

Acquisition law and oral contracts



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Abstract Many individuals do not understand the full significance of the terms outlined in a contract until they find themselves at the receiving end of litigation. In addition, they do not recognize that a contract can be established with as little as a verbal agreement between parties which can, as with a written contract, become the basis to award damages in the event that one or more members default on the agreement. When individuals make purchases they form contracts with the entity whose business they patronize.

Formation of a contract for sale need only entail an offer and acceptance between parties and is legally binding when agreement and consideration are ascertained. The purpose of this paper is to address legal considerations one should take into account when making oral purchases in the marketplace. Introduction Bob is on his way home from work when he spots his neighbor Sam selling old items at his garage sale. Bob walks over and sees a toolset for sale for \$50. Bob wants to buy the toolset but doesn't have the money to give Sam for it until next Thursday.

He asks Sam if he would be willing to hold on to the toolset for him until next Thursday so he can buy it and Sam agrees to sell it to him. By offering to purchase a good from Sam and having his offer accepted, Bob has entered into an oral contract with Sam. Such transactions occur regularly between parties but individuals often have a carefree attitude toward oral contracts because there is nothing written and signed to seal an agreement. The assumption is since an agreement isn't documented it isn't enforceable but this is not always the case.

The law recognizes oral contracts just as they do with written contracts. My research delves into the attributes that necessitates a legally binding contract and the consequences people can face should a participating member default on a promise made in an oral agreement or, in this case, an oral purchase. Oral Purchase = Oral Contract “ A contract is a legally enforceable agreement between two or more parties. The core of most contracts is a set of mutual promises (in legal terminology, " consideration"). The promises made by the parties define the rights and obligations of the parties.

Contracts are enforceable in the courts. If one party meets its contractual obligations and the other party doesn't (" breaches the contract"), the non-breaching party is entitled to receive relief through the courts. ” (Radcliffe and Brinson, 1999) Written contracts are tangible documents that validate an established agreement between parties. Contracts that are formed from statements spoken between people are not as obvious. If you agree to do something, sell something, or buy something and someone else acts on your statement, it is likely you have formed an enforceable contract.

Oral contracts are considered ‘ Invisible Contracts’ because people are often unaware that they have entered into a binding agreement with another party based simply on the statements they have made. Article 2 of the Uniform Commercial Code (U. C. C) Section § 2-204 Formation in General specifies the standards in forming a contract: “(1) A contract for sale of goods may be made in any manner sufficient to show agreement, including offer and acceptance, conduct by both parties which recognizes the existence of a contract, the interaction of electronic agents, and the interaction of an

electronic agent and an individual. 2) An agreement sufficient to constitute a contract for sale may be found even if the moment of its making is undetermined. (3) Even if 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. ” (U. C. C 2005) Oral contracts are one of the most common forms of agreement used between two or more parties.

The problem with an oral contract however, is that if any problems should arise and there were no witnesses to the agreement, in court the case is often reduced to one party's word against another's. Even if oral contract law is followed, an oral contract is often easily contested usually by repudiation of its existence from the defending party. It is risky to conduct any buying transaction without records to track the details of a purchase but there are some legal safeguards in place to ensure that when oral purchases are made parties who feel they did not receive appropriate recompense, merchandise, or services have the assurance that all is not completely lost. Before committing to an oral purchase it is best to evaluate every possibility that can help or hurt you in the event that the transaction ends less than harmoniously. What's at Stake Oral purchases hold certain advantages and disadvantages depending on the needs of the parties involved.

As there is little or no documentation, participating members have the convenience of completing a transaction much faster than those who make purchases involving written contracts. Additionally, purchases made orally are expedient in times when generating procurement documentation during implementation is limited or unavailable. Unfortunately, the disadvantages of <https://assignbuster.com/acquisition-law-and-oral-contracts/>

making oral purchase considerably outweigh the benefits. The most prevalent is the inability to provide physical proof outlining the details of the transaction. If an oral purchase agreement turns sour chances are one or more members stand to lose more than what they bargained for.

As such it is highly recommended that when completing purchase transactions buyers and sellers should always document the details of a sale with a written contract. Radcliffe and Brinson state several reasons why written contracts are more advantageous than oral contracts: " The process of writing down the contract's terms and signing the contract forces both parties to think about - and be precise about - the obligations they are undertaking. With an oral contract, it is too easy for both parties to say " yes" and then have second thoughts.

When the terms of a contract are written down, the parties are likely to create a more complete and thorough agreement than they would by oral agreement. A hastily made oral agreement is likely to have gaps that will have to be resolved later - when the relationship may have deteriorated. With an oral contact, the parties may have different recollections of what they agreed on (just as two witnesses to a car accident will disagree over what happened). A written agreement eliminates disputes over who promised what. " (Radcliffe and Brinson, 1999) There are laws in place that do not recognize agreements that are not in writing.

The Statute of Frauds is a rule of law requiring certain kinds of contracts to be written (not oral or " verbal") and be signed by all parties to an agreement in order to be binding. The types of contracts and rules that

comprise of the Statute of Frauds can vary from state to state and within each jurisdiction. General areas where a Statute of Frauds often applies are contracts: ? involving the sale or transfer of land; ? that by its terms, cannot be performed and completed within one year. ? involving the sale of goods worth \$500 or more under the Uniform Commercial Code. ? involving promises made in the consideration of marriage. Involve a Surety (someone who promises to pay the debt of another person.). the Statute of Frauds brought protests and criticisms. One criticism that had particular impact was a 1937 Report by the English Law Revision Committee. The major complaint (but not the only one) was that the Statute of Frauds caused more fraud than it prevented. According to these critics, this was because the statute permitted "weshers" to avoid their obligations under an oral contract which actually had been made, simply because the "technical" or "formal" requirement for a signed writing could not be produced. Shanker, 1995)

Although the statute of frauds normally requires a written document and quantity terms in order to be utilized in court, there are exceptions to the rule. Take for example the court case of *Brewster Wallcovering Co. v. Blue Mountain Wallcoverings, Inc* 864 N. E. 2d 518 (Mass. App. Ct. 2007). The court considered contract claims brought by a wallpaper distributor against the manufacturer-seller, who claimed the oral contract was unenforceable both on grounds of the statute of frauds and because it lacked a quantity term.

The court disagreed. The court rejected the manufacturer's argument that the agreement was unenforceable because it lacked a specific quantity term. Further, the court regarded the agreement as a requirements contract,

which section 2-306 validated because the agreement called for a quantity measured by the buyers historic purchases from the manufacturers predecessor and the buyers ongoing good-faith requirements of products.

The court then rejected the statute of frauds defense for two reasons.

First, it noted that there is an exception to Article 2s statute of frauds exists if the defendant admits in court that a contract was made, which the seller had done in this case. Second, the court concluded that correspondence between the parties taken collectively recognized the existence of the oral contract. (Martin and Meadows, 2008) It has been said that “ A written agreement is not final until signed — unless you indicate your agreement to the deal otherwise; say, with a handshake. Don't let an oral agreement sneak up on you by verbally agreeing to a deal before you are really ready to sign it. (Dummies. com) In the case of *Texaco v Pennzoil* 729 S. W. 2d 768 (Tex. 1987), the law demonstrates that any form of conduct by participating parties that recognizes the existence of a contract can and has been recognized in court resulting in damages, sometimes significant, for the losing party: “ A court upheld a handshake deal between Getty Oil and Pennzoil, created when an attorney from Pennzoil shook hands with the directors of Getty Oil over a written agreement that was never signed.

A jury found that Getty Oil and Pennzoil did have a valid contract, and further found that Texaco had interfered with this contract when Texaco tried to lure Getty Oil into a better deal at Pennzoil's expense. The jury awarded damages of 10. 6 billion dollars for interference with the Pennzoil-Getty contract. ”

(Dummies. com) Consider a situation in which one or more parties involved in an oral purchase agreement suddenly denies ever making the oral

contract. Courts have allowed injured parties to collect against claims of this type through Promissory Estoppel.

Promissory estoppel is when a person makes a false statement to another and the listener relies on what was told to him/her in good faith and acts on it to his/her disadvantage. In order to see that justice is done a court will treat the statement as a promise, and in a trial the judge will preclude the maker of the statement from denying it. Thus, the legal inability of the person who made the false statement to deny it makes it an enforceable promise—an enforceable promise in which the injured party has the right to collect damages as a result of the default. In the case of *McIntosh v. Murphy*, 52 Haw. 29, 469 P. 2d 177 (Haw. 1970) the defendant agreed to hire the plaintiff at the defendant's auto dealership in Hawaii for the duration of one year: " After moving all the way to Hawaii he was fired two month later. The court found in favor of the plaintiff because he had relied on the promise of the defendant and had rendered part performance. (Contract Case Law, 2008) A second exception to Statute of Fraud in which injured parties can make a claim is through part performance: " When ' partial performance' exists, a party who has accepted partial performance by another party under the contract will typically be barred from asserting the ' Statute of Frauds' in order to avoid meeting its own contractual obligations. " (Larson, 2003) The case of *Cox v. Mixon*, 51 Va. Cir. 168 (Fairfax Jan. 4, 2000) the judge in this presiding ruled: " One of the exceptions to the requirement for a writing is the partial or full performance by one of the parties. C]ourts of equity will not allow the statute of frauds to be used as an instrument of fraud. In *Cox*, performance was sufficient to withstand a demurrer and take this oral

contract outside of the Statute of Frauds and outside of §20-149 and 20-155. In consideration of this Commonwealth's reliance on a court of equity to provide a remedy to a Plaintiff who has fully performed his part of an oral agreement and sufficiently pleaded such facts in his Amended Bill of Complaint, the Court overrules the demurrer and will allow the case to proceed on its merits. " (Waterman, 2009) Conclusion

When one makes an oral purchase they have agreed to enter into an oral contract with one or more contributing parties. If the terms of the agreement are not met by one or more members everyone involved will experience a host of problems as a result. To prevent issues from becoming expensive lessons, always make purchases that come with written documentation detailing the process of the transaction from start to finish. Although there are laws in place to help individuals who feel they have been injured in an unfulfilled oral contract the law doesn't always serve to the advantage of the injured party.

The ability to prove or disprove the existence of a contract, particularly oral contracts, relies significantly on evidence that can be produced. The greatest advice to adhere to is best quoted from The Law website: " Even if the Statute of Frauds may not apply to a specific agreement, it is always excellent practice to try to reduce the essential terms of any contract to a written, signed document. Even if an oral contract is valid and cannot be invalidated by the Statute of Frauds, the terms are usually very difficult to prove in the absence of a written agreement. (The Law, 2009) REFERENCES

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