

Chapter 10

Statute of Frauds

I. Statute of Frauds

- Requirement that some contracts MUST BE in writing
- Why?
 - Prevent Fraud
- A. Writing must meet some basic requirements
 1. Signed by the party responsible
 2. Must evidence essential terms
 - Parties, subject matter, \$\$, quantity, what performance is due, when?
 3. Recital of consideration

B. Can be one or more documents

- If more than one document, must show that the documents are “integrated”
- Show that the documents belong together
- “Incorporated herein by reference...”

C. CAUTION: Incomplete writings

- Evidence of missing information to bring contract within S.O.F. may be barred by parol evidence
- Oral evidence of missing terms not permitted where contract falls within S.O.F.

D. What happens if no writing?

1. Each party may give up the right to obtain enforcement in court
2. May give other a defense of noncompliance
3. BUT: Part Performance, appearing to be nonfraudulent and reliable, of oral contract within S.O.F. provides exception allowing enforcement

E. Estoppel and S.O.F.

1. Estoppel → Promisee has reasonably and foreseeably relied on the promise to her detriment
2. W/ S.O.F. → A party is prevented from asserting lack of writing, barring enforceability of the contract if the other party had detrimentally relied
3. Monaco v. Lo Greco

II. What Contracts Fall Within the Statute of Frauds??

- A. Contracts for the sale or transfer of an interest in land
 - 1. Also includes rental property
 - 2. Partial performance, payment of price, possession of home, improvements, may excuse writing requirement

- B. Contracts made in consideration of marriage
 - 1. Prenuptial Agreements
 - 2. Divorce Agreements
 - 3. Promises to marry

C. Promises to Answer for the debts of others

1. Suretyship agreements
 - Contract where a party has undertaken to pay another's debt out of own resources
2. Surety / Guarantor
 - Someone who makes that promise
 - Co-signing

D. Contracts that cannot be performed in less than one year

1. Must be NO POSSIBILITY of performance
2. Can it theoretically be performed in less than a year? If so, statute does not apply and oral contract ok.
3. Theory: can't trust memory of long term contract.

E. Sale of goods over \$500

1. ... over \$500 is not enforceable unless there is some writing “sufficient to indicate” that a contract for sale has been made. §2-201(1) (p. 209)
2. Part performance can take contract out of statute if buyer has paid for goods
3. Between merchants §2-201(2)
 - If within a reasonable time a writing in confirmation of contract and sufficient against the sender is received and party receiving it has reason to know of its contents
→ memo is sufficient contract
 - Unless, written objection within 10 days

4. Writing requirement

- a. May be one document or several integrated documents
- b. Docs need only show contract for sale has been made
- c. Be signed by the appropriate party
- d. Indicate what quantity contracted for
- e. GAP FILLERS for missing terms
- f. Gittes v. Cook Intern