

Memorandum to Students

Study Guide for Sales Topics 5-7

Fall 2015

University of North Dakota School of Law

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I. FORMATION (continued)

Topic 5: Statute of Frauds with Sales of Goods

Reading:

- Keating, Assignment No. 5, pp. 95-110
- Hull: no reading, but you may wish to review relevant material in Ch. 4 that was previously assigned

Class sessions:

- No. 6
- Sept 10

Problems we did in class:

- 5.1
- 5.2
- 5.3 (← not particularly useful for studying for the exam)

Key code sections:

- 2-201
 - statute of frauds, requirement of writing
- 1-201(b)(37)
 - definition of signed
- 1-201(b)(43)
 - definition of writing
- 1-103
 - general construction of UCC for purposes and policies, applicability of other law

Key learning objectives:

- understand when a contract for the sale of goods must be evidenced by a signed writing
 - when the price is \$500 or more
- understand the threshold of what is necessary for a signed writing

- the signed writing need not be the contract itself
- mostly you just need:
 - the quantity of goods to be specified
 - note that the contract cannot be enforced for beyond the quantity specified
 - that the writing is “signed” by the party against whom enforcement is sought
- understand that the requirements for a signature are quite liberal (1-201(37))
 - could be a typed name, a printed name, an X, the fact that something was sent on letterhead – just as long there is evidence of intent to authenticate the document
- be able to apply the between-merchant exception to the requirement of a signed writing under 2-201(2)
 - even where the party against whom enforcement is sought never created a signed writing, the statute of frauds can be satisfied with a written confirmation under specified circumstances:
 - both parties are merchants
 - the writing is sufficient against the sender (that is, the sender has bound herself or himself under 2-201(1)),
 - the recipient has reason to know of the contents of the confirmation, and
 - the recipient fails to object within 10 days after receipt
- recognize the various exceptions to the statute of frauds listed in 2-201(3), of which any one will do to make a contract enforceable:
 - specially manufactured goods where there’s a reliance interest (see 2-201(3)(a))
 - admission in court testimony or pleading (2-201(3)(b))
 - in some jurisdictions, you might be able to advance a lawsuit just to see if you can get this admission in discovery (this was debated in the *DF Activities v. Brown* case about the Frank Lloyd Wright chair, K 98-103)
 - payment was made and accepted (2-201(3)(c))
 - goods were received and accepted (2-201(3)(c))
- promissory estoppel and outright fraud, in many courts (via general principles of law and equity incorporated through 1-103)

Topic 6: Parol Evidence with Sales of Goods

(also covered under this topic: basic contract interpretation)

Reading:

- Keating, Assignment No. 6, pp. 111-128
- Hull, Ch. 5.D, pp. 89-97

Class sessions:

- No. 7, 8
- Sept 15, 17

Problems we did in class:

- 6.1 (a-d)
- 6.2

Key code sections:

- 2-202
 - parol evidence rule
- 2-209(1)
 - modification

Key learning objectives:

- understand the basics of contract interpretation
 - see the slideshow for details on this
- understand when the parol evidence rule is relevant and how to apply it
 - see the slideshow for key issues and pitfalls
- understand that a modification to a contract for the sale of goods can be binding without independent consideration (2-209(1))

Topic 7: Requisites to Formalization in Leases, International Sales, and Real Estate Sales

Reading:

- Keating, Assignment No. 7, pp. 130-144
- Hull: review Ch.3.E.4., p. 46; review that part of Ch. 5.D. regarding CISG, pp. 89-97

Class sessions:

- No. 8, 9
- Sept 17, 22

Problems we did in class:

- 7.1 (a-c)
- 7.2 (a-b)
- 7.3 (a-b)

Key code sections:

- 2A-201
 - statute of frauds for leases
 - *has substantial differences vs. 2-201*
- 2A-202
 - parol evidence rule for leases
 - *mirrors 2-202*
- CISG Article 1(1)
 - applicability of CISG
- CISG Article 6
 - parties can choose to exclude CISG or vary its provisions
- CISG Article 8(3)
 - relevance of negotiations and post-agreement conduct to interpreting a contract
- CISG Article 11
 - no requirement of writing or formalities

Key learning objectives:

- understand that the parol evidence rule (2A-202) is the same for leases as it is for sales of goods
- understand the key differences in the statute of frauds for leases (2A-201) as compared to the statute of frauds for sales of goods
 - the dollar amount threshold for requiring a signed writing is \$1,000 in total lease payments
 - the signed writing, if required, must include a description of the goods leased and the lease term
 - understand that a lease for which a signed writing is required is not enforceable beyond the term stated in the signed writing
 - know that the signature requirement is the same as for sales of goods (and that requirement is quite loose)

- know that there is no between-merchants exception for leases that is analogous to 2-201(2)
- there are exceptions to the signed-writing requirement in 2A-201(4) that are largely the same as 2-201(3):
 - the exceptions are:
 - specially manufactured goods where there's a reliance interest (see 2A-201(4)(a))
 - admission in court testimony or pleading (2A-201(4)(b))
 - leased goods were received and accepted (2A-201(4)(c))
 - but note there is no equivalent exception for payment was made and accepted (*cf.* 2-201(3)(c))
 - the lease term for a lease excepted from the signed-writing requirement under 2A-201(4) is determined by 2A-201(5)
- promissory estoppel and outright fraud, in many courts (via general principles of law and equity incorporated through 1-103) will allow enforcement of a lease despite the lack of a signed writing
- understand that there is no parol evidence rule under the CISG
- understand that there is no statute of frauds under the CISG
- understand what parties must do to exclude parol evidence that would add to or vary the terms of a written contract governed by the CISG. They must:
 - select a jurisdiction with a body of law that has the parol evidence rule (e.g., a UCC jurisdiction)
 - de-select CISG (since UCC states are part of the United States, which is a CISG signatory)
 - include a merger clause
- for real estate, understand that the common-law statute of frauds requires a signed writing for the sale of real property
 - understand that the common-law statute of frauds for real estate is stricter than the UCC statute of frauds
 - for real estate, the signed writing must generally include all "material terms"
 - exceptions are
 - equitable estoppel (detrimental reliance)
 - part performance (*Richard v. Richard* case is an example (K 138-144))
 - understand the potential difficulty, exemplified by *Richard*, of proving that conduct is part performance of a real-estate sales contract rather than just consistent with a lease of the real property