

ASPEN PARALEGAL SERIES

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Basic Contract Law for Paralegals
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Chapter 7

CONTRACT PROVISIONS

Learning Objectives

After studying this chapter you will be able to:

- Distinguish between a covenant and a condition
- List the most generally encountered contractual rules of construction
- Apply general contract rules of construction to analysis of contract provisions
- List the types of contracts that are governed by the Statute of Frauds
- Define an antenuptial agreement
- Categorize conditions by when they create or extinguish a contractual duty
- Categorize conditions by the method whereby they have been created
- Define a condition subsequent, a condition precedent, and a condition concurrent
- Explain the parol evidence rule
- Analyze contractual clauses to determine the parties' rights and obligations

The Statute of Frauds

The statute of frauds required that, to be enforceable, the following six types of contracts had to be in writing:

- Contracts for an interest in real estate
- Contracts in consideration of marriage
- Contracts that are not to be performed within one year
- Guarantees
- Contracts for the sale of goods valued over a specified amount
- Executor's promises to pay a decedent's debts

Contracts for an Interest in Real Estate

- To be enforceable, every contract for an interest in real estate must be in writing.
- Contracts for the sale of land are also permanently recorded in governmental offices in the county where the property is located.
- This insures that the title to the property can be traced and determined.

Contracts in Consideration of Marriage

- The concept that any promise given in consideration of marriage must be in writing still exists.
- This usually takes the form of an **antenuptial**, or **prenuptial**, **agreement**.
- An antenuptial agreement is a contract between the intended bride and groom specifying each one's property rights in case of death or divorce.

Contracts Not to Be Performed Within One Year

- Be aware that even though the statute requires the contract not to be performed within one year to be in writing, if the parties actually perform or make a substantial beginning on the performance, those actions will make the contract enforceable under equitable concepts previously discussed.
- Also note that for determining the applicability of the statute, the period starts from the day of the agreement, not the date on which the performance is to start.

Guarantees

- A guarantee is a promise to answer for the debts of another.
- A guarantee is also a type of formal contract.
- The concept of a guarantee comes from the Statute of Frauds.
- Because there is, in fact, no consideration for this promise, it must be in writing to be enforceable.

Contracts for the Sale of Goods

- Today, this provision of the Statute of Frauds has been absorbed by the Uniform Commercial Code (UCC) for most commercial contracts.
- The UCC, a version of which has been adopted in every jurisdiction, provides that any contract for the sale of goods valued at over \$500 must be in writing to be enforceable.

Executor's Promise to Pay Decedent's Debts

- This section of the Statute of Frauds concerns estate administration, not contracts, and is most appropriately discussed in a work dealing with that area of law.

Covenant

An unconditional, absolute promise to perform.

Conditions

Specific promise made by the parties to the contract.



Categories of Conditions

- Conditions categorized by when they create, or extinguish, the duty to perform the covenant:
 - Conditions precedent
 - Conditions subsequent
 - Conditions concurrent
- Conditions categorized by how the parties have arrived at them:
 - Express conditions
 - Implied-in-fact conditions
 - Implied-in-law conditions

Rules of Construction

- Guidelines that the courts use to interpret all contractual provisions.
 - Lengthy communications are viewed as a whole, and any inconsistent words are discarded.
 - Contracts are to be interpreted according to business custom and usage.
 - Words are to be construed according to their ordinary meaning.
 - If there is an inconsistency with words that are printed, typed, or handwritten, handwriting prevails over typing, and typing prevails over mechanical printing.

Parol Evidence Rule

Oral testimony may not be used to vary the terms of a writing.