**Statute of Frauds under UCC §2-201**

Welcome to this podcast on the Statute of Frauds under UCC § 2-201 brought to you by CALI. I am Professor Jennifer S. Martin. The topic of this podcast is the basic concepts related Article 2’s statute of frauds. More particularly, we will look at when a contract is governed by § 2-201, the exceptions to the writing requirement of § 2-201, and what type of writing when required is satisfactory. The statute of frauds relative to other categories of contracts is taken up in a separate podcast.

Like at common law, even where a party can prove the elements of a contract for the sale of goods, the contract may not be enforceable in some cases unless a contract satisfies § 2-201. Section 2-201 only applies when there’s a contract for the sale of goods for the price of $500 or more and has many exceptions, such that many contracts can be concluded without a writing. Remember that Article 2 applies to all sales transactions, not just ones with merchants. Where applicable, § 2-201 requires: (i) written evidence indicating that a contract for sale has been made; and (ii) the writing must be signed by the party against whom enforcement is sought. Under § 2-201, though, a writing is not insufficient even if it omits or incorrectly states a term agreed upon by the parties. However, such an incorrect writing is not enforceable beyond the quantity of goods shown in the writing. Let’s look at some examples.

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Example #1. Tessa orally agreed to purchase from William his copy of Tale of Two Cities for $10. This contract is for the sale of goods so it is within Article 2, but no writing is required because the sale is for less than $500. There would be no statute of frauds defense available to either party here.

Example #2. Same as Example #1, but the book is a first edition of the book, and the sale is for $6000. Again, the contract is for the sale of goods so it is within Article 2, but now the contract is one for goods of $500 or more, so an adequate writing under § 2-201 is needed. If there’s no such writing, a statute of frauds defense would seem to be available to either party.

Example #3. Tessa orally promised to purchase from William two first edition copies of Tale of Two Cities for $6000 each, and William wrote and signed a note to Tessa “confirming Tessa’s purchase of one first edition Tale of Two Cities for $12,000.” If William asserts the statute of frauds, this contract will be enforceable by Tessa based upon the oral agreement as evidenced by the written note signed by William. Tessa would only be able to enforce the agreement as to one copy of the book, however, as that is the quantity stated in the writing. Notice that even if the writing incorrectly states the price agreed to orally, it can still satisfy the statute of frauds relative to a purchase of 1 book at the $6000 price agreed to orally. If Tessa were to assert the statute of frauds, however, this contract would not be enforceable by William based upon the oral agreement, because the writing here was only signed by William and was not signed by the party against whom enforcement is now sought, here Tessa.

There are four exceptions to the writing requirement of UCC § 2-201, including: (i) a confirmation between merchants that is not objected to within 10 days of receipt; (ii) specially manufactured goods that are not suitable for sale to others in the ordinary course of the seller’s business and the seller has either made a substantial beginning of the manufacturer or commitments for the procurement of the goods; (iii) admissions in pleadings that a contract for sale has been made; and (iv) contracts with respect to goods for which payment has been made and accepted or which have been received and accepted.

Let’s look at an example of the merchant confirmation exception to the writing requirement.

Example #4. Whitechapel Books, a rare bookseller, agrees by telephone to sell a first edition copy of Great Expectations to Shadow Books for $3500, delivery in three weeks. After hanging up the phone, Whitechapel Books prepared a writing reciting the terms of the agreement, signed it, and mailed it to Shadow Books, which received the letter, but put it aside. Two weeks later, as Whitechapel Books is preparing the shipment, Shadow Books called to cancel the order, despite Whitechapel’s protest that they had a contract. Here, the contract is one governed by Article 2, and one for which a writing is required under § 2-201. There’s no writing here signed by the party against whom enforcement is sought, Shadow Books, but the merchant confirmation exception applies here. If Whitechapel sues Shadow Books for breach of contract, Whitechapel is likely to prevail because both the parties here are merchants, Whitechapel sent a sufficient confirmation of the book sale to Shadow Books which it received, and Shadow Books did not object to the confirmation within 10 days after its receipt. As such, Shadow Books will not have a statute of frauds defense, and the contract is fully enforceable due to the merchant confirmation exception to the writing requirement.

Let’s look at an example of the specially manufactured goods exception to the writing requirement.

Example #5. Coach telephoned Sporty, a sporting goods manufacturer, and ordered 40 gold and black soccer balls with the team name “United” printed on the balls for $25 per ball, delivery in 30 days. Sporty immediately started working on the balls and made a substantial beginning on their manufacture when Coach called to notify Sporty that he would not purchase the balls after all. Sporty stopped working on the balls and sued Coach, who claims a defense based upon the statute of frauds. Here, though, Sporty might be able to claim the specially manufactured goods exception to the statute of frauds. Sporty has made a substantial beginning of the manufacture of the 40 balls. Sporty will only be able to claim this exception to the statute of frauds if the goods are not suitable for sale to others in the ordinary course of Sporty’s business. Perhaps “United” is a common enough team name that Sporty can resell the balls.

Let’s look at an example of the admissions in the pleadings exception to the writing requirement.

Example #6. The same as Example #5, except that during a deposition, Coach admits that a contract for 30 soccer balls was made. The admissions exception to the statute of frauds would now apply such that a writing is not necessary to enforce the oral agreement. However, the contract is only enforceable as to the quantity of goods admitted, not the quantity of the oral agreement. In this case, the oral agreement was for 40 soccer balls, but Coach only admitted a contract as to 30 soccer balls. The exception to the writing requirement will only validate the contract with respect to 30 soccer balls, making the contract enforceable as to the 30 soccer balls. The purpose of the statute of frauds is to prevent parties like Sporty from making up contracts and it’s met here where Coach admits in a court pleading that a contract was made.

Let’s look at two examples of the exception to the writing requirement for contracts with respect to goods for which payment has been made and accepted or which have been received and accepted. It is worth mentioning that the statute of frauds is different from other defenses in that it enforces contracts that are fully performed, whereas other defenses such as misrepresentation permit avoidance even where the contract is fully performed.

Example #7. The same as Example #5, except that Coach pays Sporty $800, the contract price, after making the order and Sporty accepts the payment. Neither party will be of the claim the defense under the statute of frauds because Coach has made payment for the goods which have been accepted by Sporty. The contract is enforceable.

Example #8. The same as Example #5, except that Sporty delivers the 40 soccer balls and Coach accepts them, but has not yet paid the price. Neither party will be able to claim a defense under the statute of frauds because the goods have been received and accepted by Coach. The contract is enforceable. Here, there’s little doubt that the parties in fact made a contract, so the purpose of the statute of frauds is satisfied here as well.

Before concluding, just a note about modifications of oral agreements. Section 2-209 expressly states that compliance with § 2-201 is required if a contract as modified falls within its provisions. Let’s look at an example.

Example #9. Coach telephoned Sporty, a sporting goods manufacturer, and ordered 10 gold and black soccer balls with the team name printed on the balls for $25 per ball, delivery in 30 days. The contract is for the sale of goods and is within Article 2, but no writing is required because the sale is for less than $500. There would be no statute of frauds defense available to either party here. But if Coach telephoned Sporty and increased the order to 40 soccer balls, with the new contract price of $1000, the rules of § 2-201 now apply.

At this point, you should be able to explain and apply the statute of frauds under § 2-201, in particular that: (i) it applies to contracts for the sale of goods of $500 or more; (ii) when applicable, it requires a writing signed by the party against whom enforcement is sought; and (iii) the writing is sufficient to make the contract enforceable even if it has omissions or misstatements, but not beyond the quantity stated. You should also be able to articulate the four exceptions to the writing requirement of § 2-201: (i) merchant confirmations; (ii) specially manufactured goods; (iii) admissions; and (iv) goods paid for or received and accepted.

I hope you’ve enjoyed this podcast on the Statute of Frauds § 2-201.

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