

# CASEBRIEFS

## The Understanding Video Lecture Series™

### Statute of Frauds

Defense to Formation

# Statute of Frauds

Certain types of contracts are governed by the Statute of Frauds:

- **M** - contract in anticipation of marriage
- **Y** - a contract that will take over a year to complete
- **L** - a contract for the sale of land
- **E** - a contract to be an executor
- **G** - a contract for the sale of goods over \$500
- **S** - a contract for suretyship



# Requirements

- Writing
- Signed by the party to be charged
- Key terms
- Names of both parties



# Alternatives

- Performance
- Admitting to a contract in court



# Let's try a Hypo

Businessman believed that his success in business was due to his willingness to “seize the moment” when a business opportunity presented itself. He was having a drink at the Liberty Hotel when he overheard Dealer, sitting at the next table, tell his (Dealer's) companion, “I've got to get rid of the Slumlord property; it is losing money and people keep asking me to fix things that I don't want to.” Businessman got up and went to Dealer's table. He told Dealer he was familiar with the Slumlord property and offered him \$500,000 for it, “on the spot.” When Dealer hesitated, Businessman wrote him a personal check for \$10,000 and said, “This will show I mean business; you give me a deed here at breakfast tomorrow, I'll have the rest in cash. Let's shake on the deal.” Dealer shook Businessman's hand and said, “O.K., it's a deal.” Businessman gave Dealer the \$10,000 check and returned to his own table to finish his drink.

# Businessman Cont'd

The next morning Businessman was at the hotel's restaurant with a cashier's check for \$490,000. When Dealer appeared, Businessman offered him the check and asked for the deed. Although Dealer had prepared and executed a warranty deed in Businessman's favor, instead of delivering the deed, Dealer returned Businessman's \$10,000 personal check, stating that he had checked around and gotten another offer for the property at a price of \$750,000. Businessman refused to accept return of his personal check and brought an appropriate action against Dealer for specific performance of the warehouse sale transaction.

# Does it comply?

- Is there a writing?
- Party's names?
- Is it signed by the party to be charged?
- Key terms?

0 1 0 2

DATE \_\_\_\_\_

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ DOLLARS

FOR \_\_\_\_\_

⑆ 24 288961⑆ 6545898434⑆ 3266

# Scarf face

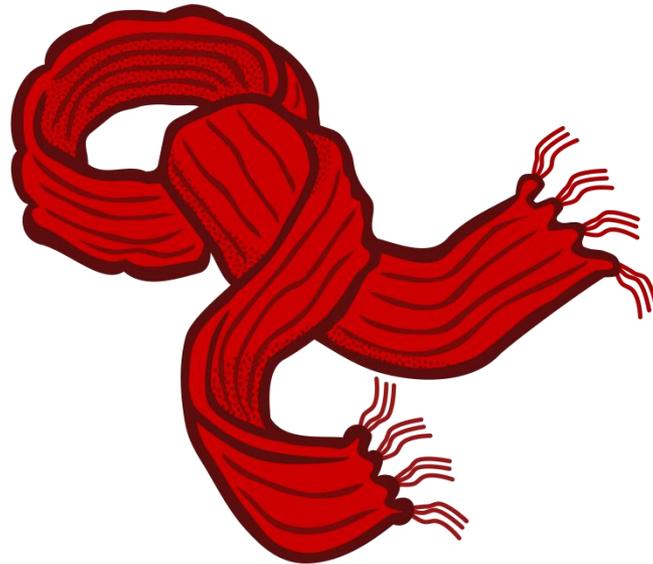
Maxwell owned a men's haberdashery in Chicago. In anticipation of a cold winter, Maxwell wanted to have a large quantity of scarves in stock for his customers. Maxwell telephoned Scarface, a scarf wholesaler, and ordered 600 scarves for October 1st delivery. Scarface promised to deliver 600 scarves at the agreed price of \$10 per scarf.

Thereafter, Scarface did an inventory and learned that he only had 550 scarves in stock. Without notifying Maxwell, Scarface went ahead and delivered the 550 scarves to Maxwell on October 1st. When Maxwell learned that the shipment contained 550 scarves instead of 600, he refused to accept delivery and did not make any payment.

If Maxwell brings suit against Scarface for breach of contract, what damages, if any, will he be entitled to?

# Is it enforceable?

- He can reject the entire shipment OR
- Accept the shipment and be bound to ONLY that amount.
- However, he can not enforce the remaining 50 scarves.



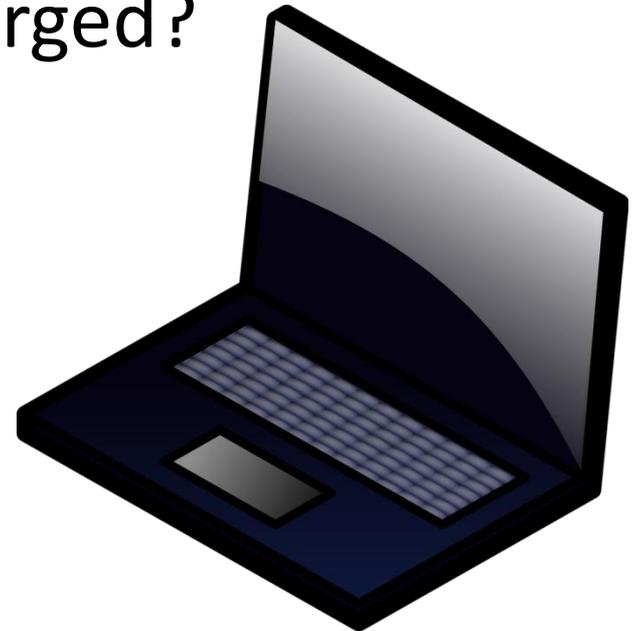
# Laptops and Emails

Tim was looking to buy a new computer, and emailed back and forth extensively with Delo Corp. about their various models and options. Tim finally agreed, in email, to pay \$1,200 for a particular desktop, and requested that it contained an extended on site warranty. Delo Corp agreed to this in the email.

Delo Corp then claimed there was no contract. Will they be successful?

# Let's Assess

- Was there a writing?
- Were key terms discussed?
- Names of parties?
- Signed by the party to be charged?



# “Do it for him”

Nephew says to Paint: “Paint my house for \$10,000.”

Uncle, because he loves Nephew, says to Paint: “And if he doesn’t pay you on completion, I’ll pay you.”

Nephew and Paint make the oral deal, Paint paints the house, and Nephew doesn’t pay.

*Is Uncle liable?*

# Answer: Suretyship

- No. Uncle's promise fell within the suretyship provision of the Statute of Frauds
  - it's a promise to "pay the debt of another."
- If Uncle had been motivated mainly by his own economic interests, the promise would *not* have qualified
  - but here, he made the promise out of love, not economic interest, so the Statute applies.

# “Loving Uncle’s letter”

Uncle to Investor by phone: “Lend my Nephew \$10,000 and I guarantee repayment.”

Investor lends to Nephew on 2/1.

On 2/2, Uncle writes to Nephew, “I was happy to guarantee your loan, b/c I love you like I would a son.”

Nephew doesn’t repay.

*Can Investor recover from Uncle?*

# Answer: Suretyship

- Yes. Uncle's promise comes w/in the suretyship provision.
- Uncle's letter to Nephew satisfies the Statute of Frauds.
  - there's no requirement either that:
    - (1) the writing be addressed to the promise;
    - or (2) that the writing be prior to or simultaneous with the promise
      - after-the-fact confirmation is fine.

# “Confirmation”

On 2/1, Buyer, a greengrocer, phones Seller, a produce wholesaler: “Send 10 dozen boxes of peaches @ \$65/box to be shipped 3/1.”

Seller says, “OK,” then immediately sends a signed fax stating, “Confirmation – 9 dozen boxes of peaches at \$65/box.” (Seller made a typo.)

On 2/15, Buyer sends fax, “Cancel my order.”

*On 2/16, do they have a contract, and if so, for how many boxes?*

# Answer: “Confirmation”

- Yes, for 9 dozen boxes.
- Oral agreement was for >\$500, so it's w/in S. of F.
- But between merchants, signed confirmation from one binds the other if not objected to w/in 10 days.
- However, recipient of confirmation is not bound beyond quantity shown in writing. 2-201(1).