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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 ↓ SELLER UNDERTAKES TO DELIVER A THING TO ↓ BUYER & ↓ LATTER IN TURN UNDERTAKES TO PAY ↓ FORMER A SUM OF MONEY IN EXCHANGE FOR ↓ THING.

TWO ESSENTIALIA - ACCORDING TO ↓ DEFINITION

- (i) ↓ PARTIES MUST AGREE & 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 ↓ PARTIES.

↓ 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

- 1) Parties must agree expressly or tacitly & ↓ lessee must restore ↓ thing leased to ↓ lessor @ some or other time.
- 2) In a contract of lease such an obligation arises not out of ↓ conclusion of ↓ contract, but out of ↓

Title:

Incidentalia - a clause in a contract of sale \perp a seller guarantees his title.

Naturalia - \perp seller stand in for eviction of \perp 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 \Rightarrow (contract of sale).

* \perp juristic act creating obligations must not be confused with \perp transfer or cession.

* A right cannot be regarded as a (incorporeal) thing.

Simulation

\perp parties representations as regards \perp nature of their contract (simulation) should in no way influence \perp courts decision. What \perp duties are to which \perp parties commit themselves as well as whether these correspond to \perp essentialia of a contract of sale, need only be noted.

(2)

DISTINCTION BETWEEN UNDERTAKING & PERFORMING AN OBLIGATION

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

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

THE UNDERTAKING TO DELIVER A THING

A undertaking to carry out an act of transfer

Delivery: There can only be a contract of sale if a 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 conductio operis : (contract for letting & hiring of work) is an agreement whereby an independent contractor undertakes to render a results of his labour to a other party. Contract of sale - seller's obligation is essentially one to deliver / locatio conductio operis a person accepting work is essentially a duty to do something.

(4)

The *Emptio Rei Speratae* (sale of a future thing)
& *emptio Spei* (sale of a pure chance)

↓ 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 materialises, so that it can be delivered. (2) It must be possible to deliver the thing from the conclusion of the contract or initial impossibility of performance.

THE EMPTIO REI SPERATAE