



Lee Burgess: Welcome to the Bar Exam Toolbox podcast. Today, we have another episode as part of our “Listen and Learn” series. This one covers the Statute of Frauds. Your Bar Exam Toolbox hosts are Alison Monahan and Lee Burgess, that’s me. We’re here to demystify the bar exam experience so you can study effectively, stay sane, and hopefully pass and move on with your life. We’re the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl’s Guide to Law School](#). If you enjoy the show, please leave a review on your favorite listening app, and check out our sister podcast, the [Law School Toolbox podcast](#). If you have any questions, don’t hesitate to reach out to us. You can reach us via the [contact form](#) on [BarExamToolbox.com](#), and we’d love to hear from you. And with that, let’s get started.

Lee Burgess: Hi, and welcome back to the Bar Exam Toolbox podcast’s “Listen and Learn” series. As usual, we are going to talk about a topic that you might see on your bar exam. Hopefully, through a couple of hypos, you will get the hang of the law and how to apply it. Today, we’ll be looking at the Statute of Frauds, which is a super commonly-tested topic from Contracts Law. Ready to get started? Let’s dive in.

Lee Burgess: So, the Statute of Frauds, as it says right there in the name, is about preventing fraud. When making a contract, there are some situations where we are worried about people getting cheated or defrauded. In these “fraud-might-happen” situations, there are a couple of extra requirements that act as safeguards. The extra requirements are so we can make sure that the contract is legit and no one is cheating. The way the Statute of Frauds is triggered in an essay fact pattern is when you see one of these situations.

Lee Burgess: The Statute of Frauds is considered a “defense to formation”. What that means is that if the rules are broken, the court will say, “The contract was never properly formed, so we’re not going to enforce it.” So, on an essay, even if you have facts that check off the formation elements of offer, acceptance, and consideration, the contract may still fall apart if it happens to get boxed into one of the fraud situations and it fails to meet the extra rule requirements. So, let’s look at what those are.

Lee Burgess: The first rule to remember is that under the Statute of Frauds, certain contracts are not valid unless they are in writing and signed by the party to be charged. We’ll break this down in a minute and look at what this really means. First, though, let’s lay out what those “certain” kinds of contracts are. These are the “fraud-might-happen” situations I mentioned before. The ones you need to memorize follow the common mnemonic MYLEGS. This handy little phrase is to



help you remember the buzzwords: Marriage, Year (which is MY), and then Land, Executor, Goods, and Surety (LEGS). Get it? So, we've got six situations the courts have decided are particularly open to fraud.

Lee Burgess: Contrary to popular belief on the student essays I've seen, on your essay, you should not go through each and every one of these situations and discuss them all. No. You don't have time for that and it's not worth any points. Instead, just hit the ones that are being triggered by facts. If no one is getting married, don't talk about marriage. If there is no land, don't talk about land. You get the idea.

Lee Burgess: So, let's back up and talk about that first rule I mentioned: "Under the Statute of Frauds, certain contracts are not valid unless they are in writing and signed by the party to be charged." What this means is that contracts about the situations I just mentioned need to be in writing; plus, they need to be signed. Do they need to be signed by both parties? Nope, just the party to be charged. But who is that? That means the person who the action is being brought against; the person who is being sued for not fulfilling their end of the bargain. So, you can see how either party might be the party charged. It doesn't just mean it's always the buyer or seller or something like that; it can change depending on the facts you get. You should always take a look at who the contract is being enforced against, or who is saying there is no contract.

Lee Burgess: Now, back to our rules. The six buzzwords marriage, year, land, executor, goods, suretyship – those need some explanation, so why don't we back up just a little bit? The first one – marriage – is pretty simple. If you're going to put a ring on it, put it in writing. We don't want people getting duped into fraudulent marriages. This one doesn't tend to come up that often on the bar exam.

Lee Burgess: The second one – year – is shorthand. What this really means is "service contracts which cannot be fully performed within one year from the date the contract is entered into". These also need to be in writing and signed. This one is commonly tested, and it's important to note that there has to be no possible way the party can perform within one year. So, for example, if I tell you I will give you money after you finish law school, that can't possibly be performed in one year because law school takes three years. This one comes up all the time on the bar, so learn it well.

Lee Burgess: Situation number three – land – is also pretty straightforward. People buying and selling land need to put that agreement in writing. This also includes contracts that create an interest in land that are longer than one year, so pay attention to the facts about easements and leases that could last longer than a year as well. This is also commonly tested.



Lee Burgess: The fourth one – executor. What is that shorthand for? Well, as you know from Wills and Trusts, an executor is a person who manages an estate after someone dies. This rule is about the situation where an executor of an estate promises to pay the estate’s debts from their own pocket. This is almost never tested, but you should still know what this means just in case.

Lee Burgess: The next one – goods. Sounds like merchants and the UCC, right? Usually, yes. But sometimes not. We will look at an example of some non-merchants dealing with goods in a minute. The rule is that “contracts for the sale of goods for \$500 or more must comply with the Statute of Frauds”. You should also know that the writing has to state who the parties are, what the goods are, and the quantity of the goods. This is very commonly tested.

Lee Burgess: Finally – surety. Now what does that even mean? What is a suretyship? This is the situation where a guarantor promises to take on the debt of another if that person is unable to pay. Think of it as a co-signer. If you can’t get the apartment by yourself and grandpa co-signs, he’s essentially saying, “Hey, if Johnny spends all his money on a life-sized marble statue of Dwayne The Rock Johnson and can’t make his rent payment, I will step in and do it for him. You can come after me instead.” Cool, grandpa, thanks. And there’s a tiny exception here – the agreement can’t be solely for the purpose of benefitting grandpa. This one, again, almost never comes up; but know the basics just in case.

Lee Burgess: Before we get into some examples, you should also know that there are three possible exceptions to the Statute of Frauds. These are situations where even though the contract is not in writing or signed when it was supposed to be, the court could still find the contract is valid. We’re not going to get too far into the exceptions today for timing’s sake, but they are: number one, full performance; number two, judicial acknowledgement; and number three, estoppel.

Lee Burgess: Basically, for performance, that means when a party getting sued already performed under the contract, that tells us they really did think there was a contract, so there’s no fraud. Similarly, for judicial acknowledgement, what that means is that when a party has already admitted in court that there was a contract, we aren’t so worried about fraud. Finally, estoppel. When there was reasonably foreseeable detrimental reliance on the promise, it shows us that the person thought there was a real contract. We aren’t as worried about fraud. This one only works in some jurisdictions, though, so if you end up discussing it on your exam, be sure to point that out.



Lee Burgess: You should know that there are also some UCC-specific exceptions as well that we don't have time to get into today. But make sure you review those on your own, and make sure they make sense to you.

Lee Burgess: Okay, so hopefully now you have an understanding of what the Statute of Frauds means when it comes up, and what rule you should write on an essay. Now, let's get into some hypos. This first one is based on the [July 2011 Contracts essay from the California Bar Exam](#). Let's get started:

Lee Burgess: "Betty is a physician. One of her patients was a man named Al. One day, at his appointment in Betty's office, Al said to Betty, 'I want to pay you back for all you've done for me. If you take care of me for the rest of my life, I will give you my office building when I die.' Betty said nothing but continued to treat Al for the next two years. At one point during that time, Betty wrote, signed and mailed Al a letter that said, 'I accept your offer of the office building and promise to take care of you for life.' One year after that, Al died.

Lee Burgess: Can Betty take ownership of the office building?"

Lee Burgess: Okay, so it's important to note that on an essay, you need to go through applicable law, then formation first, before even getting to the Statute of Frauds. Remember, formation includes three elements – offer, acceptance, and consideration. After all of that, you'd throw down a header for Statute of Frauds and state your rule.

Lee Burgess: First off, why are we within the Statute of Frauds in the first place? Let's go through our mental checklist of fraud-type situations. Marriage? No. One year? Maybe. Let's look at this. The facts said Betty continued to treat Al for the next two years. So, maybe that is a performance that couldn't be completed in just one year since it was two years of work. Sounds tempting, but no. Remember, the rule here is that the performance cannot possibly be performed within one year. Think back to our law school example from before. Why does this one fail on the facts? Because Al said he wanted care for his life. Do we know how long Al's life is going to last? No. Could he die tomorrow? Sure. There is nothing to tell us that it would be impossible for Betty to complete her act of caring for him within a one-year timeframe. So, this is not triggered.

Lee Burgess: What else? Is there a sale of land? Not really. However, we are talking about a conveyance of land, and that feels close enough. This is the fact that fits us within the Statute of Frauds for this essay. On a real exam, quickly go through the rest of your mental checklist to make sure nothing else applies. Executor? No. Goods? No, this was services. Suretyship? No way. Remember, you do not



want to walk through all of these on the actual essay you're writing. This is a mental checklist. This planning happens before you start typing out your essay. The facts didn't trigger these other situations, and that tells you that the graders do not want to hear about them.

Lee Burgess: Alright, so now we have a conveyance of an interest in land. What does that tell us? That means that an agreement falls under the Statute of Frauds. So, even though a contract may not ordinarily need to be in writing or signed, we know that this one does.

Lee Burgess: Now, remember our rule is "in writing and signed by the party to be charged". Who is the party to be charged? Well, who is suing? Betty, right? She's the one who wants the court to say there was a contract. Why? Because even though she is a rich doctor, she wants that office building. So, that means she is not the party to be charged, because she is the one enforcing the contract. Al is the one who has to sign. He is the person against whom enforcement is being sought. Otherwise, the Statute of Frauds requirements are not met.

Lee Burgess: So, first, right after your rule, you would explain why this situation triggers the application of Statute of Frauds – because it involves a conveyance of an interest of land. And then you would explain whether the requirements are met or not.

Lee Burgess: First question: Was the agreement in writing? What do you think? Al said he wanted to give Betty the office building when he was sitting in her office at his appointment. This means we are dealing with an oral statement. Not in writing.

Lee Burgess: What else? We know Betty later wrote Al a letter where she accepted his offer. So, we do have some kind of writing. Is it enough, though? The questions are, one, whether this was the right type of writing, and, two, whether we have a signature from the right person.

Lee Burgess: Did the "party to be charged" sign anything? The facts said Betty signed the letter. Is she the party to be charged? No. Why not? Because she is the one going to court and asking for something. She is the one suing. How do we know that? From the call of the question. It didn't say "Betty sued", but it asks us, "Can Betty take ownership of the office building?" In other words, could she get this contract enforced if she wanted to? So, we know that Betty is the one who is trying to say the contract was valid. Betty is the "enforcer" of the contract, and what we're looking for with "party to be charged" is the person "against whom enforcement is being sought". And that's Al.



- Lee Burgess: So, even though Betty did sign the letter, there are two problems with that. First, she is not the right person to sign. She was not the party to be charged, Al was. Second, the letter is just the acceptance part of the agreement. Is it enough to have just the acceptance signed? No. We need the whole agreement, offer and acceptance to be signed. It needs to show the parties were agreeing to something. Why? Otherwise, I could mail my doctor a signed letter that said, "I hereby accept ownership of your office building when you die." And obviously, if we never had an agreement about that, that's not going to work. So, it can't be a one-sided writing. What the writing needs to show is that the two people are agreeing on something.
- Lee Burgess: So, what's the conclusion here? Does the situation fall under the Statute of Frauds? Yes. Does it satisfy the Statute of Frauds? No. Betty cannot enforce the contract. Sorry, Betty, no office building for you.
- Lee Burgess: Now let's walk through one more example together to cement these ideas. This one is based on the [July 2019 Contracts essay from the California bar exam](#):
- Lee Burgess: "Sam owned a classic 1965 Eris automobile. Only 500 such cars were made and they are considered highly valuable. Sam showed his Eris to Bob, who had learned of the car when he saw a 'For Sale' sign Sam had decided to place on it while parked in his driveway. Bob, wanting to add the Eris to his personal collection, mailed Sam a signed letter later that day offering to pay \$250,000 for the car. When Sam received the letter, he telephoned Bob and said he accepted the offer. They agreed to meet the following week for payment and exchange of title.
- Lee Burgess: The next day, Charlie saw an advertisement for Sam's Eris in a classic car trade publication. Sam had placed the ad prior to Sam talking with Bob. Charlie drove to Sam's house and offered \$300,000 for the car and said he would mail a written contract to Sam that day. Sam said he would think about it. He did not inform Charlie of his agreement with Bob. When Charlie's contract arrived, Sam signed it, placed it in a stamped envelope addressed to Charlie, and dropped it in the mailbox. Sam died in his sleep that night. His will left his property to his only relative, a nephew named Ned. Ned wants to keep the Eris. As a result, Bob and Charlie filed timely claims against Sam's estate seeking title to the car.
- Lee Burgess: Would formation of the contract with either Bob or Charlie fail under the Statute of Frauds?"
- Lee Burgess: So remember, on an essay, you would go through applicable law and formation, including offer, acceptance, and consideration before getting to the point we're



at now: Statute of Frauds. So, let's jump straight there. The call of the question asked about Bob and then Charlie, so we should always attack in that same order. Bob first.

Lee Burgess: So, what's your first question? Does the situation we're dealing with fall under the Statute of Frauds? What is the agreement about? A car. Does that fit into any of our fraud-type scenarios? Marriage? One year? Land? Executor? Goods? Nailed it. It's a good, right? Why? Because a car is a tangible, moveable object. And, side note – because people have asked before – no, I don't mean "moveable" because cars move. The "moveable" here means it's not fixed to the ground. It's an item that can be sold to another person – like widgets, or bottles of spaghetti sauce.

Lee Burgess: Now, what's our rule for goods? A sale of goods will be subject to the requirements of the Statute of Frauds if the sale is for more than \$500. This car sounds pretty fancy. It's a 1965 Eris. Honestly, no idea what that even looks like. But we know only 500 were ever made, and it sounds like a collector's item. The facts say it's valuable. Anything else? This is all fine and good, but we have an even more useful fact. What is that? The facts said Bob mailed a letter that he signed and offered \$250,000. Okay, if you're not a math person, that's way more than our threshold amount of \$500. So, this is the fact you'd need to use here.

Lee Burgess: Will the bar exam always give you a nice, neat dollar amount to use? Usually, yes. If not, you should use the other facts like we just did, and surmise how expensive the good in question might be. But also be careful to point out to the grader that you see that there are precise dollar amount facts missing that would be determinative.

Lee Burgess: Okay, so we know this agreement will be subject to the extra writing and signing requirements of the Statute of Frauds because we are dealing with a good being sold for more than \$500. Step one, check, done! What about step two? What do we do? The question is whether we have the right kind of writing with the right person signing. What did the facts give us? Let's go back and do a quick review. We know Bob mailed the letter offering to buy the car and stated the price he was willing to pay. Bob signed the letter. Then Sam phoned him back and said he accepted, and the two agreed to meet later.

Lee Burgess: So, what's our problem here? Do we have an agreement in writing that sets forth the parties, the goods in question, the price, and the quantity? No. We only have Bob's offer written down. Sam's acceptance was over the phone, so not in writing. Even if Bob's offer had all the right details written down, the offer



by itself doesn't show that the two parties came to any kind of understanding. It just shows Bob's side of things. So, the writing element fails.

Lee Burgess: What about the signature? Even if the writing was fine, does it meet our rule? No. Why not? Who signed it? Bob. Was Bob the party to be charged? Nope. And how do we know that? Because Bob is the one suing to court, trying to say there was a contract. Bob is not the guy who's getting sued. Bob is not the one who would have to give up his car if the court did find a contract.

Lee Burgess: So, bottom line – the signature was from the wrong person. It needed to be Sam who signed. That brings us to our conclusion. When it comes to Bob, even though, yes, the agreement was subject to the Statute of Frauds, it did not meet those extra requirements, so the court would not enforce the contract.

Lee Burgess: Now, what about our second plaintiff, Charlie? Let's go through the same steps. Does this situation fall under the Statute of Frauds? Yes. Why? A car is a good, and the price is way more than \$500. Charlie wanted to buy the car for \$300,000. You could get through this part very quickly on an essay because it's the same analysis as you would have just done for Bob. So you could say "see above" and just use a different dollar amount, since that fact is not the same as what you discussed before.

Lee Burgess: Next step: Do we have a writing showing that the parties agreed to something? Well, Charlie drove by and said, "Hey, I want your car. I'm going to give you \$300,000 for it and mail you a contract about it when I get home." Kind of random, but okay, sure. And we know Charlie did actually mail the contract, so we can assume it contained the information about the car and the price, which is what would need to be in the contract in order to meet this element. So, this is looking pretty good so far.

Lee Burgess: Now, what else? Sam got the contract and signed it, and then sent it back to Charlie. Great! We've got a written agreement where both people agree about a good in question, and the price. Was it signed by the party to be charged? Yeah, because it's Sam, right? Charlie is suing to enforce the contract against Sam, so Sam is the one who needed to sign.

Lee Burgess: Does it matter that Sam died and all those facts about mailing the letter and timing? Not for the Statute of Frauds. Those go to other issues, like acceptance and the mailbox rule. If you haven't brushed up on these, do it, because they're important. But they're outside our scope for today. So, the bottom line here – this contract does fall under the Statute of Frauds, and it was in writing and



signed by the party to be charged, so the court will enforce it. Charlie could actually get the car.

Lee Burgess: Okay, two hypos down! Everything make sense? Remember, when it comes to practicing Contracts questions, it's crucial to know your attack plan. The Statute of Frauds, when it is triggered in an essay, has a set place where it belongs. The graders will be looking for these issues you discuss in your essay to follow the right order, so remember your attack plan and be sure to do lots of writing practice.

Lee Burgess: And with that, today we're out of time. If you enjoyed this episode of the Bar Exam Toolbox podcast, please take a second to leave a review and rating on your favorite listening app. We'd really appreciate it. And be sure to subscribe so you don't miss anything. If you have any questions or comments, please don't hesitate to reach out to myself or Alison at lee@barexamtoolbox.com or alison@barexamtoolbox.com. Or you can always contact us via our website [contact form](https://www.BareExamToolbox.com/contact-form) at BarExamToolbox.com. Thanks for listening, and we'll talk soon!

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[California Bar Examination – Essay Questions and Selected Answers, July 2019](#)

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