

Business & Contract Law



Week 5

PART 3: CONTRACTUAL LAW

G/Contracts with Consumers

24. Sales Contracts
25. Consumer Contracts
26. Leasing
27. Consumer Protection
28. International Sales Contracts

24 - Sales contracts

- A A contract of sale is a contract whereby the seller agrees *to deliver the property* sold to the buyer and to *transfer the ownership* therein to him and whereby the buyer agrees to pay to the seller the purchase price ([CO art 184](#)). The object must be specified.
- B On conclusion of the contract, the benefits and risks usually pass onto the buyer ([CO art 185](#)).

24 - Sales contracts

- C The object of sale is movable if not registered as estate or land ([CO art 187](#)).

- D Packaging costs fall onto the seller ([CO art 188](#)), unless otherwise agreed.

But if the object must be transported to another place of that of performance, transportation costs are at the expense of the buyer ([CO art 189](#)), unless otherwise agreed.

24 - Sales contracts

E In case the object is not delivered and the seller is in default, the buyer may renounce delivery and claim damages ([CO art 190](#)).

F The seller must warrant the object is free from third party rights (eviction/ dispossession in particular) ([CO art 192](#)).

Otherwise the contract is deemed terminated ([CO art 195](#))

24 - Sales contracts

G The seller is bound to guarantee the qualities promised and is liable for defaults even if he was not aware of them on the time of conclusion of the contract ([CO art 197](#)).

This is the *warranty of quality and fitness* in that the object must be of sufficient quality to be sold on the market.

Any provisions seeking to exclude warranty, in the case of fraud, are null ([CO art 199](#)). Otherwise an object may sold without guarantee, so long as it is made clear and agreed upon.

24 - Sales contracts

H However, the seller is not liable for any defects known by the buyer at the time of purchase and in particular of defects that an attentive buyer ought to have discovered ([CO art 200](#)).

This is the principle of *caveat emptor*.

Therefore defects must be notified right away ([CO art 201](#)) even if the object was shipped from abroad ([CO art 204](#)).

24 - Sales contracts

I In cases of a breach of warranty the buyer can seek to rescind the contract or ask for a lower price ([CO art 205](#)).

The time of prescription is 1 year after the delivery of the object ([CO art 210](#)).

24 - Sales contracts

- J The sale of immovable objects requires public deed ([CO art 216](#)).

- K There is a general warranty for immovable assets that is valid for 5 years ([CO art 219](#)).

Note that the norm [SIA 118](#) renders this general warranty more specific.

24 - Sales contracts

Other aspects:

- Samples: CO art 222 ff
- Hire-purchase: CO art 227a ff
- Auctions: CO art 229 ff

25 - Consumer contracts

As much the concept of «consumer» is widely used, in Swiss law it is scarce and not fully deployed:

“Consumer contracts are contracts on supplies/offers for ordinary consumption intended for the personal use of the consumer or his family and offered by the other party in the course of its professional or commercial activity.” (CPC art 32)

Example: leasing contacts

26 - Leasing contracts

A leasing contract involves three participants:

- The seller e.g. car dealer - Mercedes
- The bank e.g. Mercedes Finance
- and the lessee, buyer

It is a written contract (LCC art 11).

27 – Consumer Protection

- A A producer is liable for damages if the defective product has caused death or the destruction of an object used under ordinary consumption circumstances (LRFP art 1).

- B A product has a defect when it does not offer the normal security conditions one would expect given its presentation, use, and distribution (LRFL art 4).

27 – Consumer Protection

- C The following defects may give rise to claims for damages:
1. Design defects due to a faulty conception or planning.
 2. Manufacturing defects due to the improper production of an individual commodity.
 3. Failure to warn, where the producer having full knowledge of a potential danger omits to inform the consumer.
 4. Surveillance defects due to insufficient monitoring by the producer.

27 – Consumer Protection

6. Development risks resulting from the lack of technical knowledge at the time of production.
7. Unknowable defects which exist in some part of the production but which are difficult to detect.

In addition to concerns for the quality of products in the market, there is a concern for the quantity hence licensing regulations and standards.

27 – Consumer Protection

However, there are exceptions to producer liability:

http://www.admin.ch/ch/f/rs/221_112_944/a5.html

Yet, a producer cannot avoid/exclude liability contractually:

http://www.admin.ch/ch/f/rs/221_112_944/a8.html

28 – International Sales Contracts

Applicable only to (business) parties whose places of business are in different states (CISG art 1, para 1). The prerequisites for applicability:

- the states are Contracting states
- the Contracting States have established rules of private international law;
- the (business) parties have places of business in different states
- the nationality of the parties is an irrelevant factor.