

Key Concept 10: Statute of Frauds¹

In contract law, there are certain situations in which a promise that is not in writing can be denied enforcement. In such situations, an otherwise valid contract can be unenforceable if it does not comply with the formalities required by state law. These situations are controlled by a type of statute called the Statute of Frauds.

A contract is said to be “within” (covered by) the statute of frauds if the statute requires that sort of contract to be evidenced by a writing. In almost all states the following types of contract are *within* the statute of frauds.

1. Collateral contracts in which a person promises to perform the obligation of another person.
2. Contracts for the sale of an interest in real estate.
3. Bilateral contracts that cannot be performed within a year from the date of their formation.
4. Contracts for the sale of goods for a price of \$500 or more.

Collateral Contracts

A **collateral contract** is one in which one person (the *guarantor*) agrees to pay the debt or obligation that a second person (the *principal debtor*) owes to a third person (the *obligee*) if the principal debtor fails to perform. For example, Cohn, who wants to help Davis to establish a business, promises First Bank that he will repay the loan that First Bank makes to Davis if Davis fails to pay it. Here, Cohn is the principal debtor, and First Bank is the obligee. Cohn’s promise to First Bank must be in writing to be enforceable.

When a person undertakes an obligation that is *not* conditioned on the default of another person, and the debt is his own rather than that of another person, his obligation is said to be *original*, not collateral. For example, when Timmons calls Johnson Florist Company and says “Send flowers to Elrod”, Timmons is undertaking an obligation to pay *her own* — not someone else’s — debt.

Interest in Land

Any contract that creates or transfers an interest in land is within the statute of frauds. Courts have interpreted the land provision of the statute of frauds broadly to require written evidence of any transaction that will affect the ownership of an interest in land. Thus, a contract to sell or mortgage real estate must be evidenced by a writing as must an option to purchase real estate or a contract to grant an easement or permit the mining and removal of minerals on land. A lease is

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also a transfer of an interest in land, but most states do not require leases to be in writing unless they are long-term leases, usually those for one year or more.

When the vendee (purchaser of land) does act in clear reliance on an oral contract for the sale of land, an equitable doctrine commonly known as the “part performance doctrine” permits the vendee to enforce the contract notwithstanding the fact that it was oral.

A contract for the transfer of an interest in land can be enforced even without a writing if the person seeking enforcement:

1. Has *reasonably relied* on the contract and on the other party’s assent.
2. Has changed his position to such an extent that *enforcement of the contract is the only way to prevent injustice*.

In other words, the vendee must have done some act in reliance on the contract, and the nature of the act must be such that restitution (returning his money) would not be an adequate remedy.

For example, Contreras and Miller orally enter into a contract for the sale of Contreras’s land. If Miller pays Contreras a substantial part of the purchase price and either takes possession of the land or begins to make improvements on it, the contract would be enforceable without a writing under the part performance doctrine.

Contracts That Cannot Be Performed Within One Year

A bilateral, executory contract that cannot be performed within one year from the day on which it comes into existence is within the statute of frauds and must be evidenced by a writing.

A contract which has been fully performed by *one* of the parties is “taken out of the statute of frauds” and is enforceable without a writing. For example, Nash enters into an oral contract to perform services for Thomas for 13 months. If Nash has already performed his part of the contract, Thomas will be required to pay him the contract price.

In addition, this provision of the statute has been held to apply only where the terms of the contract make it impossible for the contract to be completed within one year. If the contract is for an indefinite period time, it is not within the statute of frauds. This is true even if, in retrospect, the contract was not completed within a year. Thus, Weinberg’s agreement to work for Wolf for an indefinite period of time would not have to be evidenced by a writing, even if Weinberg eventually works for Wolf for many years.

A contract “for life” is not within the statute of frauds because it is possible — since death is an uncertain event — for the contract to be performed within a year.

Sale of Goods for \$500 or More

In the United States today, the writing requirement for the sale of goods is governed by section 2-201 of the Uniform Commercial Code. This section provides that contracts for the sale of goods for the price of \$500 or more are not enforceable without a writing.

MEETING THE REQUIREMENTS OF THE STATUTE OF FRAUDS

Nature of the Writing Required.

Most states require only a *memorandum* of the parties' agreement; they do not require that the entire contract be in writing. Essential terms of the contract must be stated in the writing. The memorandum must provide written evidence that a contract was made, but it need not have been created with the intent that the memorandum itself would be binding. In fact, in some cases written offers that were accepted orally have been held sufficient to satisfy the writing requirement. Typical examples include letters, telegrams, receipts, or any other writing indicating that the parties had a contract.

Signature Requirement

The memorandum must be signed by the *party to be charged*. (The party to be charged is the person using the statute of frauds as a defense — generally the defendant unless the statute of frauds is asserted as a defense to a counterclaim.) This means that it is not necessary for purposes of meeting the statute of frauds for both parties signatures to appear on the document.

The signature may appear any place on the memorandum. Any writing, mark, initials, stamp, engraving or other symbol placed or printed on a memorandum will suffice as a signature, as long as the party to be charged intended it to authenticate (indicate the genuineness of) the writing.