*Chapter 15*

**The Statute of Frauds—**

**Writing Requirement**

Answers to Learning Objectives/

Learning Objectives Check Questions

at the Beginning and the End of the Chapter

**Note that your students can find the answers to the even-numbered *Learning Objectives Check* questions in Appendix E at the end of the text. We repeat these answers here as a convenience to you.**

**1A.** ***What contracts must be in writing to be enforceable?*** Contracts that are normally required to be in writing or evidenced by a written memorandum include:

**1.** Contracts involving interests in land.

**2.** Contracts that cannot by their terms be performed within one year from the day after the date of formation.

**3.** Collateral contracts, such as promises to answer for the debt or duty of another; Promises made in consideration of marriage.

**4.** Contracts for the sale of goods priced at $500 or more.

**2A.** ***When will an oral promise to pay another person’s debt be enforced?*** If the main purpose of a guarantor in accepting secondary liability—that is, agreeing to pay the debts or discharge the liability of another if the other fails to perform—is to secure a benefit for himself or herself, the contract need not be in writing to be enforced.

**3A.** ***If a written contract is required, what terms must it contain?*** Under the UCC, to be an enforceable contract, a writing need only name the quantity. Under statutes of frauds covering transactions other than sales of goods, to be enforceable as a contract, a writing must name the parties, the subject matter, the consideration, and the essential terms with reasonable cer­tainty. In some states, a contract for a sale of land must include the price and describe the property with sufficient clarity to allow these terms to be deter­mined without reference to outside sources.

**4A.** ***What is parol evidence? When is it admissible to clarify the terms of a written contract?*** For purposes of the parol evidence rule, parol evidence is evidence of contract­ing parties’ prior negotiations, prior agreements, or contemporaneous oral agreements when that evidence contradicts or varies the terms of the parties’ written contract. It is admissible to clarify the terms of a written contract when it shows that a written contract was subsequently modified or that the contract was voidable or void. It may also be admissible when the terms of a written contract are ambiguous or incomplete; when, under the UCC, the evi­dence explains or supplements a contract by showing a prior dealing, course of performance, or usage of trade; when the existence of a written contract is sub­ject to an orally agreed-on condition; or when an obvious or gross clerical error exists that clearly would not represent the agreement of the parties.

Answer to Critical Thinking Question

**in the Feature**

**Beyond Our Borders—Critical Thinking**

***If a country does not have a Statute of Frauds and a dispute arises concerning an oral agreement, how can the parties substantiate their respective positions?*** The proof might be no different than it is under the current law. Parties could offer written documents, oral testimony, and evidence of conduct to prove agreements and their terms.

Answers to Critical Thinking Questions

**in the Cases**

**Case 15.1—Critical Thinking—Legal Consideration**

***What circumstance in this case demonstrates most strongly that Pacific Fruit did not truly believe that it had no contract with NYKCool?*** One circumstance in this case that shows most strongly Pacific did not really believe there was no contract between it and NYKCool is that Pacific enjoyed the benefits of NYKCool's performance for almost four years beyond the term of the written contract. That performance included weekly loadings of cargo totaling nearly 30 million export boxes of fruit and freight payment exceeding $70 million.

Also, if Pacific had truly believed that no contract was in force between it and NYKCool, Pacific’s remedy would have been to timely disavow any obligation to NYKCool and decline to load the ships that NYKCool placed at Pacific’s disposal. But Pacific did neither. In fact, Pacific’s performance does not appear to have been undertaken grudgingly or with a reservation of rights as to whether a binding agreement had been reached.

**Case 15.2—What If the Facts Were Different?**

***Suppose that at the hearing, the Steeles had admitted that they had an obligation to pay the outstanding loan amount. Would the result have been different? Explain.***In some states, an oral contract—or any contract not evidenced by a writing that satisfies the Statute of Frauds—may be enforceable if the party against whom enforcement is sought admits to its existence in testimony in court. In this case, if the Steeles were to admit to a joint obligation to pay the loan, and to the other terms that the lender asserts, the agreement could then be enforceable as Beneficial alleges. The court might impose a sanction on Beneficial for the cost of the additional hearing but might also enforce the loan against the Steeles.

**Case 15.3—Critical Thinking—Economic Consideration**

***How does the parol evidence rule save time and money for the parties to a dispute and the court that hears it? Discuss.*** Under the parol evidence rule, a court determines the admissibility at trial of evidence outside a written contract. If a court finds that a written contract represents the complete and final statement of the parties’ agreement, the court will not admit evidence of prior or contemporaneous agreements or negotiations that contradict or vary the terms.

This rule saves time and money for the parties to a dispute and the court that hears it by preventing litigation. The parties are bound to their contract as written and cannot successfully challenge its terms later with claims of previous or contemporaneous contradictory statements.

Answers to Questions in the Reviewing Feature

at the End of the Chapter

**1A.** ***Statute of Frauds***

Yes, an employer’s oral promise of lifetime employment in exchange for an employee’s forgoing a job opportunity needs to be in writing to satisfy the Statute of Frauds because the deal is not capable of being performed within one year. No, because a contract of employment for life is of uncertain duration. The employee’s life could end within one year, and the contract would be fully performed on the employee’s death.

**2A.** ***Exception***

Unless the employer admits that the parties had a lifetime contract, the employee’s best chance might be to assert promissory estoppel. The employee could argue in part that he acted in reliance on the employer’s promise to forego the other job.

**3A.** ***Writing***

If the receipt could be construed as the employer’s “signature,” this writing might allegedly qualify under the Statute of Frauds. The employer could argue, however, that this writing does not contain all of the alleged terms, especially the supposed term of “lifetime” employment.

**4A.** ***Parol evidence***

The admission of parol evidence in this circumstance would depend on what the contract provides. If a contract is only partially integrated, admission of evidence of consistent additional terms is possible. Proof of terms that contradict the writing are inadmissible, however.

Answer to Debate This Question in the Reviewing Feature

at the End of the Chapter

 ***Many countries have eliminated the Statute of Frauds except for the sale of real estate.  The United States should do the same.*** Certainly, unfair situations arise concerning the enforceability of contracts or contract modifications because they were not evidenced by a writing or record.  By eliminating the defense provided by the Statute of Frauds, there would be fewer unjust decisions that are based on the lack of a writing or record.

 In contrast, the requirement of a writing or record for certain contracts to be enforceable does avoid the “she said, I said” arguments that could be used after the fact when a simple oral contract was made.  In other words, unjust judicial decisions are avoided, too, if the Statute of Frauds is a requirement before certain contracts can be enforced.

Answers to Issue Spotters

at the End of the Chapter

**1A.** ***GamesCo orders $800 worth of game pieces from Midstate Plastic, Inc. Midstate delivers, and GamesCo pays for, $450 worth. GamesCo then says it wants no more pieces from Midstate. GamesCo and Midstate have never dealt with each other before and have nothing in writing. Can Midstate enforce a deal for $350 more? Explain your answer.*** No. Under the UCC, a contract for a sale of goods priced at $500 or more must be in writing to be enforceable. In this case, the contract is not enforceable beyond the quantity already delivered and paid for.

**2A.** ***My-T Quality Goods, Inc., and Nu! Sales Corporation orally agree to a deal. My-T’s president has the essential terms written up on company letterhead stationery and the memo is filed in My-T’s office. If Nu! Sales later refuses to complete the transaction, is this memo a sufficient writing to enforce the contract against it? Explain your answer.*** No, this memo is not a sufficient writing to enforce the contract against Nu! Sales because it does not include Nu!’s signature. If My-T had been the party refusing to complete the deal, however, the memo would be considered a sufficient writing to enforce the contract against it. Letterhead stationery can constitute a signature. If the memo names the parties, the subject matter, the considera­tion, and the quantity involved in the transaction, it may be sufficient to be enforced against the party whose letterhead appears on it.

Answers to Questions and Case Problems

**at the End of the Chapter**

**Business Scenarios and Case Problems**

**15–1A.** ***The one-year rule***

Under the Statute of Frauds, any contract that cannot be performed within one year from the date of entering into the contract (time of acceptance), without breaching the terms, needs a writing to be enforceable. Under this rule, the fol­lowing decisions are made:

 **1.** The one‑year period is measured from the day after the contract is made. Because Benson has the right to begin the one‑year contract im­mediately, it is pos­sible to perform the contract within one year. Therefore, the contract falls outside the Statute of Frauds and can be legally enforced without a writing.

 **2.** The one‑year period here begins with the formation of the contract, so it is measured from the day after the contract is made, May 6. Because performance is for nine months and cannot begin until September 1, however, the contract cannot be fully per­formed until mid­night on May 31. Thus, the contract is impossible to perform within the one‑year period and therefore comes under the Statute of Frauds. A writ­ing is required for enforceability.

 **3.** The likelihood or probability of a person performing according to the terms of a contract within a year is irrelevant to the question of whether such performance is possi­ble. If it is possible for Benson to sub­mit the written research report within one year, be­ginning May 6, the contract is outside the Statute of Frauds and legally enforceable with­out a writing—despite the fact that Benson is permitted two years to submit the report.

**15–2A . *Statute of Frauds***

In this situation, Gemma becomes what is known as a *guarantor* on the loan. That is, she guarantees the hardware store that she will pay for the mower if her brother fails to do so. This kind of collateral promise, in which the guaran­tor states that he or she will become responsible *only* if the primary party does not perform, must be in writing to be enforceable.

 There is an exception, how­ever. If the main purpose in accepting secondary liability is to secure a per­sonal benefit—for example, if Gemma’s brother bought the mower for her—the contract need not be in writing. The court will determine from the cir­cumstances of the case whether the main purpose was to secure a per­sonal benefit and thus, in effect, to answer for the guarantor’s own debt.

**15–3A. *The parol evidence rule***

No. The parol evidence rule prohibits the introduction at trial of evidence of the parties’ prior negotiations or agreements or contemporaneous oral agreements if that evidence contradicts or alters the terms of a written contract. The written contract is ordinarily assumed to be the final embodiment of the parties’ agreement. But when, for example, the terms of a written contract are ambiguous, evidence is admissible to show the meaning of the terms.

Here, the terms of the lease are not ambiguous, the contract can be interpreted on its face, and parol evidence is not admissible. Under the lease, if the facility is not tax-exempt, the tax-exemption termination clause takes effect. Even if parol evidence were admissible, however, it does not appear that this result would be different.

In the actual case on which this problem is based, a year later, the evacuees moved out and Evangel notified Wood Care to end the lease. Wood Care demanded the 10-percent payment. Evangel asserted that when it moved out, the facility lost the tax exemption, and Evangel could simply terminate the lease. In Wood Care’s subsequent suit against Evangel, the court held that parol evidence was not admissible, and that according to the reasoning stated above, Evangel could end the lease without making the 10-percent payment.

**15–4A. Business Case Problem with Sample Answer*—Contract involving interests in land***

No. Generally, a contract for a sale of land must be in writing and state the essential terms (such as location and price) and describe the property with sufficient clarity to allow the terms to be determined from the writing, without reference to outside sources. In this problem, the parties' “Purchase Agreement” was void for lack of an adequate property description. The agreement merely provided the name of the business and a street address. Thus, the seller could not enforce it, and the prospective buyers could back out of the deal. In the actual case on which this problem is based, the court ruled that the agreement was unenforceable because the description was not sufficient.

**15–5A. *Statute of Frauds***

Yes. A writing to satisfy the Statute of Frauds can consist of any order confirmation or other document, alone or in combination with other items, in hard copy or electronic copy, including e-mail. The item or items need only contain the essential terms of the contract to bind both parties to the writing. This includes the names of the parties, the subject matter, the consideration, and the quantity, and in the case of a contract involving an interest in land, the location, price, and description of the property. The party against whom enforcement is sought must have signed the writing. An electronic signature, such as a party’s name typed at the bottom of an e-mail note, satisfies the signature requirement.

In this problem, the e-mails between the parties included messages sent under the landlord’s name. Among those messages was a copy of the agreement to pay Newmark’s commission with a demand to pay the amount in installments. Newmark e-mailed a revised version of the agreement that set out all of the essential terms to the landlord, who did not object to it. This met the requirements of a writing under the Statute for Frauds. Thus, Newmark was entitled to the payment of its commission.

In the actual case on which this problem is based, the landlord did not pay the commission. In Newmark’s later suit to collect, a court ordered the landlord to pay the broker.

**15–6A. *The parol evidence rule***

Vaks and Mangano may not recover for breach of an oral contract. Under the parol evidence rule, if there is a written contract representing the complete and final statement of the parties’ agreement, a party may not introduce any evidence of past agreements. Here, the written agreement was an integrated contract because the parties intended it to be a complete and final statement of the terms of their agreement. Vaks and Mangano therefore may not introduce evidence of any inconsistent oral representations made before the contract was executed.

**15–7A. *Promises made in consideration of marriage***

No, the court cannot enforce the Tuttles’ prenuptial agreement without a writing.Aprenuptial agreement isanagreement made before marriage that defines each partner's ownership rights in the other partner's property. A prenuptial agreement must be in writing to be enforceable.

In this problem, the Tuttles admitted in court that they had signed a prenuptial agreement before they were married, and they agreed on the general term. But a copy of the agreement could not be found. Thus, there was no way to confirm their testimony and no way to accurately determine whether the alleged term was fair.

In the actual case on which this problem is based, the court held that the Tuttles’ prenuptial agreement was not enforceable, because no copy could be produced, and divided the marital assets “in just proportions.” On Robert’s appeal, a state intermediate appellate court affirmed the decision and the division of property. “In order to accurately follow the terms of a prenuptial agreement, the writing is necessary.”

**15–8A. *Promises made in consideration of marriage***

No, the court did not interpret the Heidens’ prenuptial agreement correctly. A unilateral promise to make a monetary payment or to give property in consideration of marriage must be in writing. And this requirement applies to prenuptial agreements, which may define each partner’s ownership rights in their separate and joint property. In interpreting these agreements, basic contract principles apply. The terms must be enforced as written, and unambiguous words and phrases should be construed according to their plain and ordinary meaning.

The prenuptial agreement between Linda and Gerald Heiden provided that “no spouse shall have any right in the property of the other spouse, even in the event of the death of either party.” The description of Gerald's separate property included a settlement from a personal injury suit. On their divorce, the court interpreted the agreement to apply only in the event of death, not divorce, and entered a judgment that included a property division and spousal support award reflecting this interpretation. But the court was not correct. The use of the word “even” indicated that the Heidens intended to keep their property separate in all events, including death and, in the circumstances here, divorce. Thus, the property division and spousal support award should not have taken into account Gerald's settlement from a personal injury suit.

In the actual case on which this problem is based, on the Heidens’ divorce, the court interpreted and applied the prenuptial agreement as stated in the facts. A state intermediate appellate court reversed, on the reasoning set out above.

**15-9A. A Question of Ethics—*Statute of Frauds***

**1.** The court refused to accept the tape recording as evidence and en­tered a judgment in Williams’s favor on Parker’s breach-of-contract claim. Both parties ap­pealed to the Alabama Supreme Court, which affirmed the lower court’s judgment. The state supreme court quoted from the Alabama Statute of Frauds: “[E]very agreement is void unless such agreement or some note or memorandum thereof expressing the con­sideration is in writing and subscribed by the party to be charged,” including “[e]very special promise to answer for the debt, default or miscarriage of another.” Williams’s purported guaranty of Shelborne's payment on the note to Parker was a “promise to an­swer for the debt .  .  . of another.” Thus, it was subject to the Statute of Frauds, which required a writing for the enforcement of such a promise. The court pointed out, how­ever, that there was no writing in which Williams guaranteed Shelborne's debt to Parker. “Because the alleged oral agreement between Williams and Parker falls within the purview of the Statute of Frauds, .  .  . no matter how compelling Williams's pur­ported promise may have been on the audiotape, the oral promise would be irrelevant because [the Statute of Frauds] requires such a guaranty to be in writing.”

**2.** As noted in the question, the lower court ruled in Parker’s favor on Williams’s counterclaim. The Alabama Supreme Court cited Williams’s “bur­den of en­suring that the record on appeal contains sufficient evidence to war­rant a reversal of the judgment he challenges. .  .  . [W]hen the record is silent as to evidence considered by the trial court, we must presume that the evidence considered was sufficient to support the trial court's judgment. Because we do not have a complete record to consider, we cannot assume error on the part of the trial court; thus we must affirm its judgment for Parker on Williams's counterclaim.”

**3.** Perhaps none of the parties involved in the circumstances of the Parker case is a likely candidate for ethical behavior. What appears to have motivated most, if not all, of the participants—Parker, Shelborne, Williams, and Tundy—is common greed. Regardless of one’s source for ethical stan­dards—religion, philosophy, or some other set of principles—the motivation in their practice may be self-interest, but their application recognizes the Golden Rule, or balances costs and benefits, or otherwise recognizes the integrity of others and their rights. The greed evidenced in this case does not go beyond self-interest as motivation, however, and rationalizes a payment of funds of which some other party has been illegitimately deprived. “Something for noth­ing” is not an ethical precept, yet it seems to have been the only principle to which most of the players in the Parker case adhered.

Shelborne and Tundy had disappeared, but Williams was an attorney who con­tinued to assure Parker that his note would be paid. Were there no sanctions to be im­posed on him for his role in the circumstances of this case? Frustrated, Parker filed a complaint with the state against Williams, alleging that he had violated the state’s eth­ics code for attorneys when he sued Shelborne, his former client, on Parker's behalf. The state determined that Williams had created a conflict of interest when he sued his for­mer client based on the transaction in which he had represented the client, and publicly repri­manded Williams. Parker’s hope in complaining to the state was to be paid on his note, but this did not occur.

**Critical Thinking and Writing Assignments**

**15–10A. Business Law Critical Thinking Group Assignment**

**1.** The parties had an enforceable contract. Meade would not have to prove the existence of a contract, despite its terms being part of an oral agreement, because—based on the facts stated in the problem—she would assert it in her complaint and Novell would admit to its existence in his answer and presumably at trial. They disagree only about its terms.

**2.** The parties’ oral agreement falls within the admissions exception to the Statute of Frauds. The pleadings—in which Meade would assert, and Novell would admit, the existence of a contract would establish that at the time the parties formed an oral contract.

**3.** This is the amount that Novell contended Meade was entitled to. Meade would counter that she was entitled to more and would have to prove it.