Business Law

The contract of Sale
Definition:

- The seller (*vendor*) promises to deliver a thing (*merx*) to another person known as the buyer (*emptor*) for payment of a certain price (*pretium*)
Generally no formalities – but:
- Parties may agree that no sale unless certain formalities complied with
- Some Statutes require formalities
Sale of land – signed & in writing

Credit agreements – in writing & signed by both buyer & seller

Sale of business – sale to be advertised
The 3 essential elements of sale

- Agreement to deliver
- Agreement on the thing sold
  - Can include a hope (*spes*)
- Agreement on the sale price
  - Price must be ascertainable & in money
Rights of the Purchaser

- To receive delivery of the merx
  - Does not mean seller must deliver, but must make available

- Preservation of the merx pending delivery
  - Seller must look after goods until delivery. Risk passes on sale being perfecta but seller liable for negligent loss or damage

- Purchaser to be protected against eviction
  - Sellers warranty against eviction

- Purchaser entitled to merx free from latent defects
Duties of the Buyer

- To pay the purchase price
  - General rule – pay in legal tender upon delivery

- To pay the seller’s necessary expenses
  - Costs of caring between sale & delivery, transfer costs

- To accept delivery of the merx
The Passing of Risk

General Rule
- The risk passes from the seller to the purchaser as soon as the sale is *perfecta*.
- The parties may agree to change this, for example, for risk to pass on delivery.

When is the sale perfecta?
- Agreement on price
- Merx identified
- Any suspensive conditions fulfilled
Forms of delivery

- Actual delivery
- Symbolic delivery – eg: keys to vehicle
- Delivery with the long hand – eg: pointing out cattle
- Delivery with short hand – purchaser already in possession
- *Constitutum possessorium* – seller retains on behalf of purchaser
Special Sales

- Auction
- CIF
- FOB
- FOR
- Execution
Ownership

- Rei vindicatio – action for recovery of possession by true owner

- Passing of ownership
  - Seller must be owner at delivery
  - Seller intends to pass ownership
  - Buyer intends to acquire ownership
  - Seller must deliver to purchaser
  - Purchase price paid or credit granted
Transfer of ownership

- Immovable property – on registration of transfer
- Incorporeal property – on cession
- Movable property – on delivery
  - If cash sale – price paid & delivery
  - If credit sale – on delivery
Warranties

- May be express or implied

- A contract of sale always implies the following warranties:
  - Warranty against eviction
  - Warranty against latent defects
Latent defects

- Defect existing at time of sale but unknown to ordinary buyer even if apparent to an expert
- There is an implied warranty that goods are fit for the purpose for which sold
- If latent defect – entitled to remedy unless:
  - Voetstoots or “as is” sale (parties agree to exclude)
  - No defect at time of sale
  - Buyer aware of defect and accepted
  - Prescription
Requirements for claim of latent defect

- There is or was a material defect in the goods
- The defect was present when the sale was concluded
- The defect was latent (not easily noticable on inspection)
- Purchaser was unaware of the defect at the time of purchase
The Aedilitian Remedies

- Actio redhibitoria
  - Available if latent defect renders goods useless or if purchaser would not have purchased the goods if aware of defect
    - Purchaser tenders return of merx & claims purchase price plus interest & costs of maintaining merx and cost of any improvement to merx
    - No compensation
The Aedilitian Remedies

- **Actio quanti minoris**
  - If defect not so material as to render goods useless or if purchaser would still have purchased goods (but maybe at lesser price)
    - Buyer sues for reduction in purchase price
    - No compensation
The Aedilitian Remedies

- **Actio ex empti**
  
  - Allows buyer to claim compensation in certain cases:
    
    - If seller fraudulent
    - Seller a manufacturer, expert or professes skill
    - Seller has given an express warranty
The Consumer Protection Act prohibits the use of a voetstoots clause
- This only applies to contracts covered by the Act

Other specific legislation relating to certain types of sale
- Share Blocks
- Sectional Title etc