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UNIT 1

CONTRACT OF SALE

By the end of this study unit you should be familiar with the essential characteristics of the contract of sale, and be able to determine and appreciate the importance of the purchaser's and sellers respective rights and duties.

INTRODUCTION

Certain kinds of contracts are concluded more often than others, for example contracts of sale, lease and employment. Of these the contract of sale is most common kind of contract. A business can never run if there is not buying and selling involved.

All contracts must comply with general requirements for it to be valid certain special principles have evolved for most commonly concluded kinds of contracts therefore naming them specific or named contracts to qualify as a specific contract the **essentialia** must be present.

FOR THOSE OF US WHO HAVE FORGOTTEN WHAT ESSENTIALIA AND NATURALIA IS LET US TAKE A RIDE DOWN MEMORY LANE!!!

ESSENTIALIA

- These essential terms identify the contract as being a certain kind of contract, for example a contract of sale.
- Once the essentialia identify the contract as being a certain kind of contract, then the relevant naturalia for that contract follow unless excluded by parties

NATURALIA

- These terms are automatically incorporated into the contract as implied terms unless they are excluded by the parties to the particular contract.

NOW LETS CARRY ON!!!!!!!!!!!!!!!

The only reason for classifying a contract as a specific contract is that naturalia will flow from that contract which regulates the relationship between the parties on certain aspects if the parties do not regulate it themselves.

EXAMPLE: READ PROPERLY AND UNDERSTAND

If the parties who are participating in the contract of sale have not agreed when payment shall be made, it is assumed then that payment must be made simultaneously with delivery of the thing to be sold, it will be a cash sale and not a credit sale.

It is also easy for parties to make other arrangements maybe they can say payment will be made at the end of the month this how parties can regulate contract of sale.

DEFINITION OF CONTRACT OF SALE

A contract which the seller undertakes to deliver the merx to the buyer or purchaser in exchange agrees to pay the purchase price or certain sum of money

IMPORTANT POINTS

- There are 2 essential characteristics the parties have to agree on for a contract of sale **the merx** and the **purchase price**.
- Why are the **merx** and the **purchase price** the **essentialia** of a contract of sale?
Due to the existence of the consensus regarding the purchase price as well as the merx shows that a contract of sale has been

concluded and it shows the difference compared to other contracts.

THE MERX

Latin word for a thing sold. In order to conclude a valid contract of sale it is important to remember that the merx must either be definite or at least ascertainable.

EXAMPLE HOW THE MERX IS DEFINITE

Merx definite if it is mentioned by the **name** in the agreement. “Portion 12 of the farm, Meerlus, in the district of Middelburg”. As you can see from the example above the merx is definite because the name is mentioned in the agreement.

It is also definite if the parties were in agreement of the thing being sold.

EXAMPLE OF HOW MERX IS ASCERTAINABLE

In the case of generic sale, that is a sale of a quantity or particular type of thing merx ascertainable because number, weight or measure mentioned together with the type of thing.

“ Ten thousand stock bricks”, “ One gram flower”, “ Three litres milk”

From the above example we can see number, weight or measure mentioned with the thing being sold.

IMPORTANT POINTS

- Anything can be sold merx can be movable, immovable goods or even maybe a claim a servitude a service
- Main thing contract should be lawful

THE PURCHASE PRICE

Purchase price may be also **definite** or **ascertainable**. The price must be an amount payable in money.

Parties have to agree on an amount or price per unit a third party may make the price

A GOOD EXAMPLE

It so often happens that many items are bought or sold without any explicit reference made to the price.

You walk into a shop and there's no price tag on the item you take it and buy this item a valid contract of sale comes into being and the parties are deemed on having agreed on a price for the merx.

THE RIGHTS AND DUTIES OF THE PURCHASER AND THE SELLER

INTRODUCTION

Classification of a contract of sale has important practical legal consequences:

1. Certain legal consequences cannot be excluded by the parties.
Delivery of the merx and payment of the purchase price are consequences that cannot be excluded by the parties.
2. Determines the legal position of the parties in respect of certain matters that were not arranged by them.

3. Many a time the parties only agree on the two essential characteristics of a contract of sale, they do not consider many things such as if the price will be paid in cash in what way will delivery take place or what would happen if the merx was damaged or destroyed before it could be delivered.
4. Common law provides a legal framework to the contract of sale and if the parties do not make arrangements to the contrary the naturalia will apply these naturalia can be excluded expressly or unspoken, But it must be clear from surrounding factors that the parties had an intention to exclude the specific naturale.

EXAMPLE READ CAREFULLY AND UNDERSTAND

Bongi and Tshepo conclude (finish) a contract of sale and agree the seller will give no warranties, if it appears that they considered possible defects in the merx but never thought the possibility of eviction (to expel or to recover (good, property etc) by virtue of superior legal title) or thought about the title of ownership, **the warranty against eviction will not be excluded.**

EXTRA NOTES

- Some contracts are not concluded by common law basis but on the basis of comprehensive set of terms contained in a printed document and signed by both parties.
- The legal relationship is found in these documents.
- The purchaser determines the extend to which the wording deviates from common law.
- Deviation factor is of great importance because it causes complications with regards to warranties & guarantees however in various instances the purchaser is protected from exploitation thru legislation.

THE COMMON LAW RIGHTS OF THE PURCHASER

THE PURCHASER IS ENTITLED TO DELIVERY OF THE MERX

Lets understand this properly when we say the purchaser is entitled to delivery of the merx we do not mean the the seller is liable for physically offloading it on the purchases doorstep. The merx must be made available to the purchaser and the purchaser is entitled to full free possession. **This legal cannot be excluded by the parties**

THE PURCHASER IS ENTITLED TO PRESERVATION OF THE MERX PENDING DELIVERY

The duty of the seller is to preserve the merx until it delivered to the purchaser. If the merx is damaged or destroyed owing to negligence or intentional conduct of the seller, he or she will be liable.

What is Mora?

- If a **purchaser** fails or delays to take delivery of the merx then the purchaser is in **mora**.
- If the seller fails or delays to deliver than the seller in **mora**.

Therefore if the purchaser is in mora, the seller will only be liable for gross negligence or intent. However if the merx is damaged if the seller is in mora he or she bears the risk.

Whenever a thing is accidentally damaged before delivery takes place the situation is governed by different principals.

It is important to establish who bears the risk.

1. If the contract is perfecta the risk has passed from the seller to the purchaser, which means the purchaser will have to bear the risk of damage to the merx.
2. If the contract is not yet in perfecta the seller still bears the risk.

I WILL DISCUSS PERFECTA UNDER SEPARATE HEADING JUST NOW

If it has become objectively impossible for the seller to perform before the contract becomes perfecta, then the principle of supervening impossibility of performance will apply.

LAW OF OBJECTIVE POSSIBILITY TO PERFORM

If it is totally impossible to perform then no valid contract arises it must be absolute impossible to render performance which causes the contract to be void.

THE PURCHASER IS ENTITLED TO BE PROTECTED BY THE SELLER AGAINST EVICTION

It is not a consequence that a seller has to transfer of ownership to the purchaser the seller merely undertakes that the purchaser will not be disturbed in his or her enjoyment of the possession of the merx by another person with a better title to the merx than that of the purchaser itself.

This undertaking is implied by the law in every contract of sale; it is basically a natural consequence of contract of sale however this consequence can be excluded if parties desire it to be so.

The undertaking so implied is known as the **seller's warranty against eviction**.

The following is what it entails:

1. If a purchaser is disturbed in his or her possession or enjoyment of the merx by someone claiming legal title to it, it is the seller's duty to come to the purchaser's assistance after being notified by the purchaser if the seller fails to do so the purchaser must then put up a proper defense against the third party.
2. If the purchaser has notified the seller, but the seller fails to intercede, and the third party succeeds with claim despite the fact

- that the purchaser strongly resisted it the seller will then be said to have breached the warranty against eviction,
3. If the purchaser fails to put up a proper defense and the third parties claim was competitive, arguable, victorious(contestable) then the purchaser loses all rights of security (recourse-cannot claim) from the seller.

LETS LOOK AT AN EXAMPLE FOR US TO UNDERSTAND THIS LAW BETTER PLEASE READ AND UNDERSTAND

Jeremy has a superb car which you are interested in buying. Jeremy bought this car from Paul for R10 000. Peter agrees to sell you the car for the amount of R120 000. You pay this amount in cash and take delivery of the car. You and Jeremy are unaware that Paul stole the car from Tom. Two months later you receive a phone call from Tom. He claims the car, since it is still his rightful property.

Tom, who is the rightful owner of the car, may institute proceedings against you to claim back the car. He will do so by issuing summons against you either a magistrate's court or a high court, and he make use of the action called “ **rei vindicatio**” (**I will discuss this law under a separate heading**).

You will now have to inform Jeremy of these events and ask him to assist you in defending Tom's claim against you. If Jeremy is not willing to assist, you should with all your power and might (**VIGOROUSLY**) defend the claim against you. However, you will not succeed in your defense because Tom is the owner.

Jeremy has now breached the warranty against eviction. As a result of this serious breach of contract you now have the right to cancel the contract and recover the R120 000 which you paid. If you have suffered a loss, you may also claim damages.

However if you fails to put up a proper defense and fight vigorously and Tom wins the case you lose your warranty against eviction and will not be able to claim a cent from Jeremy.

THE PURCHASER IS ENTITLED TO A MERX FREE FROM LATENT DEFECTS

Implied warranty against latent defects is read in every contract of sale unless it has been excluded by the parties, this warranty entitles the purchaser to certain legal remedies should the merx contain a legal defect despite the seller not knowing of this defect.

Purchaser must prove the 4 following things if he wishes to institute a claim of latent defects:

- 1. A material defect in the merx.**

What is a material defect?

A material defect is a shortcoming or abnormal characteristic which renders the merx completely useless.

- If a purchaser expressly said that he wanted to use the merx for a specific purpose, the defect will be regarded useless if it impairs the serviceability of the merx for such purpose.**
- If a special purpose was not known to the seller, a material defect is one that detrimentally affects the serviceability of the merx for the purpose for which things of that kind are ordinarily used.**

- 2. the defect was present when the contract of sale was concluded**
- 3. the defect was latent**

When are defects regarded as latent?

Defects are regarded as latent if the purchaser could not have readily noticed it during reasonable inspection of the merx at the time of the sale.

- 4. you were unaware of the defect at the time of conclusion of the contract**

LETS LOOK AT AN EXAMPLE FOR US TO UNDERSTAND THIS LAW BETTER PLEASE READ AND UNDERSTAND

You would like to buy a car. You contact Harry who has advertised the car in the classified section of the newspaper and make an appointment to test-drive the car.

At Harry's house you inspect the car thoroughly by checking the paint work, the tyres, the exhaust, the interior and the engine. You also take the car on the road and are satisfied with its performance. There and then you buy the car, pay the purchase price and take delivery of the car. On your way home the car breaks down. The emergency services tow the car to the nearest garage and there it is established that one of the pistons is broken. It is also discovered that the pistons have been broken before. Because it is welded

NOW WHAT DO YOU DO YOU HAVE A FEW CHOICES

- If you decide the car is less useful, but worth keeping, you may institute action against the seller by means of action **quantiminoris** (Retain possession, but claim a reduction price which corresponds with the reduced use.)
- If car completely useless you will institute action against seller by means of action **redhibitoria** (cancel contract and claim back the purchase price)

NB YOU HAVE TO PROVE FOUR THINGS BEFORE ANY ACTION CAN TAKE PLACE THESE FOUR ACTIONS WERE MENTIONED ABOVE BUT LET US REFERESH OUR MEMORIES.

1. the defect was material
2. the defect was present when the contract was concluded
3. the defect was latent
4. you were unaware of the defect at the time of conclusion of the contract

- If contract concluded on an “ as is” basis you will have no claim against the seller-unless you can prove Harry was aware of the defect and intentionally concealed this, then you may use action redhibitoria or action quanti minoris or actio empti.
- The remedies for breach of implied warranty against latent defects are the so-called aedilician actions.

PLEASE NOTE ACTIO EMPTI, ACTIO REDHIBITORIA, ACTIO QUANTI MINORIS, AS IS SALES AND ACTIO EMPTI WILL BE DISCUSSED PROPERLY UNDER SEPARATE HEADINGS NOW!!!

THE ACTIO REDHIBITORIA

If the latent defect is so material that if the purchaser had known of the defect he would have never purchased the item or if the defect renders the item useless the purchaser may claim the following:

1. Return purchase price
2. interest
3. prepayment of all expenses incurred regarding the receipt and preservation of the merx
4. reimbursement for improvements effected by him or her to the merx
 - Purchaser must return everything to the seller
 - If merx destroyed as a result of that defect, the inability to return the merx will not prevent the purchaser from enforcing the remedy.

THE ACTIO QUANTI MINORIS

If the latent defect is not so much that it renders the merx completely useless then the purchaser will have to ask for a reduction in the purchase price.

“AS IS” SALES

Warranty against latent defects can be excluded by parties this can be achieved by in any way but the usual way is to state the articles is sold “as is” or “voetstoots”

The purchaser then has no legal remedies if the merx has latent defects unless the seller knew it and concealed it.

If the seller knew the default and concealed it then the “as is” cause is not reliable and the purchaser can claim through action empti which is going to be discussed now.

THE ACTIO EMPTI

- Remedy a purchaser can use to enforce his or her rights against the seller
- Derived from Roman law

Purchaser can rely on Actio empti in following instances:

1. **Defective performance:** Merx is delivered without the good qualities guaranteed by the seller, purchaser may claim damages based on his or her positive interest if the merx really damaged can opt for cancellation.
2. **Misrepresentation:** Seller is aware of defects in the merx but does not disclose this to the purchaser, or if the seller persuades (induces) the contract by making false representations about the good quality of the merx the purchaser may rely on action empti to claim damages.
3. **Manufacturer’s liability:** Manufacturer of the merx claims to have expertise regarding the merx if the merx is defective he or she can be held liable for damages as well as consequential loss. It is important that the seller states verbally or by implication that there is no defects with the merx.

Consequential loss- loss resulting from use of defective merx

4. Breach of warranty against eviction- already discussed in detail.

THE COMMON LAW RIGHTS OF THE SELLER

- The seller is entitled to payment of the agreed purchase price.
- This legal consequence cannot be excluded by parties.
- It is the most important obligation of the purchaser
- Payment of sum of money most important thing and how when and where must be decided by the parties.

THE TRANSFER OF OWNERSHIP

- When a contract of sale is executed in full the purchase acquires ownership of the merx.
- Transfer of ownership is primary purpose to a contract of sale

FOUR REQUIREMENTS SET IN ORDER A PERSON TO OBTAIN OWNERSHIP:

1. The transferor must deliver the thing to the transferee.
Immovable are transferred by means of registration in the deeds office.
2. Both parties must have intention that the ownership should pass from transferor to the transferee
3. Transferor must be in the position to transfer ownership, he or she must be the owner of the thing
4. In contracts of sale purchase price must be paid or credit offered.

Cash sales- Ownership will only pass after the purchase price is paid.

Credit sales-ownership will pass upon delivery

DELIVERY

Movable property has to be delivered to the transferee via any form.

ACTUAL DELIVERY

Physical handing over of the merx by the seller to the purchaser

SYMBOLIC DELIVERY

Merx not physically handed over to the purchaser but something else which enables him to obtain control of the merx.

Example: Seller of a bus hands the keys of the bus to the purchaser

DELIVERY WITH THE LONG HAND

Pointing out of merx and it been made available to the purchaser, this method is used when the merx is too large or heavy to be handled over physically.

Example: cattle in a kraal

DELIVERY WITH THE SHORT HAND

Purchaser already in possession of the merx, but does not hold it as owner than subsequently holds it as owner:

Example Bongi lends her car to Tiny and while the car is in Bongi's possession, they agree that Bongi will by the car now it is not necessary for Bongi to give the car back to Tiny.

CONSTITUTUM POSSESSORIUM

Seller retains possession on behalf of the purchaser,

Example: seller rents a house from the purchaser for a period of time.

REGISTRATION

Immovable are transferred by way of registration on the name of purchaser. As soon as the transfer is registered in a Deeds Office, transfer of ownership takes place.

THE INTENTION THAT OWNERSHIP BE TRANSFERRED

Both parties must have intention that ownership be transferred by the delivery of the merx this intention can be explicitly or tacitly (Understood without been expressed) agree on the moment when ownership will be transferred, for example they can agree only when purchase price is paid then transfer will be made.

THE SELLER MUST BE THE OWNER

If a seller does not own the merx but yet he transfers it to the purchaser the real owner can still claim back via rei vindication, even if the purchaser obtained the thing in good faith and paid for it.

PAYMENT OF THE PURCHASE PRICE

Contracts of sale for the transfer of ownership it must be that the purchase price is paid or the seller has given the purchaser credit or the purchaser has given security. Ownership will only pass once purchase price is paid.

Case of a credit sale ownership will pass immediately when merx is delivered.

THE PASSING RISK & PERFECTA

When a owner loses or damages something he bears the loss of everything however when a contract of sale is concluded is the consequence of this contract that the risk of accidental damage or loss of the merx as well as the benefit or profit passes from seller to purchaser as soon as contract is perfecta, that is even before the purchaser becomes the owner.

CONTRACT PERFECTA IN FOLLOWING 3 INSTANCES:

1. Merx must be definite or identified

Example: can Sono & Jomo conclude a contract with an alternative obligation Sono choose weather he wants a red car or a blue car the performance is thus ascertainable and not definite merx will be identified only when Sono exercises or makes his choice.

NB: Generic sale merx definite only when individualization takes place.

2. Purchase price must be ascertained or ascertainable through simple calculation.

Example: James buys Cows for R600 each purchase price is thus ascertainable by counting the number of cows and then multiplying it by the purchase price, purchase price not yet ascertained or ascertainable through simple calculation however lets say it is established that there are R200 cows the purchase price will be ascertained thru simple calculation

3. If contract contains suspensive condition, it must already be fulfilled

Example: If Bongi and Sipho agree that Bongi will buy a plane from Sipho if Bongi can obtain a loan from the bank, the contract cannot be perfecta until Bongi obtains a loan. As soon as this condition is fulfilled the contract will be perfecta, provide the other 2 requirements are met.

EXTRA NOTES

Importance of rules concerning passing risk arises from the fact that there is often a delay between the time when the contract is concluded and the time of delivery to the purchaser eventually occurs.

If the risk has passed and the merx gets damaged the purchaser still has to pay the purchase price even if he is not the owner as yet.

STATUTORY PROTECTION OF PURCHASERS

In the commercial world many contracts are concluded along the lines of written standard-form contracts drawn up very complicated. These contracts are often geared towards protecting the party responsible for drafting and include terms that operate unreasonably against the other party, often excluding natural consequences that have favoured the latter. In an attempt to prevent or limit the exploitation of consumers, various mechanisms have been incorporated into legislation.

THE ALIENATION OF LAND Act 68 of 1981

The act prescribes formalities for contracts of sale and other deeds of alienation of land. Concept alienation important.

What does land include?

Land includes a unit in a sectional title scheme, a right to claim transfer of land, an undivided share in land and certain other interests in land land also includes improvements done to the land such as buildings.

What does the concept alienation mean?

Alienation means sell, exchange or donate.

RESTRICTION ON RECEIPT OF CONSIDERATION

One of the objectives of the Act is to protect purchasers of stands in unproclaimed townships if, eventually proclamation does not take place.

Basically what this Act does is that it protects the purchaser in a way that the purchaser is assured the return of his or her money should the contract be cancelled due to breach of contract, or if performance is not possible, Also if a seller becomes insolvent the money is refunded to the purchaser.

THE PURCHASER'S RIGHT TO CLAIM TRANSFER

The other objective of the Act is to protect the purchaser who purchases the land in installments. It gives the purchaser the right to claim transfer of land on his or her name once at least fifty per cent of the purchase price is paid.

LETS LOOK AT AN EXAMPLE:

John buys a land from Ali on installments after a few months John has paid fifty percent of that amount now John can tell Ali that land should be transferred to his name if the land is not transferred within three months after Ali has got this demand John can cancel the contract. However once the transfer is registered a mortgage bond over the land is simultaneously (at the same time) registered in favour of Ali to secure

balance of the purchase price and interest. In this way both Ali and John are covered John Becomes the owner of the land and Ali secured a creditor for the outstanding amount.

THE PURCHASER'S RIGHT OF REVOCATION OR TERMINATION

The Alienation of land Act grants a purchaser of land, a statutory right to revoke an offer to purchase or terminate a deed of alienation of land. **The requirements for the availability of this right are:**

1. Purchaser must be a natural person'
2. Price offered must not exceed R250 000
3. Land involved must be used or intended to be used for residential purposes

If all these requirements are present and provided the contract does not fall within one of the exceptions I discuss below:

1. Purchaser may terminate the deed of alienation within 5 business days after having signed it.
2. The purchaser has to deliver to the seller the written notice in which the termination is written.
3. Amounts paid by the purchaser in respect of the offer must be refunded to him within ten days of delivery of the notice.
4. Purchaser cannot be held liable for any damages or losses that occur.

Right of termination revocation not allowed in following instances:

1. Land purchased at a publicly advertised auction
2. Seller and purchaser have previously entered into a deed of alienation of the same land on the same terms.
3. Purchaser has reserved the right to nominate another person to take over his or her rights or obligations.
4. Purchaser is exercising an option which was open for at least five days.

CONSEQUENCE OF VOID OR TERMINATED DEEDS OF ALIENATION

The consequences of deeds of alienation that are void or that have been terminated are arranged on a basis which operates fairly towards both parties.

Each party may recover what he or she has performed.

The purchaser may recover from the seller:

1. Interest on prescribed rate on any payment made in terms of the contract.
2. reasonable pay back(compensation) for expenses incurred for the preservation(maintaining) or improvement of the property
3. Pay back (compensation) for any improvement effected by him or her with the express or implied consent of the owner, if the market value of the land gained more value.

The seller may recover the following form the purchaser:

1. Reasonable compensation for occupation or use of land
2. Compensation for any damage to the property caused intentionally or unintentionally by the purchaser.

THE PROTECTION OF PURCHASERS OF RESIDENTIAL LAND ON INSTALMENTS

Dear readers and my respected customers this aspect does not form part of our syllabus however I will write something on it at the end on a separate document extra information so don't stress

THE SECTIONAL TITLES Act 95 of 1986

This Act offers protection to the purchaser of units, primarily by ensuring that each unit is described accurately in an approved sectional plan

- **Basically what this means is that Sectional plans are registered and any prospective purchaser can establish exactly what he or she are buying therefore it is important that each unit be described accurately in an approved sectional plan.**
- **Further sections must be disclosed in the deed of alienation of each section**
- **If not disclosed purchaser may withdraw from it.**
- **Reason for disclosure new units may influence owners share of common property**

THE SHARE BLOCKS CONTROL Act 59 of 1980

The Act aims at protecting the purchaser of shares in the company by supplying him or her with adequate information and by providing other protective measures to members of share-block companies

The purchaser of a share can also terminate his contract within 5 working days same as for the Alienation of Land ACT.

THE FORM AND CONTENTS OF THE CONTRACT

- **Contract has to be in writing and signed by or on behalf of the parties.**
- **Must contained prescribed information to: 1. immovable property owned or leased by the company, 2. parties to the contract and addresses, 3. share which is sold as well as share price, 4. installments and interest rate**
- **Seller must supply purchaser with a copy of the contract within 14 days of conclusion of the contract.**

RESTRICTION AND RECIEPT OF CONSIDERATION

A consideration for shares may be received before the incorporation of the share-block company, only if it is paid into the trust account of a practitioner (attorney, share director) or estate agent or if a guarantee for its repayment has been given by a financial institution or insurer.

PROTECTION DURING EXISTENCE OF SHARE-BLOCK SCHEME

The share-block company may not engage in any activities not required for realization of its main object, which should be to operate a share-block scheme for example, the share block company may not engage in activities which may cause the company to go insolvent.

Share Block company may only increase its loan obligation or encumber (give security) its assets on one of the following instances:

1. The increase was disclosed to all the members when they acquired the shares
2. Members approved of it.

Also protection against indebtedness is needed however a share block company does not need permission from member when it encumbers its assets to secure an existing liability.

Act also limits:

- Excessive control by the developer of the voting rights in the company
- Votes attached to shares held by developer may not be exercised for certain decision such as to increase loan obligation
- Members may appoint 1 director in a share block company, if more than ten members they can appoint 2 directors.

CONSEQUENCE OF VOID CANCELLED CONTRACTS

The consequence is regulated by the Share Blocks Control Act in substantially the same way as in the Alienation of Land Act.

- **Rouwkoop** clause states: if a purchaser breaches a contract the contract is deemed to have been terminated and becomes liable for forfeiture or the payments of penalty or damages
- Very important for purchasers in Share Block Scheme as such clauses do not usually qualify as penalty clauses.

THE PROPERTY TIME SHARING CONTROL Act 75 of 1983

The Act gives a person the right to occupy immovable property for a specific or determines period every year. It also protects purchasers of time-share property.

- Time sharing scheme can be established on a sectional title scheme, a share block scheme or even in the form of a club
- The scheme must comply with the legislation
- Regulations have been made under the Act regarding extra information that must be disclosed by time share schemes this is the difference in connection to share block methods etc.

THE FORM AND CONTENTS OF THE CONTRACT

Time share contract must be in writing. In the official language of the chosen purchaser and signed by both parties.

Some of the things the contract must contain:

1. Name and addresses of the parties
2. Description of legal basis, duration, time sharing interest sold and the periods where the purchaser can use the facilities
3. Particulars over the immovable property, ownership or mortgage bonds over it.
4. Considerations, instalments and interest rate

Contract of time share will be invalid if:

1. Someone acting on behalf of the seller is regarded as the agent of the purchaser.
2. Seller exempted from liability for any act, omission of someone who acted on his behalf
3. Seller's liability of eviction is excluded or restricted.

- 4. Purchaser binds himself in advance to agree if the seller later wishes to transfer some of his obligations to someone else.**

RESTRICTION ON THE RECEIPT OF CONSIDERATION

Any consideration received from time-share accommodation before an architect certificate has been issued may be kept in trust by a practitioner or an estate agent, or its refund must be guaranteed by a financial institution or insurer.

- **Architect certificate must contain state certain things such as, building erected according to approved plans etc**

THE PURCHASERS RIGHT TO TERMINATE THE CONTRACT

The contract may be cancelled if an architect's certificate is not delivered to him or within the time stipulated.

This provision protects the purchaser who buys time shares in uncompleted buildings if the accommodation is not completed on time.

CONSEQUENCE OF VOID OR CANCELLED CONTRACTS

The consequence is regulated in exactly the same ways as in the Alienation of Land Act, which has already been discussed.

THE NATIONAL CREDIT ACT 34 OF 2005

The Act applies in respect of transactions in terms of which movable property or services are sold to a purchaser against payment of the price in installments over a period in the future.

The following features must be present:

1. the whole or part of the price is paid in installments
2. possession and use of the property is transferred to the consumer
3. Ownership of the property is reserved and passes only when the agreement is complied with, or ownership passes immediately subject to the right of the credit provider to repossess the goods should the consumer fail to satisfy all his or her financial obligations in terms of the agreement.
4. Interest fees or other charges are payable to the credit provider in respect of the agreement or deferred amount.

- Installment agreement is an example of a credit transaction which is one of the forms of a credit agreement
- Certain terms in credit agreement are invalid such as liability in terms of implied warranties
- If installment agreements are registers on premises other than business premises the purchaser enjoys a statutory right to terminate the contract within 5 working days via a notice.
- Purchaser must also pay for any services rendered in connection with the agreement

GOOD LUCK HOPE UNIT 1 WAS BENEFICIAL

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