



CONTRACTS

VIDEO LECTURE: UCC Art. 2 Statute of Frauds

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TOPICS COVERED

Statute of Frauds

- UCC §2-201
- Writing requirement
- Substitutes for signed writing

UCC §2-201 STATUTE OF FRAUDS DEFENSE



- **Mechanics** of *how* a contract is expressed
- **Three Questions**
 1. Does this contract fall within the Statute of Frauds?
 2. If YES, does a signed writing exist?
 3. If NO, does an exception substitute for a signed writing?
 - Confirming merchant memorandum
 - Specially manufactured goods
 - Judicial admission
 - Part performance

SAME THREE QUESTIONS IN COMMON LAW & UCC STATUTE OF FRAUDS ANALYSIS



Contract within the Statute of Frauds?

Sale of goods for \$500 or more



Writing satisfy the Statute?

Must be a “writing”

signed by the party resisting enforcement, & showing contract formed & a quantity



Exception take the contract out of Statute of Frauds?

2-201(2): confirming merchant memorandum

2-201(3): (a) specially manufactured goods;

(b) admission in court or pleadings; or

(c) Buyer paid for goods OR Seller delivered goods

UCC § 2-201(1): SCOPE OF UCC STATUTE OF FRAUDS & CONTENT OF WRITING

UCC § 2-201(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.

Q#2: DOES A WRITING SATISFY THE STATUTE OF FRAUDS?

UCC § 2-201(1): Scope & Content of Writing Requirement

“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.”

(a) **indicate that a contract for sale has been made** between the parties;

(b) **signed by the party against whom enforcement is sought** or by an authorized agent or broker;

(c) it's **okay** if the writing **omits or incorrectly states a term** agreed upon,

(d) **but quantity** of goods **must be in writing** & not enforceable beyond quantity shown in writing

ILLUSTRATING STATUTE OF FRAUDS

SCOPE: UCC § 2-201



Buyer

I'll pay you \$20K for your car

Seller

I'll sell you my car for \$20K



Question #1: Is this contract within the Statute of Frauds?

APPLYING STATUTE OF FRAUDS

SCOPE: UCC § 2-201(1)



Question #1: Is this contract within the Statute of Frauds?

Answer: **YES** because price is over \$500
if price were exactly \$500 also within the Statute of Frauds

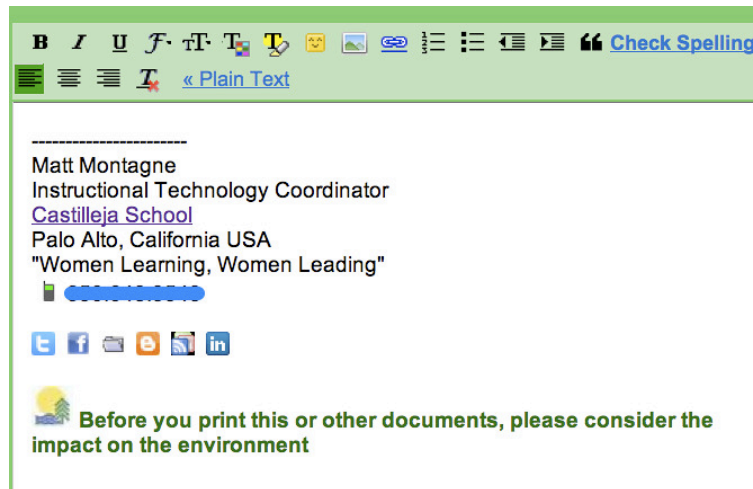
WHAT HAS TO BE IN THE WRITING?

UCC § 2-201(1)



**Question #2: Since the contract falls within the Statute of Frauds,
Does a writing satisfy the statute?**

WHAT IS A “WRITING”? WHAT IS “SIGNED”?



UCC § 1-201(b)

(31) "**Record**" means information that is *inscribed on a tangible medium* or that is *stored in an electronic* or other *medium* & is *retrievable in perceivable form*

(39) "**Signed**" includes any *symbol executed* or adopted by a party with *present intention* to *authenticate* a writing.

(46) "**Written**" or "writing" includes *printing*, typewriting, or *any* other *intentional reduction to tangible form*.

WHAT HAS TO BE IN THE WRITING?

UCC § 2-201(1)



Question #2: Since the contract falls within the Statute of Frauds,
Does a writing satisfy the statute?

Answer: **We don't know**

Have to find out: Is there a *writing* -- or "*record*" -- with the required contents?

Did the person resisting enforcement **sign** it?

Does the writing

- (a) show contract **formation** &
- (c) include a **quantity**?

SITUATION THAT SATISFIES THE STATUTE OF FRAUDS

Buyer



Seller

Question #2: Does a writing satisfy the Statute?

Answer: YES, if

- There's a writing -- or "record" – i.e., email, hard copy, or even saved voicemail
- With the required contents
 - Signed by the person resisting enforcement – mark made with intent to accept contents of writing
 - showing contract formed &-- i.e., "Buyer agrees to pay Seller \$20K for car"
 - including a quantity – i.e., 1 car



SUBSTITUTES FOR A WRITING: UCC § 2-201(2) & (3) EXCEPTIONS TO THE WRITING REQUIREMENT



Question #3: IF NO WRITING satisfies the Statute of Frauds



Does an exception take the agreement out of the Statute of Frauds?

UCC § 2-201(2) & (3): FOUR EXCEPTIONS CAN SUBSTITUTE FOR SIGNED WRITING

“(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

[2-201(1)] against such party **unless written** notice of **objection** to its contents is given within **10 days** after it is received.

(3) A contract which **does not satisfy** the requirements of subsection **[2-201(1)]** but which is valid in other respects is **enforceable**

- a) if the **goods** are to be **pecially 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**
- 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 (§ 2-606).

SUBSTITUTES FOR A WRITING: UCC § 2-201(2)& (3) EXCEPTIONS TO THE STATUTE OF FRAUDS



Question #3: IF NO WRITING satisfies the Statute of Frauds

Does an exception take the agreement out of the Statute of Frauds?



Answer: MAYBE -- IF

- If confirming merchant memorandum allows signature of person seeking enforcement to suffice; or
- Specially manufactured goods; or
- Judicial admission; or
- Part performance of delivering or paying for goods

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SUBSTITUTES FOR A WRITING: UCC § 2-201(2) CONFIRMING MERCHANT MEMO EXCEPTION



Question #3: IF NO WRITING satisfies the Statute of Frauds

Does an exception take the agreement out of the Statute of Frauds?

Answer: Under UCC § 2-201(2) confirming merchant memorandum exception IF

- Both buyer & seller merchants;
- Writing signed by party ENFORCING the contract;
- Sent within reasonable time after contract formed
- Writing would bind the party enforcing the contract; &
- Recipient does not object w/in 10 days of getting writing



ILLUSTRATION OF UCC § 2-201(2) CONFIRMING MERCHANT MEMO EXCEPTION



FACTS:

Buyer seeks to enforce contract against Seller
Seller asserts Statute of Frauds as a defense

Question #3: Exception apply since NO WRITING satisfies the Statute of Frauds?

Answer: YES under UCC § 2-201(2) confirming merchant memorandum exception IF

- Both buyer & seller merchants;
- Writing signed by party ENFORCING the contract;
- Sent within reasonable time after contract formed
- Writing would bind the party enforcing the contract; &
- Recipient does not object w/in 10 days of getting writing



ILLUSTRATION OF UCC § 2-201(2) CONFIRMING MERCHANT MEMO EXCEPTION

π

Buyer
Delivery Co.



Oral agreement to sell car for \$20K

Δ

Seller
Car Dealer



FACTS:

- Next day Buyer sent Seller signed agreement
- Seller did not object
- Month later Buyer seeks to enforce K against Seller
- Seller asserts SoF as a defense



Confirming Merchant memorandum substitutes for writing signed by Seller IF

- Both buyer & seller merchants; ☒
- Writing signed by party ENFORCING the contract; ☒
- Sent within reasonable time after contract formed; ☒
- Writing would bind the party enforcing the contract; AND ☒
- Recipient does not object w/in 10 days of getting writing; ☒

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ILLUSTRATION OF UCC § 2-201(3) (a) SPECIALLY MANUFACTURED GOODS EXCEPTION

△ Buyer
Speedy Delivery



Oral agreement to sell car for \$20K & add Speedy logo on outside of car & all over upholstery inside the car

π Seller
Car Dealer

FACTS:

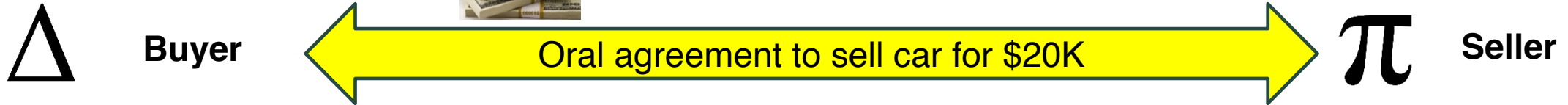
- Car with Speedy logo not suitable for other buyers
- Seller starts to paint on logo then Buyer cancels order
- Seller sues to enforce contract against Buyer
- Buyer asserts Statute of Frauds as a defense



Specially manufactured goods exception can substitute for writing signed by Buyer IF

- Goods specially manufactured for the Buyer ✓
- Seller not likely to sell goods to others in ordinary course of business; ✓
- Circumstances show that goods for this Buyer ✓
- Seller has begun to manufacture goods as instructed. ✓

ILLUSTRATION OF UCC § 2-201(3) (b) JUDICIAL ADMISSION EXCEPTION



FACTS:

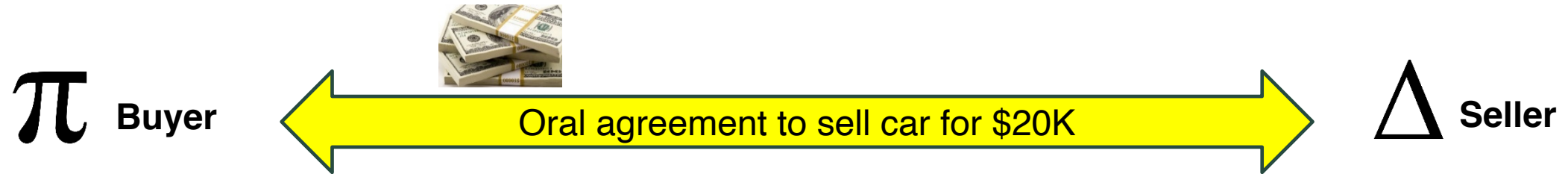
- Buyer refuses to take delivery or pay
- Seller sues to enforce contract against Buyer
 - Complaint alleges contract formed
- Buyer files Answer
 - Admits contract formed & asserts Statute of Frauds defense

Judicial admission exception can substitute for writing signed by Buyer because

- Party resisting enforcement admits contract formed ☒
- In pleading or otherwise in court. ☒



ILLUSTRATION OF UCC § 2-201(3) (c) PART PERFORMANCE EXCEPTION



FACTS:

- Buyer pays for the car
- Seller keeps the \$\$ but refuses to deliver the car
- Buyer sues to enforce contract against Seller
- Seller asserts Statute of Frauds defense

Part performance exception can substitute for writing signed by Seller because

- Buyer paid for the goods & ☒
- Seller accepted the \$\$ ☒

RECAP: THREE QUESTIONS IN STATUTE OF FRAUDS ANALYSIS



Contract within the Statute of
Frauds?

-- Sale of goods for \$500 or more



Writing satisfy the Statute?

-- Writing or record
-- Signed by party resisting enforcement that
-- Shows contract formed &
-- Includes a quantity



Exception take the contract out of
Statute of Frauds?

-- Confirming merchant memorandum
-- Specially manufactured goods
-- Judicial admission
-- Part performance



THAT'S ALL FOLKS!

(DON'T FORGET TO TAKE THE QUIZ)