Formalities of a Contract

In this unit, we have previously discussed how contracts can be formed not only when nothing is in writing but even on the basis of conduct, when nothing has been spoken. This does not mean that there are no formal requirements at all for contracts. In this section, we will look at situations when a contract requires formalities.

The first situation is governed by what is referred to as the Statute of Frauds. The concept of the Statute of Frauds has deep roots in English law and has been transferred in various forms to the United States as part of its legal inheritance from the British. The Statute of Frauds requires that certain categories of contracts be signed in writing in order to be enforceable. The most common categories include:

- Contracts which by their own terms cannot be completed within a year of contract formation
- Contracts for the sale or transfer of interests in real property
- Contracts promising to answer for or guaranty the debts of another

In these situations, the Statute of Frauds may be raised as a defense to enforcement of a contract. Note the term “Statute.” In the United States, Statutes of Frauds are the subject of statutes adopted by state governments. So, the Statute of Frauds in one state may differ in some respects from another. Note also that the Uniform Commercial Code (UCC) has amended some provisions of the Statute of Frauds relating to the sale of goods. Thus, it is now recognized that UCC Section 2 has amended the Statute of Frauds by requiring generally that contracts for the sale of goods worth $500 or more must be in writing to be enforceable. However, the same section also recognizes that flexibility is required in the context of a fast-paced business
world and will enforce a contract between merchants, where one party sends a confirmation notice to the other and the other has reason to know of the confirmation notice but takes no action.

In all of these situations, legislatures have determined that the risk of fraud by introduction of outside, unwritten evidence is too high in the situations the Statute of Frauds applies to. One other way in which the law attempts to limit the use of outside evidence is with the parol evidence rule. This rule again comes to the United States through the British system of common law. In essence, the parol evidence rule says that where parties have put their agreement in the form of a written contract, a party to a contract cannot present evidence outside of the writing that adds to or contradicts the terms that are written in the contract. To apply the parol evidence rule, a court must find that the agreement reasonably appears to be the whole agreement, or that it is “integrated.” To address this issue, contracts often contain a “merger clause” explicitly stating that the contract is the whole agreement between the parties. Keep in mind that, while outside evidence cannot add to or contradict the terms of an integrated contract, outside evidence is always allowable for other reasons, such as helping the court interpret existing terms or resolve ambiguities.