**Review Case Problems**

**Chapter 16**

\* You are **not** required to submit answers for these case problems. These questions provide you with the opportunity to practice critical legal thinking and review the chapter materials.

\*When answering a question, you should identify the issue, state the relevant rule of law, apply the law to the facts, and then reach a decision. I will post the answers at the end of each week. Contact me if you wish to discuss an answer.

1. In 1955, Robert Baxter and his wife purchased a home located at 456 Privet Drive, Newtown Square, Pennsylvania. They made a $100 down payment and borrowed the balance of $11,600 on a 30 year mortgage. In late 1961, when the Baxters were behind in their mortgage payments, they entered into an agreement to sell the house to Winston and Emily Severson if the Seversons would pay the three months arrearages on the loan and agree to make the future payments on the mortgage. Ms. Baxter and Ms. Severson were sisters. The Seversons paid the arrearages, moved into the house, and have lived there to date. In 1970, the Seversons spent $2000 to finish the basement. In 1976, Mr. Baxter sued to evict the Seversons from the house, claiming that they had never purchased it and thus had no right to live there. What is the basis for Mr. Baxter’s claim that they did not have a contract for the sale of the house? What defense can the Seversons use? Who will succeed?
   1. Issue: Does the exception of sufficient part performance prevent the application of the Statute of Frauds? A contract for the transfer of an interest in real estate must be written to be enforceable under the Statute of Frauds. If sufficient part performance occurs, the oral contract will be enforceable as an exception to the requirement of the Statute of Frauds. Decision: The Seversons win. Mr. Baxter will argue that the agreement to sell the house was not written as required under the Statute of Frauds. The Seversons will argue that under the exception of sufficient part performance the oral agreement is enforceable, and they are the legal owners of the house. The Statute of Frauds provides that oral contracts for the sale of land are invalid unless in writing. Where, however, the party seeking to enforce the sale has partially performed the contract, so as to render recession inequitable and unjust, the contract may be outside of the Statute of Frauds. Thus, where it appears that a buyer has taken continuous and exclusive possession of the real property under the contract and has made improvements, or where other equitable considerations are present, specific performance will be granted. Among the relevant equitable considerations which may justify specific performance , a court will consider the amount of time which has passed before the buyer’s possession was challenged. This factor is considered because it would be inequitable to aid one who induced another’s detrimental reliance by his failure to promptly pursue his rights. In this case, during the 14 years the Seversons inhabited the home on Orchard Drive, Robert Baxter never visited, sought rent, checked on the condition of the home, or otherwise asserted any interest in the property. Under these circumstances, the appellate court agreed with the lower court that there was sufficient evidence of part performance of the oral contact to render it specifically enforceable. Thus, the judgment in favor of the Seversons was affirmed.
2. On May, 17, 2009, Dennis Broward met with Stan Kingston, a loan officer with Hometown Bank, to discuss borrowing $30,000 from the bank to start a new business. After learning that he did not qualify for the loan on the basis of his own financial strength, Broward told Kingston that his former employers, James and Dawn Westerman of California, might be willing to guarantee the payment of the loan. On May 18, 2009, Kingston talked to Mr. Westerman, who stated that he would personally guarantee the loan to Broward. Based on this guaranty, the bank loaned Broward $30,000. The bank sent the guarantee to the Westermans, but it was never returned to the bank. When Broward defaulted on the loan, the bank filed suit against the Westermans to recover on their guarantee. Are the Westermans liable?
   1. Issue: Does the Statute of Frauds require this promise to pay the debt of another to be written to be enforceable? Under the surety provision of the Statute of Frauds, a promise to the creditor to pay the debt of another must be written to be enforceable. Decision: No, the Westermans are not liable on the guaranty contract. They never signed the written guarantee to pay Broward’s debt. It is well settled that an agreement made to the creditor to guarantee the debt of another must be in writing. In this case, the lower court found that the bank reasonably relied on Mr. Westerman’s statements and applied the doctrine of promissory estoppel to find that the Westermans were liable under the guarantee. The state supreme court, however, held that the bank could not have relied on the oral statements made by Mr. Westerman because the bank was in the business of making loans to its customers on a regular basis and knew, or should have known, that a guarantee for the debt of another had to be in writing. Moreover, the court held that there was no meeting of the minds between the Westermans and the bank, and without such a meeting of the minds, there is no enforceable contract. Accordingly, the court held that the bank simply jumped the gun in giving Broward the loan and that the Westermans were not liable as guarantors on the loan.
3. Six people, including Betty Rosen and Alicia Feldman, were members of the board of directors of the Tensile Corporation. A bank agreed to loan the corporation $1.2 million if the board members would personally guarantee the payment of the loan. Feldman objected to signing the guaranty to the bank because of other pending personal financial negotiations that the contingent liability of the guaranty might adversely affect. Feldman agreed with Rosen and the others board members that if they were held personally liable on the guaranty, she would pay her one-sixth share of that amount to them directly. Rosen and the other members of the board signed the personal guaranty with the bank, and the bank made the loan to the corporation. When the corporation defaulted on the loan, the five guarantors had to pay the loan amount to the bank. When they attempted to collect a one-sixth share from Feldman, she refused to pay, alleging that her promise was unenforceable. Does Feldman have to pay the one-sixth share to the other board members?
   1. Issue: Does the Statute of Frauds require this promise to pay the debt of another to be written to be enforceable? Under the surety provision of the Statute of Frauds, a promise to the creditor to pay the debt of another must be written to be enforceable. Decision: Yes, Feldman must pay her one-sixth share to the other board members. Here, the oral promise made by Feldman was to pay the other board members (the sureties) for the indebtedness incurred for the other members and her. The five board members as sureties signed a guarantee promising the bank, the creditor, to pay the debt of Tensile, the debtor. Feldman did not guarantee to pay the bank any portion of the loan obtained from the bank (the creditor) on behalf of the Tensile Corporation (the debtor). On the contrary, Feldman agreed to indemnify the other members of the board to the extent of one-sixth of any loss they sustained as a result of the bank loan to Tensile. This was an original contract with the other members. No third party was involved. Accordingly, the court concluded that Feldman was liable on her oral promise to pay her proportionate share of the loan. Her promise was outside of the Statute of Frauds.
4. Nathan and Carmelita Costanza were married in 1959. Carmelita had a son from a previous marriage, Carmine Bruno, who lived with them. Nathan and Carmelita moved to California where they invested $400,000 in agricultural property. Carmine, then in his early teens, moved with them to California. In 1966, Carmine, then 18 years old, decided to leave home and seek an independent living. Nathan and Carmelita, however, wanted him to stay with them and participate in the family venture. They made a promise to Carmine that if he stayed home and worked, they would leave their property to him by will. Carmine agreed and remained home and worked the family venture. He received only his room and board and spending money. When Carmine married, Nathan told him that his wife should move in with the family and that Carmine need not worry, for he would receive all the property when Nathan and Carmelita died. Nathan and Carmelita entered into identical wills leaving their property to Carmine when they died. Nathan died in the late 1980s. Shortly before his death, without the knowledge of Carmine or Carmelita, he had changed his will and left his share of the property to his grandson from his first marriage, Marco Fenestra. Carmine sued to enforce Nathan’s promise. What arguments will Carmine and Marco use? Who will succeed?
   1. Issue: Does the doctrine of promissory estoppel prevent the application of the Statute of Frauds? A contract for the transfer of an interest in real estate must be written to be enforceable under the Statute of Frauds. If promissory estoppel applies, the oral contract will be enforceable as an exception to the requirement of the Statute of Frauds. Decision: Marco will argue that Nathan’s oral promise to give the real property to Carmine is unenforceable under the Statute of Frauds. Carmine will argue that the exception of promissory estoppel can be used to enforce the oral contract. Yes, the doctrine of promissory estoppel prevents the application of the Statute of Frauds in this case. The doctrine of estoppel is used to prevent a fraud that may result from the refusal to enforce an oral contract. Such fraud may be found (1) in the unconscionable injury that would result where a party has been induced by the other to seriously change his position in reliance on the contract (Nathan reasonably foresees Carmine’s reliance and Carmine reasonably relies on Nathan’s promises), or (2) in the unjust enrichment that would result if a party who has received the benefits of the other’s performance were allowed to rely upon the statute (by staying to work at the family farm, Carmine suffers financial harm due to his reliance on Nathan’s oral promises). In this case, the court held that all elements were present. In reliance on Nathan’s repeated assurances, Carmine gave up any opportunity to accumulate any property of his own . On the other hand, Nathan reaped the benefits of the contract. Nathan and his devisee, Marco, would be unjustly enriched if the Statute of Frauds could be invoked to relieve him from the performance of his own obligations. Accordingly, the court held that Carmine could enforce the oral agreement between himself and Nathan.
5. Pacific Wholesale is in the business of buying and selling gold and silver for customers’ accounts. Garrett Soldano became a customer of Pacific in 1999 and thereafter made several purchases through Pacific. On January 28, 2000, Soldano telephoned Pacific and received a quotation on silver bullion. Soldano then bought 300 ounces of silver for a total price of $12,978. Pacific immediately contacted US Precious Metals and purchased the silver for Soldano. The silver was shipped to Pacific, who paid for it. Pacific placed the silver in its vault while it waited for payment from Soldano. When Pacific telephoned Soldano about payment, he told Pacific to continue to hold the silver in its vault until he decided whether to sell it. Meanwhile, the price of silver had fallen substantially and continued to fall. When Soldano refused to pay for the silver, Pacific sold it for $4,650, sustaining a loss of $8,328. Pacific sued Soldano to recover the loss. What arguments will Pacific and Soldano use? Who will succeed?
   1. Issue: Does the doctrine of promissory estoppel prevent the application of the Statute of Frauds? A contract for the sale of goods with a price of $500 or more must be written to be enforceable. If promissory estoppel applies, the oral contract will be enforceable as an exception to the requirement of the Statute of Frauds. Decision: Soldano will argue that the oral contract for the purchase of $12,978 of silver cannot be enforced under the Statute of Frauds. Pacific Wholesale will argue that the exception of promissory estoppel can be used to enforce the oral contract. Yes, the doctrine of promissory estoppel prevents the application of the Statute of Frauds in this case. Pacific recovers $8,328 from Soldano. In order to overcome the Statute of Frauds, the party asserting promissory estoppel must show that he has suffered a definite, substantial, detrimental change of position in reliance on the contract (Pacific bought the silver), that the other party could foresee the reliance (Soldano knew that Pacific did not currently own the silver and would have to buy it on the market for him), and that no remedy except enforcement of the bargain is adequate to restore his former position (Pacific can only sell the silver at a great loss, since the market price has fallen significantly).

It is insufficient to merely show that Pacific lost an expected benefit under the contract. The court held that Pacific Wholesale suffered a detrimental change in position because, based on its oral agreement with Soldano, it ordered 300 ounces of silver for which it paid a considerable sum. Because the value of silver declined by $8,328 in value, Pacific lost more than an expected benefit in reliance on Soldano’s word. Accordingly, the court held that Soldano could not claim the Statute of Frauds as a defense to the enforcement of his oral agreement.