

## CHAPTER 241.

## FRAUDULENT CONTRACTS.

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**241.01 Conveyances, when void.** All deeds of gift, all conveyances and all transfers or assignments, verbal or written, of goods, chattels or things in action, made in trust for the use of the person making the same, shall be void as against the creditors, existing or subsequent, of such person.

156.125 is an exception to the prohibition in this section. *Grant County Service Bureau v. Treweek*, 19 W (2d) 548, 120 NW (2d) 634.

**241.02 Agreements, what must be written.** In the following case every agreement shall be void unless such agreement or some note or memorandum thereof, expressing the consideration, be in writing and subscribed by the party charged therewith:

(1) Every agreement that by its terms is not to be performed within one year from the making thereof.

(2) Every special promise to answer for the debt, default or miscarriage of another person.

(3) Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry.

**Cross Reference:** See 401.206 for provision requiring certain contracts for the sale of personal property for more than \$5,000 to be in writing.

Plaintiff's performance under an oral contract, from the time he started spending his time and money, constituted a valuable executed consideration for the defendant's promise to continue the contract, and the contract, although not to be performed within a year, was not within the statute of frauds. *Nelsen v. Farmers Mut. Auto Ins. Co.* 4 W (2d) 38, 90 NW (2d) 123.

The beneficial-consideration doctrine is not accepted as an arbitrary rule in Wisconsin. A determination from all the evidence must be made from the nature of the oral promise as a fact free from the mechanical application of generalized rules of assumed intention. The form of the promise, the nature of the consideration, the

language of the promise used in light of the circumstances, the motive and object of making the promise, are all considerations in determining the nature of the promise but do not automatically determine it. If on such consideration the promise is in fact one to answer for the debt and default of another, it comes within the scope of the statute of frauds, otherwise it does not. *Mann v. Erie Mfg. Co.* 19 W (2d) 455, 120 NW (2d) 711.

The equitable doctrine of part performance does not apply to oral promises to answer for the debt of another. *Marshall v. Bellin*, 27 W (2d) 83, 133 NW (2d) 751.

See note to 240.10, citing *Purtell v. Tehan*, 29 W (2d) 631, 139 NW (2d) 655.

**241.025 Contracts for employment.** Any person who shall represent, as an inducement to the sale of any course of study, that he or the school offering such course will, upon the purchaser's completion of such course, place such purchaser in employment unless there is a written contract between such school and an employer whereby the latter is bound to furnish such employment as represented, is guilty of a misdemeanor. Such purchaser shall be entitled, if such representation is made and no such contract exists, to have the purchase price, tuition, fee or other consideration paid for the course refunded and may recover the same in an action of debt.

**241.03 Croppers' contracts; filing, security interest.** (1) No land owner-cropper contract is valid, except between the parties thereto, unless the contract, subscribed by the parties, describing the premises and containing the entire agreement between the parties, or a copy thereof, has been filed with the register of deeds of the county where such premises are located. The register of deeds shall file, indorse, enter and index croppers' contracts filed with him in substantially the same manner as provided for financing statements covering security interests in fixtures.

(2) In case such cropper contract is not filed then, except between the parties thereto, the cropper shall be conclusively presumed to have title and possession to an undivided one-half interest in all crops covered by such contract and the relationship between the landowner and cropper to be that of landlord and tenant.

(3) Such cropper contract is not subject to ch. 409 unless the contract expressly creates a security interest.

**History:** 1963 c. 158, 429.

**Legislative Council Note, 1963:** Language changed in sub. (1) to conform to terminology of commercial code. The stricken provision relative to public inspection of the filed contracts is covered by other provisions of the statutes, such as s. 18.01.

Subsection (3) clarifies the relationship of cropper contracts to ch. 409 of the commercial code. The landowner's interest created by a landowner-cropper contract is not to be treated as a security interest per se. (Bill No. 1-S)

**241.05 Presumption if possession not changed.** Every sale made by a vendor, of goods and chattels in his possession or under his control, and every assignment of goods and chattels, unless the same be accompanied by an immediate delivery and followed by an actual and continued change of possession of the things sold or assigned, shall be presumed to be fraudulent and void as against the creditors of the vendor or the creditors of the person making such assignment or subsequent purchasers in good faith; and shall be conclusive evidence of fraud unless it shall be made to appear on the part of the persons claiming under such sale or assignment that the same was made in good faith and without any intent to defraud such creditors or purchasers.

**241.06 "Creditors" defined.** The term "creditors," as used in section 241.05, shall be construed to include all persons who shall be creditors of the vendor or assignor at any time whilst such goods and chattels shall remain in his possession or under his control.

**241.07 Excepted cases.** Nothing contained in sections 241.05 and 241.06 shall be construed to apply to contracts of bottomry or respondentia, nor to assignments or hypothecations of vessels or goods at sea or in foreign ports, or without this state; provided, the assignee or mortgagee shall take possession of such ship, vessels or goods as soon as may be after the arrival thereof within this state.

**241.09 Assignment of wages.** No assignment of the salary or wages of any married man shall be valid for any purpose unless such assignment shall be in writing signed by the wife, if she at the time is a member of his family, and unless her signature is witnessed by 2 disinterested witnesses; nor shall any assignment of the salary or wages of any person be valid as to any such salary or wages to accrue more than 2 months after the date of the making of such assignment, except that assignments of salary or wages made directly to licensees under ss. 138.07, 138.09, 214.15 or to state or national banks, savings banks, trust company banks, savings and loan associations, the Wisconsin department of veterans affairs or credit unions, may include salary or wages to accrue more than 2 months after the date of making such assignment, and except that any assignment of wages made in connection with a proceeding under s. 128.21 shall run concurrently with the period during which the amortization proceedings are in effect and shall become void upon the dismissal of the proceedings. Nothing in this section shall apply to assignments made under s. 101.10 (14) nor to any authorization from an employe to his employer directing him to make deductions from wages to accrue in the future for union or employe club dues, insurance or annuities, war bond purchases, contributions to the American Red Cross, a community fund or other similar charity, or any indebtedness to his employer.

**History:** 1965 c. 295; 1967 c. 92.

**241.24 Board of trade contracts.** No contract for the future purchase, sale, transfer or delivery of personal property through a board of trade or organized commodity exchange is void when either party thereto intends, in good faith, to perform the same; and an intention on the part of either not to perform any such contract does not invalidate it if the other party in good faith intends to perform the same. No such contract is void because the vendor was not, at the time it was made, the owner of the property contracted to be sold; and in any action by either party for the enforcement of its terms or to recover damages for a breach thereof it is incompetent to show in defense, by any extrinsic evidence, that such contract had any other intent or meaning than it expresses; and it and all collateral contracts, agreements or securities growing out of it or of which they may have formed the consideration in whole or in part are legal and valid. Nothing herein shall be construed to exclude evidence of fraud in the procuring of any such contract as is first mentioned herein, or of any collateral contract, agreement or security growing out of it, or that any such contract was not entered into upon sufficient consideration, or is not supported thereby, or that both parties intended to make a wagering contract.

**History:** 1963 c. 153.

**Legislative Council Note, 1963:** The history and judicial interpretation of this section indicates that it was intended to have only limited applicability. The above amendment makes this limited applicability clear and avoids confusion with some similar provisions of ch. 402 of the commercial code which have general applicability to all sales of goods. (Bill No. 1-S)

**241.25 Transfer of bank book to be in writing.** No gift, sale, assignment or transfer of any saving fund bank book bearing evidence of bank deposits or of any interest in

the deposits represented thereby, shall be valid unless the same shall be in writing and the same or a copy thereof delivered to the bank issuing such bank deposit book.

241.27 Contracts requiring warning. Every proposed contract for the benefit of any person, firm or corporation furnishing or supplying in any wise whatever, goods, wares or merchandise to hawkers or peddlers and which by its terms upon execution thereof would bind any person to answer for the debt, default or miscarriage of any such hawker or peddler, in lawfully or unlawfully disposing of such goods, wares or merchandise or the proceeds thereof, or which would bind any person to guarantee or answer for any debt or liability incurred by such hawker or peddler in acquiring any title to or interest in the goods, wares or merchandise to be disposed of by such hawker or peddler or in acquiring any title to or interest in any equipment intended to be used in conducting the business of such hawker or peddler, shall have plainly printed upon it, in red ink, in type not smaller than 10 point bold face type, at the time of its execution and directly above the place for the signature of the person who would, by signing such contract, become obligated to so answer for the debt, default or miscarriage of any such peddler or hawker, the following statement: "Warning—this may obligate you to pay money". Every such contract not containing such statement shall be unlawful and in any action brought upon any such contract in any court of this state, such contract shall be construed in accordance with the laws of this state. The provisions of this section, however, shall not apply to any such contract where the same contains a provision expressly limiting the amount of the liability of each person obligated to answer for the debt, default or miscarriage of any such peddler or hawker.

241.28 Contracts requiring warning. Every proposed contract for the benefit of any person, firm or corporation furnishing or supplying in any wise whatever, goods, wares or merchandise to hawkers or peddlers and which by its terms upon execution thereof would bind any person to answer for the debt, default or miscarriage of any such hawker or peddler, in lawfully or unlawfully disposing of such goods, wares or merchandise or the proceeds thereof, or which would bind any person to guarantee or answer for any debt or liability incurred by such hawker or peddler in acquiring any title to or interest in the goods, wares or merchandise to be disposed of by such hawker or peddler or in acquiring any title to or interest in any equipment intended to be used in conducting the business of such hawker or peddler, shall have plainly printed upon it, in red ink, in type not smaller than 10 point bold face type, at the time of its execution and directly above the place for the signature of the person who would, by signing such contract, become obligated to so answer for the debt, default or miscarriage of any such peddler or hawker, the following statement: "Warning—this may obligate you to pay money". Every such contract not containing such statement shall be unlawful and in any action brought upon any such contract in any court of this state, such contract shall be construed in accordance with the laws of this state. The provisions of this section, however, shall not apply to any such contract where the same contains a provision expressly limiting the amount of the liability of each person obligated to answer for the debt, default or miscarriage of any such peddler or hawker.

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