

10-10-2026 | Lecture 7 - Definiteness, Pre-Contractual Liability, and the Statute of Frauds

What are three practical alternatives to entering an agreement to negotiate in good faith?

- 1) Executing the ultimate agreement early with express conditions
- 2) Purchasing an option on the ultimate agreement
- 3) Obtaining a right of first refusal

Under UCC § 2-201(3)(c), if a buyer pays \$600 for goods and the seller accepts payment, is the oral contract enforceable?

Yes; acceptance of payment removes the oral agreement from the Statute of Frauds to the extent of the payment made.

What two core elements are mandatory to establish an enforceable agreement?

Mutual Assent and Definiteness.

To what extent is an oral contract enforced under the UCC Judicial Admission Exception?

Only up to the quantity of goods admitted in pleadings, testimony, or court proceedings.

On what two grounds have English courts traditionally refused to enforce agreements to negotiate in good faith?

- 1) The agreement is too indefinite to be enforceable.
- 2) Calculating damages is unfeasible because the ultimate contract terms remain uncertain.

What is the traditional legal distinction between a surety and a guarantor?

A surety is directly and jointly liable with the principal debtor; a guarantor's liability is secondary and derivative after default.

What standard of proof governs damages for breach of a preliminary agreement to negotiate?

Damages must be capable of proof to a reasonable degree of certainty and be reasonably foreseeable at the time of the agreement.

What five elements must a memorandum or writing contain to satisfy the traditional common law Statute of Frauds?

- 1) Essential terms and conditions
- 2) Identification of subject matter
- 3) Identity of parties
- 4) Recital of consideration
- 5) Signature of the party to be charged

What is the prevailing majority rule regarding damages awarded for breach of an agreement to negotiate in good faith?

Recovery is limited to reliance damages, including out-of-pocket expenses and proven lost opportunities.

Why do courts generally limit damages for breach of preliminary negotiation agreements to reliance losses?

Because expectation damages are usually too speculative since the final contract terms were never definitively concluded.

What factors or sources may a court evaluate to determine if a contract is sufficiently definite?

Preliminary negotiations, prior communications, governmental regulations, applicable trade usages, course of dealing, and course of performance.

Under UCC § 2-201(3)(a), when is an oral contract enforceable under the Specially Manufactured Goods Exception?

When goods are specially manufactured for the buyer, unsuitable for sale to others in the ordinary course, and the seller has made a substantial beginning or procurement commitment before repudiation.

What signature satisfies the Statute of Frauds requirements?

Any symbol, mark, or electronic signature executed or adopted by a party with present intention to authenticate the writing.

What is an escalator clause in a commercial contract?

A contract term that fixes price adjustments according to an agreed-upon formula tied to market indices or external economic measures.

What is the Main Purpose Rule (or Leading Object Rule) in suretyship law?

An oral suretyship promise falls outside the Statute of Frauds if the promisor's primary motive in guaranteeing the debt is for their own economic benefit.

What is the legal definition of the Statute of Frauds?

A statutory rule requiring specified types of contracts to be evidenced by a signed writing to be legally enforceable.

Under UCC § 2-201(1), what is the effect if a writing omits or incorrectly states an agreed term?

The writing remains sufficient, but enforcement is strictly limited to the quantity of goods shown in the writing.

Why are prenuptial agreements required to be written and signed?

They are promises made in consideration of marriage, bringing them squarely within the Statute of Frauds.

What constitutes a misrepresentation of intention in commercial negotiations?

Falsely stating a present intention to come to terms or execute a contract when no such intention exists.

Under UCC § 1-303, what is a course of dealing?

A sequence of conduct concerning previous transactions between the parties that establishes a common basis of understanding.

Under the minority rule (e.g., SIGA Techs. v. Pharmathene), what must a claimant prove to recover expectation damages for breach of a duty to negotiate?

The claimant must prove that 'but for' the breaching party's bad faith, the parties would have concluded the ultimate deal.

What legal obligation is created when an offeree begins performance under Restatement (Second) of Contracts § 62?

Commencement of performance operates as a promise to complete performance, precluding the offeree from speculating at the offeror's expense.

What is the legal effect of complete performance on an oral contract that could not originally be performed within one year?

Full performance removes the oral contract from the Statute of Frauds, making it fully enforceable.

What fundamental difference exists between an unenforceable agreement to agree and an enforceable agreement to negotiate in good faith?

An agreement to agree promises a future result; an agreement to negotiate obligates good-faith efforts to pursue terms without guaranteeing a final deal.

Under UCC § 1-303, what is a course of performance?

A sequence of conduct between parties under a specific transaction that involves repeated occasions for performance accepted without objection.

What role does unjust enrichment play in pre-contractual negotiations?

It forms the foundation for a restitution claim if one party retains a benefit conferred during failed negotiations without paying compensation.

What is the remedy for an unexcused refusal to negotiate in good faith under a binding preliminary commitment?

Compensation for reliance damages incurred by the non-breaching party.

How does misrepresentation by non-disclosure affect pre-contractual negotiations?

It can create tort liability or pre-contractual liability when a party conceals facts they have a legal duty to disclose.

Does the UN Convention on Contracts for the International Sale of Goods (CISG Art. 11) require writing for international sales contracts?

No; under CISG Art. 11, international sales contracts need not be concluded in or evidenced by writing and may be proved by any means.

What is the essential function of an option contract?

It limits the offeror's power to revoke an offer for a specified period of time.

Why does a contract to construct a complex 110-story skyscraper fall outside the Statute of Frauds One-Year Provision even if it actually takes three years to complete?

Because completion within one year is theoretically possible under the terms, even if highly improbable.

What two essential functions does the Requirement of Definiteness serve in contract law?

- 1) Enables a court to determine whether a contract breach has occurred.
- 2) Enables a court to calculate appropriate remedy and damages.

In a suretyship relation, who is the principal?

The debtor whose underlying obligation is shared or guaranteed by another.

How does Restatement (Second) of Contracts § 45 protect an offeree in a unilateral contract?

It creates an option contract as soon as the offeree begins the requested performance, preventing the offeror from revoking the offer.

What is the evidentiary function of the Statute of Frauds?

It provides reliable physical evidence of contract terms, preventing fraud, perjury, and faulty memory in litigation.

How does an affirmative defense differ procedurally from a standard defense denial?	An affirmative defense asserts independent facts that defeat liability rather than directly refuting an essential element of the plaintiff's cause of action.
What equitable doctrine can enforce an oral contract for the transfer of real property?	The part performance doctrine, typically triggered when a buyer pays part of the price and takes possession or makes valuable improvements.
Under general American common law, is there an implied duty of good faith in pre-contractual negotiations?	No; the common law does not imply a general duty to negotiate in good faith absent an express contract to do so.
How does UCC § 1-203 differ from civil law systems (such as UNIDROIT Principles Art. 2.1.15) regarding pre-contractual negotiations?	UCC § 1-203 imposes good faith only in contract performance and enforcement, whereas civil law regimes impose good faith duties during pre-contractual negotiations.

What measure of recovery is available if a party confers a benefit on another during failed negotiations?

Restitution damages, requiring the recipient to restore or pay for the unjust benefit conferred.

How can Promissory Estoppel prevent the assertion of a Statute of Frauds defense?

It precludes a party from raising the Statute of Frauds when detrimental reliance on an oral promise would result in unconscionable injury or fraud.

What main contract categories traditional fall within the Statute of Frauds (often recalled by the mnemonic MY LEGS)?

Marriage, Year (performance >1 year), Land, Executor, Goods (\$500+), Suretyship.

What is the legal consequence if a contract is within the Statute of Frauds but fails to satisfy its writing requirement?

The oral contract or unwritten obligations are unenforceable against a party asserting the Statute as an affirmative defense.

What distinguishes the duty of good faith in contract performance from a duty to negotiate in good faith?

Good faith in performance is implied in existing contracts; the duty to negotiate arises only from a binding preliminary agreement to negotiate.

What are the three required elements of Promissory Estoppel?

- 1) A clear and unambiguous promise
- 2) Reasonable and foreseeable reliance by the promisee
- 3) Detrimental injury or loss sustained by reason of reliance

Under UCC § 2-201(1), what purchase price brings a contract for the sale of goods within the Statute of Frauds?

A contract price of \$500 or more.

Are 'agreements to negotiate in good faith' enforceable?

Yes, provided the traditional requirements for a valid contract are present.

Under UCC § 2-201(3)(c), when does performance remove an oral contract for goods from the Statute of Frauds?

With respect to goods for which payment has been made and accepted or which have been received and accepted.

What defines flexible pricing in sales contracts?

A pricing arrangement that allows price variations based on defined criteria without failing for indefiniteness.

What is the general enforceability status of an 'agreement to agree'?

An 'agreement to agree' is generally unenforceable due to indefiniteness.

How does UCC § 1-303 assist courts in resolving indefiniteness in commercial sales?

It allows courts to supplement or interpret missing contract terms using the parties' course of performance, course of dealing, and usage of trade.

What is the recital of consideration requirement in a common law Statute of Frauds memorandum?

A written statement outlining the bargained-for exchange or payment supporting the underlying obligations.

If complete performance of an oral agreement is theoretically possible within one year, does it fall within the Statute of Frauds?

No; if theoretical performance within one year is possible under its terms, the agreement falls outside the Statute and is enforceable orally.

Under UCC § 2-201(2), how long does a merchant have to respond to a written confirmation before losing a Statute of Frauds defense?

10 days after written receipt of the confirmation.

What is the Judicial Admission Exception under UCC § 2-201(3)(b)?

An oral contract is enforceable if the party against whom enforcement is sought admits in court pleadings or testimony that a contract was made, up to the admitted quantity.

What precedent was reinforced regarding express agreements to negotiate in good faith in Channel Home Centers?

Express agreements to negotiate in good faith are enforceable contracts under American law.

Who is 'the party to be charged' under Statute of Frauds signature rules?

The party against whom enforcement of the contractual obligation is sought in litigation.

What is an accommodation party under UCC Article 3?

A person who signs a negotiable instrument as a surety to lend their credit to another party.

From what date does the one-year calculation begin under the Statute of Frauds One-Year Provision?

From the exact date the contract is signed/formed, not from the date performance begins.

What measure of damages is recoverable when a negotiating entity misrepresents its intention to reach an agreement?

Reliance damages, compensating for out-of-pocket expenses and losses incurred by relying on the misrepresentation.

What real property transactions fall under the Land category of the Statute of Frauds?

Transfers of ownership, purchase/sale agreements, mortgages, deeds, leases, easement agreements, and fixtures/minerals to be severed by the buyer.

What is the cautionary function of the Statute of Frauds?

It encourages deliberate reflection by requiring a writing, preventing parties from entering ill-considered agreements.

What is open pricing under UCC § 2-305?

An agreement for the sale of goods where the price is not settled, leaving it as a reasonable price at the time of delivery.

What does it mean for a contract to be 'within the Statute of Frauds'?	It means the contract subject matter falls into a legal category governed by the Statute of Frauds, requiring a signed writing for enforcement.
What are three primary grounds upon which a party may incur pre-contractual liability?	<ul style="list-style-type: none">1) Creation of an irrevocable offer2) Misrepresentation or unjust enrichment during failed negotiations3) Breach of an agreement to negotiate in good faith
Is a formal unified written instrument required to satisfy the Statute of Frauds?	No; multiple connected writings or informal notes can satisfy the Statute if together they contain the required terms and signatures.
Why is an oral employment contract 'for life' outside the Statute of Frauds One-Year Provision?	Because the employee could die within one year, rendering full contractual performance within a year theoretically possible.

What is an affirmative defense in civil procedure?

A set of facts that, if proven, defeats or mitigates a claim even if all factual allegations supporting the plaintiff's claim are true.

What is a right of first refusal?

A contractual right giving a holder the option to purchase or contract on the same terms offered by a third party before the owner sells to another.

What is the legal consequence for a merchant who fails to object to a written confirmatory memorandum within 10 days under UCC § 2-201(2)?

The merchant loses the affirmative defense of the Statute of Frauds against enforcement of the contract.

According to RREF BB Acquisitions, LLC v. MAS Properties, LLC, what is the precise legal basis for a 'duty to negotiate in good faith' claim?

It is a breach of a binding preliminary agreement to negotiate, where good faith is the standard implied covenant of good faith and fair dealing.

What condition must a seller fulfill regarding custom goods under UCC § 2-201(3)(a) before notice of repudiation?

The seller must make a substantial beginning of manufacture or make commitments for procurement.

What is a preliminary binding commitment?

An agreement where parties bind themselves to negotiate open terms in good faith while establishing core framework terms.

What are the requirements for the Merchant Confirmation Exception under UCC § 2-201(2)?

A written confirmation sent between merchants within a reasonable time, sufficient against the sender, satisfies the Statute against the recipient if they know its contents and fail to object in writing within 10 days.

How do trade usages aid in rendering contract terms definite?

By providing standard industry practices and objective reference points to clarify omitted or ambiguous terms.