Formalities: Rescission by Land.

Parties are at liberty to make their intentions known in whatever way. However, sometimes it is required that such intentions be expressed in a formal way. Failure of which will make a contract not valid.

Writing - Certain cases require that a contract be in writing. Alienation of fixed property. A party to a contract of sale of land, where the contract has been cancelled, the parties may by ORAL AGREEMENT, agree to contract. The contract provided the party who cancelled the contract chose not to rely on his cancellation. (NEECHAIN CASE)

Donations

Donations: No donations may be invalid merely for lack of registration or notarial execution - in certain cases writing required - case of executory contracts and donations.

Section 5 donations (what makes a donation according to Section 5) no every contract where a party promise performance without a counter performance being stimulated is a donation.

Ex Parte Oostheizen v De Jager vs Géranne.
Under the Sugar Act of 1952, all leases of land must be in writing.

- Leases of land.

Section (1)(4) of the Lease of Land Act:

No lease agreement may be invalid merely because it was not in writing.

No such lease, may be valid against a creditor/successor, for a period more than 10 years unless it was registered in the title deed of creditor/successor know about it.

NI

The drawer of a cheque (in legible or the cheque before he has delivered it to the drawer's bank).

Formalities stipulated by the Parties.

Parties AGREE THAT THEIR AGREEMENT MUST BE IN WRITING.
The parties agree that an oral contract entered into must be reduced to writing - will only acquire legal effect once written & signed. Contract becomes binding. (Goldblatt case)

On the other hand, the parties may have intended to put the agreement into writing merely to lend it the proof of its terms - in that case the contract becomes binding (even though it is not written). If agreement only effective once written (as agreed by both parties) then written agreement must be signed by both parties.

Unilateral & bilateral departure.

1 parties cannot unilaterally depart from a clause 1 agreement will only be effective once it has been reduced to writing. (They won't be able to sue each other on 1 oral contract) Goldblatt case. They can do away with formalities clause by mutual agreement. They can also agree impliedly 1 oral contract of sale will take effect immediately - even if it has not been reduced to writing.
Facts

F & G agreed that F will supply G with lucerne. They also agreed to their arrangement of conditions of contract will be reduced to writings. F started supplying G with lucerne, and also set out terms of contract in a letter for confirmation by G in writing. G failed to comply with this & F stopped supplying G with lucerne. G sued F on breach of contract. The action failed. AD held that since parties agreed that contract had to be in writing to valid contract of sale arose.

Formalities can be prescribed by parties or statute where parties prescribe formalities for eg the agreement of their contract must be reduced to writing. Their intentions can be 2-fold:

1) A contract will only take legal effect once it has been reduced to writing and signed.
2) A contract reduced to writing is merely to facilitate proof of its terms and will become binding immediately even where is no writing.

As far as 1st possibility is concerned, parties cannot unilaterally clepart from a clause in agreement & a contract will only take legal effect once it has been reduced to writing. They cannot sue each other on an oral agreement unless
it can be proved that planned documentation was merely at the record of an agreement or to facilitate proof of its terms and was not a requirement for its validity in a contract.

**Non Variation Clause**

where the parties include a clause in a contract or a clause may only be varied in writing. Parties cannot later vary a clause or any other orally.

A nonvariation clause will only be protected against oral variation if a non-variation clause is in itself entrenched against oral variation.

**SA Sentrale Ko-operative Grootmaatskappy Bpk v Shifeni & ander**

1 lesee

1 SA Sentral Kop entered into a contract of lease with Shifeni & others. The terms of the lease prohibited the leasing of the property or ceasing its rights without written consent of the lessor. A further clause of the lease was that any variation of the terms of the lease will have to be in writing. The lessee later ceded its rights to a 3rd person without written consent of the lessor. The lessor cancelled the contract & sued for ejectment of the lessee and his casernary. The lessee alleged that there had been an oral variation of the non-variation clause. The court held that parties bound by the non-variation clause. Any attempt to oral variation is of no effect.
Criticism: Shifren decision can only be defended on policy grounds. 1. Freedom of contract argument can be raised against decision 2. Parties are free to contract as they wish. Cannot explain why a prior agreement should take precedence over a later one.

May 1 parties cancel a whole contract orally where they have previously agreed? Any dissolution must be in writing. Court held in Impala case in conformity with Shifren case 1. If contract contains further provision entrenching restriction, dissolution will not be possible.

A waiver by one party does not amount to consent to oral agreement to dissolve a contract.

Van N V Du Preez