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## The Uniform Commercial Code's Statute of Frauds for Sales of Goods

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THE UNIFORM COMMERCIAL CODE'S STATUTE  
OF FRAUDS FOR SALES OF GOODS

I.

INTRODUCTION

The Statute of Frauds provision of the Uniform Sales Act, as enacted in Pennsylvania,<sup>1</sup> was substantially the same as the original English Statute of Frauds.<sup>2</sup> Its purpose was the prevention of fraud in relation to the enforcement of an alleged oral contract. The advocates of the statute argue that it prevents the introduction of perjured testimony, and suggest further that it acts as a deterrent against hasty action in that the formality of a writing will prevent a person from legally obligating himself without a full appreciation of the nature of his acts.<sup>3</sup> The opponents of the statute contend that it aids fraud by facilitating the breach of legitimate oral contracts.<sup>4</sup>

The enactment of the Sales article of the Uniform Commercial Code, with its liberal statute of frauds provisions, has been hailed by many authorities as the solution to the controversy.<sup>5</sup> Yet, before enactment of

1. UNIFORM SALES ACT § 4, PA. STAT. ANN. tit. 69, § 42 (repealed) (1915).

2. Statute of Frauds, 1677, 29 Car. 2 c. 3 (repealed).

3. 2 CORBIN, CONTRACTS § 275, at 4 (1950); FULLER, BASIC CONTRACT LAW, *The Statute of Frauds* 940, 943 (1947); 3 WILLISTON, CONTRACTS § 505, at 629 (3d ed. 1960); Comment, 36 TEMP. L.Q. 75 (1962).

4. Burdick, *A Statute For Promoting Fraud*, 16 COLUM. L. REV. 273 (1916).

5. Corbin, *The Uniform Commercial Code — Sales; Should It Be Enacted?*, 59 YALE L.J. 821 (1950). The author states at 829:

In the present writer's forthcoming treatise on the law of Contracts, one entire volume is devoted to the statute of frauds and its extremely variable application by the courts. This work involved the comparative study of some thousands of cases in all jurisdictions, one result of which is that he can say with assured confidence that the adoption of the Code provisions will not in the least increase the difficulty of interpretation of the statute or the uncertainty of its application.

Section 2-201 of the UNIFORM COMMERCIAL CODE reads as follows:

Section 2-201. Formal Requirements; Statute of Frauds.

- (1) Except as otherwise provided in this section a contract for the sale of goods for the price of \$500 or more is not enforceable by way of action or defense unless there is some writing sufficient to indicate that a contract for sale has been made between the parties and signed by the party against whom enforcement is sought or by his authorized agent or broker. A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under this paragraph beyond the quantity of goods shown in such writing.
- (2) Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received.
- (3) A contract which does not satisfy the requirements of subsection (1) but which is valid in other respects is enforceable
  - (a) if the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business and the seller, before notice of repudiation is received and under circumstances which reasonably indicate that the goods are for the buyer, has made either a substantial beginning of their manufacture or commitments for their procurement; or
  - (b) if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the

the sales article, it was opposed by some, in particular Professor Williston, who called it "not only iconoclastic but open to criticisms that I regard so fundamental as to preclude the desirability of enacting this part [Sales], at least, of the proposed Code."<sup>6</sup> He considers section 2-201 as one of the "most iconoclastic in the Code."<sup>7</sup>

The Code makes some changes in the formal requirements for enforceability of a contract for the sale of goods at a price or value of \$500 or more. The chief purposes in view are these: first, to make the formal requirements more definite and more easily applied; secondly, to make the repudiation of genuine contracts less likely to be successful, while at the same time increasing in no way the probability of successful fraud.<sup>8</sup> The purpose of the Statute of Frauds is to prevent the enforcement of alleged promises that never were made; it is not, and never has been, to justify contracting parties in repudiating promises that were in fact made.<sup>9</sup>

This comment will analyze the problems presented by the Statute of Frauds under the Sales Act and the impact of section 2-201 of the Code on these problems.

## II.

### SCOPE OF SECTION 2-201

This section of the Code deals only with the sale of goods. Section 2-105 defines "goods" as "all things (including specially manufactured goods) which are movable at the time of identification to the contract for sale, other than the money in which the price is to be paid, investment securities (Article 8) and things in action."<sup>10</sup> The Statute of Frauds provision of the Uniform Sales Act applied to "a contract to sell or a sale of any goods or choses in action of the value of \$500 or upwards."<sup>11</sup> Thus, it readily appears that the Statute of Frauds provision of the Code is more restrictive than that of the Sales Act. Section 4 of the Sales Act covered the sale of any goods or choses in action,<sup>12</sup> while section 2-201 of the Code is limited to the sale of goods.<sup>13</sup> Some choses in action are within

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contract is not enforceable under this provision beyond the quantity of goods admitted; or

(c) with respect to goods for which payment has been made and accepted or which have been received and accepted (Sec. 2-606).

6. Williston, *The Law of Sales in the Proposed Uniform Commercial Code*, 63 HARV. L. REV. 561 (1950).

7. *Id.* at 573.

8. Corbin, *supra* note 4, at 829.

9. *Ibid.*

10. UNIFORM COMMERCIAL CODE § 2-105(1), PA. STAT. ANN. tit. 12A, § 2-105 (Supp. 1964).

11. UNIFORM SALES ACT, § 4, PA. STAT. ANN. tit. 69, § 42 (repealed) (1915).

12. Some things held to be choses in action under the Sales Act were: a contract right in an exclusive sales agency, *Continental Collieries v. Shober*, 130 F.2d 631 (3d Cir. 1942); corporate stock, *Fidelity Philadelphia Trust Co. v. Trustees*, 41 Lanc. L.R. 111 (Pa. C.P. 1928); and an interest in a partnership, *Conrad v. Ehrhart*, 63 York 33 (Pa. 1949).

13. In *Demuth v. Robling*, 55 Lack. Jur. 197 (Pa. 1954), it was held that the Statute of Frauds provision of the Code was not applicable to a deceased partner's interest in a partnership.

the coverage of section 8-319<sup>14</sup> in the investment securities article and section 9-203, dealing with secured transactions; any remaining choses, ostensibly, had been excluded from Statute of Frauds limitations under the Sales provisions.<sup>15</sup> When the draftsmen learned that undocumented choses (*e.g.*, simple contract rights) were not covered by the Code's specific provisions, they prepared section 1-206 to provide for choses in action not otherwise regulated.<sup>16</sup> This section has a high value limit in that only transactions in excess of \$5,000 must be evidenced by a written memorandum.

Under both the Sales Act and the Code, contracts for the sale of goods must be distinguished from contracts for work, labor and services. As illustrated by cases concerning contracts for affixing specified objects to realty, such as the installation of identified fixtures, the distinction was difficult. Where services are to be performed and goods furnished under the same contract, the courts must decide which aspect of the contract is dominant. In *Farr v. Zeno*,<sup>17</sup> the vendor agreed to furnish and install a generator of good workmanship; the court found the transaction to be a sale of goods within the coverage of the Sales Act, and consequently the vendor's action to recover the price of the generator was defeated by the breach of warranty created under another section of the Sales Act. Three years later, in *York Heating Co. v. Flannery*,<sup>18</sup> an action of assumpsit to recover the balance due under a contract for the furnishing and erection of a heating system for a *new building*, the same court distinguished *Farr v. Zeno* by stating that: "Where a dealer sells a machine and the setting up or installation is but incidental to the sale, the Sales Act applies; but where, as here, the contract is really a building or construction agreement, and the furnishing of materials and apparatus is merely an incident thereto, the Sales Act has no application." The Code continues this policy by stating, in section 2-102: "Unless the context otherwise requires, this article applies to transactions in goods." In the case of *Stone v. Krylon, Inc.*,<sup>19</sup> decided subsequent to the enactment of the Code in Pennsylvania, the court was confronted with this problem. The defendant corporation had promised the plaintiff orally that if he would aid defendant in developing a satisfactory special product for coating asbestos shingles, defendant would grant him the exclusive distributorship for the product throughout the United States for a minimum period of ten years. Defendant also agreed to sell plaintiff certain quantities of the product which plaintiff

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14. In *Kessler v. Green Co.*, 110 Pitts. L.J. 168 (Pa. 1962), a contract for the sale of securities was held to be within the Statute of Frauds in the article on Investment Securities (§ 8-319); while, in *In re Carter's Claim*, 390 Pa. 365, 134 A.2d 908 (1957), it was held that article 2 did not govern the sale of corporate stock. Also, there was dicta indicating that article 2 may be applied to sales of stock if the provisions of article 8 do not cover the situation and that the provisions of article 2 are applicable by analogy.

15. Comment, 58 DICK. L. REV. 373, 374 (1954).

16. 1 HAWKLAND, A TRANSACTIONAL GUIDE TO THE UNIFORM COMMERCIAL CODE 23 (1964).

17. 81 Pa. Super. 509 (1923).

18. 87 Pa. Super. 19 (1926).

19. 141 F. Supp. 785 (E.D. Pa. 1956).

had helped to develop, the total purchase price being in excess of \$500. After the plaintiff had successfully developed the product, the defendant refused to grant plaintiff the distributorship for the product and further refused to ship plaintiff any amount of the product. In defense to an action on the oral contract, the defendant moved to dismiss on the Statute of Frauds because the contract involved a sale of goods in excess of \$500. The court, in denying defendant's motion, held that the contract was not for the sale of goods, but rather was a contract of employment, the franchise being the consideration for the services, and delivery of the goods part performance of the defendant's obligations.<sup>20</sup>

A recent case, decided under a different Statute of Frauds section (8-319),<sup>21</sup> has reached a result inconsistent with that of *Stone*. In *Kessler v. Green Co.*,<sup>22</sup> plaintiff had agreed orally to promote and obtain a public offering of defendant corporation's stock in exchange for a promise that plaintiff would receive an option to purchase 7,500 shares of the stock of defendant corporation at the book value as of the date he secured a broker to handle the public sale. The court, after reciting the Statute of Frauds concerning "a contract for the sale of securities," stated: "The complainant in this case alleges facts which bring the action within the Statute of Frauds. There is a contract *relating to* the sale of securities; it is not in writing."<sup>23</sup> This rendered the contract unenforceable.

An attempt to reconcile this decision with that in *Stone v. Krylon, Inc.*, presents a most difficult task. The official comment to section 8-319 states the purpose of that section to be: "To conform the Statute of Frauds provisions with regard to securities to the policy of the provisions in the Article on Sales or sale of goods."<sup>24</sup> In Anderson's treatise on the Code, the author comments on section 8-319:

Although the Code treats securities and goods separately, the Statute of Frauds provision applicable to securities is patterned to a large extent upon the statute of frauds applicable to goods. Where there is an identical or similar provision in the two, it is to be expected that the courts will give a similar construction to both.<sup>25</sup>

Alternative considerations for analyzing the case present themselves. The court may have been mistaken in the application of the Code to the facts; or perhaps this case manifests a tendency to effect an expansion which would bring contracts *relating to* the sale of securities within the scope of the Code provisions. If the latter, could it be that a court when faced with a *Stone v. Krylon, Inc.*, situation in a sales context would reach

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20. For a similar discussion of *Stone v. Krylon, Inc.*, see Note, 15 SYRACUSE L. REV. 532, 535 (1964).

21. UNIFORM COMMERCIAL CODE art. 8, Investment Securities § 8-319; PA. STAT. ANN. tit. 12A, § 8-319 (Supp. 1964).

22. 110 Pitts. L.J. 168 (Pa. C.P. 1962).

23. *Id.* at 169.

24. UNIFORM COMMERCIAL CODE § 8-319, official comment under "Purposes of Changes," PA. STAT. ANN. tit. 12A, § 8-319 (Supp. 1964).

25. 2 ANDERSON, UNIFORM COMMERCIAL CODE 48 (1961).

a different result, by interpreting a contract for the sale of goods as encompassing also a contract *relating to* a sale of goods?

After the initial determination that a particular transaction is within the scope of section 2-201, problems may still arise as to the interpretation of the provisions of that section. Keeping in mind the section's purpose of providing sufficient evidence that a contract has been made, this comment proceeds to a discussion of the methods of satisfying the Statute of Frauds. The code continues the primary method which requires a sufficient memorandum but expands this for transactions between merchants. A writing in confirmation of their contract and sufficient against the sender to satisfy the statute suffices if not objected to within ten days after receipt.

Satisfaction by partial payment or receipt and acceptance of any part of the goods is continued, but with new limitations, while an admission that a contract has been made by the party against whom enforcement is sought, in his pleading, testimony or otherwise in court is a novel statutory provision.

The final provision to be treated is that which removes specially manufactured goods from the proscriptions of the statute. While the previous modes of satisfying the statute depended upon acts of the parties, this last method arose merely from the substantive matter of the contract. The Code changes this somewhat by adding the requirement that the seller take one of several steps toward performance.

### III.

#### SUFFICIENCY OF THE MEMORANDUM

Under the Sales Act, an oral contract was enforceable only if evidenced by "some note or memorandum in writing of the contract or sale . . . signed by the party to be charged or his agent in that behalf."<sup>26</sup> The Sales Act did not specify the completeness required of the memorandum, but many courts required a completely integrated memorandum of all the essential terms. However, some courts did not require that the memorandum be contained in a single writing. Several documents sufficed as long as they were connected by internal references to each other; the party to be charged had signed one of them; and together they indicated an intent to contract.<sup>27</sup> A memorandum which merely recognized that a contract had been executed would not satisfy the statute.<sup>28</sup> The names of the parties, the quantity and kind of the goods sold, the time of delivery and the terms of the sale have all been described as essential terms of the contract.<sup>29</sup> The

26. UNIFORM SALES ACT § 4; PA. STAT. ANN. tit. 69, § 42 (repealed) (1915).

27. *Swift & Co. v. Meehan*, 283 Pa. 429, 129 Atl. 324 (1925); *Paturzo v. Ferguson*, 280 Pa. 379, 124 Atl. 481 (1924); for similar cases, see Comment, 36 TEMP. L.Q. 75, 77 (1962).

28. *Vitro Mfg. Co. v. Standard Chem. Co.*, 291 Pa. 85, 139 Atl. 615 (1927); *Stein v. Camden Fibre Mills*, 148 Pa. Super. 348, 25 A.2d 741 (1942); for similar cases, see PA. BAR ASS'N NOTES; PA. STAT. ANN. tit. 12A, § 2-201.

29. *Franklin Sugar Ref. Co. v. Spruks*, 3 Pa. D.&C. 87 (C.P. 1923).

case of *Franklin Sugar Ref. Co. v. Howell*<sup>30</sup> is in point. The plaintiff sought recovery under a contract for the sale of sugar which the defendant had refused to accept. The sales memorandum signed by the agent of the defendant stated the parties to the contract, the quantity of the goods sold, and the terms of delivery, but, although appearing in a column labelled price were the numerals 22.50, the court found this inadequate as a price term and held the memorandum insufficient to satisfy Section 4 of the Sales Act, stating:

A writing is insufficient as a memorandum where it does not state any (all) of the terms of the contract; where it omits or states incompletely a single essential term; where it merely refers to the contract without stating its terms, or where it shows expressly or inferentially that there are terms which it either does not state or does not clearly and sufficiently state.<sup>31</sup>

The Code, in part, follows the pattern of the Sales Act in requiring a writing for the enforcement of sales for \$500 or more but, in contrast to the Sales Act, is very liberal in defining what constitutes a sufficient writing. Section 2-201(1) requires only that the writing (1) indicate that a contract of sale has been made between the parties, (2) be signed by the party against whom enforcement is sought, and (3) specify the quantity of goods sold.<sup>32</sup> The official comment to this section states:

The required writing need not contain all the material terms of the contract, and such material terms as are stated need not be precisely stated. All that is required is that the writing afford a basis for believing that the offered oral evidence rests on a real transaction. . . . It need not indicate which party is the buyer and which the seller. The only term which must appear is the quantity term which need not be accurately stated but recovery is limited to the amount stated. The price, time, and place of payment or delivery, the general quantity of the goods, or any particular warranties may all be omitted.<sup>33</sup>

The purpose of this change is to limit the use of the statute as a defense to cases where there is a definite possibility of fraud, by abolishing the prior rigid, inflexible rules developed by case law under the Sales Act.<sup>34</sup> The Code proceeds upon the theory that the memorandum should be sufficient if it reasonably proves the existence of the contract and shows enough of its terms to permit fair enforcement.<sup>35</sup> Reasonable proof of the

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30. 274 Pa. 190, 118 Atl. 109 (1925).

31. *Id.* at 200, 118 Atl. at 113.

32. As stated in § 2-201(1): "A writing is not insufficient because it omits or incorrectly states a term agreed upon but the contract is not enforceable under the paragraph beyond the quantity of goods shown in such writing."

33. UNIFORM COMMERCIAL CODE § 2-201, official comment pt. 1; PA. STAT. ANN. tit. 12A, § 2-201. See also, *Rubin & Sons, Inc. v. Consolidated Pipe Co.*, 396 Pa. 506, 153 A.2d 472 (1959).

34. Comment, 36 TEMP. L.Q. 75, 78 (1962).

35. This provision is consistent with other sections of the UNIFORM COMMERCIAL CODE that refuse to make contracts unenforceable because certain material terms are omitted, such as § 2-305 relating to open price contracts and § 2-311 relating to

existence of the contract is assured by section 2-201(1), and, given the quantity term, a court can fairly construct the omitted terms for these are often matters readily ascertainable from course of dealing and usage of trade.<sup>36</sup>

Given the facts of *Franklin Sugar Ref. Co. v. Howell*, a court, applying section 2-201 of the Code, would reach a contrary result. Not only did the defendant admit the existence of the memorandum in his testimony (which would be sufficient for enforcement under section 2-201(3)(b)) but the memorandum included the quantity of goods sold (50 barrels), which element would, of itself, make the contract enforceable under the Code. The court, using the basis of 22.50 referred to in the memorandum, or by using a reasonable market price in the trade, could reach a result more just than the court's act of declaring the entire contract unenforceable.<sup>37</sup>

By requiring "some writing sufficient to indicate that a contract for sale has been made between the parties," section 2-201 assures the existence of the contract. In *Arcuri v. Weiss*,<sup>38</sup> the court in construing this provision required adequate information to convince the court that the oral agreement was final and complete. During negotiations for the purchase by plaintiff of defendant's restaurant, the plaintiff gave a check to the defendant as a deposit on the sale. The check contained a marginal notation, "tentative deposit on tentative purchase of 1415 City Line Avenue, Philadelphia Restaurant, Fixtures, Equipment, Goodwill." Plaintiff, losing interest in the sale, demanded a return of his check, which the defendant refused on the ground that there was a binding contract. The court, in finding for the plaintiff, held that the memorandum was insufficient to indicate a final agreement between the parties stating: "While it (section 2-201) does not require a writing which embodies all the essential terms of the contract, and even goes so far as to permit omission of the price, it does require some writing which indicates *that a contract for sale has been made*."<sup>39</sup>

As previously mentioned, section 2-201 retains the requirement of the Sales Act that the memorandum be "signed by the party against whom

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contracts leaving open the particulars of performance. Obviously, if these terms may be omitted from an enforceable written contract, they should not have to be included in a memorandum which, by definition, seems to connote something less inclusive than the contract it purports to note. HAWKLAND, *op. cit. supra* note 16, at 25.

36. HAWKLAND, *op. cit. supra* note 16, at 25.

37. It is obvious that the price term could have been ascertained readily if the court had gone beyond the four corners of the memorandum. The court, when construing the phrase "basis 22.50," remarked:

The dollar mark is not used, and was not intended to be (used); admittedly the price was to be 22½ cents for each pound of sugar in each barrel purchased. Ordinarily, if this was intended, it would be written 22½ cents, or .225. We therefore start out with the fact that an important term of the contract cannot be ascertained from the paper alone, if its words are to be given their usual significance.

*Franklin Sugar Ref. Co. v. Howell*, *supra* note 30, at 196, 118 Atl. at 112. It is submitted that the court had before it sufficient evidence of a reasonable price to place upon the goods.

38. 198 Pa. Super. 506, 184 A.2d 24 (1962); see Note, 15 SYRACUSE L. REV. 532, 538 (1964).

39. *Arcuri v. Weiss*, *supra* note 38, at 510, 184 A.2d at 26.



enforcement is sought or by his authorized agent or broker."<sup>40</sup> A significant change in the satisfaction of the memorandum requirements has been enacted by section 2-201(2).<sup>41</sup> Between merchants, this section obviates the requirement of a memorandum signed by the party sought to be charged. The purpose of the section is to rectify a situation that readily could aid a fraudulent buyer. If a buyer and seller made an oral contract of sale, it was usual for the seller to send a letter of confirmation to the buyer. Under the Sales Act, the buyer had the benefit of the letter as a memorandum to enforce the contract, while, if the buyer chose to breach, the seller had nothing to satisfy the Statute of Frauds. Under section 2-201(2), if the buyer fails to object to the letter within ten days, his silence precludes his use of the Statute of Frauds defense. This gives the seller a substantially equal status in the transaction. The burden of proving that a contract was made is not affected by this subsection, and, thus, will be of limited assistance to those trying to use it to perpetrate fraud. A fraudulent party who sends out a letter of confirmation when no oral agreement has been made could use 2-201(2) to deprive a buyer of the Statute of Frauds defense, but he could not recover against that party until he proved the existence of the contract.<sup>42</sup>

In *Rubin & Sons, Inc. v. Consolidated Pipe Co.*,<sup>43</sup> the court held that a memorandum consisting of a purchase order on the seller's form signed by the purchaser, and a letter from the purchaser to the seller requesting an order similar to that on seller's form was sufficient to satisfy the Statute of Frauds. The court found that the memoranda were a sufficient "basis for believing that the offered oral evidence rests on a real transaction."<sup>44</sup>

#### IV.

##### PARTIAL PAYMENT

Under the Sales Act, an oral contract, otherwise unenforceable because of the Statute of Frauds, was enforceable if one of the parties gave "some-

40. UNIFORM COMMERCIAL CODE § 2-201(1); PA. STAT. ANN. tit. 12A, § 201(1) (Supp. 1964). In *Frye Safety, Inc. v. Yerger Bros.*, 56 Lanc. L.R. 311 (Pa. C.P. 1958), a writing was held sufficient to satisfy § 2-201 despite the absence of the seller's signature because enforcement was sought against the buyer whose signature was present.

41. UNIFORM COMMERCIAL CODE § 2-201(2). "Between merchants if within a reasonable time a writing in confirmation of the contract and sufficient against the sender is received and the party receiving it has reason to know its contents, it satisfies the requirements of subsection (1) against such party unless written notice of objection to its contents is given within ten days after it is received. Compare the effect of failure to comply under § 2-207. See § 2-104(1) for definition of "merchant."

42. UNIFORM COMMERCIAL CODE § 2-201, official comment pt. 3.

43. 396 Pa. 506, 153 A.2d 472 (1959).

44. *Id.* at 512, 153 A.2d at 476; see also UNIFORM COMMERCIAL CODE § 2-201 comment under "Purposes of Changes 1"; PA. STAT. ANN. tit. 12A, § 2-201 (1964 Supp.). In *Wickersham E.&C. Co. v. Arbutus Steel Co.*, 58 Lanc. L.R. 164 (Pa. C.P. 1962), the court found that a memorandum failed as a confirmation because it did not refer to any prior oral contract and its use of words of future intent failed to bind the sender. In addition, the plaintiff failed to allege that the defendant had received the memorandum. The alleged memorandum, therefore, was found insufficient as to each of the four basic requisites of § 2-201(2). HAWKLAND, *op. cit. supra* note 16, at 26 n.25.

thing in earnest to bind the contract or in part payment."<sup>45</sup> Partial payment was a total bar to the Statute of Frauds defense, thus rendering the entire contract enforceable.<sup>46</sup>

Section 2-201(3)(c) deals with the same problem but makes the contract enforceable only "with respect to goods for which payment has been made and accepted." The theory of the modification is that payment speaks of a contract with respect to only those goods for which payment has been made. The remaining portion is unenforceable, since there is no evidence of contract obligations beyond the actual performance.<sup>47</sup> The result is that the Code severs that part of the transaction for which payment has been made from that part for which it has not. Partial payment by the buyer and acceptance of the same by the seller is an overt admission by both parties that a contract actually exists.<sup>48</sup> The contract will be enforced to the extent of the apportionable part of the goods.<sup>49</sup>

A question remains as to the extent of enforcement where it is impossible to apportion the goods in direct relation to the value of the payment that has been made. If part payment has been made on an indivisible contract, the buyer cannot enforce the contract but is limited to a recovery of his payment.<sup>50</sup> A recent Pennsylvania case<sup>51</sup> is illustrative of this problem. The seller orally agreed to sell two vats (purchase price \$1,600) with the buyer paying \$100 on account. When the buyer refused to accept the vats, the seller sued for breach of the oral agreement. The buyer asserted section 2-201 as a defense to the action but the seller contended that the payment of the \$100 by the buyer brought him within the exception to the Statute of Frauds (section 2-201(3)(c)). The court refused to enforce the contract, holding that the Code "denies enforcement of the contract where in the case of a single object the payment made is less than the full amount."<sup>52</sup>

Although the case follows subsection 2-201(3)(c), one authority, in commenting on the case,<sup>53</sup> has suggested what would seem to be a more

45. UNIFORM SALES ACT § 4(1); PA. STAT. ANN. tit. 69, § 42 (repealed) (1915).

46. *H. Feldman's Sons Co. v. Netsky*, 348 Pa. 237, 35 A.2d 305 (1944); *Emco Supply Co. v. Glover*, 47 Sch. L.R. 24 (Pa. C.P. 1950).

47. REPORT OF THE LAW REVISION COMMISSION, STUDY OF THE UNIFORM COMMERCIAL CODE, N.Y. LEG. DOC. No. 65(c), at 371 (1955).

48. UNIFORM COMMERCIAL CODE § 2-201, comment pt. 2. Admittedly, this may not be a sales contract, but it is evidence that a contract has been made.

49. *Ibid.* ". . . [I]f the price has been paid, the seller can be forced to deliver an apportionable part of the goods." The accuracy of this official comment is subjected to serious doubt by § 2-716 which specifies those instances when a buyer is entitled to specific performance. See also comment 2 to the latter section which clarifies the statutory language by giving specific examples of situations which are appropriate for specific performance.

50. It is just this result that has caused Professor Corbin to prefer the old Statute of Frauds or a complete abolition of the statute. See Corbin, *The Uniform Commercial Code — Sales; Should It Be Enacted?*, 59 YALE L.J. 821, 831 (1950).

51. *Williamson v. Martz*, 11 Pa. D.&C. 33, 29 Northumb. L.J. 32 (C.P. 1956).

52. *Id.* at 34, 11 Pa. D.&C.2d at 35.

53. Hawkland, *op. cit. supra* note 16, at 29.

suitable result. The payment of the \$100 indicates that the oral agreement rests on a real transaction. Since the buyer could not use part of a vat, the contract contemplated at least one vat; the court, therefore, could safely enforce the contract to the extent of one vat, and give the seller a recovery of \$800.

## V.

### ACCEPTANCE AND RECEIPT

The Sales Act gave to "acceptance and receipt of part of the goods sold" the same effect as part payment.<sup>54</sup> If the buyer accepted part of the goods sold the entire contract would be enforceable. Under the Code, acceptance and receipt of part of the goods makes the contract enforceable only "with respect to goods . . . which have been received and accepted."<sup>55</sup> This change is based on reasoning identical to that concerning part payment, that is, acceptance of part of the goods is evidence of a contract only with respect to the goods received. Again, there is no evidence of a contract more extensive than that part actually performed.<sup>56</sup>

The problems of apportionment which arose in the preceding section are not as difficult when concerned with receipt and acceptance. If the buyer accepts part of the goods, the seller is entitled to an apportionable part of the contract price.<sup>57</sup> Such a partial enforcement of the oral agreement requires proof of the whole agreement, for otherwise it is not possible to make a just apportionment of price to the goods delivered.<sup>58</sup>

## VI.

### ADMISSIONS

The Code adds a new method of satisfying the Statute of Frauds to those contained in the Sales Act. Section 2-201(3)(b) provides that the

54. UNIFORM SALES ACT § 4(1); PA. STAT. ANN. tit. 69, § 42 (repealed) (1915).

55. See *Kerecman v. Diedrich*, 1 *Craw.* 204 (Pa. C.P. 1960), for construction of the § 2-201(3)(c) provision for acceptance of goods.

56. See, UNIFORM COMMERCIAL CODE § 2-606, which describes the acts that constitute acceptance of goods. Under the Sales Act, the Statute of Frauds provision (§ 4) had its own definition of acceptance (§ 4(3)).

57. UNIFORM COMMERCIAL CODE § 2-201, comment pt. 2.

58. 2 CORBIN, CONTRACTS § 482, at 644 (1950). As the author states in a footnote to this section:

Since even partial enforcement as this, requires oral proof of the terms of the agreement, it seems to the present writer that the Code might as well have followed the Sales Act and old section 17 by making the agreement fully enforceable. It is true, however, that under the Code provision, a plaintiff can no longer fraudulently enlarge the transaction by perjured testimony as to the agreed amount. His remedy is now limited to the part actually received by the other party.

oral contract is enforceable "if the party against whom enforcement is sought admits in his pleading, testimony or otherwise in court that a contract for sale was made, but the contract is not enforceable under this provision beyond the quantity of goods admitted."<sup>59</sup> This section, although not contained in the Sales Act, is not a completely novel provision. A case decided under the Sales Act held that an oral agreement within the Statute of Frauds would be enforced against a defendant, if defendant either inadvertently or advertently, admitted at trial the making of the oral agreement.<sup>60</sup> Under article 2 of the Code, any such admission is specifically declared to be sufficient to enable enforcement of the contract.

The first case construing this section of the Code held that a demurrer based on the Statute of Frauds defense does not constitute an admission which will make the contract enforceable under the Code.<sup>61</sup> The court indicated that this section applied only to responsive pleadings. A contrary result would eliminate the use of a demurrer as a basis for raising the Statute of Frauds.

## VII.

### SPECIAL MANUFACTURING

Related to the earlier discussion of contracts for labor and services is section 2-201(3)(a) which provides for specially manufactured goods. As stated in the section on the scope of 2-201, if the contract is for labor and services it is not subject to the Statute of Frauds. But, even under the Sales Act, ". . . if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section [4(2)] shall not apply." Under the Sales Act special manufacturing was exempted from Statute of Frauds requirements on the theory that it involved work and labor.<sup>62</sup> To make the contract enforceable on this basis, two requirements had to be met: (1) the goods had to be manufactured specially by the seller for the buyer; (2) the goods had to be such as cannot be disposed of by the seller in the ordinary course of his business. If these were present, the contract was one for labor and services and not for a sale of goods. But difficulties were encountered when the seller contracted with a third party to have the latter manufacture the goods for the buyer. Since the goods were not being manufactured *by the seller*, one of the requisites was lacking. The contract for this transaction was treated as a sale of goods, and, thus, the Statute of Frauds became applicable.<sup>63</sup>

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59. UNIFORM COMMERCIAL CODE § 2-201(3)(b); PA. STAT. ANN. tit. 12A, § 2-201(3)(b) (Supp. 1964).

60. *Martin v. Wilson*, 371 Pa. 529, 92 A.2d 193 (1952).

61. *Beter v. Helman*, 41 West. 7 (Pa. C.P. 1958). The demurrer stated: "The petition shows on its face that the alleged contract is unenforceable by reason of the statute of frauds."

62. HAWKLAND, *op. cit. supra* note 16, at 31.

63. The courts were consistent when interpreting the exception to the Statute of Frauds under the Sales Act providing for specially manufactured goods, in holding

Under the Code, the policy which exempts special manufacturing arises because of the peculiarly vulnerable position of the special manufacturers. They are more seriously injured than other sellers when a buyer reneges on his oral contract, because they are left with goods not readily marketable. Therefore, they need more protection than ordinary sellers.<sup>64</sup> Subsection 2-201(3)(a) provides that an oral contract for the price of \$500 or more is unenforceable “. . . unless the goods are to be specially manufactured for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, and the seller . . . has made either substantial beginning of their manufacture or commitments for their procurement.” This section differs from the Sales Act in that it does not require the seller to be the special manufacturer. It is enough if the transaction involves special manufacturing. In requiring the seller to have changed his position as a result of the oral contract, the draftsmen of the Code are consistent in their approach. This recognizes that those selling special goods need special protection only when they stand to be injured more seriously than ordinary sellers by the renouncement of oral contracts.<sup>65</sup>

### VIII.

#### CONCLUSION

The Code, although taking the same general approach to the Statute of Frauds as did the Sales Act, has developed a more practical approach to problems that arise under this provision. By relaxing the requirements for a sufficient memorandum, and providing more specifically for the exceptions to the memorandum, the Code's approach seems to fit more easily into the present day commercial setting than did the Sales Act. The memorandum sufficient to satisfy the Code is just that which would be used by merchants in their everyday transactions. The exception for special manufacturing is likewise brought in line with the business setting. Although certain problems may still arise in this area, the Code gives the courts sufficient discretion to reach a more equitable solution than did prior law.

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that: “every part of the statute must be considered and, if possible, effect given to every word, clause and sentence.” Where the goods were not manufactured by the seller, the courts held that the Statute of Frauds was not satisfied under the exception for specially manufactured goods. *Cf. Eagle Paper Box Co. v. Gatti-McQuade*, 99 Misc. Rep. 508, 164 N.Y. Supp. 201 (1917); *Atlas Shoe Co. v. Rosenthal*, 242 Mass. 15, 136 N.E. 107 (1922); *H. W. Myers and Son, Inc. v. Felopulos*, 116 Vt. 364, 76 A.2d 552 (1950).

64. HAWKLAND, *op. cit. supra* note 16, at 31.

65. *Ibid.* For a discussion of the reasons against giving special manufacturers this protection, see HAWKLAND, *op. cit. supra* note 16, at 31-32.