

# The Statute of Frauds

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- Scope
- Satisfying the writing requirement
- Exceptions to the writing requirement

# Purposes of the writing requirement

- The *cautionary* function
- The *evidentiary* function
- The *channeling* function

# Scope of the statute of frauds: When is a writing required?

- The executor or administrator of a decedent's estate promises to pay any debts or damages owed by the estate out of his own personal funds
- The promisor agrees personally to guarantee the debts of another
- The promise is offered in consideration of marriage
- The contract is for the sale of, or transfer of some other interest in, land
- The promise cannot be performed within one year of its making
- The contract is for the sale of goods for the price of \$500 or more

# Writing requirement in the sale of goods: UCC § 2-201

## § 2-201(1):

Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker.

# Satisfying the writing requirement

- In the sale of goods:

- § 2-201(1)

A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.

§ 1-201(39)

“Signed” includes any symbol executed or adopted by a party with present intention to authenticate a writing.

# Satisfying the writing requirement

- At common law: Restatement 2d § 131

Unless additional requirements are prescribed by the particular statute, a contract within the Statute of Frauds is enforceable if it is evidenced by any writing, signed by or on behalf of the party to be charged, which

(a) reasonably identifies the subject matter of the contract,

(b) is sufficient to indicate that a contract with respect thereto has been made between the parties or offered by the signer to the other party, and

(c) states with reasonable certainty the essential terms of the unperformed promises in the contract.

# Satisfying the writing requirement: questions

- If no single writing satisfies the requirement, can multiple writings (e.g., one unsigned writing containing some of the terms, and another signed writing containing the remaining terms) be combined?
  - Restrictive approach: yes, as long as the signed writing *specifically refers to and incorporates* the unsigned writing
  - More liberal approach: yes, as long as each writing clearly refers to the same subject matter or transaction
- Can a writing be used to satisfy the requirement if it was not produced with contractual intent?

# Exceptions to the writing requirement and doctrines that mitigate its effect

- Restitution
- Partial performance

Restatement 2d § 129:

A contract for the transfer of an interest in land may be specifically enforced notwithstanding failure to comply with the Statute of Frauds if it is established that the party seeking enforcement, in reasonable reliance on the contract and on the continuing assent of the party against whom enforcement is sought, has so changed his position that injustice can be avoided only by specific performance.

# Exceptions to the writing requirement and doctrines that mitigate its effect

- Restitution
- Partial performance
- Admissions
- Confirmations: UCC § 2-201(2)

Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.

# Exceptions to the writing requirement and doctrines that mitigate its effect

- Restitution
- Partial performance
- Admissions
- Confirmations
- Waiver and estoppel
  - Equitable estoppel
  - Promissory estoppel

# Promissory estoppel as exception to the writing requirement

- Restatement § 139

(1) A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise. The remedy granted for breach is to be limited as justice requires.

(2) In determining whether injustice can be avoided only by enforcement of the promise, the following circumstances are significant: ...

(c) the extent to which the action or forbearance corroborates evidence of the making and terms of the promise, or the making and terms are otherwise established by clear and convincing evidence ...