Comments on Statute of Frauds

The most important thing to know about the statute of frauds is that it involves *a lot* of technicalities. So if you get a case involving an oral contract, you look up the technicalities. There is no point in memorizing the technicalities now; they are forgettable. We will just try to get some sense of the kinds of problems that arise under the statute.

Categories covered by the statute

You should learn what kinds of contracts are governed by the statute. There are five categories:

(1) Contracts involving the sale of an interest in land;

(2) contracts the performance of which extends beyond one year;

(3) contracts in which someone assumes responsibility for someone else's debt; that is, promises to be a surety;

(4) promises the consideration for which is getting married;

(5) contracts for the sale of goods worth more than $500.

(6) Certain promises by executors and adminstrators

Various states have added other categories; often contracts to make a will are included, as are contracts to pay a real estate agent's commission.

Practical advice

Always put contracts in writing. That way you do not have to worry about the statute of frauds, and you do not have problems proving what you agreed to; the written contract is your evidence.

Overlapping categories

One thing to watch for in applying the statute: a contract may fall into more than one category. Suppose you agree to buy my car; I will deliver the car to you on January 1, 1992. Does this contract have to be in writing? Well, January 1, 1992 is not a year away, so is an oral contract ok? Depends on the price of the car. If I am selling the car for over $500 the contract has to be in writing. This is a standard law school exam trick; and, it also happens in real life.

Brief overview of the categories

(1) *Sale of interests in land*

What is an interest in land? Does it include leases? Easements? The right to remove fixtures?

(2) Contracts whose performance extends beyond one year

The contract must not be performable within one year. For this reason contracts for life are not deemed to extend beyond one year--because the person might die within a year.

(3) Promises to be a surety

This is one of the trickiest areas of the statute, and we won't worry about it.

(4) Promises in consideration of marriage

Note this does not simply apply to promises to marry. The marriage must be the consideration for the promise. Note: courts have held that it does not apply to the consideration of living together--to the "palimony" cases. Being "pals" is not really being married in the eyes of the courts.

(5) Contracts for sale of goods for over $500

Not so many problems here. Still have to decide what counts as a good.

(6) Certain promises made by executors and administrators

This category concerns promises by an executor or administrator to a creditor of the decedent to personally answer for a debt of the decedent should the estate prove insufficient to discharge it.

Reasons for the statute of frauds

Two reasons are usually given.

(1) The cautionary function: The idea here is that making parties write down their agreement makes the parties take the agreement more seriously, and makes the approach the whole matter less hastily. It makes the parties more carefully about the contract.

Two problems: does it really have this cautionary effect? And, even if it does, why does the statute only apply to some categories and not others? If it is caution we want, why not extend the application of the

statute to many other categories?

(2) The evidentiary function: The other idea is that the statute of frauds is supposed to prevent fraud: without a written contract you could come into court and lie about there being a contract or about the terms of the contract.

Problem: This prevents one kind of fraud, but it makes another kind possible. Suppose you and I make an oral contract; there are lots of witnesses, so there is no question that we made a contract and no question as to what the terms are. We don't put the contract in writing. Then something happens, and I want out--say, market prices fall. So I say, "Yes, I promised, but the contract is not in writing, so it is not enforceable."

Policy and technical definitions

Is it a good idea to let me do this? Should I be able to make a promise, then break it just because the contract is not in writing? Maybe I was careful not to put it in writing because I knew about the statute of frauds, and I thought I might want out of the contract.

Many courts felt a pressure to hold me to my contract in this kind of case. So they exploited technicalities. Two examples: the court says the contract might have been performed within one year, so no writing is necessary. Or, the court says that the contract is not really one contract for goods worth $1000, but four contracts for four deliveries of goods worth $250 each. The courts found technical ways around the rule. Note most technicalities limit the scope of the statute.

Any writing will do

Here is another important way around the statute: we are very liberal about what will count as a writing to satisfy the statute of frauds. The contract itself does not have to be in writing. Any writing sufficient to show a contract was made will do.

Another way out

Suppose we make an oral contract, and there is an understanding that I will put it in writing. I never do. Then I try to get out of the contract on the ground that the contract had to be in writing. The court could interpret our understanding as a promise by me to put the contract in writing. That promise does not fall under the statute of frauds, and I could be liable for the breach of that promise.

ALSO, if a contract is fully performed (executory), it is irrelevant that the contract was subject to the Statute of Frauds but was never put in writing. After fully performance, the Statute of Frauds cannot be raised as a defense for an oral agreement to void the contract.

Restitution

Another way to get around the statute is simply to sue off the contract in restitution. This will work when the plaintiff has conferred a benefit on the defendant, and the recovery of the reasonable value of that benefit is adequate compensation.

Reliance, promissory estoppel

You may be able to get around the statute if you have relied on the promise--even where your reliance has not conferred a benefit on the other party (so there is no restitution suit). Some courts have said that you can sue under the theory of promissory estoppel. This is a little dubious. Traditionally, estoppel is a defense, not a cause of action in its own right.

But we can reach the same result by a different route. We can say that, because of the reliance by the plaintiff, the defendant is estopped from raising the statute of frauds as a defense. So the promise ends up being enforceable. This makes sense if the main purpose of the statute is evidentiary; the reliance is evidence of the contract, so a writing as evidence is not necessary.

UCC on restitution and reliance

The UCC has provisions explicitly dealing with restitution and reliance. Look at 2-201.

(3)(c) says that if you have already delivered some goods you can collect for those goods at least--even if the contract is not in writing. This is a restitution principle.

(3)(a) says that if the goods ordered are customized for a particular buyer, and the seller has started the manufacturing process, then the promise is enforceable. This is a common example of reliance. Makes sense: customized goods are likely not be saleable to any other buyer, so when the seller starts making those goods, the seller is clearly relying on the contract.

http://www.kentlaw.edu/faculty/rwarner/classes/contracts/statute_of_frauds_notes.htm