Statute of Frauds

A type of state law, modeled after an old English Law, that requires certain types of contracts to be in writing.

U.S. law has adopted a 1677 English law, called the Statute of Frauds, which is a device employed as a defense in a breach of contract lawsuit. Every state has some type of statute of frauds; the law's purpose is to prevent the possibility of a nonexistent agreement between two parties being "proved" by perjury or Fraud. This objective is accomplished by prescribing that particular contracts not be enforced unless a written note or memorandum of agreement exists that is signed by the persons bound by the contract's terms or their authorized representatives.

The statute of frauds is invoked by a defendant in a breach of contract action. If the defendant can establish that the contract he has failed to perform is legally unenforceable because it has not satisfied the requirement of the statute, then the defendant cannot be liable for its breach. For example, suppose that a plaintiff claims that a defendant agreed to pay her a commission for selling his building. If the defendant can demonstrate that no commission contract was signed, the statute of frauds will prevent the plaintiff from recovering the commission.

The English Statute of Frauds, which was enacted by Parliament in 1677, applied to only specific types of contracts. These included promises to a creditor of another to pay that individual's debts when they became due, a marriage contract or promise to marry, other than the mutual promises of a man and woman to wed, a contract for the sale of real estate, and a contract that cannot be performed within one year of its formation and has not been completely performed by one side.

States have expanded the application of the statute to other categories of contracts, such as a life insurance contract that is not to be performed within the lifetime of the person making the promise. It also applies to a contract to bequeath or devise property by will and to a contract that authorizes an agent to sell real property for a commission.

A strict application of the statute of frauds can produce an unjust result. A party, who in Good Faith believes a contract exists and therefore spends time and money to perform the contract, would be unable to force the other party to perform because the agreement was not in writing. Therefore, courts often employ the term part performance to determine whether a plaintiff's conduct based on her belief that a contract exists justifies enforcement of the contract even though it has failed to comply with the statute of frauds. Part performance refers to acts performed by the plaintiff in reliance on the performance of the duties imposed on the defendant by the terms of the contract. The plaintiff's actions must be substantial in order to demonstrate that he actually has relied on the terms of the contract.

When the alleged contract involves real property, the acts of taking possession and making part payment—when performed in reliance upon an oral contract under circumstances that clearly show a buyer-seller relationship—are usually sufficient to remove a contract from the requirements of the statute of frauds. The oral contract, therefore, would be enforced. However, payment or possession alone generally will not suffice to overcome the statute of frauds.

Where services have been performed based upon a contract that is unenforceable because of the statute of frauds, the value of those services can nevertheless be recovered on the basis of quantum meruit, or the reasonable value of those services. If a person performs services in reliance on an oral promise that he will inherit certain property and that promise is not fulfilled, that individual can sue the decedent's estate on a Quantum Meruit basis for the reasonable value of his services.

If a contract is unenforceable, a person can recover expenses incurred at the other party's request even though they pertain to the unenforceable contract. The recovery of expenses is not affected because the law implies a promise by the defendant to pay for expenses incurred at her request, and liability is not based upon breach of contract.

If one party has performed in reliance on an oral contract and will be irreparably harmed if the contract is not enforced, some courts apply the theory of equitable estoppel to prevent the statute of frauds from being employed as a defense. Equitable estoppel holds that if a person has so altered his position that justice demands the enforcement of the contract, the court will enforce the contract even though it fails to comply with the statute.
Further readings

Browne, Causten. 1997. A Treatise on the Construction of the Statute of Frauds, as in Force in England and the United States. Holmes Beach, Fla.: Gaunt.

Kidwell, John. 2000. "Ruminations on Teaching the Statute of Frauds." Saint Louis University Law Journal 44 (fall).

Randolph, Patrick A., Jr. 2001. "Has E-Sign Murdered the Statute of Frauds?" Probate & Property 15 (July-August).
Cross-references

Quasi Contract.

Source: http://legal-dictionary.thefreedictionary.com/Statute+of+Frauds

Subrogation is a legal term that is widely used in the insurance industry. Perhaps you have encountered this word in an insurance policy and wondered what it meant. This article will explain the meaning of this term and its significance to policyholders.

Subrogation derives from laws of equity (fairness). It is based on the idea that if Party A accidentally injures Party B, and Party C compensates Party B for his injuries, C has the right to sue A to recover the amount C paid to B.

Source; http://businessinsure.about.com/od/glossaryofinsuranceterms/fl/What-Does-Subrogation-Mean.htm

subrogation n
1 : an equitable doctrine holding that when a third party pays a creditor or obligee the third party succeeds to the creditor's rights against the debtor or obligor
;also
: a doctrine holding that when an insurance company pays an insured's claim of loss due to another's tort the insurer succeeds to the insured's rights (as the right to sue for damages) against the tortfeasor called also equitable subrogation
2 : an act or instance of subrogating [where an insurer has acquired by an assignment or by the right to

recover for money "J. M. Landers et al. "] NOTE: Subrogation can take place either by operation of law or by contractual agreement.

Source: http://dictionary.findlaw.com/definition/subrogation.html

subrogation

n. assuming the legal rights of a person for whom expenses or a debt has been paid. Typically, subrogation occurs when an insurance company which pays its insured client for injuries and losses then sues the party which the injured person contends caused the damages to him/her. **Example: Fred Farmer negligently builds a bonfire which gets out of control and starts a grass fire which spreads to Ned Neighbor's barn.** Good Hands Insurance Co. has insured the barn, pays Neighbor his estimated cost of reconstruction of the barn, and then sues Farmer for that amount. Farmer will have all the "defenses" to the insurance company's suit that he would have had against Neighbor, including the contention that the cost of repairing the barn was less than Neighbor was paid or that Neighbor negligently got in the way of firefighters trying to put out the grass fire.
See also: negligence subrogee subrogor

Source: http://dictionary.law.com/default.aspx?selected=2044