

The managing director of an investment firm orally offered to hire a foreign-exchange trader for a nine-month period at a salary identified only as "more than you're making now." The trader accepted the director's offer, began work immediately, and thereafter received a check for \$8,000 each month. The monthly check exceeded his prior salary.

Two months after the trader started work at the firm, the director sent him this email: "I hereby offer to extend your position for an additional six months beyond the original nine-month term at the amount stated in your monthly paycheck. Please confirm. /s/ Director." The trader's reply email read: "I agree to work for six additional months."

After the trader had completed nine months with the firm, the director notified the trader that his services were no longer needed.

Is the trader likely to prevail in a breach of contract suit against the investment firm?

- A. No, because the parties did not specify salary with reasonable certainty.
- B. No, because the trader did not rely on the director's promise to his detriment.
- C. Yes, because the parties' emails satisfy the statute-of-frauds requirement.
- D. Yes, because the trader's employment was extended for less than one year.

Explanation:

Statute of frauds requirements

- Writing** Physical or electronic document(s) containing reasonable basis to believe contract was formed (eg, receipt, check, emails) AND
- at common law – identifies parties, subject matter, consideration, time & nature of performance
 - under UCC – lists quantity of goods (contract enforceable only up to written quantity)
- Signature** General rule – handwritten signature from, or other mark identifying, party to be charged (eg, letterhead, electronic signature, initials)
- Merchant exception – between merchants, written confirmation that satisfies statute of frauds as to *sender* will bind both parties if no written objection within 10 days

UCC = Uniform Commercial Code,

The following types of contracts (as entered or as modified) fall within the **statute of frauds** and must be in **writing** to be enforceable (**MY LEGS**):

- **Marriage** – a contract made in consideration of marriage
- **Year** – a contract that **cannot be completed** within **one year**
- **Land** – a contract for the sale or transfer of an interest in real property
- **Executor** – a contract to pay an estate's debt out of the executor's personal funds
- **Goods** – a contract for the sale of goods for \$500 or more
- **Suretyship** – a contract to answer for the debt or duty of another

The writing must be **signed** by the party against whom enforcement is sought and state with **reasonable certainty** the **essential terms** of the deal—eg, length of employment and salary in an employment contract. The writing need not be formal, and the essential terms may be in **multiple writings** so long as one of the writings **references the other(s)**.*

Here, the parties' nine-month oral employment agreement was enforceable without a writing. However, the parties subsequently agreed to extend the trader's employment for six additional months. Because the agreement *as modified* could not be completed within one year, it had to be in a writing that satisfies the statute of frauds (**Choice D**).

The parties' emails satisfy this requirement. They contain the director's electronic signature and state the essential terms of the deal with reasonable certainty—eg, they specify employment length and salary by reference to the trader's monthly paychecks (**Choice A**). Therefore, the trader will likely prevail.

*Even if the writing is lost or destroyed, it still satisfies the statute of frauds, and its prior existence can be proved by oral evidence.

(Choice B) The fact that the trader did not detrimentally rely on the director's promise (eg, by declining a job offer) would preclude him from enforcing the promise on [promissory estoppel](#) grounds. But the trader need not rely on promissory estoppel since the parties have a valid contract.

Educational objective:

Contracts within the statute of frauds (MY LEGS) are unenforceable without a signed writing that states with reasonable certainty the essential terms of the deal. The essential terms may be in multiple writings so long as one of the writings references the other(s).

References

- Restatement (Second) of Contracts §§ 131–32 (Am. Law Inst. 1981) (writing requirement for statute of frauds).