Chapter 5. Statute of Frauds

5.1. Statute of Frauds – the General Rule. The general rule is that oral contracts are perfectly good. The exception is the collection of statutes referred to as the Statute of Frauds. These statutes require certain transactions to be evidenced by a writing. Although you may have an offer and an acceptance that form a contract for the sale of goods, under UCC § 2-201, the contract may not be judicially enforceable *unless* it is evidenced by a writing. The writing requirement only applies to sales of goods for $500 or more.

5.1.1. Section 2-201(1) sets forth the following requirements for enforcement of a contract for the sale of goods of $500 or more:

- some ***writing***;
- sufficient to ***indicate a contract*** for sale has been made between the parties;
- ***signed*** by the party ***against whom*** enforcement is sought, or by the party's authorized agent; and
- indicating the ***quantity***.

5.1.1.1. Official Comment 1 notes that the writing "need not contain all the material terms" and any terms stated "need not be precisely stated." Comment 1 emphasizes that the only term that must appear is the quantity term, but even that does not need to be accurately stated. However, recovery is limited to the amount stated, whether accurate or not.

5.1.2. "Writing" is defined at UCC § 1-201(b)(43) as "printing, typewriting, or any other intentional reduction to tangible form." Under Section 7(c) of the Uniform Electronic Transactions Act, if a law, such as § 2-201, requires a record to be in writing, an electronic record satisfies the law.

5.1.3. Any terms not supplied by the writing will be supplied by other permissible evidence and by the gap-filler sections of the UCC.

5.1.4. The statute of frauds does not require the writing to be in one document. Two or more writings may be pieced together, provided that they relate to the same transaction (which may be established by the documents themselves, or by other evidence showing the connection). Thus, one signed payroll card and one unsigned payroll card could be read together to determine the terms of the agreement. *Crabtree v. Elizabeth Arden Corp.*, 110 N.E.2d 551 (N.Y. 1953).

☑ **Purple Problem 5-1.** Would the following constitute a "writing" for purposes of UCC § 2-201(focus on the writing requirement; we'll get to content requirements later):

(1) A sales receipt from Wal-Mart?

(2) An internal memorandum prepared by a manufacturing company addressed to one of its sales employees authorizing a sale?

(3) Notations of the terms of a sale made on a napkin at lunch?

(4) A digital recording?

5.1.5. There must be *some indication* that a contract has been made. For example, a check with a notation on the memo line such as "purchase of briefcase" would constitute language indicating a contract for sale has been made. A check with nothing written on it but the payee's name and the amount of the check would not sufficiently indicate the existence of a contract.

5.1.6. The writing need not necessarily be signed by both parties. The important signature is the signature of the party *against whom enforcement is sought*. So, for example, a letter signed by the purchaser, would be sufficient against the purchaser, *but not* against the seller, whose signature is not on the letter. Under § 7(d) of the Uniform Electronic Transactions Act (UETA), if a law requires a signature, an electronic signature satisfies the law.

☑ **Purple Problem 5-2.** Read the definition of "signed" at § 1-201(b)(37). Which of the following likely constitutes a signature:

(1) Handwritten initials?

(2) A typed name?

(3) A seller's letterhead?

5.1.7. Case: *Southwest Engineering v. Martin Tractor*

Southwest Engineering Co. v. Martin Tractor Co.

Supreme Court of Kansas
1970

SOUTHWEST ENGINEERING COMPANY, INC., a Corporation, Appellee, v. MARTIN TRACTOR COMPANY, INC., a Corporation, Appellant. No. 45,735. Opinion filed July 17, 1970. 473 P.2d 18 (Kan. 1970). The opinion of the court was delivered by Justice Fontron.

JOHN F. FONTRON, Justice:

This is an action to recover damages for breach of contract. Trial was had to the court which entered judgment in favor of the plaintiff. The defendant has appealed.

Southwest Engineering Company, Inc., the plaintiff, is a Missouri corporation engaged in general contracting work, while the defendant, Martin Tractor Company, Inc., is a Kansas corporation. The two parties will be referred to hereafter either as plaintiff, or Southwest, on the one hand and defendant, or Martin, on the other.

We glean from the record that in April, 1966, the plaintiff was interested in submitting a bid to the United States Corps of Engineers for the construction of certain runway lighting facilities at McConnell Air Force Base at Wichita. However, before submitting a bid, and on April 11, 1966, the plaintiff's construction superintendent, Mr. R. E. Cloepfil, called the manager of Martin's engine department, Mr. Ken Hurt, who at the time was at Colby, asking for a price on a standby generator and accessory equipment. Mr. Hurt replied that he would phone him back from Topeka, which he did the next day, quoting a price of $18,500. This quotation was re-confirmed by Hurt over the phone on April 13. Southwest submitted its bid on April 14, 1966, using Hurt's figure of $18,500 for the generating equipment, and its bid was accepted. On April 20, Southwest notified Martin that its bid had been accepted. Hurt and Cloepfil thereafter agreed over the phone to meet in Springfield on April 28. On that date Hurt flew to Springfield, where the two men conferred at the airfield restaurant for about an hour. Hurt took to the meeting a copy of the job specifications which the government had supplied Martin prior to the letting.

At the Springfield meeting it developed that Martin had upped its price for the generator and accessory equipment from $18,500 to $21,500. Despite this

change of position by Martin, concerning which Cloepfil was understandably amazed, the two men continued their conversation and, according to Cloepfil, they arrived at an agreement for the sale of a D353 generator and accessories for the sum of $21,500. In addition it was agreed that if the Corps of Engineers would accept a less expensive generator, a D343, the aggregate price to Southwest would be $15,000. The possibility of providing alternate equipment, the D343, was suggested by Mr. Hurt, apparently in an attempt to mollify Mr. Cloepfil when the latter learned that Martin had reneged on its price quotation of April 12. It later developed that the Corps of Engineers would not approve the cheaper generator and that Southwest eventually had to supply the more expensive D353 generator.

At the conference, Mr. Hurt separately listed the component parts of each of the two generators on the top half of a sheet of paper and set out the price after each item. The prices were then totaled. On the bottom half of the sheet Hurt set down the accessories common to both generators and their cost. This handwritten memorandum, as it was referred to during the trial, noted a 10 per cent discount on the aggregate cost of each generator, while the accessories were listed at Martin's cost. The price of the D353 was rounded off at $21,500 and the D343 at $15,000. The memorandum was handed to Cloepfil while the two men were still at the airport. We will refer to this memorandum further during the course of this opinion.

On May 2, 1966, Cloepfil addressed a letter to the Martin Tractor Company, directing Martin to proceed with shop drawings and submittal documents for the McConnell lighting job and calling attention to the fact that applicable government regulations were required to be followed. Further reference to this communication will be made when necessary.

Some three weeks thereafter, on May 24, 1966, Hurt wrote Cloepfil the following letter:

MARTIN TRACTOR COMPANY, INC.
Topeka Chanute Concordia Colby
CATERPILLAR
P.O. Box 1698
Topeka, Kansas

May 24, 1966

Mr. R. E. Cloepfil
Southwest Engineering Co., Inc.
P.O. Box 3314, Glenstone Station
Springfield, Missouri 65804

Dear Sir:

Due to restrictions placed on Caterpillar products, accessory suppliers, and other stipulations by the district governing agency, we cannot accept your letter to proceed dated May 2, 1966, and hereby withdraw all verbal quotations.

Regretfully,

/s/ Ken Hurt

Ken Hurt,

Manager Engine Division

On receipt of this unwelcome missive, Cloepfil telephoned Mr. Hurt who stated they had some work underway for the Corps of Engineers in both the Kansas City and Tulsa districts and did not want to take on any other work for the Corps at that time. Hurt assured Cloepfil he could buy the equipment from anybody at the price Martin could sell it for. Later investigation showed, however, that such was not the case. In August of 1966, Mr. Cloepfil and Mr. Anderson, the president of Southwest, traveled to Topeka in an effort to persuade Martin to fulfill its contract. Hurt met them at the company office where harsh words were bandied about. Tempers eventually cooled off and at the conclusion of the verbal melee, hands were shaken all around and Hurt went so far as to say that if Southwest still wanted to buy the equipment from them to submit another order and he would get it handled. On this promising note the protagonists parted.

After returning to Springfield, Mr. Cloepfil, on September 6, wrote Mr. Hurt placing an order for a D353 generator (the expensive one) and asking that the order be given prompt attention, as their completion date was in early December. This communication was returned unopened.

A final effort to communicate with Martin was attempted by Mr. Anderson when the unopened letter was returned. A phone call was placed for Mr. Martin, himself, and Mr. Anderson was informed by the girl on the switchboard that Martin was in Colorado Springs on a vacation. Anderson then placed a call to the motel where he was told Mr. Martin could be reached. Martin refused to talk on the call, on learning the caller's name, and Anderson was told he would have to contact his office.

Mr. Anderson then replaced his call to Topeka and reached either the company comptroller or the company treasurer who responded by cussing him and saying "Who in the hell do you think you are? We don't have to sell you a damn thing." Southwest eventually secured the generator equipment from Foley Tractor Co. of Wichita, a company which Mr. Hurt had one time suggested, at a price of $27,541. The present action was then filed, seeking damages of $6,041 for breach of the contract and $9,000 for loss resulting from the delay caused by the breach. The trial court awarded damages of $6,041 for the breach but rejected damages allegedly due to delay. The defendant, only, has appealed; there is no cross-appeal by plaintiff.

The basic disagreement centers on whether the meeting between Hurt and Cloepfil at Springfield resulted in an agreement which was enforceable under the provisions of the Uniform Commercial Code § 2-201 (1) . . . .

Southwest takes the position that the memorandum prepared by Hurt at Springfield supplies the essential elements of a contract required by the foregoing statute, *i.e.*, that it is (1) a writing signed by the party sought to be charged, (2) that it is for the sale of goods and (3) that quantity is shown. In addition, the reader will have noted that the memorandum sets forth the prices of the several items listed.

It cannot be gainsaid that the Uniform Commercial Code has effected a somewhat radical change in the law relating to the formation of enforceable contracts as such has been expounded by this and other courts. In the Kansas Comment to 84-2-201, which closely parallels the Official U.C.C. Comment, the following explanation is given:

> Subsection (1) relaxes the interpretations of many courts in providing that the required writing need not contain all the material terms and that they need not be stated precisely. All that is required is that the writing afford a basis for believing that the

> offered oral evidence rests on a real transaction. Only three definite and invariable requirements as to the writing are made by this subsection. First, it must evidence a contract for the sale of goods; second, it must be signed, a word which includes any authentication which identifies the party to be charged; and third, it must specify quantity. Terms relating to price, time, and place of payment or delivery, the general quality of goods, or any particular warranties may all be omitted. . . .

The defendant does not seriously question the interpretation accorded the statute by eminent scriveners and scholars, but maintains, nonetheless, that the writing in question does not measure up to the stature of a signed memorandum within the purview of the Code; that the instrument simply sets forth verbal quotations for future consideration in continuing negotiations.

But on this point the trial court found there was an agreement reached between Hurt and Cloepfil at Springfield; that the formal requirements of K.S.A. 84-2-201 *were* satisfied; and that the memorandum prepared by Hurt contains the three essentials of the statute in that it evidences a sale of goods, was authenticated by Hurt and specifies quantity. Beyond that, the court specifically found that Hurt had apparent authority to make the agreement; that both Southwest and Martin were "merchants" as defined in K.S.A. 84-2-104; that the agreement reached at Springfield included additional terms not noted in the writing: (1) Southwest was to install the equipment; (2) Martin was to deliver the equipment to Wichita and (3) Martin was to assemble and supply submittal documents within three weeks; and that Martin's letter of May 24, 1966, constituted an anticipatory breach of the contract.

We believe the record supports all the above findings.

We digress at this point to note Martin's contention that the memorandum is not signed within the meaning of 84-2-201. The sole authentication appears in handprinted form at the top lefthand corner in these words: "Ken Hurt, Martin Tractor, Topeka, Caterpillar." The court found this sufficient, and we believe correctly so.

K.S.A. 84-1-201 (39) provides as follows:

> "Signed" includes any symbol executed or adopted by a party with present intention to authenticate a writing.

The official U.C.C. comment states in part:

> The inclusion of authentication in the definition of "signed" is to make clear that as the term is used in this Act a complete signature is not necessary. Authentication may be printed,

> stamped or written; ... It may be on any part of the document and in appropriate cases may be found in a billhead or letterhead. . . . The question always is whether the symbol was executed or adopted by the party with present intention to authenticate the writing.

Hurt admittedly prepared the memorandum and has not denied affixing his name thereto. We believe the authentication sufficiently complies with the statute. . . . It is quite true, as the trial court found, that terms of payment were not agreed upon at the Springfield meeting. . . . However, a failure on the part of Messrs. Hurt and Cloepfil to agree on terms of payment would not, of itself, defeat an otherwise valid agreement reached by them. K.S.A. 84-2-204(3) reads:

> Even though one or more terms are left open a contract for sale does not fail for indefiniteness if the parties have intended to make a contract and there is a reasonably certain basis for giving an appropriate remedy.

The official U.C.C. Comment is enlightening:

> Subsection (3) states the principle as to "open terms" underlying later sections of the Article. If the parties intend to enter into a binding agreement, this subsection recognizes that agreement as valid in law, despite missing terms, if there is any reasonably certain basis for granting a remedy. The test is not certainty as to what the parties were to do nor as to the exact amount of damages due the plaintiff. Nor is the fact that one or more terms are left to be agreed upon enough of itself to defeat an otherwise adequate agreement. Rather, commercial standards on the point of "indefiniteness" are intended to be applied, this Act making provision elsewhere for missing terms needed for performance, open price, remedies and the like.
>
> The more terms the parties leave open, the less likely it is that they have intended to conclude a binding agreement, but their actions may be frequently conclusive on the matter despite the omissions. . . .

So far as the present case is concerned, K.S.A. 84-2-310 supplies the omitted term. This statute provides in pertinent part:

> Unless otherwise agreed

> (a) payment is due at the time and place at which the buyer is to receive the goods even though the place of shipment is the place of delivery;

In our view, the language of the two Code provisions is clear and positive. Considered together, we take the two sections to mean that where parties have reached an enforceable agreement for the sale of goods, but omit therefrom the terms of payment, the law will imply, as part of the agreement, that payment is to be made at time of delivery. In this respect the law does not greatly differ from the rule this court laid down years ago. . . .

We do not mean to [imply] that terms of payment are not of importance under many circumstances, or that parties may not condition an agreement on their being included. However, the facts before us hardly indicate that Hurt and Cloepfil considered the terms of payment to be significant, or of more than passing interest. Hurt testified that while he stated his terms he did not recall Cloepfil's response, while Cloepfil stated that as the two were on the point of leaving, each stated their usual terms and that was as far as it went. The trial court found that only a brief and casual conversation ensued as to payment, and we think that is a valid summation of what took place. Moreover, it is worthy of note that Martin first mentioned the omission of the terms of payment, as justifying its breach, in a letter written by counsel on September 15, 1966, more than four months after the memorandum was prepared by Hurt. On prior occasions Martin attributed its cancellation of the Springfield understanding to other causes. In its May 24 letter, Martin ascribed its withdrawal of "all verbal quotations" to "restrictions placed on Caterpillar products, accessory suppliers, and other stipulations by the district governing agency." In explaining the meaning of the letter to Cloepfil, Hurt said that Martin was doing work for the Corps of Engineers in the Kansas City and Tulsa districts and did not want to take on additional work with them at this time.

The entire circumstances may well give rise to a suspicion that Martin's present insistence that future negotiations were contemplated concerning terms of payment, is primarily an afterthought, for use as an escape hatch. Doubtless the trial court so considered the excuse in arriving at its findings. …

Neither confirmation nor acceptance by Southwest was needed on May 2 to breathe life into the agreement previously concluded at Springfield, for it was memorialized in writing at the time of making. In an article entitled The Law of Sales Under the Uniform Commercial Code, 17 Rutgers Law Review 14, Professor Calvin W. Corman writes:

> The Code Provision merely requires that the writing be sufficient to indicate that a contract for sale has been made between the parties. (p. 20.)

In our opinion the instant memorandum amply satisfies that requirement, affording a substantial basis for the belief that it rests on a real transaction.

We find no error in this case and the judgment of the trial court is affirmed.

[Authors' Note: The definitions of "signed" and "writing" are now found at §§ 1-201(37) and (43) respectively.]

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5.2. The Confirmation between Merchants Exception. Section 2-201(1) having set forth the general requirements imposed by the statute of frauds, subsection (2) provides an ***exception*** for agreements ***between merchants***:

> IF
>
> - a written confirmation is sent within a ***reasonable time*** after an agreement is made,
> - the writing is "***sufficient against the sender***,"
> - the writing is ***received*** by the other party, and the other party ***has reason to know*** of its contents
>
> AND
>
> - the recipient ***does not object*** to the writing's contents ***within 10 days*** of receipt
>
> THEN the writing satisfies the statute of frauds, and is enforceable against the recipient, even though not signed by the recipient.

5.2.1. See UCC § 1-205 which states that "reasonable" time depends on "the nature, purpose and circumstances of the action."

5.2.2. What does it mean to be "sufficient against the sender?" The writing must meet the elements of subsection (1) (*i.e.*, a writing, indication of contract, at least a quantity term, signed by the sender).

5.2.3. The written confirmation must be *received*. See § 1-202(e), which states that a person "receives" a notice when:

- it comes to that person's attention, or
- it is duly delivered in a form reasonable under the circumstances at the place of business through which the contract was made OR at

another location held out by that person as the place for receipt of such communications.

Section 15(b) of UETA states that an electronic record is received when it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record, in a form capable of being processed by that system.

5.2.4. Note the distinctions between notice, receipt, and knowledge. See § 1-202. What does it mean in § 2-201(2) that the writing must be "received" and the recipient must have "reason to know" its contents? What if it said that one party must "notify" the other party of the confirmation? What if it said that the recipient must "know" its contents?

5.2.5. Note that if a recipient *objects* within 10 days to the written confirmation, then the written confirmation does not satisfy the statute of frauds.

☑ **Purple Problem 5-3.** On July 10, 2014, Jack, a farmer, made a contract over the phone to sell all of his winter wheat to be harvested in August to General Milling for $7.50/bushel. On July 25, 2014, General Milling sent an e-mail to the e-mail address provided to it by Jack, stating "per phone conversation, confirm purchase of all your 2014 winter wheat at $7.50/bushel." Jack saw the e-mail from General Milling, but he thought it was probably just an advertisement for some products, so he never opened it nor read its contents. On August 25, 2014, after the harvest, Jack received an offer of $7.95/bushel from AgraBroker, and Jack sold the winter wheat to AgraBroker. When General Milling brings a breach of contract claim against Jack, Jack raises the statute of frauds defense, noting that he had not signed a contract with General Milling. Apply each element of § 2-201(2). Will Jack prevail?

5.3. Exceptions Applicable to Merchants and Non-Merchants. Subsection (3) of § 2-201 provides three additional exceptions to the statute of frauds that apply to all contracts (and not just contracts involving merchants):

1. The specially manufactured goods exception.
2. The admission exception
3. The performance exception

Let's take each in turn.

5.3.1. ***The specially manufactured goods exception:*** If the contract is for *specially manufactured* goods which *are not suitable for sale to others in the ordinary course of business*, UCC § 2-201(3)(a) provides that the contract *will be enforced* in the absence of a writing if:

- the manufacturer makes a substantial beginning of their manufacture OR commitments for their procurement
- before any notice of repudiation AND under circumstances which reasonably indicate that the goods are for the buyer (*i.e.*, some sort of identification to the contract).

☑ **Purple Problem 5-4.** Big Edge Theatre places an order with Leftwhere Design over the phone for 100 custom made outfits to be used in an upcoming theatrical production. Leftwhere Design accepts the order over the phone and the parties agree upon a price of $10,000. The outfits are to be made with lots of glitter, feathers, and neon green fabric. Before a written agreement is entered into, Big Edge Theatre calls Leftwhere Design and cancels the order.

(1) Leftwhere Design has taken no steps to begin making the outfits. Is there an enforceable contract under UCC § 2-201(3)(a)?

(2) Leftwhere Design has not started making any of the outfits, but in reliance on the oral agreement Leftwhere Design has paid for and ordered 1,000 yards of neon green fabric. Is there an enforceable contract?

5.3.2. ***The admission exception*****:** If a party to an agreement that does not satisfy the statute of fraud *admits* the existence of a contract in its pleadings, testimony, or other court proceedings, the contract is enforceable under UCC § 2-201(3)(b) up to the quantity of goods admitted.

☑ **Purple Problem 5-5.** On October 1, Bonnie, a student, orally agreed to purchase her roommate Stephanie's car for $6,000. When Stephanie tendered the car, Bonnie refused to pay, saying that her boyfriend, a law student, told her that the contract was not enforceable because it was not in writing.

(1) Stephanie sued Bonnie, alleging:

A. On October 1, plaintiff offered to sell her car to defendant.

B. On October 1, defendant accepted the offer and promised to pay plaintiff $6,000 for the car.

C. On October 3, plaintiff tendered the car and defendant refused to pay for it.

D. The market value of the car is $5,600.

E. Wherefore plaintiff is damaged in the amount of $400.

How should Bonnie answer the complaint?

(2) Alternatively, suppose Bonnie was questioned in a deposition as follows:

Q: Did you and Stephanie talk about purchasing her car on October 1?

A: Yes.

Q: And she offered to sell it to you for $6,000?

A: Yes.

Q: And you accepted that offer?

A: Yes.

Will Bonnie prevail in her statute of frauds defense?

5.3.3. *The performance exception*: Under UCC § 2-201(3)(c), an agreement for the sale of goods for $500 or more not otherwise satisfying the statute of frauds will nonetheless be enforced if there has been performance, either in the form of ***payment for goods*** or ***acceptance of goods***. Many other defenses to contract formation make the contract voidable, so that a party can assert the defense even if they have performed. But if you accept the goods or pay for them, you lose your right to later assert the statute as a defense. This makes sense, for if the purpose of the statute is to prevent fraud, a person should not be able to in effect admit they made a contract by performing it, and then deny it.

A more difficult question is whether a partial payment, such as a deposit, will constitute sufficient payment to enforce the contract. Several courts have held that a deposit is sufficient. See, e.g., *Morris v. Perkins Chevrolet*, 663 S.W.2d 785 (Mo. Ct. App. 1984), where the court enforced an oral agreement for the purchase of an "Indy 500 Pace Car" because purchaser had paid a $100 deposit

by check (which was cashed by the seller). On the other hand, in *Jones v. Wide World of Cars, Inc.*, 820 F. Supp. 132 (S.D.N.Y. 1993), the court held that a buyer's deposit towards the purchase of a car was insufficient to establish an enforceable contract absent additional conduct or a writing. This court noted that courts are more inclined to find a deposit sufficient when enforcement is sought against the seller rather than the buyer.

5.4. Estoppel. If all else fails, and the contract does not meet the requirements of the statute of frauds, and no exceptions apply, is there any other argument you can present to avoid the statute of frauds defense? Recall § 1-103(b), discussed in Section 1.7 of Chapter 1, which allows principles of law and equity to supplement the UCC, specifically including "estoppel."

5.4.1. In *Northwest Potato Sales, Inc. v. Beck*, 678 P.2d 1138 (Mont. 1984), a farmer agreed to sell seed potatoes to a merchant. In reliance on that oral agreement, the merchant re-sold the potatoes in the market (before they were delivered). Seed potato prices quickly escalated, and when it came time for delivery, the farmer refused, and sold his seed potatoes to another merchant at double the price. When the first merchant brought a breach of contract claim, the farmer raised the statute of frauds defense. The court estopped the farmer from denying the existence of the contract. The court noted previous dealings between the parties which gave rise to the farmer's knowledge that the merchant would re-sell the seed potatoes into the market in reliance on the contract. Another factor noted by the court were phone conversations between the parties after the original contract was formed, in which the farmer failed to deny the existence of the contract when the merchant brought it up, and even promised to send back a written contract.

5.4.2. Is UCC § 2-201 the exclusive statement of the statute of frauds applicable to sales of goods, or should it be supplemented by the non-UCC statute of frauds? For example, assume that on October 1, 2017, John orally agreed with Mary to sell his Ted Williams autographed baseball to her for $400 on November 1, 2018. This agreement does not fall within UCC § 2-201, because the price is under $500. If John refuses to perform on November 1, 2018, and Mary subsequently brings a breach of contract claim against him, can he assert as a defense the non-UCC statute of frauds which, in most jurisdictions, prevents enforcement of an oral contract that cannot be performed within one year? One argument is that the UCC § 2-201 is the exclusive source of the statute of frauds for the sale of goods, in which case the one-year rule would not apply. This is the approach used in proposed-but-withdrawn Amended § 2-201, which specifically

addressed the issue in a new subsection (4) that would have said, "A contract that is enforceable under this section is not unenforceable merely because it is not capable of being performed within one year or any other period after its making."

But since the proposed Amended Code was not enacted in any jurisdiction, this question remains one where there is a split of authority.

5.5. Writings Signed by Agents. Is a writing otherwise sufficient to meet the statute of frauds enforceable when signed by an agent? Yes. However, under the ***equal dignities rule***, if the contract signed by the agent must be in writing, then the agent's authority to enter into the contract must also be in writing.

☑ **Purple Problem 5-6.** Ed Urner orally authorizes his ranch manager to sell 10 head of buffalo for $1,000 each. The ranch manager, in turn, enters into a written agreement with a local restaurant for the sale of ten buffalo at $1,000 each. Is the contract enforceable against Ed Urner?