Law of Sale
Study Unit 1

Definition - Contract of Sale
A contract of sale is a specific type of contract. A contract of sale is a reciprocal agreement in terms of which the seller undertakes to deliver a thing to the buyer and the latter in turn undertakes to pay a sum of money in exchange for the thing.

Two Essentialia - According to definition
(i) Parties must agree, i.e., one of them will deliver the thing. (ii) The other will pay a price.

Requirements for Validity
A contract of sale can only be binding if there is agreement between the parties. The presence of consent in no way will help to classify a contract.

Distinction Between Sale & Lease
Contracts of Sale
1) Contracts of sale do not have a similar clause. 2) A contract of sale can be made subject to a suspensive or resolutive condition, or for a right

Contracts of Lease
Parties must agree expressly or tacitly. The lessee must restore the thing leased to the lessor at some other time. 2) In a contract of lease, such an obligation arises not out of the conclusion of the contract, but out of the
Incidentalia - a clause in a contract of sale that a seller guarantees his title.

Naturalia - the seller stand in for eviction of the purchaser.

Selling of claims
It is not only possible to sell a thing (corporeal entity) a personal right (claim) may also be sold.
Eg x agrees to transfer his claim against y to z at a price = (contract of sale).
* A juristic act creating obligations must not be confused with a transfer or cession.
* A right cannot be regarded as a (incorporeal) thing.

Simulation
* Parties representations as regards the nature of their contract (simulation) should in no way influence a court's decision. What duties are to which parties commit themselves as well as whether they correspond to an express or tacit renunciation of a contract of sale, need only be noted.
DISTINCTION BETWEEN UNDERTAKING & PERFORMING AN OBLIGATION

A VALID CONTRACT OF SALE IS CONCLUDED WHEN 1 SELLER UNDERTAKES TO DELIVER 1 THING & 1 BUYER UNDERTAKES TO PAY A PRICE & NOT ONLY WHEN 1 SELLER DELIVERS 1 THING OR 1 BUYER PAYS 1 PRICE.

BY UNDERTAKING 1 PARTIES CREATE OBLIGATIONS & BY 1 PARTIES PERFORMING 1 OBLIGATIONS ARE EXTINGUISHED.

THE UNDERTAKING TO DELIVER A THING is an undertaking to carry out an act of transfer.

Delivery: There can only be a contract of sale if 1 seller's obligation to perform consists of delivery.

Obligation to do something:

A contract of sale in terms of which A undertakes to register a servitude over his land in favour of B in exchange for monetary compensation is not a contract of sale.

Locatio condumicho operis & (contract for letting & hiring of work) is an agreement whereby an independent contractor undertakes to render the results of his labour to 1 other party. Contract of sale - seller's obligation is essentially one to deliver locatio condumicho operis. 1 person accepting work is essentially a duty to do something.
The Emptio Rei Speratae (sale of a future thing)
& I Emptio Spei (sale of a pure chance)

The best known forms of contract of sale of things not yet in existence.

A contract in terms of which one party undertakes to deliver a thing not yet in existence to another party in exchange for a payment of a sum of money can pass as a contract of sale despite the fact that the thing was not yet in existence at the time of the conclusion of the contract.

1. The seller has a duty to deliver the thing and also to make sure the thing materializes, so that it can be delivered.
2. It must be possible to deliver the thing from the conclusion of the contract or at least possibility of performance.

THE EMPTIO REI SPERATAE