Instructor Manual

Miller, Business Law Today – Comprehensive Edition: Text and Cases 13e 2022, 9780357634783; Chapter 15: The Statute of Frauds – Writing Requirement

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# Purpose and Perspective of the Chapter

Chapter 15 discusses the Statute of Frauds and how a contracting party’s failure to comply with its requirements affects the enforceability of contracts. 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. When a contract has been put in writing, and a dispute arises that ends up in court, the parties normally 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.

Cengage Supplements

The following product-level supplements provide additional information that may help you in preparing your course. They are available in the Instructor Resource Center.

* Transition Guide (provides information about what’s new from edition to edition)
* Test Bank (contains assessment questions and problems)
* Solution and Answer Guide (offers textbook solutions and feedback)
* PowerPoint (provides text-based lectures and presentations)
* Guide to Teaching Online (provides technological and pedagogical considerations and resources for teaching online)
* MindTap Educator Guide (describes assets in the MindTap platform with a detailed breakdown of activities by chapter with seat time)

# Chapter Objectives

The following objectives are addressed in this chapter:

1. Identify the purpose of the statute of frauds.
2. List the types of contracts covered by the statute of frauds.
3. Differentiate between the various types of collateral.
4. Describe when a writing is legally sufficient to form a contract.
5. Explain the parol evidence rule.

# Key Terms

**Collateral promise:** a secondary promise to a primary transaction, such as a promise made by one person to pay the debts of another if the latter fails to perform; a collateral promise normally must be in writing to be enforceable.

**Integrated contract:** a written contract that constitutes the final expression of the parties’ agreement; evidence extraneous to the contract that contradicts or alters the meaning of the contract in any way is inadmissible.

**Parol evidence rule:** a rule of contracts under which a court will not receive into evidence prior or contemporaneous external agreements that contradict the terms of the parties’ written contract.

**Prenuptial agreement:** an agreement made before marriage that defines each partner’s ownership rights in the other partner’s property; prenuptial agreements must be in writing to be enforceable.

**Statute of frauds:** a state statute that requires certain types of contracts to be in writing to be enforceable.

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# What's New in This Chapter

The following elements are improvements in this chapter from the previous edition:

* **1 New Case:** 
  + *Habel v. Estate of Capelli* (2020) – Involved an alleged contract that appeared to be unenforceable for lack of consideration. One of the parties sought to present evidence outside the written terms of the deal to establish consideration. Could the court consider this evidence?

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# Chapter Outline

*In the outline below, each element includes references (in parentheses) to related content. “PPT Slide #” refers to the slide number in the PowerPoint deck for this chapter (provided in the PowerPoints section of the Instructor Resource Center). Introduce the chapter and review objectives for Chapter 15 (PPT Slide 3).*

1. **15-1 The Writing Requirement** (PPT Slides 5-14)
   1. **Contracts Involving Interests in Land**
      1. Another defense to the enforceability of a contract is form, specifically, some contracts that must be in writing. All states require certain types of contracts to be in writing or evidenced by a written memorandum or an electronic record.
         1. The party against whom enforcement is sought must have signed the contract, unless certain exceptions apply.
         2. In this text, we refer to these state statutes collectively as the **Statute of Frauds.**
      2. The following types of contracts are said to fall “within” or “under” the Statute of Frauds and therefore require a writing:
         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, or secondary, contracts, such as promises to answer for the debt or duty of another.
         4. Promises made in consideration of marriage.
         5. Under the Uniform Commercial Code, contracts for the sale of goods priced at $500 or more.
      3. A contract calling for the sale of land is not enforceable unless it is in writing or evidenced by a written or electronic memorandum. The Statute of Frauds operates as a defense to the enforcement of an oral contract for the sale of land.
         1. **Example 15.1**
      4. An agreement that includes an option to purchase real property must be in writing for the option to be enforced.
         1. ***See* Case 15.1: *Sloop v. Kiker***
   2. **The One-Year Rule**
      1. Contracts that cannot, *by their own terms*, be performed within one year from the day after the contract is formed must be in writing to be enforceable.
      2. **Time Period Starts the Day after the Contract Is Formed –** The one-year period begins to run *the day after the contract is made*.
         1. **Example 15.2**
      3. **Contract Must Be Objectively Impossible to Perform within One Year –** The test for determining whether an oral contract is enforceable under the one-year rule is whether performance is possible within one year from the day after the date of contract formation.
         1. **Example 15.3**
         2. If performance is possible within one year under the contract’s terms, the contract does not fall under the Statute of Frauds and need not be in writing.
            * **Case Example 15.4: *David Knigge v. B&L Food Stores, Inc.***
            * ***See* Exhibit 15-2 – The One-Year Rule**
   3. **Collateral Promises**
      1. A **collateral promise**, or secondary promise, is one that is ancillary (i.e., subsidiary) to a principal transaction or primary contractual relationship.
         1. Any collateral promise of this nature falls under the Statute of Frauds and therefore must be in writing to be enforceable.
      2. **Primary versus Secondary Obligations –** An understanding of this concept requires the ability to distinguish between primary and secondary promises and obligations.
         1. A promise to pay another person’s debt that is not conditioned on the person’s failure to pay is a primary obligation.
         2. A promise to pay another’s debt only if that party fails to pay is a secondary obligation.
            * **Example 15.5**
      3. **An Exception—The “Main Purpose” Rule –** An oral promise to answer for the debt of another is covered by the Statute of Frauds unless the guarantor’s purpose in accepting secondary liability is to secure a personal benefit.
         1. Under the “main purpose” rule, this type of contract need not be in writing.
            * **Example 15.6**
   4. ***Knowledge Check Activity (1) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of the main purpose rule. After answer is provided, review with students the exception of the main purpose rule as an exception to collateral promises.*
   5. **Promises Made in Consideration of Marriage**
      1. A unilateral promise to make a monetary payment or to give property in consideration of marriage must be in writing.
         1. **Example 15.7**
      2. The same rule applies to a **prenuptial agreement**—an agreement made before marriage that defines each partner’s ownership rights in the other partner’s property.
         1. **Example 15.8**
   6. **Contracts for the Sale of Goods**
      1. The Uniform Commercial Code (UCC) includes Statute of Frauds provisions that require written evidence or an electronic record of a contract for the sale of goods priced at $500 or more.
      2. A writing that will satisfy the UCC requirement need only state the quantity terms (e.g., six thousand boxes of cotton gauze). The contract will not be enforceable for any quantity greater than that set forth in the writing.
2. **15-2 Exceptions to the Statute of Frauds** (PPT Slides 15-16)
   1. **Partial Performance**
      1. When a contract has been partially performed and the parties cannot be returned to their positions prior to the contract’s formation, a court may grant *specific performance*.
         1. Specific performance is an equitable remedy that requires that a contract be performed according to its precise terms. The parties still must prove that an oral contract existed.
         2. In some states, mere reliance on certain types of oral contracts is enough to remove them from the Statute of Frauds.
            * ***See* Case Example 15.9: *NYKCool A.B. v. Pacific Fruit, Inc.***
   2. **Admissions**
      1. 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.
         1. If a party admits a contract subject to the UCC, the contract is enforceable, but only to the extent of the quantity admitted.
            * **Example 15.10**
   3. **Promissory Estoppel**
      1. An oral contract that would otherwise be unenforceable under the Statute of Frauds may be enforced under the doctrine of *promissory estoppel*.
         1. Section 139 of the *Restatement (Second) of Contracts* provides that an oral promise can be enforceable, notwithstanding the Statute of Frauds, if the promisee has justifiably relied on the promise to the promisee’s detriment.
   4. **Special Exceptions Under the UCC –** Oral contracts for customized goods may be enforced in certain circumstances.
      * 1. Another exception has to do with oral contracts between merchants that have been confirmed in a written memorandum.
        2. ***See* Exhibit 15-3 – Contracts Subject to the Statute of Frauds**
   5. ***Knowledge Check Activity (2) PPT Slide: 1 minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of written requirements for sale of goods under the UCC. After answer is provided, review with students when a writing is required for sale of goods under the UCC.*
3. **15-3 Sufficiency of the Writing** (PPT Slides 17-19)
   1. **What Constitutes a Writing?**
      1. A writing can consist of any confirmation, invoice, sales slip, check, fax, or e-mail—or such items in combination.
      2. The written contract need not be contained in a single document to constitute an enforceable contract.
         1. **Example 15.11**
   2. **What Must Be Contained in the Writing?**
      1. A memorandum or note evidencing an oral contract need only contain the essential terms of the contract, not every term.
         1. There must, of course, also be some indication that the parties voluntarily agreed to the terms.
         2. Under most state laws, the writing must also name the parties and identify the subject matter, the consideration, and the essential terms with reasonable certainty.
         3. Because only the party against whom enforcement is sought must have signed the writing, a contract may be enforceable by one of its parties but not by the other.
            * **Example 15.12**
            * ***See* Case 15.2: *Moore v. Bearkat Energy Partners, LLC***
4. **15-4 The Parol Evidence Rule** (PPT Slides 20-26)
   1. **Exceptions to the Parol Evidence Rule**
      1. Because of the rigidity of the parol evidence rule, courts make several exceptions. These exceptions include the following:
         1. *Contracts subsequently modified.*
         2. *Voidable or void contracts.*
         3. *Contracts containing ambiguous terms.*
            * ***See* Case Example 15.13: *Windows v. Eric Insurance Exchange***
         4. *Incomplete contracts.*
         5. *Prior dealing, course of performance, or usage of trade.*
         6. *Contracts subject to an orally agreed-on condition precedent.*
         7. *Contracts with an obvious or gross clerical (e.g., typographic) error.*
            * **Example 15.14**
   2. **Integrated Contracts**
      1. In determining whether to allow parol evidence, courts consider whether the written contract is intended to be a complete and final statement of the terms of the agreement.
         1. If it is, the contract is referred to as an **integrated contract**, and extraneous evidence is excluded.
            * ***See* Case Example 15.15: *Andy Mohr Truck Center, Inc. v. Volvo Trucks North America***
      2. A contract can be either completely or partially integrated. If it contains all of the terms of the parties’ agreement, then it is completely integrated.
         1. If the contract is only partially integrated, evidence of consistent additional terms is admissible to supplement the written agreement.
         2. For both completely and partially integrated contracts, courts exclude any evidence that *contradicts* the writing.
            * ***See* Exhibit 15-4 – The Parol Evidence Rule**
   3. ***Knowledge Check Video Activity (3) PPT Slide: 2 ½ minute(s) total (5 minutes with discussion and review of answer).*** *Tests students’ knowledge of parol evidence. After answer is provided, review with students the concept and definition of parol evidence as it relates to contracts.*

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# Discussion Questions

You can assign these questions several ways: in a discussion forum in your LMS; as whole-class discussions in person; or as a partner or group activity in class.

1. **Discussion – Requirements of the Statute of Frauds, Type of Contracts, Collateral Promises, and Contract Enforcement ([15-1 The Writing Requirement], PPT Slides 5-14). Duration 25 minutes.**
   1. **Why do certain contracts have to be written to be enforceable?** 
      1. The primary purpose of requiring a writing is to provide reliable evidence—a writing signed by the party against whom enforcement is sought.
   2. **Explain the one-year rule.** 
      1. 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.
      2. 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.
      3. 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.
   3. **What is a collateral promise?** 
      1. 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 (e.g., to pay legal fees out of his or her own pocket).
   4. **What effect does part performance have on the enforcement of an oral contract?** 
      1. 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.
      2. 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.
2. **Discussion – Exceptions to the Parol Evidence Rule and Integrated Contracts ([15-4 The Parol Evidence Rule], PPT Slides 20-26). Duration 15 minutes.**
   1. **What are the reasons for the parol evidence rule? What are some criticisms of these purposes?** 
      1. 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 (e.g., terms that the parties discussed in negotiation, but that they did not intend to include in the end).
      2. 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.

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# Additional Activities and Assignments

1. **MindTap** – Why Does the Statute of Frauds Matter to Me?
   1. Online auto-graded activities connect the upcoming chapter to a real-world scenario designed to pick engagement and emphasize relevance. Consists of 1 multiple choice question in each.
2. **Mind Tap** – Learn It: Mistakes in Contracts; How Duress Affects a Contract; Statute of Frauds; Parol Evidence Rule
   1. Get familiar with one of the key concepts from the chapter.
3. **MindTap** – Check Your Understanding: Defenses to Contract Enforceability
   1. Online auto-graded activity that assesses students’ foundational knowledge of the concepts presented in this chapter. Consists of 10 multiple choice questions.
4. **MindTap** – Case Problem Analysis: Bilateral Mistake
   1. Online auto-graded activity that first walks students through a fact pattern, and then asks them to answer similar questions with slight variations in the fact pattern. Consists of approximately 5 fill-in-the-blank questions.
5. **MindTap** – Brief Hypotheticals: Defenses to Contract Enforceability
   1. Online auto-graded activity that presents 5 fact patterns in which students are asked to apply the concepts of the chapter, and to come up with a legal conclusion. Consists of 5 multiple choice questions.

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# Additional Resources

## Cengage Video Resources

* MindTap Quick Lesson Videos:
  + Parol Evidence. Duration 2:42 minutes.
  + Specific Performance. Duration 2:18 minutes.

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