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| *Chapter 15* |
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**The Statute of Frauds—**

**Writing Requirement**

**Introduction**

 This chapter covers two distinct concepts: how the Statute of Frauds affects the enforceability of a contract, and how the parol evidence rule excludes outside evi­dence offered to modify a contract.

 A contract that is otherwise valid may be unenforceable if it is not in the proper form—certain types of contracts are required to be in writing. If a contract is required by law to be in writing and it is not, it may not be enforceable.

 When a contract has been put in writing, and a dispute arises that ends up in court, the parties may not introduce evidence of prior written or oral negotiations or promises or contemporaneous oral agreements that contradict the contract terms. This is the parol evidence rule. For it to apply, the parties must have in­tended their writing to be their final agreement. Of course, as with the other concepts covered in this chap­ter, there are exceptions.

**Chapter Outline**

**I. The Writing Requirement**

 To be enforceable, certain contracts must be in writing (even if both parties acknowl­edge an oral con­tract, it may not be enforced). The primary purpose of this requirement is to provide reliable evi­dence of these contracts—a writing signed by the party against whom enforcement is sought. The contracts are—

• Contracts involving interests in land.

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

• Collateral contracts.

• Promises made in consideration of marriage.

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

**A. Contracts Involving Interests in Land**

Con­tracts for the sale of land—including physical objects that are permanently attached to it (buildings, fences, trees, minerals, timber)—and for the transfer of other inter­ests in land (such as mortgages) must be in writing.

**B. The One-Year Rule**

A contract that cannot, by its own terms, be performed within one year from the date it was formed must be in writing to be enforceable.

**1. Time Period Starts the Day after the Contract Is Formed**

 The one-year period begins to run the day after the contract is made.

**2. Must Be Objectively Impossible to Perform within One Year**

 Performance must be ob­jectively impossible. Emphasize that *even if improb­able, if performance within a year is possible, a contract need not be in writ­ing*.

**C. Collateral Promises**

**1. Primary v. Secondary Obligations**

Generally, a contract in which a party assumes a primary obligation doe not need to be in writing to be enforceable. Secondary obligations—promises made by one person to pay the debts or discharge the duties of another if the latter fails to perform—must be in writing to be enforceable.

**2. An Exception—The “Main Purpose” Rule**

 If the main purpose of the guarantor in accepting secondary liability is to secure a bene­fit for himself or herself, the contract need not be in writing to be enforceable.

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| **Additional Background—** |
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| **The “Main Purpose” Rule** |
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| The following is a section of the *Restatement (Second) of Contracts* that relates to this part of the text—*Restatement (Second) of Contracts,* Section 116—with a selected Comment. |
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| **§ 116. Main Purpose; Advantage to Surety** |
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| A contract that all or part of a duty of a third person to the promisee shall be satisfied is not within the Statute of Frauds as a promise to answer for the duty of another if the consideration for the prom­ise is in fact or apparently desired by the promisor mainly for his own economic advantage, rather than in or­der to benefit the third person. If, however, the consideration is merely a premium for in­surance, the contract is within the Statute. |
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| **Comment:** |
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| a. Rationale. This Section states what is often called the “main purpose” or “leading object” rule. Where the surety-promisor’s main purpose is his own pecuniary or business advantage, the gratu­i­tous or sentimental element often present in suretyship is eliminated, the likelihood of disproportion in the values exchanged between promisor and promisee is reduced, and the commercial context com­monly provides evidentiary safeguards. Thus there is less need for cautionary or evidentiary for­mal­ity than in other cases of suretyship. |

**D. Promises Made in Consideration of Marriage**

A unilateral promise to pay money or give property in consideration of a promise to marry must be in writing to be enforceable. The same rule applies to prenuptial agreements. Prenuptial agreements that are accompanied by consideration are more likely to be enforced.

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| Enhancing Your Lecture— |
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|  Prenuptial Agreements |
|  and Advice of Counsel  |
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|  The drafting and signing of prenuptial agreements are often at odds with the very concept of marriage. After all, the parties purport to be in love with each other and desirous of sharing all aspects of their lives. Under these circumstances, the thought of involving lawyers in the negotiation of a prenuptial agreement seems inappropriate. Nonetheless, prenuptial agreements are drafted and entered into every day. Cases occasionally come before the courts in which a party to a prenuptial agreement claims that the agreement should not be enforced because one party was not advised to consult his or her own attorney before signing the agreement. |
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| Some Jurisdictions Require Independent Counsel |
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|  In a growing number of jurisdictions, courts regard the advice of independent counsel as a significant factor in determining whether a party signed a prenuptial agreement voluntarily. In other words, if a prospective spouse did not have the advice of her or his own attorney before signing the agreement, that could indicate that the agreement was not signed voluntarily. In one case, for example, a woman challenged the enforceability of a prenuptial agreement on the ground that her husband’s lawyer, who was hired to draft the agreement, did not advise her to have it reviewed by her own attorney. The Supreme Court of North Dakota held that the agreement could in fact be unenforceable for this reason.**a** In a subsequent case involving similar facts, the Supreme Court of North Dakota reiterated that “adequate legal representation will often be the best evidence that a spouse signed the agreement knowledgeably and voluntarily.”**b** |
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|  Many courts have been particularly suspicious of prenuptial agreements involving a waiver by the future wife of all spousal support in the event of marriage or divorce. The reasoning has been that any prenuptial support waiver might undermine the permanency of the marital relationship, which would be contrary to public policy**.** |
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| Other Jurisdictions Do Not Require Independent Counsel |
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|  Other jurisdictions take a different approach. For example, in a highly publicized case involving baseball player Barry Bonds, the California Supreme Court held that a prenuptial agreement was enforceable even though Bonds’s wife was not advised to obtain independent counsel before signing it. The wife, who was Swedish and had little knowledge of English, later stated that she had not understood that by signing the agreement, she would forfeit any right to the earnings and property acquisitions of the parties during their marriage. The court, however, held that the agreement was enforceable. The court concluded that the evidence indicated that the wife had consented to the terms of the agreement.**ca** |
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|  In another case, just days before the wedding, a man drove his future wife to his attorney’s office and asked her to sign a prenuptial agreement as a precondition of their marriage. The agreement provided that each spouse waived his or her rights to the other spouse’s property. The attorney advised the woman to obtain independent counsel and gave her an opportunity to review the document before signing it, but she did neither. After her husband’s death, she claimed that the agreement was invalid because she had not signed it voluntarily. She stated that she had been very embarrassed by the scene in the attorney’s office when she signed the agreement and had just wanted to “get it over with.” Nonetheless, the court held that the agreement was valid. The court declared that while the husband’s actions were “certainly not laudatory” and could be “fairly characterized as surprise tactics,” they did not negate the “voluntary nature of the execution.”**d** |
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|  In a more recent case, the Connecticut Supreme Court rejected a trial court’s conclusion that the ex-wife had insufficient time to digest and understand the disclosure on the day she signed the agreement. That court ruled that “it is the party’s responsibility to delay the signing of an agreement that is not understood.**e** **d** |
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| For Critical Analysis |
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|  ***Some observers argue that enforcing prenuptial agreements when both parties did not have the advice of independent counsel unduly burdens the financially weaker party to the marriage, customarily the woman. Others contend that allowing financially successful future spouses to protect their assets encourages more marriages to take place. Clearly, the courts are divided on the issue of whether prenuptial agreements should be upheld despite the lack of independent counsel by both parties. Should the advice of independent counsel be a requirement for a valid prenuptial agreement? What is your position on this issue?*** |
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| a. *Estate of Lutz,* 563 N.W.2d 90 (N.Dak. 1997). |
| b. See *Binek v. Binek,* 673 N.W.2d 594 (N.Dak. 2004). |
| c. *In re Marriage of Bonds,* 24 Cal.4th 1, 5 P.3d 815, 99 Cal.Rptr.2d 252 (2000). |
| d. *In re Estate of Ingmand,* 2001 WL 855406 (Iowa.App. 2001). |
| e. *Friezo v. Friezo,* 281 Conn. 166, 914 A.2d 533 (2007). |
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**E. Contracts for the Sale of Goods**

The UCC requires a writing for a sale of goods priced at $500 or more [UCC 2–201]. The writing need only state the quantity term and be signed by the party to be charged.

**F. Exceptions to the Writing Requirement**

**1. Partial Performance**

*•* On a contract for a transfer of an interest in land, if the buyer has paid part of the price, taken possession, and made permanent improvements to the property, and the parties cannot be returned to their precontract status, a court may grant spe­cific performance.

• Under the UCC, an oral contract is enforceable to the extent that a seller accepts payment or a buyer accepts delivery.

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| **Case Synopsis—** |
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| **Case 15.1: *NYKCool A.B. v. Pacific Fruit, Inc.***  |
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|  NYKCool A.B. is one of the world’s largest operators of maritime transportation for hire with a fleet of more than fifty ships. Pacific Fruit, Inc., exports cargo from Ecuador. NYKCool and Pacific entered into an oral contract, under which NYKCool agreed to transport weekly shipments of bananas from Ecuador to California and Japan. After nearly four years of performance, a dispute arose between the parties. An arbitrator held Pacific liable to NYKCool for nearly $9 million for breach of contract. Pacific appealed, contending that the arbitrator “manifestly disregarded \*  \*  \* contract law” by concluding that the parties had an enforceable contract. |
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|  The U.S. Court of Appeals for the Second Circuit affirmed the award, reasoning that “the parties' substantial partial performance on the contract weighs strongly in favor of contract formation.” |
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| **Notes and Questions** |
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|  ***Why did the parties’ trade continue despite their disagreement over the terms of their contract and the consequent lack of an enforceable writing?*** Most likely, the parties continued to do business despite their lack of agreement over the terms of their contract because it was in their mutual economic interest to stay in business. |
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|  ***How can a carrier avoid losses under a contract that obligates it only to transport cargo one way and not on the return voyage?*** A carrier can avoid losing money under a contract that obligates it only to transport cargo from one location to another but not on the return voyage by making agreements with other parties to fill the ships for the return. This logistical tactic is noted in the “Company Profile.” And in the facts behind the *NYKCool* case, NYKCool’s transport was part of a larger trading scheme under which, after loading Pacific's cargo in Ecuador, NYKCool's vessels would sail to California, unload some of Pacific's fruit and load Sunkist oranges for shipment to Japan. After discharging Pacific’s and Sunkist's cargo in Japan, the vessels would load automobiles for the return trip to South America. In fact, several of NYKCool's vessels, with sufficient capacity to carry these cargo volumes, were specifically selected to perform this sort of interrelated around-the-world weekly service. |
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**2. Admissions**

In some states, if a party against whom enforcement of an oral contract is sought admits under oath that a contract for sale was made, the contract will be enforce­able. Under the UCC, this will of course be enforceable only to the extent of the quantity admitted.

**3. Promissory Estoppel**

Some courts have used the doctrine of promissory estoppel to allow parties to recover under oral contracts that would otherwise be unenforce­able under the Statute of Frauds.

**4. Special Exceptions under the UCC**

Oral contracts for customized goods and oral contracts between merchants that have been confirmed in writing may be enforced in certain circumstances.

**II. Sufficiency of the Writing**

 The Statute of Frauds requires a writing signed only by the party against whom enforcement is sought. The signature can be no more than an initial and can be anywhere in the writing.

**A. What Constitutes a Writing?**

Any con­firmation, invoice, sales slip, check, or telegram can constitute a sufficient writing. The writing does not have to consist of a single document to constitute an en­forceable contract.

**B. What Must Be Contained in the Writing?**

*•* Under the UCC, a writing need only name the quantity.

• Under statutes of frauds covering transactions other than sales of goods, the writing must name the parties, the subject matter, the consideration, and the es­sential terms with reasonable certainty.

• In some states, contracts for the sale of land must state the price and describe the property with sufficient clarity to allow them to be determined without refer­ence to outside sources.

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| **Case Synopsis—** |
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| **Case 15.2: *Beneficial Homeowner Service Corp. v. Steele*** |
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|  Beneficial Homeowner Service Corp. filed a suit in a New York state court against Stephen and Susan Steele to foreclose on a mortgage. Beneficial claimed that the loan was secured by real property. Beneficial sought $91,614.34 in unpaid principal, plus interest. The lender asserted that both Steeles had signed the loan agreement, and filed a motion for summary judgment. But Beneficial’s copy of the agreement identified Stephen as the sole obligor and it had not been signed. |
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|  The court denied Beneficial’s motion. Because a mortgage involves a transfer of real property, it and its underlying obligation must be in writing. To be enforceable, the writings must be signed by the party to be charged. Here, Beneficial sought to enforce an agreement against two parties—Stephen and Susan Steele—who had not signed it. In fact, Susan was not even mentioned in the agreement as a party to it. |
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| **Notes and Questions** |
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|  ***Suppose that at the hearing, Beneficial can prove the Steeles moved into, and reside in, the property subject to the mortgage and each of them made at least one payment on the loan. Would these circumstances constitute an exception to the signature requirement?*** These circumstances might support a ruling in the lender’s favor at the hearing on the enforceability of the loan agreement. If the Steeles lived on the property subject to the mortgage and especially if they each made some payments on the loan—jointly or separately—the court might be convinced to rule in the lender’s favor on the payment of the outstanding debt. This may depend on the degree of harm that would be caused if the court chose not to enforce the loan. And of course, there are other circumstances that the Steeles might assert as proof they are not liable—they may not be the owners of the property, for example. |
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|  ***Does a signature have to be handwritten and legible to satisfy the Statute of Frauds?*** No. A signature can consist of any mark intended to be a signature. It can be in the traditional form, but it may also be printed, typewritten, or stamped. It may consist of a cross, a crooked line, or a symbol. Simply making a mark by bringing a pen in contact with paper can be sufficient. |
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|  ***Why might Beneficial have tried to enforce an unsigned document?*** The lender may have presented the wrong copy, inadvertently or negligently, due to an office worker’s mistake or carelessness—a worker may have misfiled documents, misplaced files, or mislaid copies, for example. Or Beneficial might have presented an unsigned document because it does not have a signed document. For example, in haste to process loans and foreclosures, the lender might have failed to comply with the legal requirements. Either scenario could have resulted from a desire to make more money by cutting costs or by working faster. This may not be illegal, but it could arguably be unethical. |
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| Enhancing Your Lecture— |
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|  How Can You Prevent Problems |
|  with Oral Contracts?  |
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|  As a general rule, most business contracts should be in writing even when they fall outside the Statute of Frauds. Businesspersons frequently make oral contracts over the telephone, however, par­ticularly when the parties have done business with each other in the past. |
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| Confirm the Agreement in Writing |
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|  Any time an oral contract is made, it is advisable for one of the parties to send either a written memorandum or a confirmation of the oral agreement by fax or e-mail to the other party. This ac­complishes two purposes: (1) it demonstrates the party’s clear intention to form a contract, and (2) it provides the terms of the contract as that party understood them. If the party receiving the memo­randum or confirmation then disagrees with the terms as described, the issue can be addressed be­fore performance begins. |
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| Special Rules for Contracts between Merchants |
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|  What about the sale of goods between merchants? Under the UCC, written confirmation received by one merchant removes the Statute of Frauds requirement of a writing unless the merchant receiv­ing the confirmation objects in writing within ten days of its receipt. This law clearly points out the need for the merchant receiving the confirmation to review it carefully to ascertain that the confirmation conforms to the oral contract. If the writing does not so conform, the merchant can object in writing (the Statute of Frauds still applies), and the parties can resolve mis­understandings without legal liability. If the merchant fails to object, the written confirmation can be used as evidence to prove the terms of the oral contract. Note, however, that this ten-day rule does not apply to contracts for interests in realty or for services, to which the UCC does not apply. |
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| Checklist for the Businessperson |
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| **1.** When feasible, use written contracts. |
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| **2.** If you enter into an oral contract over the telephone, fax or e-mail a written confirmation outlining your understanding of the oral contract. |
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| **3.** If you receive the other party's written or faxed confirmation, read it carefully to make sure that it states the terms already agreed to in the oral contract, as you understand them. |
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| **4.** If you have any objections, notify the other party of these objections, in writing, within ten days. |
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**III. The Parol Evidence Rule**

 No evi­dence of prior oral or written negotiations or agreements or contemporane­ous oral negotiations may be used to change the terms of a written contract. Parol evidence is evidence—oral or writ­ten—out­side the writing and not made a part of the contract by a reference in the writing.

**A. Exceptions to the Parol Evidence Rule?**

 Parol evidence is admissible in cases involving the following.

**1. Contracts Subsequently Modified**

 Evidence of the subsequent modification (oral or written) of a written con­tract is admissible (but an oral modification may not be enforceable if it brings the contract under the Statute of Frauds).

**2. Voidable or Void Contracts**

 This may occur if a contract was entered into under deception or induced in bad faith.

**3. Contracts Containing Ambiguous Terms**

**4. Incomplete Contracts**

**5. Prior Dealing, Course of Performance, or Usage of Trade**

 Under the UCC, evidence can be introduced to explain or supplement a contract by showing a prior dealing, course of performance, or usage of trade (see Chapter 20).

**6. Contracts Subject to Orally Agreed-on Conditions Precedent**

 Proof of such a condition does not alter or modify the written terms but affects the enforceability of a written contract.

**7. Contracts with Obvious or Gross Clerical (or Typographic) Errors**

 These must clearly not represent the agreement of the parties.

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| **Case Synopsis—** |
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| **Case 15.3: *Frewil, LLC v. Price*** |
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|  Madison Price and Carter Smith were prospective students planning to attend the College of Charleston in South Carolina. They contacted Frewil LLC about renting an apartment at the beginning of the fall semester. They asked if the apartment had a washer/dryer and dishwasher, and were told yes. The lease stated that the unit did not contain those appliances, but it also stated that any overflow from washing machines or dishwashers was the responsibility of the tenant and that the dishwasher had to be clean for a refund of the security deposit. When Price and Smith arrived to move in, the apartment had no washer/dryer or dishwasher and no connection for them. They found housing elsewhere. Frewll filed a suit in a South Carolina state court against Price and Smith, claiming breach of contract. The defendants sought to introduce parol evidence to challenge Frewll’s claim. The court denied the request and issued a judgment in Frewll’s favor. The defendants appealed. |
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|  A state intermediate appellate court reversed. On the question of whether the apartment included a washer/dryer and dishwasher, “the lease was ambiguous thereby permitting the introduction of parol evidence.” |
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| **Notes and Questions** |
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|  ***How might the lease at the center of this case have been phrased to avoid the dispute between these parties?*** If the lease had clearly and conspicuously stated that the appliances sought by the defendants as prospective tenants were not included, the dispute in this case might have been avoided entirely. |
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|  ***What does the decision in this case suggest to landlords and their representatives?*** The decision in this case illustrates the importance of providing all material; information to tenants and prospective renters clearly and fully. |
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**B. Integrated Contracts**

 The key is whether a written contract is intended to a complete and final embodiment of the par­ties’ agreement. If the contract is only partially integrated, evidence of consistent additional terms is admissible to supplement the written agreement.

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| Enhancing Your Lecture— |
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|  What Does “Registration” Mean |
|  in the Domain Name Context?  |
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|  Article 2 of the Uniform Commercial Code (UCC) specifically allows evidence of trade usage to be introduced in court to explain or supplement the written terms of a contract. As mentioned else­where, this is one of the exceptions to the parol evidence rule. Article 2, however, applies to sales of *goods.* Does this mean that trade usage *cannot* be admitted to explain the meaning of terms in con­tracts governed by the common law—that is, contracts that do not involve sales of “goods”? Specifically, can a court consider usage of trade in determining what the term *registration* means in a contract to register a domain name? |
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| The Question of “Exclusive Use” |
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|  Typically, when a person or business entity registers an Internet domain name as the address for a Web site, the that person or entity expects to have the exclusive right to use that name. Certainly, this was Michael Zurakov’s expectation when he registered the domain name “Laborzionist.org” with Register.Com, Inc., a business that provides Internet services, including the registration of domain names. Register.Com established a “Coming Soon” page for Zurakov’s Web site. The page, which would be accessed by anyone keying in Zurakov’s domain name, contained banner ads for Register.Com and other organizations, as well as a list of “Additional Services.” It appeared that the ads were in some way endorsed by Zurakov and that he was the provider of the additional services. |
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|  Zurakov sued Register.Com, alleging that by registering the domain name, he had obtained the exclusive right to use the name and the corresponding Web page. He claimed that Register.Com’s use of the page interfered with this right. Register.Com asked the court to dismiss the case because, among other things, nothing in the contract stated that Zurakov would have the exclusive use of the domain name. The trial court dismissed the case after concluding that Zurakov had received “every­thing he bargained for” in the contract—because Register.Com had indeed “registered” the domain name. Zurakov appealed. |
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| The Meaning of “Registration” |
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|  In arriving at its decision, the trial court had looked at the ordinary meaning of the term *register,* which is “to make a record of.” The appellate court, however, stated that “the custom and usage of ‘registration’ of a domain name in the Internet context is certainly more relevant than the literal defi­nition of ‘registration’ found in the dictionary.” According to custom and usage, the registration of a domain name conferred on the person registering the name the *exclusive* right to use that name. The court also stated that the exclusiveness of the use of a registered domain name “is already a familiar concept in the law” and cited a number of cases that illustrated this concept. In sum, concluded the appellate court, Zurakov had stated a valid claim against Register.Com, and the case should go to trial.**a** |
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| For Critical Analysis |
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|  ***The court also noted that if Zurakov could not have the exclusive use of the domain name, the registration contract would be “rendered illusory.” What did the court mean by this statement?*** |
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| a. *Zurakov v. Register.Com, Inc.,* 304 A.D.2d 176, 760 N.Y.S.2d 13 (1 Dept. 2003). |
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| Teaching Suggestions |
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| **1.** For a manager, the most important of the contracts that must be in writing to be enforceable un­der the Statute of Frauds are land-related contracts, promises to pay another’s debt, contracts for the sale of goods priced at $500 or more, and contracts that by their terms cannot be completed within one year of the date of contracting. The last is the most difficult; even courts sometimes mis­apply it. Students should be told to con­centrate on the words “by its terms” because they are the key to understanding the rule. Ordinarily, a con­tract will “by its terms” be completed within one year when no time for completion is provided or when a com­pletion time of less than one year is provided for. |
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| **2.** The parol evidence rule excludes evidence that conflicts with a clear, complete, and unambiguous writ­ten contract. Nevertheless, many people enter into written contracts believing that oral repre­sentations made during the negotiation process but not included in the writing are part of the bar­gain. They find it hard to ac­cept that these oral representations are meaningless. Ask students whether they think all merchants should be required to advise buyers of the parol evidence rule be­fore written contracts are made. ***Would buyers then be more inclined to have everything in­cluded in the writing?***  If some students believe that this would im­pose too much of a burden, ask whether they would accept requiring an explanation of the parol evidence rule for only some con­tracts, including leases, automobile-purchase contracts, real estate contracts, and others that have given rise to a number of parol evidence problems. |
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| **3.** Contracts subject to the Statute of Frauds can be remembered in mnemonic shorthand as “MY LEG”—Marriage, Year, Land, Executor’s promise, and Goods: |
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| • Promises made in consideration of Marriage. |
| • Contracts that cannot by their terms be performed within one Year from the date of forma­tion. |
| • Contracts that involve interests in Land. |
| • Collateral contracts, including promises by an Executor or administrator of an estate person­ally to pay a dent of the estate and promises to answer for the debt or duty of another. |
| • Under the UCC, contracts for sales of Goods priced at $500 (or $5,000) or more. |
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| **4.** Exceptions to the applicability of the Statute of Frauds can be abbreviated “CAPPS”: |
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| • Confirmation of an oral contract between merchants. |
| • Admissions. |
| • Part performance of an oral contract for the transfer of an interest in land or for a sale of goods. |
| • Promissory estoppel. |
| • Goods made Specially to order. |
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| *Cyberlaw Link* |
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|  ***Does the Statute of Frauds apply to contracts entered into on the Web? In what ways?*** |
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**Discussion Questions**

**1. *What is the Statute of Frauds?*** All states require that certain contracts be in writing. The stat­utes mandating these requirements are known as statutes of frauds. Most of these statutes are modeled af­ter the English Statute of Frauds.

**2. *Why do certain contracts have to be written to be enforceable?*** The primary pur­pose of requir­ing a writing is to provide reliable evidence—a writing signed by the party against whom en­forcement is sought.

**3. *Explain the one-year rule.*** A contract that cannot, by its own terms, be performed within one year from the date it was formed must be in writing to be enforceable. The one-year period begins the day after the contract is made. A contract for a one-year term that begins the day the contract is made is enforceable whether or not it is in writing. A contract for a nine-month term that starts six months later is not enforce­able unless it is in writing. The performance must be objectively impossible. Even if improbable, if perfor­mance within a year is possible,a contract need not be in writing. Thus, an oral contract to do something “as long as the promisor remains in business” is enforceable—the promisor could go out of business in less than a year.

**4. *What is a collateral promise?*** A collateral promise is a secondary promise, a promise that is an­cil­lary to a principal transaction or primary contractual relationship. There are three elements to a collat­eral promise: (1) three parties, (2) two promises, and (3) a promise to pay a debt or fulfill a duty only if the first promisor fails to do so. A collateral promise is a suretyship or guaranty contract. The key point is that the obligation of the guarantor is secondary. Included in this category are promises made by the adminis­trator or executor of an estate to pay personally the debts of the estate (for example, to pay legal fees out of his or her own pocket).

**5. *What is the “main purpose” rule?*** Promises made by one person to pay the debts or discharge the duties of another if the other fails to perform must be in writing to be enforceable. If the main purpose of the guarantor in accepting secondary liability is to secure a benefit for himself or herself, however, the con­tract need not be in writing. For example, a creditor’s guarantee to pay a debtor’s debt to another creditor to fore­stall litigation to allow the debtor time to pay both creditors need not be written because the main pur­pose is to benefit the guarantor.

**6. *What effect does part performance have on the enforcement of an oral contract?*** In cases in­volving contracts relating to the transfer of interests in land, if the buyer has paid part of the price, taken pos­session, and made permanent improvements to the property and the parties cannot be returned to their pre-contract status quo, a court may grant specific performance. This depends on the injury that would re­sult if the court chose not to do so. In some states, reliance on an oral contract is enough to remove it from the Statute of Frauds. Under the UCC, an oral contract is enforceable to the extent that a seller accepts payment or a buyer accepts delivery of goods. For example, an oral contract for 800 items that the buyer repudiates after 150 of the items are accepted is enforceable to the extent of the 150.

**7. *What happens if the party against whom en­force­ment of an oral contract is sought admits in court that a contract was made?*** In some states, if a party against whom enforcement of an oral con­tract is sought admits in “pleading, testimony or otherwise in court that a contract for sale was made,” the contract will be enforceable, but only to the extent of the quantity admitted.

**8. *What is required to satisfy the writing requirement of the Statute of Frauds?*** The Statute of Frauds requires a writing signed by the party against whom enforcement is sought. The signa­ture (an ini­tial is enough) can be anywhere in a writing. Under the UCC, any confirmation, invoice, sales slip, check, or telegram will satisfy the requirement. Under most other statutes of frauds (governing transactions other than sales of goods), a writing must name the parties, the subject matter, the consideration, and the es­sen­tial terms with reasonable certainty. In some states, contracts for the sale of land must state the price and describe the property with sufficiently so as to allow them to be determined without reference to outside sources.

**9. *What is* not *admissible under the parol evidence rule?*** Under the parol evidence rule, if a court finds that the parties intended their written contract to be a complete and final embodiment of their agree­ment, a party cannot introduce in court evidence of any contradictory negotiation or agreement that oc­curred before the contract was formed or any contradictory oral agreements that were made at the time the contract was formed.

**10. *What are the reasons for the parol evidence rule? What are some criticisms of these purposes?*** The policy behind the parol evidence rule is to support the contracting parties’ writing against intentionally false testimony and possibly false memories. It is also purposed to exclude terms that have been superseded by the writing (for example, terms that the parties discussed in negotiation but that they did not intend to include in the end). The rule is also intended to force parties put their complete agreement into writing and thereby make transacting business more certain. Criticisms of these points include that the rule can exclude as much true evidence as perjury and that it has never effectively forced parties to put all of their contract terms into writing, with business continuing unabated.

**Activity and Research Assignments**

**1.** Under the Statute of Frauds, contracts for the sale of goods priced at $500 or more must be in writ­ing to be enforceable. Many students sell cars or other goods for more than $500. Have students draft a simple con­tract that could be used to sell a used car. Using student suggestions, have the class come up with a model used-car sales contract that would satisfy the Statute of Frauds.

**2.** Obtain a blank, standard-form apartment lease. Fill in the blanks, leaving ambiguities. Possible am­biguities include retaining language that stipulates “no pets” and adding a clause that allows a tenant to keep his dog, writing in different amounts for monthly rent, and failing to indicate which of clearly alterna­tive lan­guage is intended to apply. Distribute copies of the filled-in lease and have students discuss how the ambi­gui­ties might be resolved by a court.

**Explanation of a Selected Footnote in the Text**

 **Footnote 7:** Pamela Watkins bought a “home” from Sandra Schexnider under an agreement that stated Watkins would make monthly payments on the mortgage until the note was paid in full when “the house” will become hers. The agreement also stipulated that she would pay for insurance on “the property.” The home was destroyed in Hurricane Rita in 2005, and the insurance proceeds satisfied the mortgage. Watkins claimed that she owned the land, but Schexnider refused to transfer title. Schexnider asserted that she had sold only the house. Watkins filed a petition in a Louisiana state court to obtain the land. The court concluded that the “clear wording of the contract” indicated a sale of the house, not the land, and refused to admit parol evidence to the contrary. Watkins appealed. In ***Watkins v. Schexnider***, the court ruled that parol evidence should have been admitted and ordered title to the land transferred to Watkins. The parties’ contract referred variously to the “home,” “house,” and “property,” but there was nothing about “matters pertaining to use of another person's land”—terms of rent, duration, use limitations, and so on. ”The fact that Schexnider, the person who wrote the contract, is claiming that the agreement only conveyed the house, yet failed to put any such provision in the contract, can only be interpreted as ambiguous.” Watkins testified that Schexnider always indicated the sale included the land, walking around the property, for example, to show the boundary.

 ***The parol evidence rule is an age-old and important rule of contract law. Why should the courts allow exceptions to this rule?*** Freedom of contract is one of the most important principles of contract law. Simply stated, the law assumes that people should be free make whatever bargains they wish, whether they be wise or foolish. The law also assumes that people should be held to their bargains. Nonetheless, as indicated throughout this unit on contracts, in the interests of equity and fairness, some contracts will not be enforced by the courts. Similarly, the courts on occasion make exceptions to the parol evidence rule in the interests of fairness and justice. In this case, the contract itself only referred to the “house” or the “home,” but it was clear from the evidence that the parties did not intend to sell or buy only the house. Therefore, it would be unfair to apply the parol evidence rule in this situation and exclude oral evidence. There are several other situations when exceptions to the parol evidence rule will be allowed to make the meaning of a contract clear or to prevent injustice. For example, when one party, through deception or fraud, entices another to enter into a contract, if parol evidence could not be admitted to demonstrate that fraud or deception had occurred, it bring about an injustice.