I. Common Law Statutes of Frauds

A. Basics: To be enforceable as a contract, certain types of agreements must be evidenced by one or more writings, signed by the party against whom enforcement is sought or by her authorized agent. R2 § 110.

1. Content: The writing(s) must
   a. reasonably identify the subject matter of the contract;
   b. sufficiently indicate that the parties have made a contract regarding the subject matter (or that the party against whom enforcement is sought has offered such a contract to the other party); and
   c. state with reasonable certainty the essential terms of the contract. R2 § 131.

2. Composite Document Rule: The writing requirement may be satisfied by more than one writing, as long as at least one of them is signed, and the circumstances indicate that they are related to one another. R2 § 132.

3. Purpose: Except for a writing evidencing a contract upon consideration of marriage, the writing(s) used to satisfy the SOF need not have been created for that purpose. R2 § 133.

   ♦ Indeed, a writing repudiating a purported agreement may be used to satisfy the SOF that such an agreement existed. Id. cmt. c.

4. Signature
   a. Form: “[A]ny symbol made or adopted with an intention, actual or apparent, to authenticate the writing as that of the signer” will satisfy the SOF’s signature requirement. R2 § 134.
   b. Signer: A writing may be signed by an agent of the party against whom enforcement is sought. R2 § 135 cmt. b.
c. **Not Signed by All Parties:** Only the party against whom enforcement is sought must sign. R2 § 135.

5. **Time:** The writing(s) may be made or signed at any time before or after the contract is formed. R2 § 136.

6. **Spoliation:** The loss or destruction of a writing does not negate its effect. R2 § 137.

   ♦ That said, the loss or destruction of the writing will obviously create proof problems.

B. **Application:** The following types of agreements must be evidence by one or more writings, signed by the party against whom enforcement is sought or by her authorized agent:

1. a contract by an **executor/administrator** to answer for a duty owed
   a. by the decedent
   b. that arose prior to the decedent’s death, R2 §§ 110(1)(a) & 111;

2. a contract to answer for the duty of another,
   a. made by a promisor known by the promisee to be a **surety** of the other,
   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**, R2 §§ 110(1)(e) & 130.
II. UCC Article 2 Statute of Frauds

A. Requisites

1. A party cannot enforce, by way of action or defense, a contract
2. for the sale of goods
3. in the amount of $500 or more
   ♦ UCC § 2-201(1) (2003) increases this amount to $5,000.
4. unless there is some writing that
   a. evidences that the parties have contracted for the sale of goods,
   b. 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.
   c. is signed by the party against whom enforcement is sought or by his authorized agent. § 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).