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LEGISLATION

A COMPARISON OF THE STATUTE OF FRAUDS SECTIONS OF THE UNIFORM SALES ACT AND UNIFORM COMMERCIAL CODE IN PENNSYLVANIA

On July 1, 1954, the *Uniform Commercial Code* (hereinafter referred to as the *Code*) will take effect as the law regulating, among other things, sales of goods in Pennsylvania.¹ At that time, the statute which for almost thirty years has been the fountain-head of the law of sales in Pennsylvania, the *Uniform Sales Act*,² will become dead by repeal.³ The purpose of this note is to compare the salient features of the statute of frauds section of each law.^{3a}

SCOPE OF THE STATUTE OF FRAUDS OF THE SALES ACT AND THE CODE

Applicability to Contracts of Sale and Contracts to Sell

Section 4 of the *Sales Act* begins by informing us that it deals with sales of or contracts to sell⁴ (goods or choses in action, et cetera). A sale is a transfer of general property in goods for a consideration called the price, which transfer of property takes place by force of the original agreement. A contract to sell is an agreement that general property in goods shall be transferred sometime in the future for a consideration called the price, the transfer to be effected by a subsequent manifestation of that intention by the parties.

The *Code*, section 2-201, begins by putting within its scope "a contract for the sale" (of goods, et cetera).⁵ The definition indicates that the *Code* makes its "contract for sale" an all-inclusive term, which covers both the contracts of sale and the contracts to sell of the *Sales Act*. Clearly the distinction here between the two acts is superficial, one of words rather than meaning.

Applicability to Goods and/or Choses in Action

The *Sales Act* statute of frauds embraces sales of or contracts to sell "any goods or choses in action" (of the value of \$500 or upwards. . . .). Although the *Sales Act* definition of goods did not include choses in action,⁶ the drafters of the

¹ Act of April 6, 1953, P.L. — no. 1, 12A. P.S.; Article 2 is the Sales Article.

² Act of May 19, 1915, P.L. 543, no. 241, 69 P.S. 1.

³ Section 10-102 of the Code specifically repeals the Uniform Sales Act.

^{3a} The text of the statute of frauds in the Sales Act may be found in 1915 P.L. 543, no. 241, § 4, 69 P.S. 42; the Code provision is contained in 1953 P.L. —, no. 1, § 2-201, 12A P.S. 2-201.

⁴ A sale is defined in § 1 (2) of the Sales Act as "an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price." A contract to sell is defined in § 1 (1) as "an agreement whereby the seller agrees to transfer the property in goods for a consideration called the price."

⁵ A contract for sale is defined in § 2-106 of the Code as "both a present sale of goods and a contract to sell goods at a future time. A sale consists of the passing of title from the seller to the buyer for a price."

⁶ Section 76 of the Sales Act defines "goods" as "all chattels personal other than things in action and money."

Act expressly included them as subject to the statute of frauds. Some courts, prior to the writing of the *Sales Act*, held that a sale of or a contract to sell choses in action, if of the required value, was subject to the statute.⁷ When Pennsylvania adopted the *Sales Act* in 1915,⁸ choses in action naturally became subject to the statute of frauds. Among some of the things held to be choses were corporate stock,⁹ a contract right in an exclusive sales agency,¹⁰ and an interest in a partnership.¹¹

Turning to the *Code*, section 2-201(1) covers only contracts "for the sale of goods. . . ." Goods are defined in section 2-105 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, and things in action." The *Code* statute of frauds does not add choses in action to its coverage. It has been suggested that this omission may have been inadvertent;¹² regardless of that, however, an important change in the law is produced. Because of the omission, inadvertent or not, the scope of the statute of frauds will be narrowed. To be sure, investment securities will be subject to a separate statute of frauds, section 8-319, in the article on investment securities. But as to the remaining uncovered field of choses, they ostensibly will be dropped from statute of frauds coverage.¹³

Applicability to Specially Manufactured Goods

Related to the discussion of goods, *supra*, is the distinction between contracts for the sale of goods and contracts for work and labor. The former are subject to the statute of frauds while the latter are not.

Pennsylvania, before its passage of the *Sales Act*, had no statute of frauds comparable to the ones under discussion here. Obviously then, the Pennsylvania courts were not very much concerned with the problem of whether a contract was one for the sale of goods or one for work and labor. In those jurisdictions where there was such a statute of frauds, however, separate rules evolved as to

⁷ *Banta v. Chicago*, 172 Ill. 204, 218, 50 N.E. 233, 40 L.R.A. 611 (1898), shares of stock. *Greenwood v. Law*, 55 N.J.L. 168, 26 A. 134, 19 L.R.A. 688 (1893), bond and mortgage. *Somerby v. Buntin*, 118 Mass. 279, 19 Am. Rep. 459 (1875), bills and notes.

⁸ As to the inclusion of choses in action in section 4: this was held to be unconstitutional in *Guppy v. Moltrup*, 281 Pa. 343 (1924) and also in *Parrish and Co. v. Boem*, 7 D. & C. 119 (1925), since it violated Art. 3, § 3 of the Pennsylvania Constitution which provides that "No bill. . . shall be passed containing more than one subject which shall be clearly expressed in the title." The defect was cured by amending the title to the *Sales Act*, which amendment included choses in the Act's title (act of April 27, 1925, P.L. 310, no. 174, § 2). The original title had merely been "An Act Regulating the Sales of Goods."

⁹ *Fidelity Philadelphia Trust Co. v. Trustees*, 41 Lanc. 111 (1928); *Staples v. Pan American Wall Paper and Paint Co.*, 63 F.2d 701 (1933).

¹⁰ *Continental Collieries v. Shober*, 130 F.2d 631 (1942).

¹¹ *Conrad v. Ehrhart*, 63 York 33 (1949).

¹² See p. 13, Pennsylvania Annotation to the Proposed Uniform Commercial Code, published by the Joint State Government Commission, Sept., 1952.

¹³ Since Pennsylvania had no statute of frauds comparable to the ones under purview here, taking choses in action away from statute of frauds coverage is to merely revert to pre-1915 days as far as this state is concerned.

how to distinguish them. Space does not permit a discussion of all the rules, the so-called English, New York, and Massachusetts rules.¹⁴ Suffice it to say that it was the Massachusetts rule which was adopted by the *Sales Act* in section 4.¹⁵ The Massachusetts rule is clearly set forth in the case of *Goddard v. Binney*:¹⁶

" . . . a contract for the sale of articles then existing, or such as the vendor in the ordinary course of his business manufactures or procures for the general market, whether on hand at the time or not, is a contract for the sale of goods, to which the statute applies. But on the other hand, if the goods are to be manufactured especially for the purchaser on his special order, and not for the general market, the case is not within the statute."

This is substantially reproduced in section 4(2) of the *Sales Act*, which says:

" . . . 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 shall not apply."

The distinction between contracts for work and labor and contracts for the sale of goods is based on two things: (1) the goods must be manufactured specially by the seller for the buyer; (2) the goods cannot be disposed of by the seller in the ordinary course of his business.

Under the *Sales Act*, once an oral contract for work and labor is formed (that is, satisfying the requisites given above), the entire contract becomes enforceable.

Some difficulty arose under the *Sales Act* where the seller procured a third party to manufacture the special goods for the buyer. Here one of the requisites was satisfied, i.e., the goods could not be disposed of by the seller in the ordinary course of his business. But the other was not, that is, the goods were not manufactured *by* the seller *for* the buyer. Thus it has been almost universally held in cases of this type arising under the *Sales Act* that there was a contract for the sale of goods, and that the statute of frauds must in some way be satisfied to make the oral contract enforceable.¹⁷

To all this the *Code* makes some interesting innovations. Section 2-201(3a) states 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 before notice of repudiation. . . has made either substantial beginning of their manufacture or commitments for their procurement." The *Code* both broadens and narrows this concept of a contract for work and labor as it appears in the *Sales Act*.

It broadens in that a contract will be deemed one for work and labor (or at least it will be deemed *not* a contract subject to the statute of frauds) in all

¹⁴ For a discussion of these rules, their origins and histories, see 1 Williston on Sales, §§ 54-55, (1948 ed.); a good capsule summary may be found in 55 Dick. L. Rev. 398-399.

¹⁵ See Commissioners note, 1 Uniform Laws Annotated, § 4, pp. 71, 72.

¹⁶ 115 Mass. 450, 15 Am. Rep. 112 (1874).

¹⁷ *Eagle Paper Box Co. v. Gatti-McQuade*, 164 N.Y.S. 201 (1917); *Atlas Shoe Co. v. Rosenthal*, 242 Mass. 15, 136 N.E. 107 (1922); *H. W. Myers and Sons Inc. v. Felopulos*, 116 Vt. 364, 76 A.2d 552 (1950).

cases where the goods are to be specially manufactured for the buyer (whether by the seller himself or by a third party procured by the seller) and not disposable by the seller in the ordinary course of his business.¹⁸

It narrows in that the oral contract becomes enforceable only if the seller, before notice of repudiation by the buyer, has made a substantial beginning of the manufacture of the special goods, or commitments for their procurement. (Under the *Sales Act*, once it was decided the contract was one for special manufacture by the seller for the buyer, the contract became enforceable without either party doing anything more.)

Applicability to Rescission of a Contract

Only if the contract of rescission involves a sale of goods of the value of \$500 or more must the statute of frauds be satisfied. This is so under the *Sales Act* and the *Code*. Thus where the contract to be rescinded is wholly executory, or if it is partially executed to the extent of a value or price less than \$500, the statute of frauds does not apply;¹⁹ the reason is simply that the contract of rescission does not involve a re-transfer of the general property in the goods of the required amount, i.e., \$500. However, if the contract to be rescinded has been partially or fully executed to the extent of a value or price exceeding \$500, then it does involve the passage of general property interest in the goods of the required amount. Such a contract falls within the scope of the statute of frauds. The *Sales Act* has certain rules regarding satisfaction of the statute of frauds, as does the *Code*. They will be discussed shortly. It is enough to say here that a contract of rescission involving a sale (re-sale) of \$500 or more of goods must comply with the statute of frauds.

Applicability to Modification of a Contract

Under the *Sales Act* and the *Code* if a modified contract is one for the sale of goods worth \$500 or more then the contract as modified is subject to the statute of frauds, and to be enforceable, must comply with it.²⁰ As was pointed out, however, the methods of satisfying the statute differ under the *Code* and *Sales Act*. These differences will be soon considered.

However, the *Code* does make a change with respect to modification of a contract. The change merits some mention here, although it comes from outside the scope of the statute of frauds. Under the *Sales Act*, the modified contract has to conform with the general law of contracts, one requirement of which is that

¹⁸ The *Code* idea here, though apparently new, is not without precedent. In *Bird v. Muhlbrink*, 1 Rich. 199 (S.C., 1845), the court, in calling a contract where the seller procured a third party to manufacture special goods not one for the sale of goods, stated the philosophy that: "he [the seller] incurred expense and trouble entirely to accommodate the buyer. . . he undertook to perform an agency for the buyer, and at his own expense about that which would have been of no benefit to him unless the terms of the contract were complied with."

¹⁹ See *Flaherty v. Goldinger*, 249 Mass. 564, 144 N.E. 374 (1924).

²⁰ *Producers Coke Co. v. Hoover*, 268 Pa. 104 (1920).

every promise must be supported by a legally sufficient consideration. The *Code* in section 2-209(1) states:

"An agreement modifying a contract within this article (sales article) needs no consideration to be binding."

The comment to this section declares moreover that the modification must be made in good faith which includes "observance of reasonable commercial standards."

THE EFFECT OF NON-COMPLIANCE WITH THE STATUTE OF FRAUDS

The *Sales Act*, in section 4(1), states that a contract to sell or a sale of goods or choses in action of the value of \$500 or upwards "shall not be enforceable" unless certain conditions are met. The *Code's* words are that a contract for the sale of goods "is not enforceable by way of action or defense" unless certain conditions are again met. As under the *Sales Act*, so under the *Code* such contracts will be made unenforceable only and not void. Here again we have the *Code* merely rephrasing an old idea.

SATISFACTION OF THE STATUTE OF FRAUDS

Acceptance and Receipt

Under the *Sales Act*, section 4 (statute of frauds) may be satisfied if:

"the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same. . . ."

The parallel provision in the *Code* is in section 2-201(3c) where it is stated:

"A contract becomes enforceable with respect to goods which. . . have been received and accepted."

Acceptance under the *Sales Act* of the type to satisfy the statute of frauds is defined in that section, section 4(3), and reads:

"There is acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, or any part thereof, expresses by words or conduct his assent to becoming owner of those specific goods."

Note that only in regard to the statute of frauds does this definition of acceptance have use in the *Sales Act*. In all other situations, acceptance as defined in section 48 is used.²¹ The *Code* has one definition of acceptance, contained in sec-

²¹ "The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him, and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them." For a good discussion of the two *Sales Act* concepts of acceptance, see J. Keller's opinion in *Cleggs v. Lee* 82 Pa. Sup. 584, 586-587 (1924).

tion 2-606.²² The question is—which of the two *Sales Act* definitions of acceptance is adopted by the *Code*. There is much to lead to the conclusion it adopts the *Sales Act* definition of acceptance as it appears in section 48. First of all, the *Code* statute of frauds refers to section 2-606 for its definition of acceptance. Section 2-606 is strikingly similar in wording to section 48 of the *Sales Act*. Both of them say there is acceptance (1) when the buyer signifies or manifests his acceptance to the seller; (2) when the buyer does any act inconsistent with the seller's ownership; (3) when the buyer retains the goods without informing the seller that he has rejected them. Of some significance too is the very location in their respective statutes of the two definitions of acceptance. Both section 48 of the *Sales Act* and section 2-606 of the *Code* are in that portion of the act which deals with the performance of the contract, and outside the part that has to do with formalities. So, in language and statutory context, section 48 and section 2-606 are substantially similar. If it can be agreed that this is so, then the *Code* statute of frauds requires an acceptance which is more than a mere manifestation of assent by the buyer to become owner of the specific goods to the contract. The case of *Cleggs v. Lee*²³ will illustrate. There buyer and seller orally contracted for the sale of a certain amount of yarn. The buyer inspected the goods at the seller's warehouse and, being satisfied with them, agreed to buy the yarn. Subsequently the yarn was delivered to and received by the buyer, but he then informed the seller that he was no longer willing to go through with the transaction. In the ensuing litigation the buyer raised the defense of the statute of frauds; the seller alleged there was acceptance and receipt. In its decision, the court said (quoting from volume 1, Uniform Laws Annotated, page 30):

"a buyer might accept the goods so far as to preclude him from setting up the statute of frauds as a defense without accepting to the extent of precluding him from setting up other defenses, such as the failure of the goods to comply with the contract."

Here the buyer had manifested an assent to become owner of the goods when he, after inspection, agreed to buy them. That is all that is required under section 4(3) of the *Sales Act*. Section 48 of the same Act, however, would not have been satisfied. Now, since *Code* section 2-606 and section 48 of the *Sales Act* are similar, it seems reasonable to hypothesize that the buyer in the above case would be deemed not to have accepted under the *Code* and his defense would have been good. If this is true, then clearly the *Code* will require more for its acceptance as a means of satisfying the statute of frauds, and in that way further narrow its application.

²² Section 2-606 of the *Code* reads:

- (1) Acceptance of the goods occurs when the buyer
 - (a) signifies his acceptance to the seller; or
 - (b) fails to make an effective rejection, but such acceptance does not occur until the buyer has had a reasonable opportunity to inspect them; or
 - (c) does any act inconsistent with the seller's ownership; but if such act is wrongful as against the seller it is an acceptance only if ratified by him.
- (2) Acceptance of a part of any commercial unit is acceptance of that entire unit.

²³ Note 21, *supra*.

Receipt is not defined in the *Sales Act* or the *Code*. The rules regarding it are found in the cases and presumably will remain unchanged by the *Code*.

Under the *Sales Act*, once there has been acceptance and receipt of any part of the goods which form the subject matter of the contract, the entire oral contract becomes enforceable.²⁴ In this regard, the *Code* makes a change. In section 2-201(3c), it is provided that an oral contract otherwise unenforceable will be enforced "with respect to goods. . . which have been received and accepted." Acceptance and receipt under the *Code* still operate to make the contract enforceable, but only to the extent of those goods received and accepted. Vold²⁵ suggests that the reason acceptance and receipt made the entire contract enforceable under the *Sales Act*, was that the unequivocal acts of acceptance and receipt made it fairly clear that there was a contract. The purpose of the statute of frauds (to avoid frauds and perjuries being committed on the courts as to non-existent contracts) is then satisfied, in that actual performance of some part of the contract is good proof towards its existence. This being so it was logical for the part performance to make the entire contract enforceable. But the philosophy behind the *Code's* limitation of enforceability to those goods actually received and accepted is not so clear. The comment to section 2-201 clearly indicates that the *Code* recognizes that acceptance and receipt constitute an "unambiguous overt admission by both parties that a contract actually exists." This, of course, could mean that the acceptance and receipt of part of the goods suggests a contract involving that amount of goods only, that is, those actually received and accepted. Certainly as to those goods there is a minimum of doubt that a contract exists, and consequently the margin for the perpetration of fraud and perjury on the courts as to those goods is small. On the other hand, to allow parol evidence to establish a greater amount of goods than those accepted and received is to open the door partly for the commission of fraud on the courts. The *Code* approach seems to weigh the policy consideration against frauds and perjuries against the intention of the parties, and takes the view of the former. Certainly it is a narrowing of this method, acceptance and receipt, as a way of satisfying the statute of frauds.

Part Payment

Section 4(1) of the *Sales Act* makes an oral contract, otherwise unenforceable because of the statute of frauds, enforceable by one of the parties giving "something in earnest to bind the contract or in part payment." The *Code* in section 2-201(3c) accomplishes the same result "with respect to goods for which payment has been made and accepted." Note again, as with acceptance and receipt, the part payment makes the entire contract enforceable under the *Sales Act*, while under the *Code* only that portion is made enforceable for which there was part payment. The comment to this latter *Code* section states: "if the price has been paid, the seller can be forced to deliver an apportionable part of the goods."

²⁴ Jessup and Moore Paper Co. v. Bryant Paper Co., 283 Pa. 434, 129 A. 559 (1925).

²⁵ Vold on Sales, § 29 (a), (1931).

Granting that the *Code* comments are not binding on the courts, the above quotation still raises some interesting questions. What if the goods are not apportionable? Assume there was part payment on an oral contract involving a truck costing \$5000. Does this mean the buyer can force the seller to deliver him the tires, the motor, or what? Will the contract be enforced at all? Or does it mean that since the goods are not apportionable the *Code* will then treat part payment as making the whole contract enforceable? And if the latter is done, will it not be in contradiction to the terms of the act, which clearly state the contract will be enforceable only "with respect to goods for which payment was made and accepted"? Going further, what if the goods are apportionable, such as wheat and corn; can the buyer demand the wheat he urgently needs in return for his part payment, or must he accept the corn which the seller wants to get rid of, but which the buyer has plenty of? Obviously these questions will have to be answered sooner or later in the courts. Until they are, however, there will probably be some uncertainty concerning this manner of satisfying the statute.

The inclusion in the *Sales Act* of "something in earnest" to bind the contract and so satisfy the statute of frauds has by usage merged in meaning with part payment.²⁶ The *Code*, recognizing this, makes no reference to "something in earnest."

Note or Memorandum in Writing

Elements of the Memo. The third way an oral contract, otherwise unenforceable because of the statute of frauds, becomes enforceable under the *Sales Act* is if there is "some note or memorandum in writing signed by the party to be charged or his agent in that behalf." Dismembering this quotation, three elements emerge: (1) a note or memo in writing; (2) indicating the sale or contract to sell; (3) signed by the party to be charged or his agent. The *Code*, in section 2-201(1), has a parallel provision:

" . . . 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 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. . . beyond the quantity of goods shown in such writing."

Breaking this down, there are these elements: (1) some writing; (2) indicating a contract for a sale between the parties; (3) signed by the party to be charged or his agent; and (4) a specification of quantity in the writing.

The *Sales Act* does not specify how complete the note or memo must be. This deficiency was filled by the courts. In one Pennsylvania case,²⁷ the court said (in

²⁶ See *Goldstein v. Obregon Distributing Co.*, 14 D. & C. 1 (1930), which also cites *Howe v. Hayward*, 108 Mass. 54 (1871).

²⁷ *Swift and Co. v. Mecham*, 283 Pa. 429, 432 (1925); see also *Vitrol Mfg. Co. v. Standard Chemical Co.*, 291 Pa. 85, 139 A. 615 (1927) where the *Swift v. Mecham* case was cited with approval.

deciding what constitutes a sufficient memo) that it depends on the facts of the particular case, but:

“. . . generally a writing is not sufficient as a note or memorandum where it does not state [all material] 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.”

Perhaps the best catalogue of those things which the Pennsylvania courts consider to be terms essential to the contract, hence included in the memo, appears in a Lackawanna county case²⁸ where it is said:

“. . . [the memo must] clearly state the names of the parties, the quantity and kind of goods sold, time of delivery, and terms of the sale.”

By comparison, the *Code* on this point is liberal. The writing need only be sufficient “to indicate that a contract for sale has been made between the parties, [and it shall not fail] because it omits or incorrectly states a term agreed upon.” In Pennsylvania, the many cases which were appealed on this very ground,²⁹ (that a writing merely indicating the existence of a contract is sufficient), and were unsuccessful will presumably become dead precedent under the *Code*. The comment to *Code* section 2-201(1) says that “the only term which must appear is the quantity term. . . . The price, time and place of delivery, the general quality of the goods or any particular warranties may all be omitted.”³⁰ It has been suggested that the failure to mention an essential term of the contract in the memo may work to negative the intentions of the parties that there be a contract.³¹ However, it seems that this will be so only where *both* parties signed a memo lacking an essential term; where the memo is a unilateral effort by one of the parties, it is unlikely that that could negative the intention of the parties to contract.³²

The reasoning behind the *Code's* liberality here is not completely consistent with its strictness noted under acceptance and receipt and part payment. In the latter two situations, the *Code* will enforce the contract only to the extent it is partly performed—ostensibly because that part performance is the only accurate indication of the extent to which a contract exists. However, with the memo, the *Code* will allow a contract to be enforced with all the essential terms missing or in error. A thread of consistency is to be found, however, relative to the amount. The memo will not be enforced to an extent greater than the amount expressed

²⁸ Franklin Sugar Refining Co. v. Spruks, 3 D. & C. 87 (1923).

²⁹ A few of the cases are: Manufacturers Light and Heat Co. v. Lamp, 269 Pa. 517, 112 A. 679 (1921); Franklin Sugar Refining Co. v. John, 279 Pa. 104, 123 A. 685 (1924); Vitrol Mfg. Co. v. Standard Chemical Co., 291 Pa. 85, 139 A. 615 (1927); Stein v. Camden Fibre Mills, 148 Pa. Sup. 348, 25 A. 2d 741 (1942).

³⁰ Draft of Code, Text and Comments Edition, 1952, Comment 1, p. 56.

³¹ See Pennsylvania Annotation to the proposed Uniform Commercial Code, Joint State Government Commission, Sept., 1952, p. 12.

³² The explanation seems simple enough: where the memo is a unilateral effort by one party, it serves mainly as evidence of a contract, upon which parol evidence will build the essential terms. A bilateral memo, on the other hand would tend to be the contract itself, which if lacking an essential term might indeed show there was never an intention to enter into a contract.

therein. Recall how in part performance, also, the enforceability of the contract was limited to the extent of the acceptance and receipt or part payment.

Signature of the Memorandum. Under both the *Code* and the *Sales Act*, the signature of the principal or his agent acting for him is sufficient to bind the principal.³³ As to the signatures themselves the *Sales Act* is silent. The cases seem to imply at least some resemblance to the general conception of a signature. The *Code*, however, defines its concept of signature in section 1-201(3a) as "any authentication which identifies the party to be charged." It has been suggested that this "may liberalize present law."³⁴

Against Whom the Memorandum is Enforceable. Once having established that the memo has been signed by one party, under the *Sales Act* that writing makes the contract enforceable against him (assuming, of course, the other requisites for a sufficient memo are present). The other party, however, is free from suit if he did not sign the memo.³⁵ On this, the *Code* makes an interesting change. Section 2-201(2) says:

"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 becomes enforceable against the party receiving the writing] unless written notice of objection to its contents is given within ten days after it is received."

To illustrate: Suppose S and B, merchants in textiles, orally contract, whereby S promises to deliver 1000 yards of orlon cloth, and B promises to pay \$600 for it. The next day, S sends B a letter, signed by S, confirming the oral contract, as B expected he would. Now the oral contract is enforceable against S, but not B. Under the new *Code* provision B has ten days after receiving S's letter of confirmation to make written objection. If he fails to do so, the oral contract becomes enforceable against him (B) as well. The same would apply in converse if B had sent the first writing. Note however that this provision applies only to transactions "between merchants." In section 2-104(3), "between merchants" is defined: "(where) both parties are chargeable with the knowledge and skill of merchants." By section 2-104(1) a merchant is a person "who deals in goods of the kind or otherwise by his occupation holds himself out as having the skill and knowledge peculiar to the practice or goods involved in the transaction or to whom such knowledge or skill shall be attributed by his employment of an agent or broker or other intermediary who by his occupation holds himself out as having such knowledge and skill." Because this new provision of the *Code* confines itself to transactions between merchants, many business deals will be excluded; but at least in some situations the signing party to a memo will not be exposing himself to suit without some means of protection.

³³ A case under the *Sales Act* is *McGowan v. Lustig-Burgerhoff Co.*, 93 Pa. Sup. 227 (1928).

³⁴ See note 28, *supra*.

³⁵ *Stein v. Camden Fibre Mills*, 148 Pa. Sup. 348, 25 A. 2d 741 (1942); *Sell v. Mueller Brass Co.*, 361 Pa. 449, 65 A. 2d 236 (1949).

Admission of Contract in Pleadings or in Court

Under the *Sales Act* there were only three ways of satisfying the statute of frauds. These have been discussed and compared. The *Code* adds a fourth way. In section 2-201 (3b), the statute of frauds is satisfied "if the party against whom enforcement is sought admits in his pleadings or otherwise in court that a contract for sale was made." This, however, is not new to Pennsylvania. It has been held in a case involving a land transaction that the party who admits the oral contract will be held to it.³⁶ In Pennsylvania then, the *Code* cements existing case law on this fourth method of satisfying the statute of frauds.

CONCLUSION

The *Code* has made several innovations relative to the statute of frauds. Generally the approach in section 2-201 has been a realistic one, as compared with the more legalistic approach of section 4 of the *Sales Act*. To be sure, there are provisions in the *Code* which may lead to great confusion. Ostensibly, it is going to shake certain foundations which have stood for 300 years. Williston³⁷ has called section 2-201 of the *Code* its second-most "iconoclastic" provision.³⁸ But to shed the hallowed and the hoary is perhaps a good thing if it results in greater efficiency in commercial transactions and makes the statute of frauds a provision whereby the businessman's interests as well as the lawyer's distinctions are recognized. Whether the Pennsylvania legislature has made itself a party to an act of iconoclasm, or has set the way for a more realistic and functional statute of frauds, only time will tell.

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³⁶ *Zlotziver v. Zlotziver*, 355 Pa. 299, 49 A. 2d 779 (1947).

³⁷ See 63 Harv. L. Rev. 573.

³⁸ Mr. Williston considers the *Code* changes in regard to title its most sacrilegious violation. See note 33, *supra*.