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POPULAR TALKS ON LAW

CONTRACTS: ENFORCEABLE AND UNENFORCEABLE

By Walter K. Towers, A. B., J. D., of the Michigan Bar

When, in the ordinary dealings of life, you arrive at a business agreement, you expect to carry out your part, and expect the other party will carry out his. Almost invariably, in the ordinary agreements that are regularly arrived at, each of you promises to give something or to forego in return for what the other is to do under the agreement. He is to mow your lawn; you are to give him fifty cents. He is to rent your house by giving you twenty dollars per month, and you are to furnish him with the use of the house. That is mutuality of obligation, and thus the difficult question of the consideration so necessary to contracts does not arise.

You have agreed definitely with the neighbor that he is to have the trees now growing in your acre woodlot, he is to pay you a hundred dollars there for, the trees to become his property as they stand. Each of you is to give something, so there is consideration. You do not want litigation to arise from this agreement; you do not want, or expect to go to court to have it enforced, else you would not have entered into it—for the unprofitability of "buying a law suit is proverbial. But you do want to have the agreement in such form that, if disagreement should arise you would be able to enforce your rights. You may not be able to "lick" Neighbor Jones; and even if you can, that would only involve you in an action for assault and battery. You want the contract in such form that if you must assert your rights you will have them in a form which the law—the procedure provided for the enforcement of rights—will recognize.

Probably the principal reason why the average man finds his contract unenforceable is because of the lack of the written evidence which the law requires in certain classes of cases. In the case of the sale of the standing timber the law of most states requires that it be evidenced by writing signed by the party against whom it is to be enforced, otherwise the courts would not enforce it. A statement of the principles which determine in what form a contract must be evidenced to be valid may not possess the interest attached to other branches of the law, but they are of the utmost practical importance to the average individual in the guidance of the business affairs of everyday life.

There are probably no two sections of written law which possess the practical importance, or have the far-reaching influence of the 4th and the 17th sections of the Statute of Frauds enacted by the English Parliament in 1676. These provisions have been reenacted by the legislatures of the various states in but slightly varying form, and the principles are firmly embodied in our law and are set down to guide all of us in the formation of our contractual agreements. Every student of the law memorizes these provisions.

What is known as the 4th section specifies certain classes of contracts which must be evidenced by a signed writing if they are to be enforceable. The first of these is an agreement by an executor or administrator to answer damages out of his own estate. Of course, one holding such a position is not personally bound to pay the debts of the deceased out of his own pocket; but if he does so agree, it must be in writing if he is to be bound to his promise.

The next class of agreements covered are those "to answer for the debt, default or miscarriage of another." If some third party suffers under an existing, or contemplates a future, liability and you agree with his creditor to make it good for him, that agreement must be evidenced by a writing signed by you if you are to be bound by it. Suppose John Simms comes to you, tells you he has no money, and must have a pair of shoes, and you agree to see that he gets them at the store. You go with him to the storekeeper and say, "Let Simms have a pair of shoes I will see you paid." By this statement you have become directly and personally liable and it is not within the statute. But if you say, "Let Simms have a pair of shoes, if he doesn't pay you I will"; then this is a contract to answer for the debt of another within the statute and there must be some written memorandum signed by you if the agreement is to be enforceable.

One of the most important of the provisions is that any contract or a sale of public lands, or any interest in or concerning land, must be evidenced by a signed writing. This is the provision that requires that a contract with reference to standing timber be in writing if it is with reference to reality. So, too, contracts to buy land, or for mineral rights, are within this provision and must be in writing. It is to be noted that if the contract calls for the delivery of timber or of coal from the lands of the owner by the owner, that is not within this provision, since he himself is to cut or mine it, thus severing it from the land so that it loses its character as realty. But if he sells coal or oil as it lies beneath his farm the contract must be in writing. The same applies to all leases, except short term leases, which are excepted in most of the states.

die and that would not be a performance of the contract as would be the other.

The seventeenth section provides that contracts for the sales of goods, wares and merchandise for the price of \$50, or over, shall not be good signed by the party to be charged, or part delivery and acceptance, or part payment. The amount below which the statute does not apply is varied by the statutes in the various American states which have reenacted this provision in varying forms.

It is to be noticed that the contract is the agreement, not the writing. The writing is merely evidence of the contract. It may be made at and time after the contract has been agreed upon, up to the time of suit. The writing need not be a formal document to comply with this statute. Any note or memorandum is sufficient so long as it contains all the material terms, as the names of the parties, the subject matter, the consideration given, etc. There may be several papers, as a series of letters or telegrams, so long as they are consistent and connected. The necessary signature of the party may appear at any point, and may be affixed either by the party himself or his authorized agent. Thus at an auction the auctioneer is the agent of both parties and if his memo contains the essential terms his entry of the names of the parties will amount to the necessary signature and complete the required writing.

The law of some states requires that some contracts be under seal as well as in writing. In many states seals have been abolished. In all states the tendency is to lessen their effect. The principal reason that makes the seal of comparative little import is that it is required only on the most important and formal of contracts, as deeds. The printed forms provided for these instruments include a seal; and further, these are instruments of an importance that requires the services of a competent attorney who is familiar with the requirements of the particular state and will see to it that the necessary formalities are complied with. The simple legal scroll (L.S.) has now been generally substituted for the more formal wax seal. Seals, used where not necessary, are merely superfluous.

It should be remembered that all contracts need not be in writing. The general rule is that if no statute requires that the particular kind of contract be in writing it need not be, and so contracts other than the ones specified in the statutes may be oral. Of course, even though no writing be required, prudent men frequently draw their contracts in writing that the evidence may be preserved in more permanent and indisputable form should trouble arise. If the matter is of considerable importance, better embody the terms in a letter addressed to the other party, sign it, keep a copy, and see that he replies over his signature accepting the proposal and terms.

(Copy'r. 1913, by Walter K. Towers)

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Adv.-A-41-Jun 5-26.

PREVENTING MOSQUITOES

The destruction of mosquitoes has received considerable attention at the hands of scientists. Eliminating the pests is often simple.

First destroy all breeding places. Where the rain water barrel and the rain water tank are necessary they should be screened. About a house the waste places in the immediate vicinity should be carefully searched for tin cans, wooden or tin boxes or other receptacles in which water can accumulate. These must be destroyed or carried away. Roof gutters should be examined for pools of water. The chicken pans in the poultry yard, the water in the troughs for domestic animals, and the water cup of the grindstone are places where mosquitoes will breed and water should not be allowed to stand for more than a day at a time. Water in flower vases should be looked after. Mosquitoes will also breed in water pitchers in unused guest rooms and pipes under stationary wash stands and other unsuspected places. For ponds and necessary bodies of water the larvae may be killed by the use of crude oil which is allowed to spread over the surface of the water. To keep mosquitoes away at night mix an ounce of oil of citronella and spirits of camphor with a

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