DEFINITION: THOSE REQUIREMENTS RELATING TO OUTWARD, VISIBLE FORM IN WHICH AGREEMENT MUST BE CAST TO CREATE VALID CONTRACT

IF REQUIRED BY LAW, REQUIREMENTS MUST BE SATISFIED TO CREATE VALID & ENFORCEABLE CONTRACT

NO EXPRESS PROVISION THAT CERTAIN FORMALITIES MUST BE COMPLIED WITH, CONTRACT WILL ARISE WHEN PARTIES WHO HAVE CAPACITY TO ACT REACH CONSENSUS ON OBLIGATIONS THAT PHYSICALLY & LEGALLY POSSIBLE

USUALLY COMPLIANCE WITH FORMALITIES CONSISTS OF REDUCING CONTRACT TO WRITING, WITH / WITHOUT SIGNATURES OF PARTIES
GENERAL RULE: NO FORMALITIES REQUIRED

MOST CASES - INFORMAL CONTRACT = BINDING & CONTRACTS ARE VALIDLY CONCLUDED WITHOUT OBSERVATION OF ANY FORMALITIES

POSSIBLE FOR CERTAIN ASPECTS OF CONTRACT TO BE IN WRITING WHILE OTHER MATTERS ARE AGREED ON ORALLY / TACITLY
CONTRACTS WHERE FORMALITIES ARE REQUIRED

- FORMALITIES REQUIRED BY LAW
- WRITING & SIGNING OF ELECTRONIC TRANSACTIONS
- FORMALITIES REQUIRED BY PARTIES
FORMALITIES REQUIRED BY LAW

AIMED AT PREVENTING FRAUD & REDUCING UNCERTAINTIES & EVIDENTIAL PROBLEMS

MOST COMMON REQUIREMENT: CONTRACT REDUCED TO WRITING & SHOULD BE SIGNED IN ORDER TO RENDER THEM VALID

CONSUMER CONTRACTS

(A) CONTRACTS FOR ALIENATION OF LAND

(B) CONTRACTS OF SURETYSHIP

(C) CONTRACTS OF DONATION IT TO PERFORMANCE = DUE IN FUTURE

FORMALITIES REQUIRED BY LAW

Most common requirement: Contract reduced to writing & should be signed in order to render them valid.

Consumer contracts

(A) Contracts for alienation of land

(B) Contracts of suretyship

(C) Contracts of donation into performance = due in future
CONTRACTS FOR ALIENATION OF LAND ACT 68 OF 1981

No contract for alienation of land = valid unless contained in contract of alienation signed by parties to contract / agents acting on written instructions.

Alienation of land in contravention of act - deemed valid if both parties performed fully & land transferred to new owner.

Act provides for special enrichment rules in case of invalidity due to non-compliance with act.
CONTRACTS OF SURETYSHIP

GENERAL LAW AMENDMENT ACT 50 OF 1956

CONTRACT OF SURETY = VALID ONLY IF IN WRITING & SIGNED BY / ON BEHALF OF SURETY
CONTRANTS OF DONATION ITO WHICH PERFORMANCE = DUE IN FUTURE

GENERAL LAW AMENDMENT ACT 50 OF 1956

DONATION COMPLETED BY DELIVERY & TRANSFER FALLS OUTSIDE THIS SECTION

AUTHORITY MUST BE GRANTED IN PRESENCE OF 2 WITNESSES

CONTRACT OF DONATION UNDER WHICH PERFORMANCE = DUE = VALID ONLY IF TERMS CONTAINED IN WRITTEN DOCUMENT, SIGNED BY DONOR / SOMEONE ACTING ON WRITTEN AUTHORITY

DONATION COMPLETED BY DELIVERY & TRANSFER FALLS OUTSIDE THIS SECTION
CONSUMER CONTRACTS

CONSUMER PROTECTION ACT 68 OF 2008

WRITTEN RECORD OF EACH TRANSACTION - FALLS WITHIN AMBIT OF ACT MUST BE GIVEN TO CONSUMER

WRITTEN RECORD MUST CONTAIN CERTAIN MINIMUM INFO

MIN INFO: SUPPLIER'S FULL NAME / REG BUSINESS NAME, VAT NO

FRANCHISE AGREEMENT MUST BE IN WRITING & SIGNED BY FRANCHISEE / PROXY & MUST COMPLY WITH ACT'S REQUIREMENTS ON PLAIN & UNDERSTANDABLE LANGUAGE

MINISTER MAY PRESCRIBE CERTAIN FURTHER CATEGORIES OF CONTRACTS

CONSUMER CONTRACT NOT SIGNED BY CONSUMER DOES NOT MAKE IT INVALID

FREE ACCESS TO ELECTRONIC COPY OF CONTRACT WILL SUFFICE

NON-COMPLIANCE - NOT AUTOMATICALLY LEAD TO INVALIDITY
CONSUMER CONTRACTS CONTINUED...

CREDIT ACT 34 OF 2005 - NOT PRESCRIBE WRITING AS REQUIREMENT FOR VALIDITY OF CREDIT AGREEMENT

CREDIT AGREEMENT - PRESCRIBED FORM, IF NO APPLICABLE FORM, MAY BE IN ANY FORM

CREDIT PROVIDER MUST PROVIDE COPY OF AGREEMENT IN PAPER FORM / PRINTABLE ELECTRONIC FORM

NON-COMPLIANCE THAT AGREEMENT MUST BE IN WRITING - CONSTITUTE CRIMINAL OFFENCE BY CREDIT PROVIDER - WILL NOT LEAD TO INVALIDITY OF CREDIT AGREEMENT

DEEDS REGISTRIES ACT 47 OF 1937 - ANTENUPTIAL CONTRACTS REGISTERED IN MANNER & WITHIN TIME MENTIONED IN ACT

UNLESS REGISTERED, ANTENUPTIAL CONTRACT - NO FORCE & EFFECT AGAINST ANY PERSON WHO IS NOT PARTY TO IT

ANTENUPTIAL CONTRACT VALID BETWEEN SPUCES BUT NOT AGAINST 3RD PARTIES
FORMALITIES REQUIRED BY PARTIES

OFFEROR SETS REQUIREMENT THAT ACCEPTANCE OF OFFER MUST BE IN WRITING, ACCEPTANCE = VALID CONTRACT ONLY IF ACCEPTANCE IN WRITING

SOMETIMES NEGOTIATE ORALLY - FINAL AGREEMENT IN WRITING

INTENDED WRITTEN AGREEMENT TO EASE PROOF OF ORAL AGREEMENT'S TERMS, ORAL CONTRACT BECOMES BINDING IMMEDIATELY UPON CONCLUSION

IF WRITING IS REQUIREMENT FOR VALIDITY OF CONTRACT - REMAINS INVALID UNTIL PUT IN WRITING
WRITING & SIGNING OF ELECTRONIC TRANSACTIONS

ELECTRONIC SIGNATURE: TYPING NAME @ END OF DOC, SCANNED HANDWRITTEN SIGNATURE / COMPLEX IDENTIFICATION TECHNOLOGY AS LONG AS INTENDED TO BE SIGNATURE

PARTIES MAY STIPULATE SPECIFIC TYPE OF ELECTRONIC SIGNATURE / USE APPROPRIATE & RELIABLE METHOD WHICH IDENTIFIES PERSON & INDICATES APPROVAL OF INFO

DATA MESSAGES RECOGNISED AS WRITING IF DOCUMENT / INFO = ACCESSIBLE FOR FUTURE USE, EXCEPT IN RESPECT OF TRANSACTION CONCLUDED UNDER FOLLOWING ACTS:

(1) AGREEMENT FOR ALIENATION OF LAND (ALIENATION OF LAND ACT 68 OF 1981)

(2) AGREEMENT FOR LONG-TERM LEASE OF LAND IN EXCESS OF 20 YEARS (ALIENATION OF LAND ACT 68 OF 1981)

(3) EXECUTION, RETENTION & PRESENTATION OF WILL / CODICIL (WILLS ACT 7 OF 1953)

(4) EXECUTION OF BILL OF EXCHANGE (BILLS OF EXCHANGE ACT 34 OF 1964)

(5) STAMP DUTIES ACT 77 OF 1968

ELECTRONIC COMMUNICATIONS & TRANSACTIONS ACT 25 OF 2002 (ECT ACT)

DATA MESSAGES RECOGNISED AS WRITING IF DOCUMENT / INFO = ACCESSIBLE FOR FUTURE USE, EXCEPT IN RESPECT OF TRANSACTION CONCLUDED UNDER FOLLOWING ACTS:

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