Chapter 14
Written Contracts

Despite What Many People Believe...

...there is no general requirement that contracts be in writing.
Most oral contracts are legally enforceable, assuming they can be proven.

But Written Contracts Have Many Advantages
✓ Easier to prove the existence of the contract
✓ Easier to prove the terms of the contract
✓ The process of writing, revising, discussing, and then signing often helps clarify differences in understanding
✓ People forget
✓ People are tempted to lie
The Statute of Frauds

✓ In 17th century England, the parties to an oral contract were prohibited from giving oral testimony in their own cases.
✓ So they'd bring in witnesses to testify as to the existence and terms of the contract.
✓ This resulted in widespread fraud and perjury.
✓ The Statute of Frauds was passed in 1677 to reduce fraud in civil lawsuits.

Goals of the Statute of Frauds
1. Reduce the number of witnesses who are lying under oath.
2. Give potential plaintiffs an incentive to get their important contracts in writing.
3. Protect defendants from fraudulent claims by unscrupulous plaintiffs.

Enforcement of Oral Contracts

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<thead>
<tr>
<th>Court enforces the claim</th>
<th>Plaintiff’s claim is truthful</th>
<th>Plaintiff’s claim is fraudulent</th>
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<td>I. Justice is served</td>
<td>II. The Defendant is wronged by the court (type II error)</td>
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<tr>
<td>Court refuses to enforce the claim</td>
<td>III. The Plaintiff is wronged by the court (type III error)</td>
<td>IV. Justice is served</td>
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The Statute of Frauds
“Certain types of contracts must be evidenced by a signed writing to be enforceable.”
✓ Each state has a statute of frauds
✓ Each state’s law is different.
✓ The UCC has its own statute of frauds provision which control goods contracts.

Oral Contracts Within the Statute of Frauds
Are unenforceable but not void.
✓ If an oral contract has been completely performed by both parties, neither party can sue for rescission on the grounds that the contract was not in writing.

Contracts Within the Statute of Frauds are Those…
1. For any interest in land, or
2. That cannot be performed in one year
3. Or to pay the debt of another, or
4. Made by the executor of an estate, or
5. Made in consideration of marriage, or
6. For the sale of goods worth $500 or more

✓ Kary Presten and Ken Sailer were roommates renting an apartment. The lease was in Sailer’s name.
✓ Sailer borrowed $1,000 from Presten to secure their rights to buy the apartment for $58,000, and orally agreed to buy it with Presten. Enforceable?

A Contract for the Sale of Any Interest in Land

“All promises to transfer, buy, or pay for an interest in land must be evidenced by a signed writing.”

Examples:
✓ Sale of a parcel of land
✓ Sale of a 10% ownership interest in a parcel of land

Examples (cont.)
✓ Leases for longer than a year (all states)
✓ Leases for less than a year (some states)
✓ A mortgage loan (Why?)
✓ An easement to land
The Land Contract Provision

*Excludes*

- Contracts to build a building on a piece of land
- Contracts to perform work on a piece of land
- Contracts to insure a building, e.g. against fire, flood, or earthquake

Exception: Full Performance by the Seller

If the seller completely performs his side of a contract for an interest in land, such as by delivering the deed to the buyer, a court is likely to enforce the agreement, even though it is oral.

Exception: Part Performance by the Buyer

The buyer of land may be able to enforce an oral contract if she:

1. Paid part of the purchase price, *and*  
2. Either *entered upon the land* or *made improvements to it.*
Exception: Promissory Estoppel

If a promisor makes an oral promise that would reasonably cause the promisee to rely on it, and the promisee does so rely, the promisee may be able to enforce the promise, if that is the only way to avoid injustice.

Oliver and Perry

- Oliver and Perry agree that each shall take turns (in alternate months) buying one lottery ticket per week for the next two and one-half years.
- Oliver buys the first four and none are winners.
- Perry’s first ticket is a winner.
- Enforceable?

Contracts That Cannot be Fully Performed in One Year

“All contracts that cannot be fully performed within one year of the making of the contract must be evidenced by a signed writing to be enforceable.”
Contracts That Cannot be Fully Performed in One Year

✓ The possibility test: If it is possible (however unlikely or unexpected by the parties) for the contract to be fully performed in one year, then an oral contract will be enforced.

Is This Oral Contract Enforceable?

Fred and Ginger agree on April 7, 2012 that Ginger will work for Fred for $100,000 per year as a dancer for the one year period stretching from May 1, 2012 to April 30, 2013. Enforceable?

Which of These Oral Contracts is Enforceable?

✓ An agreement that a person shall be employed in a specific job at a specific employer for a period of three years
✓ “As long as you work here at Burger Brain you can have Friday’s off.”
✓ “I promise to employ you for life.”
Is This Oral Contract Enforceable?

✓ Blair orally promises Clay to sell him five crops of potatoes to be grown on Blackacre, a farm in Idaho; and Clay promises to pay a stated price for them upon delivery. In this particular part of Idaho, it is physically impossible to perform more than three successful crop rotations of potatoes in a single year.

Is This Oral Contract Enforceable?

✓ Bill and Alice orally agree that Bill will build a bridge for Alice for a specific price. They do not set a completion date, and engineers in the court testify that ordinarily, this bridge would take two years to complete, but if you really rushed it, you might be able to complete it in one year.

Sawyer v. Mills

YOU BE THE JUDGE

✓ What were the facts that led to this case?
✓ What did the trial court decide?
✓ How many think the oral promise was enforceable?
✓ How many think the oral promise was unenforceable?
Promise to Pay the Debt of Another
✓ When one person agrees to pay the debt of another, should that other default on the debt, as a favor to the debtor, it is called a collateral promise and it must be in writing to be enforceable.
✓ Classic example: Co-signing a loan.
✓ Classic exception: The leading object rule.

The Leading Object Rule
When the promisor guarantees to pay the debt of another and the leading object of the promise is some benefit to the promisor himself, then the contract will be enforceable even if unwritten.
Example: An owner of land promises a supplier of building materials that if the contractor he has hired fails to pay for the materials, he himself will pay.

Promise Made By an Executor of an Estate
“An executor’s promise to use his or her own funds to pay a debt of the deceased must be in writing to be enforceable.”
✓ Does not apply to promises to pay debts out of the estate’s assets.
Promise Made in Consideration of Marriage

“A promise made in consideration of marriage must be in writing to be enforceable.”

Example: “If you marry me, I will give you half ownership of my business.”

✓ Interesting side-note: Prenuptial agreements are NOT promises made in consideration of marriage, but they are required to be in writing in all states that allow them!

What the Writing Must Contain

1. It must be signed by the defendant to be enforceable against the defendant.
2. It must state with reasonable certainty the name of each party, the subject matter of the agreement, and all of the essential terms and promises.
✓ It must not be vague or incomplete.

Characteristics the Writing Need Not Have

✓ It need not be typewritten.
✓ It need not be distilled into a single document.
✓ The many documents that make it up need not have been created on a single day.
**Signature**
- It does NOT need to be a handwritten, cursive signature!
- A secretary who stamps an executive’s signature on a letter fulfills this requirement.
- The presence of the *logo of the offeror* on the offer document will usually suffice to bind the offeror.

**UCC Sec. 2-201(1) – The Basic Rule**
- A contract for the sale of goods worth $500 or more is not enforceable unless there is some writing, signed by the defendant, indicating that the parties reached an agreement.
- This means that the writing doesn’t need to contain all of the essential *terms*.

**2-201(2) The Merchants’ Exception**
Within a reasonable time of making an oral contract, if one merchant sends a written confirmation to the other, and the confirmation is definite enough to bind the *sender herself*, then the merchant who receives the confirmation will *also* be bound by it unless he objects in writing within 10 days.
**UCC Sec. 2-201(3) – Special Circumstances**

An oral contract may be enforceable if:

- The seller is specifically manufacturing the goods for the buyer, or
- The defendant admits in court that there was a contract, or
- The goods have been delivered (and accepted) or they have been paid for.

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Frank calls Barney, a window pane and glass products manufacturer, and asks him to make 500 glass shower doors with custom, sandblasted etched-glass designs on them for a seaside hotel. Frank places the entire order over the telephone, using numbered designs shown on Barney’s website to order specific quantities of each design he wants, which are all ocean-themed, such as shells, waves, seagulls, and starfish. The parties orally agree on a price of $499 per shower door. Barney makes the doors and delivers them, but Frank rejects the delivery and refuses to pay. (He has found a cheaper source for the doors.) Barney sues for payment. Who wins?

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**Parol Evidence**

Anything (apart from the written contract itself) that was said, done, or written before the parties signed the agreement or as they signed it.

An integrated contract: A writing that the parties intend as the final, complete expression of their agreement.
The Parol Evidence Rule
“When two parties make an integrated contract, neither one may use parol evidence to contradict, vary, or add to its terms.”
✓ If a court determines that the parties intended their written contract to be integrated, it will prohibit testimony about any oral promises made.

An Integration Clause
A statement within a contract clearly proclaiming that this writing is the full and final expression of the parties’ agreement, and that anything said before signing or while signing is irrelevant.

Mayo v. North Carolina State University
✓ Illustrates the principle that, if the parties intended certain written documents to comprise their entire agreement, then neither party may introduce evidence outside those agreements, even if the contract does not contain an integration clause.
Exceptions to the Parol Evidence Rule

- If a court determines that a written contract is *incomplete or ambiguous*, it will permit parol evidence.
- If the testimony of the parties at court indicates that *they did not intend the written document to constitute their entire agreement*, they will permit parol evidence.

Exceptions to the Parol Evidence Rule

- A court will permit parol evidence of misrepresentation or duress.
  - Thus, a party can use an integration clause to place *sales puffery* beyond examination by the court, but not to place *fraudulent statements* or *improper threats* there.
  - When in doubt, a court will hear evidence.

Leitz v. Thorson

- Illustrates the principle that if the testimony of the parties at court indicates that they did not intend the written document to constitute their entire agreement, they will permit parol evidence, even if the written document contains an integration clause.
Leitz v. Thorson

- Paragraph 16 of the lease says “Tenant shall not erect or install any signs…visible from outside the leased premises without the previous written consent of the landlord.”
- And the lease also has an “integration clause.”

Leitz v. Thorson

- But the landlord admitted in court that he told the tenants they could have a sign, and that he told them they would not have to obtain his written consent to put up the sign.
- After the lease was executed, both parties found out about a municipal ordinance that allowed only one sign.