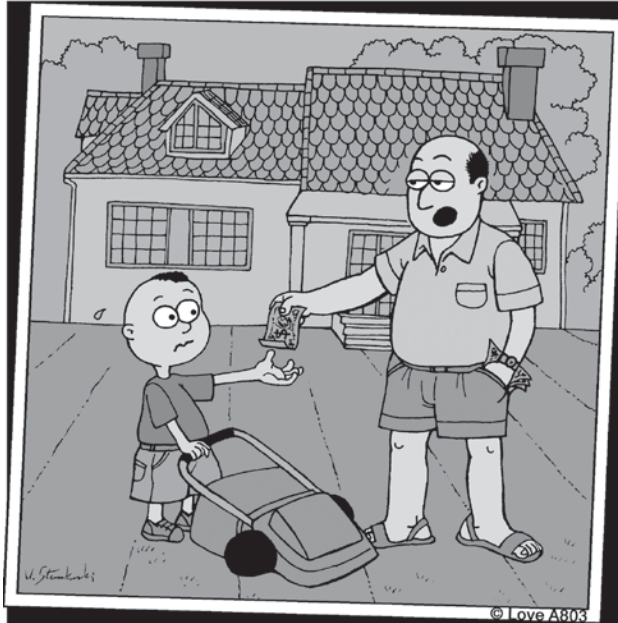


Comic Commentary

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"No, Billy, I distinctly said that if you mow the lawn you can *halve* your allowance. That's why we ask for things in writing."

It is commonly said that, "A verbal contract isn't worth the paper it's written on".¹ However, due to the necessity of the moment, or perhaps simply the lack of writing utensils at hand, oral agreements are often entered into nevertheless.

The fear that such oral contracts could lead to unintentional, or indeed all too intentional, "misunderstandings" regarding the interpretation of the terms of the contractual relationship, or whether indeed a contract existed in the first place, led the common law at a relatively early date to, rather uncharacteristically, codify the ground rules for oral contract formation. Known as the "Statute of Frauds" (or 'SOF' to those in the know), it was passed by the English Parliament in 1677 in an effort to prevent, as the name implies, fraud relating to specific oral contracts which lent themselves to such deceit; or at the very least, areas of con-

tract law where the potential impact of 'misunderstanding' would be most keenly felt. While the act itself was largely repealed in Britain in 1954, the Statute of Frauds still exists in varying forms throughout the various common law legal systems of the world.

Traditionally, the Statute of Frauds requires contracts to be in writing in the following circumstances. While the list is rather long, it is conveniently memorized by the handy, or should I say, footy, mnemonic "**MY LEGS**." A fact that countless generations of law students are forever grateful!

M stands for 'marriage', or more specifically, consideration of marriage. Not your normal marriage 'consideration' as in "I might consider marrying you, if you were a bit better looking; I mean, more in tune with my spiritual needs." No, no, 'consideration' in this context refers to the third step in common law contract formation, or quid pro quo. In order for a contract to be formed under the common law, the parties must exchange "something of value". In the case of truly traditional marriage, this was usually not the bride, but the "stuff" that came along with her. You see, in jolly old England, an unattractive young damsel with an attractive enough title and estate, was much more marriable (not that so much has changed perhaps, but there is at least significantly more 'gender equality' on this front nowadays). However, 'back in the day' nearly every marriage was a 'package deal', and therefore, if in the end you were not going to get the bride due to the fact that the engagement went terribly pear-shaped, you at least wanted the property! (Perhaps resulting in the best of both worlds, depending upon the damsel in question). In any event, due to the centrality of marriage as a means of amorous property transfer, Parliament deemed it necessary to be sure that it was all in writing. While modern 'package deals' are far less common (at least overtly), the SOF still is applied to modern prenuptial agreements.

Y stands for 'years'. Under the SOF, a "contract which, by definition, cannot be completed within a year" has to be in writing. This can lead to some odd situations. For example, you can form a binding oral contract to build a life-size model of the Empire State Building out of matchsticks, since it could technically be, however unlikely, completed within a year. But an oral contract to deliver me a box of matches 366 days from now is not binding. Or, the fact that an oral employment contract for, say, 14 months violates the SOF; but an oral employment contract to work for the

¹ This quote, attributed to the famous Hollywood film executive *Samuel Goldwyn*, is actually a rather dramatic misquote. In reality he said about a respected colleague that: "His verbal contract is worth more than the paper it is written on." However, Mr. *Goldwyn* was apparently aware of, and quite amused and flattered by, the now famous misattribution.

rest of your life is not, since you could die within a year, and thus fulfill your side of the agreement. You got to love the common law!

L stands for 'land'. Obviously transferring interests in land is a 'big deal' and thus it would all be rather confusing if courts were clogged with cases claiming, "You said I could buy the White House!" Okay, maybe a bad example, but you know what I mean. This requirement of the SOF not only deals with the sale of land, but also any transactions 'touching land', such as mortgages, easements and to a lesser degree leases.

E stands for 'executor'. No sooner has Aunt Tilly died, than the family members start circling the still-warm corpse like a kettle of vultures.² They want 'their' money, and they want it fast! Therefore, the executor of the estate has to liquidate the estate of the deceased, but in order to do so, often has to use his (executor) or her (executrix) own money to get the ball rolling. In order to avoid any conflicts on this front, payments made by the executor/executrix of debts out of his or her own pocket must be in writing.

G stands for 'goods'. Contracts for the sale of goods totaling \$500 or more have to be in writing. However, if the contract is a combination of goods and services, and the latter dominates the former, the contract does not have to be in writing. Therefore, if for your University graduation party your parents hire a circus clown (you will always be their little boy or girl!) for \$3,000 – what can I say, he is a very good clown – and in addition the clown supplies \$600 in balloon animals; this contract, however embarrassing, is outside the SOF and is binding.

S stands for 'surety'. A surety is a (gullible) person who promises a third party to pay your debt if you don't. They are often called 'parents' in common lexicon. As promises to pay other's debts, besides among parents, is exceptional; it is deemed necessary to have such virtuous actions in writing.

So there you have it, my legs, well, not my legs, of course, but MY LEGS!

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² English has a fantastic tradition of giving every group of animals a specific name: a murder of crows, a crash of rhinos, a fever of stingrays, a scurry of squirrels, a wisdom of wombats, to name but a few!