**Chapter 10: The Requirement of Writing**

Consequences of the Statute of Frauds: Parties to oral contracts are often able to avoid their obligations solely because these contracts have been held to come within the scope of the Statue (the contracts might be perfectly valid in every other respect). The problem of deciding whether a contract is affected by the Statute of Frauds arises only when an otherwise valid contract has been made. The mere fact that a promise is in writing as required by the Statute does not make the promise binding.

**Guarantee** – a conditional promise to pay only if the debtor defaults

**Indemnity** – a promise by a third party to be primarily liable to pay the debt

**Miscarriage** – an injury caused by the tort of another person (ex. by their negligence/fraud)

Memories may fail over a long period and so Parliament chose an arbitrary one-year limit. Where the obligations of one party can clearly extend beyond one year, the intention that the other should wholly perform within one year must be clear from the terms of the contract.

Memorandums must contain all the essential terms of the contract, including the identity of the parties. The Statute requires that the note or memorandum be signed by the party to be charged – the defendant – and only that person (not the plaintiff).

**Unenforceable Contract** – a contract that still exists for other purposes but neither party may obtain a remedy under it through court action

Both parties to an unenforceable contract may choose to perform under it, but if they do not, recovery of any down payment will depend on which party repudiates the contract.

A party who has accepted goods and services under a contract that is unenforceable because of the Statue is not permitted to retain the benefit received without paying for it.

A written memorandum may come into existence *after* the contract has been formed and the memorandum will still satisfy the Statute. As long as the memorandum comes into existence before the action is brought on the contract, it provides the necessary evidence.

A defendant who is sued upon an oral contract must expressly plead the Statute as a defence to the action. If he fails to plead it, the court will decide the case without reference to the Statute. The plaintiff will then succeed if he establishes that the contract, through oral, was validly formed.

An oral contract may effectively vary or dissolve a prior written contract even though the oral contract could not itself be enforced.

A party to a contract who has signed a memorandum can be sued, but she cannot sue the other party who has not signed a memorandum.

**Past Performance** – performance begun by a plaintiff in reliance on an oral contract relating to an interest in land, and accepted by the courts as evidence of the contract in place of a written memorandum.

The Sale of Goods Act states expressly that a party to a contract for the sale of goods who cannot produce the required memorandum may still enforce the contract if he can show one of the following:  
 a) “acceptance” and actual receipt of the goods by the buyer  
 b) part payment tendered by the buyer and accepted by the seller  
 c) something “by way of earnest” given by the buyer to the seller

**“Acceptance”** – any conduct by the buyer in relation to the goods that amounts to recognition of an existing contract of sale  
  
- the buyer will have “accepted” the goods when he does anything that amounts to admitting that he has a contract with respect to them

**Part Payment** – something tendered by the buyer and accepted by the seller after formation of the contract, to be deducted from the price

- the buyer must have first, made a contract and second, given something

**“Earnest”** – a token sum or article given to seal a bargain – now a rare practice

- different from part payment since it isn’t deducted from the price to be paid

The Sale of Goods Act and Statute of Frauds may apply to the same contract if there is an oral agreement to sell goods that are to be delivered and paid for by instalments over a period exceeding one year.