



## Weekly Information Sheet 07

# Contract Rules and Interpretation

### Definition of Contract:

*“An agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law.”*

### Elements of a Contract include:

- *Agreement,*
- *Between Competent Parties,*
- *Based on Genuine Assent,*
- *Supported by Consideration,*
- *for Lawful Purpose Subject Matter,*
- *in Legal Form.*

## Statute of Frauds

### Oral and Written Contracts:

**Oral or Written:** Contracts in most situations can be an oral or written agreement.

**Oral Contracts:** Unless otherwise required by law, a contract does not have to be in writing to be a binding and enforceable legal obligation.

**Written Contracts:** Although it is always a good idea to make contractual agreements in writing (as such tends to reduce confusion) under certain legal requirements sometimes contracts are mandated to be in writing.

**Statute of Frauds:** In accordance with the legal principle known as the statute of frauds, there are some types of contracts that must be recorded in writing, and signed by the party to be charged in order to be enforceable.

### Basic Rule and Intent:

**Basic Rule:** The basic rule of the statute of frauds is that a contract within its scope may not be enforced unless a memorandum of it is written and signed by the party to be charged. This gives rise to a three observations:

**First:** The statute does not require the entire contract to be written, but only a memorandum of it.

**Second:** Only the party who is to be charged, that is, against whom enforcement is sought, needs to have signed it, and thus the signature of the other party is not needed.

**Third:** The consequence of noncompliance is usually unenforceability, not invalidity.

**Intent:** The statute is intended to prevent a person from enforcing a falsely alleged contract through perjured testimony.

# Statute of Frauds (Continued)

## Covered Items:

**Contracts Involving the Sale or Conveyance of an Interest in Land:** The statute of frauds requires that contracts concerning the sale or conveyance of an interest in land, must be in writing;

**Contracts That Cannot Be Performed Within a Year:** The statute of frauds further requires that any contract, which cannot be performed within a year, must be in writing;

**Contracts For the Sale of Goods in Excess of \$500:** The statute of frauds additionally mandates that a contract for sale and/or purchase of goods, in excess of \$500, must be in writing;

**Contracts To Answer for the Debt or Obligation of Another:** The statute of frauds also requires that suretyship contracts, meaning a contract to pay another person's debt or obligation, must be in writing;

**Contracts Made by Executors or Administrators to Answer for the Duty of Their Decedents:** The statute of frauds further requires that contracts in which the executor or administrator of an estate assumes personal liability to a creditor of the decedent for a debt or obligation incurred by the decedent before his death, must be in written form;

**Contracts Made upon Consideration of Marriage:** The statute of frauds requires that prenuptial contracts motivated by the impending marriage must be in writing. This is not a promise of marriage, which can be, and usually is an oral agreement; and

**Contracts Involving the Assignment of, or the Naming of a Beneficiary of, a Life, Health or Accident Insurance Policy:** That any contract, involving a promise to assign, or name a beneficiary of, a life, health or accident insurance policy, must be in writing.

## Writing and Signature:

**What Constitutes Writing:** Although writing is traditionally the inscription of words on a tangible surface, such as paper, it is clear in contemporary law that "writing" includes a retrievable recording in an electronic or other medium. The statute of frauds is silent as to the particular formality needed for the writing as long as it contains the statute's minimum required content and signature.

**Can Be a Memorandum and Not the Entire Contract:** A written memorandum of the contract can suffice to satisfy the statute of frauds, and need not be in a single document.

**What Constitutes Signing:** In accordance with the statute of frauds, the contract, or memorandum thereof, must be signed by the party sought to be bound by the contract. A signature is any mark or symbol placed by the party on the writing with the intention of authenticating it. This includes electronic signatures under the UETA and the ESRA.

**Who Must Sign – The Party to be Charged:** In accordance with the statute of frauds, the "party to be charged" (i.e. the party sought to be held liable to perform the duties under the agreed to contract), must have signed the contract.

## Exceptions:

**Partial Performance:** The doctrine of partial performance, allows an oral contract to be upheld, when the parties begin performance, because such provides reliable evidence of a contract.

**Judicial Admission:** The doctrine of judicial admission also allows an oral contract to be upheld, when the party being charged admits in pleadings or testimony that a contract was made.

**Estoppel / Detrimental Reliance:** The statute of frauds may be circumvented when the party seeking to get around the statute of frauds is able to prove estoppel and detrimental reliance.

# Parole Evidence Rule

## Parole Evidence Rule:

**Basic Statement and Rationale:** The Parole Evidence Rule holds that no oral or extrinsic evidence (evidence outside the provisions of the written contract) shall be considered when determining the meaning of the contract itself.

**The Written Contract Represents the Final Expression of the Parties:** The Parole Evidence Rule is based on the principle that when the parties record their agreement in writing, they intend the written record to be the final expression of their agreement. Accordingly, under the Parol Evidence Rule, no oral or extrinsic evidence may be admitted to supplement, explain, or contradict the written contract.

**The Written Contract Supersedes All Previous Discussions and Agreements:** When parties reduce the contract to writing, and sign the same, the courts hold that they intended such to supersede anything that might have been proposed, discussed, or agreed to prior to execution of the writing but not ultimately recorded in it. This is why the Parole Evidence Rule requires that the court should not hear evidence of any terms that were allegedly agreed to but are not reflected in the writing, as such evidence is suspect, unreliable, and irrelevant, and is more likely to mislead and confuse than to inform.

**Purpose and Premise of the Parole Evidence Rule:** The primary purpose of the parole evidence rule is to control the court's decision making and to shield it from evidence that is suspect and unreliable. This Rule also promotes efficiency in the conduct of litigation, by excluding such suspect evidence at the outset thereby saving the time that would otherwise be wasted in presenting such less reliable evidence. Lastly, the Rule also promotes transactional efficiency, because due to its existence, contracting parties are more likely to make an effort to record their agreement more fully and accurately.

## Exceptions:

**Ambiguity:** If a written contract is **ambiguous** or clearly has term which can have two or more different meanings, then parole evidence may generally be admitted by the court to clarify the meaning.

**Fraud, Duress, Mistake or Illegality:** Under certain circumstances involving fraud, duress, mistake, or illegality, parole evidence may also sometimes be admitted:

**Contract Modification:** The Parol Evidence Rule prohibits only the contradiction of a complete written contract. It does not prohibit proof that the contract is incomplete or was subsequently, thereafter modified or terminated.

# Rules of Construction and Interpretation

## Ascertaining the Meaning of an Agreement:

**Process:** The processes of interpretation (inferring meaning from facts) and construction (inferring meaning as a matter of law) of contracts follows several rules and legal methods in the areas examined.

**Areas of Examination:** These include the Intention of the Parties; Examination of the Whole Contract; Analysis of Contradictory and Ambiguous Terms; Determination of Implied Terms; Conduct and Custom of the Parties; and Manner of Avoidance of Hardship.

**Disputes of Law vs. Fact:** Whereas construction determines the legal effect of the words or actions in a contract, interpretation identifies the meaning of such words or actions.

# Rules of Construction and Interpretation

## Areas of Examination:

**Intent of the Parties:** When people enter into a contract, it is to be presumed that they intend for their agreement to have some effect. A court will strive to determine the intent of the parties in order to give this effect to it. A contract, therefore, is to be enforced according to its terms. But a court cannot remake or rewrite the contract, under the pretense of interpreting what the intent of the parties actually is.

**Examination of the Whole Contract:** The provisions of a contract must be construed as a whole in such a way as to examine the whole contract so that every part is given effect. Every word of a contract is therefore to be given effect if reasonably possible. The contract is thus to be construed as a whole, and if the plain language of the contract thereby viewed solves the dispute, then the court is to make no further analysis.

**The Four Corners of the Contract:** Proper contractual interpretation first focuses on the normal, accepted meaning of the words used by the parties within the four corners of the contract.

**Plain Meaning:** Where the court has no evidence of meaning extrinsic to the bare language of the contract, an examination is necessarily confined to the four corners of the agreement interpreting that language to ascertain its meaning. Where the contract expresses the disputed term in clear and unambiguous language, extrinsic evidence as to its meaning is rejected and/or treated with caution. Courts are quite strongly resistant to considering extrinsic evidence if the language used in the contract is clear on its face. Under the doctrine of Parol Evidence, it is the written contract itself that contains the intent of the parties, and from which such can be determined.

**New York Four Corners Rule:** The New York Court of Appeals has explicitly held that the four corners approach should be followed, and that an examination of the entire contract must be done to determine the meaning of its terms. In *WWW Associates v. Giancontieri*, 77 NY2d 157 (1990) the court held "[E]xtrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face." *Id.* at 163. "Such court further stated that "when parties set down their agreement in a clear, complete document, ... [e]vidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing." *Id.* at 162. Under this New York doctrine, when the plain meaning of an integrated writing is unambiguous, that meaning governs.

**Analysis of Contradictory and Ambiguous Terms:** The provisions of a contract must not conflict or have different meanings. If a term in a contract conflicts with another term, or one term has two different meanings, then it is necessary for a court to determine whether there is a contract and, if so, what the contract really means.

**Determination of Implied Terms:** In certain cases, a court will imply a term to cover a situation for which the parties failed to provide or, when needed, to give the contract a construction or meaning that is reasonable. In such instances, the court will imply details of the performance of a contract not expressly stated in the contract. In contracts to perform work, courts will find an implied promise to use such skill as is necessary to properly perform the work.

**Conduct and Custom of the Parties:** The conduct of the parties and the customs and usages of a particular trade may give meaning to the words of the parties and thus aid in the interpretation of their contract.

**Manner of Avoidance of Hardship:** As a general rule, a party is bound by a contract even though it proves to be a bad bargain. This means, that if possible, a court will interpret a contract to avoid hardship. Courts will also, if possible, interpret a vague contract in a way to avoid any forfeiture of a party's interest. As a result, when hardship arises, because the contract makes no provision for the situation that has occurred, the court will sometimes imply a term to avoid the hardship.