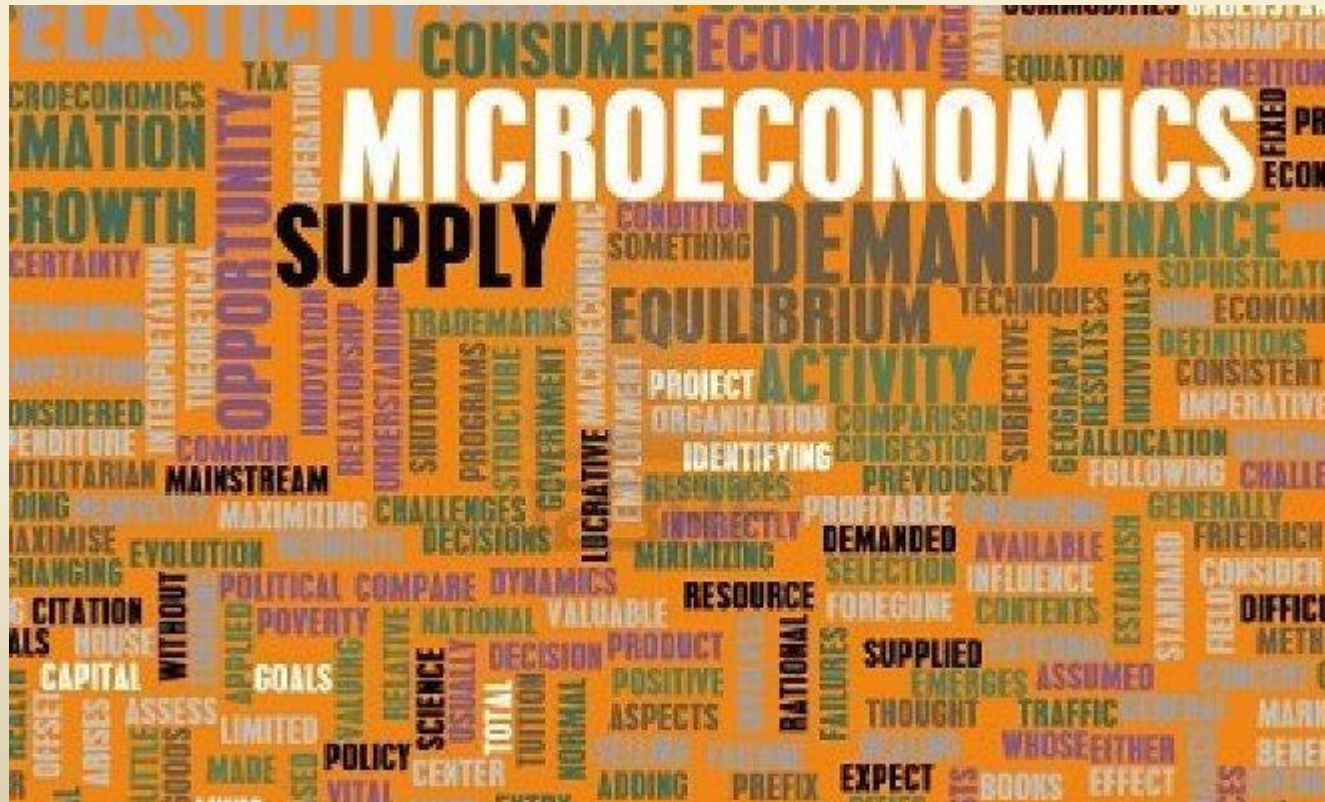


presentation19: Markets and the law



What can and cannot be demanded/sold is based on the provisions in force. It is not just a question of the legality of the products/services but rather how consumers and producers are meant to relate through a number of contracts.

In Switzerland for instance we can distinguish

- Sales contracts that concern tangibles
- Lease contracts that concern tangibles
- Mandates that concern services
- Work contracts that concern construction

Sales contracts

A contract of sale “is a contract whereby the seller undertakes to deliver the item sold and transfer ownership of it to the buyer in return for the sale price, which the buyer undertakes to pay to the seller” (CO art 184).

Two aspects:

- The seller is obliged to deliver the good and the buyer to pay the price agreed.
- There is transfer the ownership at the moment of their physical transfer - in case of a sale of real estate by its registration with the Land Registry

In addition to the provisions meant to protect the consumer, there is warranty for defective goods (CO Art. 197, a) in that “the seller is liable to the buyer for any breach of warranty of quality and for any defects that would materially or legally negate or substantially reduce the value of the object or its fitness for the designated purpose”.

The buyer has an obligation to pay the price in accordance with the terms of the contract and to accept the goods provided they are offered as contractually agreed (CO art 211). Usually payment is due as soon as the property passes into the buyer's possession, unless another time has been agreed (CO art 213).

Even though the seller must sell goods of a certain marketable quality, this obligation must be met by the obligation of the buyer to inspect the goods purchased so as to make a notice for the defects discovered - known as the principle of *caveat emptor* (CO art 201, para 1)

Leasing contracts

A leasing contract involves three participants: the seller, the bank, and the lessee.

The seller sells the leased object to the bank, who becomes the owner and who then leases it to the lessee against payment in the form of rent or monthly instalments. In addition, the seller often concludes a maintenance contract with the lessee whose cost is included in the amount paid by the lessee.

Mandates

A mandate is a contract of representation whereby the mandatary/agent (*mandataire*) takes the responsibility to perform business in the name of the mandator/principal (*mandant*) (CO art 394):

Work contracts

A contract for work is a contract whereby the contractor (*entrepreneur*) undertakes to carry out work and the principal/customer (*maître*) undertakes to pay him for that work (CO art 363).

Work contracts are not to be confused with employment contracts.

It is to be noted that if the CO starts with outlining a relationship, norm SIA 118 art 1 puts emphasis on the work that has to be realized. The norm is important: “the content of CO art. 363 to 379 apply to the contract, unless the parties agree to apply other rules either by the adoption of the norm SIA 118, or of quite other contractual arrangement”.

In principle the contractor is responsible for any defects - since he has to deliver work without defects (SIA 118 art 166), or deviations from the contract (CO art 366).

The contractor has to take remedial action in case of defects (CO art 368). However, following CO art 367, the customer must inspect the condition of work in the normal course of business and not only at the end.

Visible defects must be notified within 2 years of completion of the work (SIA 118 art 172) and 5 years for hidden defects (SIA 118 art 180, CO art 371).