

Contracts
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Statutes of Frauds

I. Common Law Statutes of Frauds

A. Requisites

1. **Content:** A party seeking to enforce certain types of agreements must produce a signed writing that
 - a. reasonably identifies the **subject matter** of the contract;
 - b. indicates that the parties have made a **contract** regarding the subject matter (or that the signer has offered such a contract to the other party); and
 - c. states with reasonable certainty the **essential terms**. R2 § 131.
2. **Composite Document Rule:** More than one writing can satisfy the writing requirement, as long as at least one of them is signed and the circumstances indicate that the writings relate to one another. R2 § 132.
3. **Purpose:** Except for a writing evidencing a contract upon consideration of marriage, the writing need not have been created for the purpose of satisfying the statute of frauds. R2 § 133.
 - ◆ Indeed, a signed writing repudiating an agreement may satisfy the statute of frauds that such an agreement existed. *See id.* cmt. c.
4. **Signature**
 - a. **Signer:** The party against whom enforcement is sought, or his authorized agent, must sign the writing. R2 §§ 110 & 135 cmt. b.
 - b. **Not Signed by All Parties:** Only the party against whom enforcement is sought must sign. R2 § 135.
 - c. **Form:** “[A]ny symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer” satisfies the signature requirement. R2 § 134.

5. **Time:** A writing may be made or signed at any time before or after the contract is formed. R2 § 136.
 6. **Spoliation:** Losing or destroying a writing does not negate its effect, R2 § 137, although it will create proof problems.
- B. **Application:** A party seeking to enforce one of the following types of agreements must satisfy the foregoing requirements:
1. a contract by an **executor/administrator** to answer for a duty
 - a. the decedent owed,
 - b. which arose prior to the decedent's death, R2 §§ 110(1)(a) & 111;
 2. a contract to **answer for the duty of another**,
 - a. if the promisee knew the promisor to be a **surety** of the other for whom the promisor undertakes to answer,
 - b. unless the promisee accepts the suretyship contract in satisfaction of the other's pre-existing duty, R2 §§ 110(1)(b), 112 & 115;
 3. a contract **made upon consideration of marriage**, but not a contract between to persons to marry one another, R2 §§ 110(1)(c) & 124;
 4. a contract to transfer, buy, or pay for **an interest in land**,
 - a. including leases, mortgages, easements, and other present or future interests or encumbrances on land,
 - b. except that most states statutorily exempt leases for a term of not more than one year, R2 §§ 110(1)(d), 125 & 127; and
 5. any contract that **cannot be fully performed within one year** from the date the parties make it, R2 §§ 110(1)(e) & 130.

II. UCC Article 2 Statute of Frauds

A. **Requisites:** A party cannot enforce, by way of action or defense, a **contract** for the **sale of goods** in the amount of **\$500 or more** unless there is some **writing** that

1. evidences that the **parties have contracted** for the sale of goods,
2. identifies the **quantity of goods** to be bought and sold, and
 - ◆ If the writing misidentifies the quantity of goods to be sold, it can only be enforced up to the amount of goods stated.
3. the party against whom enforcement is sought or by his authorized agent has **signed**. § 2-201(1).

B. Exceptions

1. **“Between Merchants”:** A prior oral agreement between two merchants may be enforced, notwithstanding the statute of frauds, if
 - a. within a **reasonable period of time**,
 - b. one merchant sends to the other a **written confirmation**,
 - c. the terms and import of which the receiving merchant has **reason to know**, and
 - d. the receiving merchant **fails to object in writing within 10 days** of receiving the purported confirmation. § 2-201(2).
2. **Specially Manufactured or Procured Goods:** An agreement that does not otherwise satisfy the statute of frauds may be enforced if
 - a. the goods in question are **specially manufactured** (or procured) for the buyer,
 - b. and are **not suitable for sale to others** in the ordinary course of business, and
 - c. the seller has either **substantially begun their manufacture** or has **made commitments** for their procurement,
 - i. **before receiving notice** of the buyer’s repudiation, and
 - ii. under circumstances which reasonably indicate the goods are for the buyer. § 2-201(3)(a).

3. **“Judicial Admission”**: An agreement that does not otherwise satisfy the statute of frauds may be enforced
 - a. if the party against whom enforcement is sought **admits the existence of the contract** in her pleadings, testimony, or otherwise in court, but
 - b. only to the extent of the **quantity admitted** by the party against whom enforcement is sought. § 2-201(3)(b).
4. **Partial Performance**: An agreement that does not otherwise satisfy the statute of frauds may be enforced with respect to goods
 - a. that the buyer has **received and accepted**, or
 - b. for which the buyer has **made and** the seller has **accepted payment**. § 2-201(3)(c).

III. **The Statute of Frauds and the CISG**: “A contract for sale need not be concluded in or evidenced by a writing” CISG art. 11.

IV. **UETA and Statutes of Frauds**

- A. **Formation**: “A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation.” UETA § 7(b).
- B. **Effect of Electronic Writing or Signature**
 1. **§ 7(a)**: “A record or signature may not be denied legal effect or enforceability solely because it is in electronic form.”
 2. **§ 7(c)**: Any law requiring a record to be in writing may be satisfied by an electronic record.
 3. **§ 7(d)**: Any law requiring a signature to be in writing may be satisfied by an electronic signature.
- C. **Attribution**: “An electronic record or signature is attributable to a person if it was the act of the person.” UETA § 9(a).