

U Study unit 18

Formalities Prescribed by Law.

Parties are @ liberty to make their intentions known in whatever way. However ~~for~~ sometimes it is required that their intentions be expressed in a formal way - failure of which will ~~make~~ render the contract not valid.

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

Donations

Donations no donations may be invalid merely for lack of registration or notarial executions - in certain cases writing required - case of executory contracts and donations.
* Section 5 donations (what makes a donation according to section 5) is every contract where a party promise performance without a counter performance being stipulated is a donation.
EX PARTE GOSTHEIZEN / DE JARQUE VS GRANDE.

Writing

- suretyship

C.L. of Amer Act 50 of 1956

Must be in writing.

1.2

Writing, Notarial Ex, REGISTER

- LEASES OF LAND.

~~Section 11(1)~~ 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 ^{may run} of 10 years unless it was registered in the title deed of creditor / successor knew about it.

NI

The drawer of a cheque is not liable on the cheque before he has delivered it to the drawee (bank).

② 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 formalise 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 document 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 1 formalities clause by ^{express} 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.

Goldblatt v Freemantle.

Facts F & G agreed ^{orally} that F will supply G with lucerne. They also agreed \pm their arrangement of \pm conditions of \pm contract of sale will be reduced to writing ^{by F} ^{confirmed by G}. F started supplying G with lucerne and also set out \pm terms of \pm 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. \pm action failed. AD held \pm since parties agreed \pm contract had to be in writing \rightarrow to valid contract of sale arose

Note:

~~Parties Formalities can be prescribed by parties or statute where parties prescribe \pm \pm contract ^{of their agreement} will only take legal effect once it has been reduced to writing & signed their intentions can be 2-fold~~
~~1) \pm \pm contract reduced to writing.~~

Formalities can be prescribed by \pm parties or by statute where \pm parties prescribe formalities for eg \pm the agreement of their contract must be reduced to writing their intention could be 2-fold.

- 1) \pm contract will only take legal effect once it has been reduced to writing and signed.
- 2) \pm contract reduced to writing is merely to facilitate \pm proof of its terms and will become binding immediately even ^{though} there is no writing.

As far as \pm 1st possibility is concerned, parties cannot unilaterally depart from a clause in \pm agreement \pm \pm contract will only take legal effect once it has been reduced to writing, they cannot sue each other on \pm oral agreement unless

it can be proved \pm \downarrow planned documentation was merely for ^{provide a} record of \downarrow agreement or to facilitate proof of its terms and was not a requirement for \downarrow validity of \downarrow contract.

Non Variation Clause

Formalities: Where \downarrow parties include a clause in \downarrow contract \pm \downarrow contract or \downarrow clause may only be varied ^{or terminated} in writing. Parties cannot later vary \downarrow clause or any other orally.

Shifren case judgement: A nonvariation clause will only be protected against oral variation if \downarrow non-variation clause is in itself entrenched against oral variation.

SA Sentrale Ko-operatieve Groenmarktshappy Bpk \downarrow Shifren en andere
 \downarrow
lessee lessors

\downarrow SA Sentral Kop entered into a contract of lease with Shifren & others. \downarrow terms of \downarrow lease prohibited \downarrow leasing lessee from subletting \downarrow property or ceding its rights without \downarrow written consent of \downarrow lessor. A further clause of \downarrow lease was \pm any variation of \downarrow terms of \downarrow lease will have to be in writing. \downarrow lessee later ceded its rights to a 2nd person without \downarrow ^{written} consent of \downarrow lessors. \downarrow lessors cancelled \downarrow contract & sued for \downarrow ejectment of \downarrow lessee and his co-lessee. \downarrow lessee alleged \pm there had been an oral variation of \downarrow non variation clause. \downarrow AD held \pm \downarrow parties bound by non variation clause. Any attempt @ an oral variation is of no effect.

Criticism Shifren decision can only be defended on policy grounds. \perp freedom of contract argument can be raised against \perp decision \perp parties are free to contract as they wish. Cannot explain why a prior agreement should take precedence over a later one.

May \perp parties cancel \perp whole contract orally where they have previously agreed \perp any-dissolution must be in writing. Court held in Impala case in conformity with Shifren case \perp if \perp contract contains further provision entrenching \perp restriction, dissolution will not be possible.

A waiver by one party does not amount to ~~a valid~~ an oral agreement to dissolve a contract.
Van A & V Du preez.