

STATUTES OF FRAUDS

- **Statute of Frauds:** A statute requiring that certain types of contracts, including the following, be evidenced by a signed writing (or its electronic equivalent) in order to be enforceable:
 - (1) contracts involving an interest in **real property** (*e.g.*, a home mortgage);
 - (2) contracts that cannot, by their terms, be performed within **one year** after the date the contract was formed (*e.g.*, a five-year employment contract);
 - (3) **collateral promises**, such as promises to answer for or guarantee the debt or duty of another person and promises by an executor or administrator to answer personally for the debts of an estate;
 - **“Main Purpose” Rule:** If the party who agrees to guarantee the debt of another does so to secure a personal benefit for themselves, the statute of frauds does not require a writing.
 - (4) promises made in **consideration of marriage** (*i.e.*, prenuptial agreements); and
 - (5) contracts for the **sale of goods** for **\$500 or more**.

STATUTE OF FRAUDS EXCEPTIONS

- **Partial Performance:** If a buyer has taken partial possession of property and paid that part of the contract price attributable to the property received, and if the parties cannot be returned to their pre-contractual positions, a court may order that the remainder of the contract be performed according to its terms.
 - Under the UCC, an oral contract is enforceable *to the extent* that the seller has **accepted payment** or the buyer has **accepted delivery** of the goods covered by the oral contract.
- **Judicial Admission:** If a party judicially admits the existence of a contract, the contract is enforceable at least to the extent of the admission.
- **Promissory Estoppel:** If a promisor makes a promise on which the promisee *justifiably relies* to the promisee's detriment, the promisor may be *estopped* from denying the existence and validity of the contract despite the lack of a writing satisfying the statute of frauds.

FORM OF THE WRITING

- A **written contract**, signed by both parties, satisfies the requirements of the statute of frauds. What else will suffice?
- A writing **signed by the party against whom enforcement is sought**;
 - An agreement may be **signed anywhere on the agreement**; moreover, **initials, letterhead, a rubber stamp**, or even a **fax banner** may satisfy the signature requirement – as long as the person intended to authenticate the writing by affixing their initials, etc.
- A **confirmation, invoice, sales slip, check, or fax**, or any combination thereof; or
- Several documents which, in combination, provide the terms for an agreement.

ESSENTIAL TERMS

- The writing need only contain the **essential terms**:
 - (1) the parties' **names**,
 - (2) the contract's **subject matter**,
 - (3) the **amount** of property to be sold or leased or services to be rendered, and
 - (4) the **consideration** given or promised to the party against whom enforcement is sought.
- Whether **price** is an “essential” term depends on the type of contract in question.

THE PAROL EVIDENCE RULE AND ITS EVIDENTIARY CONSEQUENCES

- **Parol Evidence Rule:** An *integrated, unambiguous* written agreement supersedes and discharges all prior oral and written agreements and all contemporaneous oral agreements between the parties regarding the same subject matter.
- **Integration:** The extent to which a writing represents the final and exclusive agreement of the parties.
 - A term in a writing is *integrated* if the writing represents the parties' final agreement on that term.
 - A *fully integrated* writing constitutes the parties' final agreement on all terms relating to the transaction.
- **Ambiguity:** A writing is *unambiguous* if its terms are not susceptible to more than one reasonable, legal interpretation.
- **Evidentiary Corollary:** A court shall not admit evidence of the parties' prior dealings, negotiations, or oral or written agreements, or their contemporaneous oral agreements to **contradict or vary** the terms of a **fully integrated, unambiguous** written contract.

PAROL EVIDENCE EXCEPTIONS

- Courts have recognized numerous exceptions to the rule excluding *extrinsic evidence* proffered to contradict or vary the terms of a fully integrated, unambiguous written contract, including:
 - evidence that the parties **orally modified** their written agreement after the fact;
 - evidence of **mistake, fraud, or misrepresentation** in the formation of the written contract, or of other grounds on which the party proffering the evidence might **avoid** the contract or that might make the contract **void**;
 - evidence that may resolve an **ambiguity** or supply a **missing term or condition** in the written contract;
 - evidence of **prior dealing** between the parties, **usage of trade** in the relevant locale or trade, and **course of performance** under the contract by the parties;
 - evidence of an oral **condition precedent** to the written contract; and
 - evidence of an obvious or gross **clerical error**.