I. Common Law Statutes of Frauds: A Brief Review

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 Statutes of Frauds

A. Article 2 Statute of Frauds: 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
4. unless there is some writing that
   a. indicates 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. Article 2A Statute of Frauds: Basic Requirements

1. A party cannot enforce, by way of action or defense, a contract
2. for the lease of goods
3. for which total lease payments amount to $1,000 or more
4. unless there is some writing,
   a. signed by the party against whom enforcement is sought or by his authorized agent,
   b. indicates that the parties have made a lease contract, and
   c. describes
      i. the goods being leased and
      ii. the term of the lease. § 2A-201.
      ♦ A writing that misidentifies the term or the quantity of goods, is only be enforceable up to the term and quantity stated; or, if no term is stated, for (1) a reasonable term or (2) such other term as is judicially admitted by the party against whom enforcement is sought. § 2A-201(3), (5)
C. **Exceptions to the UCC Statute(s) of Frauds**

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).

   ♦ Article 2A contains no counterpart to § 2-201(2).

2. **Specially Manufactured Goods:** An oral or written agreement that does not otherwise satisfy the statute of frauds may be enforced, notwithstanding the statute of frauds, if

   a. the goods in question are **specially manufactured** (or obtained) for the buyer/lessee,

   b. and are **not suitable for sale to others** in the ordinary course of business, and

   c. the seller/lessor has either **substantially begun their manufacture** or has **made commitments** for their procurement,

      i. **before receiving notice** of the buyer’s/lessee’s repudiation, and

      ii. under circumstances which reasonably indicate the goods are for the buyer/lessee. §§ 2-201(3)(a) & 2A-201(4)(a).

3. **“Judicial Admission”:** An oral or written agreement that does not otherwise satisfy the statute of frauds may be enforced, notwithstanding the statute of frauds,

   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) & 2A-201(4)(b).
4. **Partial Performance**: An oral or written agreement that does not otherwise satisfy the statute of frauds may be enforced, notwithstanding the statute of frauds, with respect to goods

   a. which have been **received and accepted** by the buyer/lessee, §§ 2-201(3)(c) & 2A-201(4)(c), or

   b. for which payment has been made by buyer the contract and accepted by the seller, § 2-201(3)(c).

D. **Pre-Revised Article 1 “Default” Statute of Frauds**: Subject to, *inter alia*, § 2-201 and § 2A-201,

1. a party cannot enforce, by way of action or defense, a **contract**

2. for the **sale of personal property**

3. **beyond $5,000 in amount or value of remedy**, 

4. **unless** there is a **writing** that

   a. indicates that a contract for sale has been made

      i. **between the parties,**

      ii. at a **defined or stated price**;

   b. reasonably **identifies** the subject matter of the contract; and

   c. is **signed** by the **party against whom enforcement is sought** or by his **authorized agent**. § 1-206.

♦ Revised Article 1 eliminates Section 1-206, which the drafters deemed unnecessary in light of Revised Article 1’s scope is provision. So, Section 1-206 no longer applies to a contract for the sale of personal property not governed by another article of the UCC and subject to the law of a jurisdiction where Revised Article 1 was in effect at the relevant time.

III. **The Statue of Frauds and the CISG**: Article 11 dispenses with any writing requirement, providing, in relevant part, that “[a] contract for sale need not be concluded in or evidenced by a writing ….”
IV. **UETA and the Statute 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).