**Statute of Frauds**

Welcome to this podcast on the Statute of Frauds brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is the basic concepts related to the types of contracts governed by the statute of frauds -- that is, statutes that require evidence of the contract in writing. More particularly, we will look at the categories of contracts governed by the statute, what type of writing satisfies the statute, and exceptions to the statute where a writing is not required. This podcast will introduce the statute of frauds related to sales of goods, but greater discussion of sales contracts will be taken up in a separate podcast.

Even where a party can prove the elements of a contract, that is, mutual assent and consideration, the contract may not be enforceable in some cases unless a contract satisfies the relevant statute of frauds. Most contracts are enforceable without a writing. A statute of frauds, however, requires evidence of some contracts to be in writing. Meaning, the courts will not enforce an oral contract that is within the statute. While modern courts tend to disfavor the statute of frauds where the parties seem to have actually made a contract, historically the statute prevented the enforcement of some contracts where doubt might have existed as to the evidence of a contract. Analysis of a defense based upon the statute of frauds consists of three questions: first, is the contract within a category subject to the statute of frauds that requires evidence of the contract in writing; second, if so, does the contract fall within an exception to the statute of frauds that eliminates the requirement of a writing; and third, if no exception exists, is there a writing evidencing the contract sufficient to satisfy the statute?

Let’s begin with the categories. Only certain types of contracts are subject to the statute of frauds, including: (i) contracts entered into with third parties in anticipation of marriage; (ii) contracts not to be performed by their terms within one year of the making; (iii) contracts for sales of an interest in land; (iv) promises made by the executor or administrator of an estate to personally pay creditors sums owed by the decedent at the time of death; (v) sales of goods for $500 or more; and (vi) suretyship contracts where the surety guarantees payment of another’s obligation if the primary obligor does not pay. If you don’t have a contract that is governed by one of the general categories or a specific statute of frauds, then the parties are free to enter into the contract orally and the contract cannot be challenged on that ground.

Let’s look at some examples.

Example #1. Tony operates a popular mountain climbing summer camp for teenagers called High Peaks Camp, limited to 14 campers each year who pay $1500 for two weeks of mountain climbing camp. Tony telephones Mom in November to make her an offer for camp for her son Leeland beginning the following July 25 and Mom orally accepts. This contract does not fit within any of the categories of the statute of frauds and will be fully enforceable based upon an oral agreement.

Example #2. Same as Example #1, but grandfather overhears the conversation and tells Tony, “If Leeland’s parents don’t pay the $1500 for his camp, I will!” If grandfather asserts the statute of frauds, this contract will not be fully enforceable based upon the oral agreement because it is a suretyship contract where grandfather has promised to guarantee payment of Leeland’s parents’ obligation.

Example #3. Tom is the executor of grandfather’s estate and guarantees personally to pay Dale for overdue housekeeping bills. If Tom asserts the statute of frauds, this contract will not be enforceable based upon the oral agreement because it is a promise made by an executor of an estate to personally pay a creditor, here Dale.

Example #4. Mom telephones The Mountaineer and makes a contract for a camp kit for Leeland’s High Peaks Camp for the price of $500, which will include his backpack, sleeping bag, and other gear for the camp. If either party asserts the statute of frauds, the contract will not be enforceable based upon the oral agreement because under Article 2 of the Uniform Commercial Code § 201, agreements for the sale of goods for $500 or more must be evidenced in writing.

Land sales contracts are probably the most common types of contracts governed by the statute of frauds, but in general, short-term leases are typically not covered by the statute.

Students often find the one-year provision to be the most difficult category of the statute of frauds to identify. This category requires evidence of a writing if the contract is not to be performed within one year of the making of the contract, measured from the day after the contract is entered to the day the contract will be fully performed.

Example #5. Tony telephones Mom in November of 2017 to make her the camp offer for Leeland for summer 2019 and Mom orally accepts. If one of the parties asserts the statute of frauds, the contract will not be enforceable because it cannot be performed within one year of the making of the contract. It doesn’t matter here that the camp itself might be short in duration -- the contract will not be fully performed within a year from the time it was made.

In the event that the contract concerns a category covered by the statute of frauds, the next question would be whether there’s some exception to take the agreement outside of the statute. At common law, part performance, equitable and promissory estoppel sometimes serve as a basis for enforcing an oral agreement. Let’s look at an example.

Example #6. Landlord leases an upstairs apartment at her beach home to Tenant. Landlord offers to sell Tenant the home for $500,000 cash and Tenant accepts, with closing to occur in January, six months later. With Landlord’s approval, Tenant makes permanent improvements to the beach home, including remodeling the kitchen. Landlord asserts the statute of frauds and refuses to sell. A court might find an exception to the statute of frauds in favor of the Tenant based upon justifiable reliance to the detriment of Tenant.

Other exceptions arise with respect to UCC §2-201, including: (i) confirmations between merchants that are not objected to within 10 days make the contract enforceable against the merchant receiving the confirmation; (ii) specially manufactured goods; (iii) admissions in pleadings or otherwise under oath; and (iv) contracts with respect to goods for which payment has been made and accepted or which have been received and accepted.

In the event that a contract is one governed by a category of the statute of frauds and no exception exists, then the contract must be evidenced in a writing that is signed by the party to be charged, that is, the party that is asserting the statute of frauds defense. Note that the contract itself does not have to be in writing, we just need evidence of the contract in writing. In fact, the evidence in writing could be one or more writings that collectively indicate that a contract was made. The writing or writings, though, must reasonably identify the subject matter of the contract, indicate that a contract has been made, and provide the essential terms. Let’s look at two examples.

Example #6. The same as Example #5 above, except after making the deal with Tenant, Landlord writes a letter to her sister stating, “I just agreed to sell Tenant the beach home for $500,000 cash to close next January. I’m sad about it, but glad to get the money and to sell to Tenant who will take good care of the property.” Here, although the contract itself is not in writing, the statute of frauds is satisfied. There is evidence of the contract based upon the letter signed by Landlord to Sister which: (i) identifies the subject matter of the contract as the sale of the beach home; (ii) indicates that the contract was made with Tenant; and (iii) provides essential term of the sale, including the property sold, price, and closing date. The result would be the same even if the information was contained in several letters to the sister or if the information was sent by email, as we would consider the email a signed writing.

Example #7. The same as Example #5, except after making the deal with Landlord, Tenant writes a letter to her attorney directing the preparation of documents for the purchase of Landlord’s beach home for $500,000 cash, to close next January. If Landlord asserts the statute of frauds as a defense, Tenant’s writing to the attorney will not be sufficient to satisfy the statute of frauds. The writing here is not signed by Landlord, the party to be charged. It is only signed by Tenant.

Before concluding, just a note about writings sufficient under §2-201. Again, the writing or writings must be signed by the party against whom enforcement is sought. However, the writing does not have to be the contract and can even omit or incorrectly state terms, but is not enforceable beyond the quantity of goods shown in writing.

At this point, you should be able to explain and apply the statute of frauds, in particular: (i) identifying the categories of contracts covered by the statute of frauds; (ii) identifying the common exceptions to the statute of frauds; and (iii) determining whether a writing or writings are sufficient to satisfy the statute of frauds.

I hope you’ve enjoyed this podcast on the Statute of Frauds.

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