

STATUTE OF FRAUDS

Part 1

The Statute, E-Sign, and UETA

- The Original Writing Requirement
- 1677 - Act for the Prevention of Fraud and Perjury - Fraud meant fraud on the court (England).
- Section 4
 - 1. Promise by an Executor to answer for the deceased's debts
 - 2. Promise to answer for the default, or debt of another
 - 3. Contract made in consideration of marriage
 - 4. Contract for the sale of land or interests in land
 - 5. Contract that is not to be performed within 1 year of making.
- Section 17
 - 1. Sale of goods for a price of 10 pounds sterling or more

Electronic Communication—E-Sign and UETA

- This law provides that a signature, contract or other record may not be denied legal effect, validity or enforceability solely because it is in electronic form or because an electronic signature was used in its formation. The law does not require anyone to use an electronic signature, and it also does not deny anyone the right to determine the means for authenticating an electronic signature. E-SIGN applies to transactions in interstate or foreign commerce.

Electronic Communication—E-Sign and UETA

- The statute defines electronic signature to include electronic sounds, symbols or processes, attached to or logically associated with something executed and adopted by a person with the intent to sign the record. Certain transactions are excluded under the law. For example, wills and trusts will still require a written signature, and adoptions, divorces and other family matters require a written signature. State laws that interfere with electronic signatures are pre-empted, however, if the state has enacted the Uniform Electronic Transactions Act (UETA), that law applies unless inconsistent with E-SIGN.

Uniform Electronic Transactions Act (UETA)

- The Uniform Electronic Transactions Act (UETA) goes hand-in-hand with the Electronic Signatures in Global and National Commerce Act (ESIGN Act), in that both were enacted to help ensure the validity of electronic contracts and the defensibility of electronic signatures.

Uniform Electronic Transactions Act (UETA)

- A key difference between UETA and the ESIGN Act has to do with the notices that both parties must agree to before entering into an electronic transaction. Under UETA guidelines, the type of agreement that must be made in order for an e-signature to be legally valid varies depending on the context and the circumstances. This gives companies latitude when conducting commercial transactions online. Three states, Illinois, New York and Washington, have not adopted the uniform act, but have statutes pertaining to electronic transactions.

Suretyship Contracts

- Promise by Executor or Administrator
 - Falling within the Statute of Frauds, this type of agreement must have a written record. This applies only to promises by the Executor to pay debts out of his/her personal estate, not out of the estate of the decedent.

Special Promise to Answer for the Obligation of Another

- Definitions:

- P = Principal (original) Debtor
- C = Person to whom money was owed
- D = Person promising to pay the debt of P
- Collateral promise - Agreement that must be in writing or is violative of the Statute of Frauds
- Original promise - Agreement that need not be in writing to satisfy the Statute of Frauds

No Prior Obligation Owning From P to C

- P Must Come Under at Least a Voidable Obligation to C
- D's promise is not collateral unless P has an enforceable obligation to C,
 - If there is no "debt of another" there is no promise to pay the debt of another.
 - P and D Must Be in a Principal-Surety Relationship
- SURETYSHIP. An accessory agreement by which a person binds himself for another already bound, either in whole or in part, as for his debt, default or miscarriage. Simultaneous agreements do not count, nor do agreements to stand for the debt of an agent. If no suretyship, not SoF issue.

C Must Have Reason to Know of the Relationship

- If C does not know of principal/suretyship relationship, agreement is considered original and no SoF problem
- The Promise Must Not Be Joint
- Joint promise is treated as a single debt, and, therefore, original. No SoF issue.

Where There Is a Prior Obligation Owing From P to C

- If there is a prior debt owing at the time D makes the promise to pay, the SoF will apply, unless one of the following exceptions is in place:
- Novation - Excuse of P's performance as a result of D's promise serves to make D's promise original (primary) and, therefore, no SoF issue.

Exceptions, cont.

- Where the Promise to Pay Is Made to P
 - C may enforce D's promise to C as a third party beneficiary.
- Where the Promise Is Made to C but Is Co-Extensive With D's Obligation to C.
- Where D already has a debt to C, but P has undertaken it, D's re-assumption of debt by promise to pay does not violate SoF.

The Main Purpose (or Leading Object) Rule

- Main purpose rule is a principle of law of contracts which exempts from the Statute of Frauds those oral promises made for the "main purpose" or "leading object" of receiving a consideration beneficial to the promisor. This is also known as the leading object rule.
- Example:
 - In California, the main purpose rule is codified at Cal. Civ. Code § 2794(4): "A promise to answer for the obligation of another, is deemed an original obligation of the promisor, and need not be in writing where the promise is upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation, or from another person."

The Peculiar New York Rule - see textbook

- 1. There must be consideration;
- 2. It must be beneficial to the promissor;

AND

- 3. “The promissor thereby comes under an independent duty of payment irrespective of the liability of the principal debtor.”

Contracts in Consideration of Marriage

- When the Statute of Frauds Applies
- SoF does not apply to mutual promises of marriage or to promises merely in contemplation of marriage. It applies to promises to give money (dowry) or property or anything else in exchange for marriage or promise of marriage or of negative covenant (prenuptial agreement). SoF applies to third party promises in consideration of marriage as well.

Contracts for the Sale of Realty

- Contracts for the Sale of Land
- A Promise to Pay for an Interest in Real Property
- Some states require a writing signed only by the seller (vendor) and not the buyer, who is not conveying an interest in land, but only a promise to pay.

Interests in Land

- In General - Interests covered include purchase, transfer of a legal estate, creating or assigning a lease, or easement or rent, or (majority rule) restrictions on land or options for any of these. License is not covered. Shares in co-ops are.
- Liens or mortgages - included under SoF, but liens by operation of law (e.g., mechanic's lien) are not.

Interests in Land, cont.

- *Fructus Industriales* (Products of the land) - not under SoF; treated as sale of goods.
- Other Things Attached to the Earth - minerals, oil, gas, are treated as sale of goods.
- Miscellaneous Excluded Items - Agreements related to land, but not transferring an interest are not included under SoF.

Contracts for the Sale of Goods

- UCC § 2-201. Formal Requirements; Statute of Frauds.
- (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. 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.

Contracts for the Sale of Goods, cont.

- (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 10 days after it is received.

Contracts for the Sale of Goods, cont.

- (3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable
 - (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or

Contracts for the Sale of Goods, cont.

- (b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted; or
- (c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).