if a modification of the lease contract increases the lease payment to \$1,000 or more, the *modification* has to be in writing to be enforceable.

The most recent revision to UCC 2A-201 requires that lease contracts involving payments of \$20,000 or more must be in writing to be enforceable. A state must adopt this amendment for it to become effective. However, most states have not enacted this change.

Equitable Exception: Part Performance

If an oral contract for the sale of land or transfer of other interests in real property has been partially performed, it may not be possible to return the parties to their *status quo*. To solve this problem, the courts have developed the equitable

Section 2-201(1) of the Uniform Commercial Code (UCC)

A section of the Uniform Commercial Code (UCC) that states that sales contracts for the sale of goods costing \$500 or more must be in writing.

To break an oral agreement which is not legally binding is morally wrong.

Bava Metzi'a
The Talmud

Section 2A-201(1) of the Uniform Commercial Code (UCC)

A section of the Uniform Commercial Code (UCC) that states that lease contracts involving payments of \$1,000 or more must be in writing.

doctrine of **part performance**. This doctrine allows the court to order such an oral contract to be specifically performed if performance is necessary to avoid injustice. For this performance exception to apply, most courts require that the purchaser either pay part of the purchase price and take possession of the property or make valuable improvements on the property.

In the following case, the court had to determine whether the equity doctrine of part performance applied.

part performance

An equitable doctrine that allows the court to order an oral contract for the sale of land or transfer of another interest in real property to be specifically performed if it has been partially performed and performance is necessary to avoid injustice.



Ethics

Equity Saves an Oral Agreement for the Purchase of Real Estate

“The doctrine of part performance by the purchaser is a well-recognized exception to the Statute of Frauds as applied to contracts for the sale of real property.”

—Kline, Judge

Arlene and Donald Warner inherited a home at 101 Molimo Street in San Francisco. The Warners obtained a \$170,000 loan on the property. Donald Warner and Kenneth Sutton were friends. Donald Warner proposed that Sutton and his wife purchase the residence. His proposal included a \$15,000 down payment toward the purchase price of \$185,000. The Suttons were to pay all the mortgage payments and real estate taxes on the property for five years and at any time during the five-year period, they could purchase the house. All this was agreed to orally.

The Suttons paid the down payment and cash payments equal to the monthly mortgage to the Warners. The Suttons paid the annual property taxes on the house. The Suttons also made improvements to the property. Four and one-half years later, the Warners reneged on the oral sales/option agreement. At that time, the house had risen in value to between \$250,000 and \$320,000. The Suttons sued for specific performance

of the sales agreement. The Warners defended, alleging that the oral promise to sell real estate had to be in writing under the Statute of Frauds and was therefore unenforceable.

The trial court applied the equitable doctrine of part performance and ordered the Warners to specifically perform the oral contract. The court of appeal, which agreed, stated: “The actions taken by the Suttons in reliance upon the oral agreement, when considered together with the Warners’ admission that there was an oral agreement of some duration, satisfy the elements of the part performance doctrine.” The court of appeal held that the equitable doctrine of part performance made the oral contract for the sale of real property in this case enforceable. *Sutton v. Warner*, 12 Cal.App.4th 415, 15 Cal.Rptr.2d 632, Web 1993 Cal.App. Lexis 22 (Court of Appeal of California)

Ethics Questions Who would have won if the Statute of Frauds were applied to this case? What does the equitable doctrine of part performance provide? Why was this doctrine developed? Did the Warners act ethically in this case?

Icon: Montego/Shutterstock

Formality of the Writing

Some written commercial contracts are long, detailed documents that have been negotiated by the parties and drafted and reviewed by their lawyers. Others are preprinted forms with blanks that can be filled in to fit the facts of a particular situation.

A written contract does not, however, have to be either drafted by a lawyer or formally typed to be legally binding. Generally, the law only requires a writing containing the essential terms of the parties’ agreement. Thus, any writing—including letters, telegrams, invoices, sales receipts, checks, and handwritten agreements written on scraps of paper—can be an enforceable contract under this rule.

Required Signature

The Statute of Frauds and the UCC require a written contract, whatever its form, to be signed *by the party against whom enforcement is sought*. The signature of

Most of the disputes in the world arise from words.

Lord Mansfield, C. J.
Morgan v. Jones (1773)

Statute of Frauds and Equitable Exceptions

WEB EXERCISE

John Hancock's bold signature on the U.S. Declaration of Independence is one of the most famous signatures in history. Go to www.fotosearch.com/DGT081/cbr002400 to see this signature.

integration of several writings

The combination of several writings to form a single contract.

incorporation by reference

Integration made by express reference in one document that refers to and incorporates another document within it.

*Counsel Randle Jackson:
In the book of nature, my
lords, it is written—Lord
Ellenborough: Will you have
the goodness to mention the
page, sir, if you please?*

Lord Campbell
Lives of the Chief Justices (1857)

the person who is enforcing the contract is not necessary. Thus, a written contract may be enforceable against one party but not the other party.

Generally, the signature may appear anywhere on the writing. In addition, it does not have to be a person's full legal name. The person's last name, first name, nickname, initials, seal, stamp, engraving, or other symbol or mark (e.g., an X) that indicates the person's intent can be binding. The signature may be affixed by an authorized agent.

If a signature is suspected of being forged, the victim can hire handwriting experts and use modern technology to prove it is not his or her signature.

Integration of Several Writings

Both the common law of contracts and the UCC permit several writings to be **integrated** to form a single written contract. That is, the entire writing does not have to appear in one document to be an enforceable contract.

Integration may be by an *express reference* in one document that refers to and incorporates another document within it. This procedure is called **incorporation by reference**. Thus, what may often look like a simple one-page contract may actually be hundreds of pages long when all of the documents incorporated by reference are considered.

Example Credit card contracts often incorporate by express reference such documents as the master agreement between the issuer and cardholders, subsequent amendments to the agreement, and such.

Several documents may be integrated to form a single written contract if they are somehow physically attached to each other to indicate a party's intent to show integration. Attaching several documents together with a staple, paper clip, or some other means may indicate integration. Placing several documents in the same container (e.g., an envelope) may also indicate integration. Such an action is called **implied integration**.

Interpreting Contract Words and Terms

When contracts are at issue in a lawsuit, courts are often called upon to interpret the meaning of certain contract words or terms. The parties to a contract may define the words and terms used in their contract. Many written contracts contain a detailed definition section—usually called a **glossary**—that defines many of the words and terms used in the contract.

If the parties have not defined the words and terms of a contract, the courts apply the following **standards of interpretation**:

- *Ordinary* words are given their usual meaning according to the dictionary.
- *Technical words* are given their technical meaning, unless a different meaning is clearly intended.
- *Specific terms* are presumed to qualify *general terms*. For example, if a provision in a contract refers to the subject matter as "corn," but a later provision refers to the subject matter as "feed corn" for cattle, this specific term qualifies the general term.
- If both parties are members of the same trade or profession, words will be given their meaning as used in the trade (i.e., **usage of trade**). If the parties do not want trade usage to apply, the contract must indicate that.
- Where a preprinted form contract is used, *typed words* in a contract prevail over *preprinted words*. *Handwritten words* prevail over both preprinted and typed words.
- If there is an ambiguity in a contract, the ambiguity will be resolved against the party who drafted the contract.

Parol Evidence Rule

By the time a contract is reduced to writing, the parties usually have engaged in prior or contemporaneous discussions and negotiations or exchanged prior writings. Any oral or written words outside the *four corners* of the written contract are called **parol evidence**. *Parol* means “word.”

The **parol evidence rule** was originally developed by courts as part of the common law of contracts. The UCC has adopted the parol evidence rule for sales and lease contracts.⁶ The parol evidence rule states that if a written contract is a complete and final statement of the parties’ agreement (i.e., a **complete integration**), any prior or contemporaneous oral or written statements that alter, contradict, or are in addition to the terms of the written contract are inadmissible in any court proceeding concerning the contract.⁷ In other words, a completely integrated contract is viewed as the best evidence of the terms of the parties’ agreement.

Merger, or Integration, Clause

The parties to a written contract may include a clause stipulating that the contract is a complete integration and the exclusive expression of their agreement and that parol evidence may not be introduced to explain, alter, contradict, or add to the terms of the contract. This type of clause, called a **merger clause**, or an **integration clause**, expressly reiterates the parol evidence rule.

Exceptions to the Parol Evidence Rule

There are several major exceptions to the parol evidence rule. Parol evidence may be admitted in court if it:

- Shows that a contract is void or voidable (e.g., evidence that the contract was induced by fraud, misrepresentation, duress, undue influence, or mistake).
- Explains ambiguous language.
- Concerns a *prior course of dealing or course of performance* between the parties or a *usage of trade*.⁸
- *Fills in the gaps* in a contract (e.g., if a price term or time of performance term is omitted from a written contract, the court can hear parol evidence to imply the reasonable price or time of performance under the contract).
- Corrects an obvious clerical or typographical error. The court can *reform* the contract to reflect the correction.

In the following case, the court refused to admit parol evidence and enforced the express terms of a written contract.

parol evidence

Any oral or written words outside the four corners of a written contract.

parol evidence rule

A rule that says if a written contract is a complete and final statement of the parties’ agreement, any prior or contemporaneous oral or written statements that alter, contradict, or are in addition to the terms of the written contract are inadmissible in court regarding a dispute over the contract. There are several exceptions to this rule.

merger clause (integration clause)

A clause in a contract that stipulates that it is a complete integration and the exclusive expression of the parties’ agreement.



CASE 2 Parol Evidence Rule

Yarde Metals, Inc. v. New England Patriots Limited Partnership

834 N.E.2d 1233, Web 2005 Mass. App. Lexis 904 (2005)
Appeals Court of Massachusetts

“The purchase of a ticket to a sports or entertainment event typically creates nothing more than a revocable license.”

—Greenberg, Judge

Icon: Courtesy of the author, Henry Cheeseman

Facts

Yarde Metals, Inc. (Yarde) was a season ticket holder to New England Patriots professional home football games. The football team is owned by the New England Patriots Limited Partnership (Patriots).

(case continues)

Yarde permitted a business associate to attend a Patriots game. However, the associate was ejected from the game for disorderly conduct. Subsequently, the Patriots sent Yarde a letter terminating his season ticket privileges in the future. Yarde sued the Patriots, claiming that the Patriots had breached his implied contractual right to purchase season tickets. The Patriots countered that the Patriots' written contract with season ticket holders expressly provided that the "purchase of season tickets does not entitle purchaser to renewal in a subsequent year." The Patriots asserted that because the contract with Yarde was an express written contract, then Yarde's claim of a implied right to purchase season tickets in the future was parol evidence and was inadmissible to change the express terms of the contract. The trial court dismissed Yarde's case. Yarde appealed.

Issue

Does Yarde have an implied right to purchase Patriots' season tickets?

Language of the Court

The purchase of a ticket to a sports or entertainment event typically creates nothing more than a revocable license. Where there is a seemingly clear transaction—Yarde purchased tickets to ten games—we cannot infer an annual renewal right. More importantly, such a theory would disregard the Patriots'

express disclaimers of any right of the purchaser to renew in subsequent years printed on game tickets and informational material provided to season ticket holders. The ticket specifically stated that "purchase of season tickets does not entitle purchaser to renewal in a subsequent year." Parol evidence is not generally admissible to vary the unambiguous terms of the contract. Yarde has articulated no basis on which we can ignore the language on the ticket.

Decision

The appeals court held that there was an express written contract between Yarde and the Patriots, and that the parol evidence rule prevented Yarde's alleged implied right to purchase season tickets from becoming part of that contract. The appeals court affirmed the trial court's dismissal of Yarde's case.

Case Questions

Critical Legal Thinking

What is the parol evidence rule?

Ethics

Was it ethical for the Patriots to terminate Yarde's season ticket privileges? Was there good cause to do so?

Contemporary Business

What would be the consequences if there were no parol evidence rule?

promissory estoppel (equitable estoppel)

An equitable doctrine that permits enforcement of oral contracts that should have been in writing. It is applied to avoid injustice.

Equitable Exception: Promissory Estoppel

The doctrine of **promissory estoppel**, or **equitable estoppel**, is another equitable exception to the strict application of the Statute of Frauds. The version of promissory estoppel in the *Restatement (Second) of Contracts* provides that if parties enter into an oral contract that should be in writing under the Statute of Frauds, the oral promise is enforceable against the promisor if three conditions are met: (1) The promise induces action or forbearance of action by another, (2) the reliance on the oral promise was foreseeable, and (3) injustice can be avoided only by enforcing the oral promise.⁹ Where this doctrine applies, the promisor is *estopped* (*prevented*) from raising the Statute of Frauds as a defense to the enforcement of the oral contract.

Key Terms and Concepts

Agents' contract

Complete integration

Easement

Equal dignity rule

Executory contract

Glossary

Guarantor

Guaranty contract

Implied integration

Incorporation by

reference

Integration of several writings

Lease

Lease contracts

Life estate

Main purpose exception (leading object exception)

Merger clause

(integration clause)