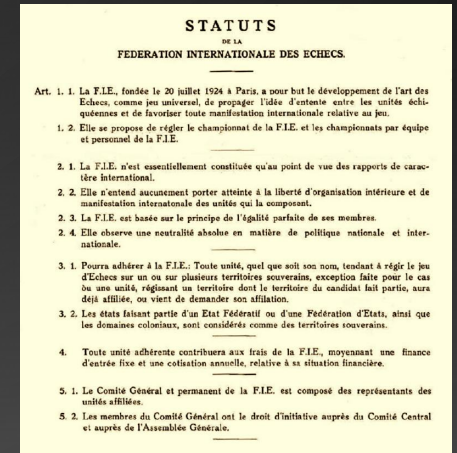


# THE WRITING REQUIREMENT AND ELECTRONIC RECORDS

BY: DWIGHT M, HELEN J, & PATRICIA D



# STATUTE OF FRAUD

- **The Statute of Frauds:** In 1677 in England they passed an Act of the Parliament. It required that certain types of contracts, wills, and grants, assignment or surrender of leases or interest in real property must be in writing and signed to avoid fraud on the court by perjury and subornation of perjury. It also required that documents of the courts be signed and dated.

# STATUTE OF FRAUDS

- Every state has a statute that stipulates what type of contract must be in writing.
- A statute requiring that certain types of contracts, including the following, be evidenced by a signed writing (or its electronic equivalent) in order to be enforceable:
  1. Contracts involving interests in land
  2. Contracts that can't by their terms be performed within one year from the day after the date of the formation of the contract.
  3. Collateral, or secondary, contracts.
  4. Promises made in consideration of marriage.
  5. Under the Uniform Commercial Code, contracts for the sale of goods prices at \$500 or more.

# ***EXCEPTIONS TO WRITTEN REQUIREMENT***

- ***Partial Performance***
- ***Admissions***
- ***Promissory Estoppel***
- ***Special Exceptions under UCC***



# CONTRACTS INVOLVING INTERESTS IN LAND

A contract calling for the sale of land is not enforceable unless it is in writing or evidenced by a writing memorandum.

- Includes all physical objects that are permanently attached to the soil, such as buildings, fences, trees, and the soil.
- All the contracts for the transfer of other interests in land, such as mortgage agreements and leases.
- Land sale contract can be enforceable under that Statute of Frauds
  - The contract must describe the property being transferred.

## THE ONE-YEAR RULE:

- Contracts that **CANNOT**, *by their own terms*, be performed within one year from the day after the contract is formed must be in writing to be enforceable.
- In this contract one-year period it begins to run the day after the contract is made.
  - It was be in writing to be enforceable, because it cannot be performed within one year.
  - It does not have to be in writing to be enforceable, because it can be performed within one year.



# FORM OF WRITING:

- A written contract, signed by both parties, satisfies the requirements of the statute of frauds. What else will suffice?
- A writing signed by the party against whom enforcement is sought;
- An agreement may be signed anywhere on the agreement; moreover, initials, letterhead, a rubber stamp, or even a fax banner may satisfy the signature requirement – as long as the person intended to authenticate the writing by affixing their initials, etc.
- A confirmation, invoice, sales slip, check, or fax, or any combination thereof; or
- Several documents which, in combination, provide the terms for an agreement.

# SUFFICIENCY OF THE WRITING

- A writing contract will satisfy the writing requirement as will a written memorandum or an electronic record evidences the agreements and signed by the party against whom enforcement is sought.
- The signature need not be placed at the end of the document but can be anywhere in the document in writing.
- A signature can consist of a typed of name or even just initials than the full name





# NEED TO CONTAIN IN THE WRITING CONTRACT:

- The writing need only contain the essential terms:
  - (1) the parties' names,
  - (2) the contract's subject matter,
  - (3) the amount of property to be sold or leased or services to be rendered, and
  - (4) the consideration given or promised to the party against whom enforcement is sought.
- Whether price is an “essential” term depends on the type of contract in question.