

A man owned a tract of land. His friend wanted to buy the tract and offered \$20,000 for it. The man knew that the friend was insolvent but replied, "As a favor to you as an old friend, I will sell my tract to you for \$20,000, even though it is worth much more, if you can raise the money within one month." The friend wrote the following words, and no more, on a piece of paper: "I agree to sell my tract to [the friend] for \$20,000." The man then signed the piece of paper and gave it to the friend.

Three days later, the man received an offer of \$40,000 for the tract. He asked the friend if he had raised the \$20,000. When the friend answered, "Not yet," the man told him that their deal was off and that he was going to accept the \$40,000 offer.

The next week, the friend secured a bank commitment to enable him to purchase the tract. The friend immediately brought an appropriate action against the man to compel the man to convey the tract to the friend.

Who will likely prevail?

- A. The friend, because he has equitable title.
- B. The friend, because the parties' antecedent agreement is enforceable.
- C. The man, because the man's performance was excused by the friend's anticipatory breach.
- D. The man, because the terms of the parties' fully integrated written agreement control.

## Explanation:

### Statute of frauds requirements for real estate contracts

<b>Writing</b>	Physical or electronic document(s) containing reasonable basis to believe contract was formed
	eg, receipt, check, emails
<b>Signature</b>	Handwritten signature from, or other mark identifying, party to be charged
	eg, letterhead, electronic signature, initials
<b>Essential terms</b>	Typically includes: identity of parties words of intent to buy or sell property description sales price

Contracts for the sale of land are enforceable only if they comply with the **statute of frauds**. This statute requires that land-sale contracts be **in writing**, be **signed by the party** against whom **enforcement is sought**, and contain all **essential terms**. Essential terms often include:

the identity of the **parties** (eg, "I," "the friend," and the man's signature)  
words of **intent** to buy or sell (eg, "I agree to sell")  
a **description** of the property (eg, "my tract") *and*  
the sales **price** (eg, \$20,000).

Therefore, the antecedent agreement—ie, the piece of paper on which the friend wrote "I agree to sell my tract to [the friend] for \$20,000" and that the man signed—is enforceable against the man under the statute of frauds. Therefore, the friend will likely prevail.

**(Choice A)** The doctrine of **equitable conversion** relates to the ownership of property and the risk of loss in the period between contract formation and closing. However, it does not impact the validity of, or the ability to enforce, a land-sale contract.

**(Choice C)** **Anticipatory repudiation** arises when a party to a contract clearly and unequivocally expresses an *unwillingness* to perform. The other party may then treat that repudiation as a breach. But here, the friend's statement that he had "not yet" raised the \$20,000 expressed his *willingness* to perform, so no anticipatory repudiation occurred.

**(Choice D)** The parol evidence rule generally bars the use of extrinsic evidence of a prior or contemporaneous agreement that contradicts the written terms of a fully integrated

contract. As a result, the terms of a final written agreement will control. But since the friend is able to perform under that contract, this will not help the man prevail.

**Educational objective:**

Under the statute of frauds, a contract for the sale of land is enforceable only if it is in writing, is signed by the party against whom enforcement is sought, and contains all essential terms—ie, identifies the parties, contains words of intent to buy or sell, describes the property, and lists the sales price.

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