REAL ESTATE TRANSACTIONS
Assignment #2: Contract Formation, the Statute of Frauds, Letters of Intent

Reading Assignment: Casebook pages 24-45. Discussion questions for this material:

1. Uphoff and Levin were discussing a home that Uphoff owns at 123 Pine Street in Anytown. Levin said, “I’ll buy it for $150,000.” Uphoff said, “OK.” The parties didn’t sign a formal agreement, but Levin took out his checkbook and wrote Uphoff a check for $150,000, placing “123 Pine Street, Anytown” on the memo line and signing the check. He handed Uphoff the check.
   a. Does the check itself constitute a sufficient memorandum to satisfy the Statute of Frauds? What additional information, if any, would you need?
   b. As a policy matter, do you think it should be possible for a check like the one Levin signed to be a sufficient memorandum of a binding contract to purchase and sell real estate? Why or why not?

2. The “part performance” doctrine allows a court to take an otherwise-unenforceable oral agreement “outside the Statute of Frauds” and enforce it where the party seeking to enforce the agreement can prove the existence of the oral agreement and can also present proof of “part performance” (usually, payment of some/all of the price along with either the buyer’s possession of the land, the buyer’s making substantial improvements, or sometimes both). Does it make sense to apply the part performance doctrine in a case like Johnston v. Curtis (p. 31), where it is the Seller — not the Buyer — that is seeking to enforce the oral agreement?

3. In Johnston v. Curtis, there is no indication that the Johnstons had consulted with a lawyer at any time prior to or during their negotiations with the Curtises. Is this a reason for the court NOT to use part performance to take the case outside the Statute of Frauds? How might the involvement of a lawyer have protected the Johnstons? Does/should it matter that no real estate agent was involved in the transaction between the Johnstons and the Curtises?

4. The court in Johnston v. Curtis notes (p. 34) that “[t]he original real-estate contract was silent as to what would constitute an acceptable rate of interest or acceptable closing costs. In addition, Turbeville [the mortgage company’s loan officer] testified that the Johnstons did not discuss with her what interest rate or amount of closing costs would be acceptable to them.” In light of these statements, do you think that the agreement provides all of the essential terms necessary to satisfy the Statute of Frauds? Why or why not?

5. Trump owns a small microbrewery located on 7 acres of land, with a production facility, a refrigerated warehouse facility, a small gift/retail store, and a tap room. Buffett approaches Trump about the possibility of purchasing the microbrewery at a price of $3.2 million. Trump needs money to invest in his political campaign, and he thinks the proposed price is pretty good. After a brief discussion, Buffett sent Trump the following “Letter of Intent,” which Trump accepted by signature five days later:
LETTER OF INTENT

Donald Trump
1A Mar-a-Lago Club
25 Comboyer Drive
Palm Beach, FL 33480

Re: Trump Craft Brewery

Dear Mr. Trump:

The following is to serve as a Letter of Intent to acquire from you that certain Property located at 278 Peachtree St., Atlanta, GA 30301, along with the improvements, fixtures, furnishings, and business equipment located thereon, otherwise known as “Trump Craft Brewery.”

1. Buyer. Warren Buffett

2. Seller. Donald Trump

3. Purchase Price. Purchase price shall be the sum of Three Million Two Hundred Thousand Dollars ($3,200,000.00), which shall be payable:
   a. Three hundred twenty thousand dollars ($320,000) cash deposit to be deposited with an escrow agent, selected by Buyer, said deposit to be deposited in an interest-bearing account, interest accruing to the benefit of the Buyer. Said deposit to be paid upon execution of a formal Contract to Purchase, executed by both parties.
   b. Two million, eight hundred and eighty thousand dollars ($2,880,000) payable in cash at closing.

4. Acceptance of Letter of Intent. Seller shall have until August 20, 2016 to accept this Letter of Intent by delivering written notice of acceptance to Buyer by said date at 312 Lincoln Avenue, Omaha, NE 68022.

5. Contract of Sale. Within ten (10) days of Seller’s acceptance of this Letter of Intent, the parties will enter into a contract embodying the terms of this Letter of Intent, and such other provisions as the parties and/or their counsel deem necessary or appropriate.

6. Rights of Inspection. Seller shall furnish Buyer upon execution of the Contract of Sale, copies of any mortgages or liens encumbering the subject property, copies of all leases and contracts pertaining to the property, a current survey, and profit and loss operating statements relative to the property for the past three (3) years. Buyer shall have twenty (20) business days from the date of delivery of said documents to review the same. In addition, Buyer shall have twenty (20) business days from the date of execution of the Contract of Sale within which to inspect the property and all improvements thereon. If the Seller is not
notified in writing prior to the termination of the twenty (20) business day period that Buyer wishes to terminate the Contract of Sale, the earnest money deposit will be forfeited to Seller and will be nonrefundable.

7. **Closing.** Closing with respect to the sale will take place on or before October 31, 2016.

8. **Formal Agreement.** The provisions of this Letter of Intent are subject to the execution of a formal agreement by the parties within a specified time in Paragraph 5 above and this Letter of Intent shall not be binding on Buyer or Seller until complete execution of such Purchase and Sale Agreement by the parties, which Purchase and Sale Agreement shall embody the above provisions and contain acceptable covenants and agreements regarding title, survey, closing procedures and expenses, notice, remedies, and such other items as may be deemed necessary or appropriate.

Please confirm that the foregoing is acceptable to you so that we may proceed to prepare a formal Purchase and Sale Agreement for your submission and review.

Sincerely,

Warren Buffett

Accepted:

Donald Trump

Date: August 15, 2016

On August 20, 2016, Trump entered into a binding contract of sale to sell Trump Craft Brewery to Jay-Z for a price of $4 million, and sent Buffett a text saying “I no longer intend to pursue the negotiations reflected in your letter of intent of August 10, 2016.” Buffett wants you to bring an action against Trump and Jay-Z on the ground that Trump was contractually obligated to sell the property at the agreed price of $3.2 million, and to obtain either (a) specific performance (the property itself), or (b) damages in the amount of the $800,000 extra that Jay-Z agreed to pay for the property. Is there a binding agreement between Trump and Buffett capable of enforcement? What is the impact of ¶ 8 of the “Letter of Intent” on your analysis? To the extent that a letter of intent is not legally binding, what is its purpose?