



LAW ON SALES

HANDOUT

I. CONTRACT OF SALE

By the contract of sale, one of the contracting parties obligates himself to transfer the ownership of and to deliver a determinate thing and the other to pay therefore the price certain in money or its equivalent.

A. Elements of contract of sale

A.1 Essential Requisites of a contract of sale

1. **Consent** of the contracting parties by virtue of which, the vendor obligates himself to transfer the ownership of and to deliver a determinate thing, and the vendee binds himself to pay therefore a price certain in money or its equivalent.

2. **Object** certain which is the subject matter of the contract. The object must be licit and at the same determinate or, at least capable of being made determinate without the necessity of a new or further agreement between the parties.

3. **Cause** of the obligation which is established. The cause as far as the vendor is concerned is the acquisition of the **price certain in money or its equivalents**, while the cause as far as the vendee is concerned, is the **acquisition of the thing which is the object of the contract**.

A.2 Natural elements (inherent in the contract of sale)

1. **Warranty against eviction.** Eviction means deprivation of the buyer of the whole or part of the thing sold by virtue of a final judgment in court.
2. **Warranty against hidden defects and encumbrances.** Hidden defect is a defect does is not patent or visible; an encumbrance means a burden or impediment imposed upon a thing.

A.3 Accidental Elements

1. terms;
2. place and time of payment;
3. and other conditions agreed upon.

B. CHARACTERISTICS OF A SALE

1. **Consensual** – perfected by mere consent
2. **Bilateral and Reciprocal** – both parties are bound by obligations dependent upon each other
3. **Principal** – there is no necessity for it to depend upon the existence of another contract
4. **Onerous** – because to acquire the rights, valuable consideration must be given
5. **Commutative** – the values exchanged are always equivalent to each other
6. **Nominate** – the Code refers to it by special designation or name

C. Rules on the object of a contract of sale

Requisites:

1. The thing must be within the commerce of men

2. The thing must not be contrary to laws, morals, good customs, public order, and public policy
3. The thing must be determinate - a thing is determinate if it is particularly designated or physically segregated from all others of the same class.

Related Rules on Object:

1. The seller must have the right to transfer the ownership of the thing at the time that it is delivered; it is not necessary that the seller be the owner of the thing at the time of sale.
2. Things having potential existence may be the object of a contract of sale; However, the thing must come into existence, otherwise the sale will not be effective for not having a subject matter.

Emptio rei speratae - sale of future thing; must come into existence otherwise the sale will not be effective

Emptio spei - sale of hope itself; produces effects even if the thing hoped does not come into existence.

Exception: Sale of vain hope is void.

Distinguish between *emptio res speratae* and *emptio spei*

<i>emptio res speratae</i>	<i>emptio spei</i>
1. Sale of a thing having a potential existence	1. Sale of hope
2. The uncertainty is with regard to the quality and quantity but not with regard to the existence of the thing	2. The uncertainty is with regard the existence of the thing
3. The contract deals with the future thing	3. The contract deals with the present thing – hope or expectancy
4. The sale is subject to the condition that the thing should exist, so that if it does not, there is no contract for lack of the essential requisite	4. The sale produces effects even though the thing itself does not come into existence, since the subject matter is the hope itself

3. The goods which form the subject of a contract of sale may be either:

- a. Existing goods owned or possessed by the seller.
- b. Goods to be manufactured, raised or acquired by the seller after the perfection of the contract of sale, called: “Future goods” or goods whose acquisition by the seller depends upon a contingency which may or may not happen.

EFFECTS OF THE CONTRACT WHEN THE THING HAS BEEN LOST

Who bears the loss?

1. If the thing has been lost before perfection, the seller bears the loss
2. If the object was lost after delivery to the buyer, the buyer bears the loss (res perit domino – the owners bear the loss).
3. If the object was lost after perfection but before delivery, the buyer bears the loss, in effect, it is an exception to the principle of res perit domino

Exception to the rule that between perfection and delivery, the buyer bears the loss:

- a. If the object sold consists of fungibles sold for a price fixed according to weight, number, or measure.

Fungibles are personal property which may be replaced with equivalent things.

- b. If the seller is guilty of fraud, negligence, default, or violation of contractual terms.
- c. If the objects sold is generic because “genus does not perish” (genus nun quam perit).

Effect of Loss

1. If the object was lost before the perfection of the contract, the sale is VOID.
2. If the object was partly lost or have deteriorated by, the buyer may at his option treat the sale as:
 - a. Avoided, so he may withdraw or cancel the sale;
 - b. Demand performance as to the remaining object and payment of proportional price.

D. Rules on Price

1. The price is the sum that will be paid for the property that is sold.
2. Price must be certain otherwise the sale is void because of lack of meeting of the minds of the contracting parties.
3. The price is considered certain if:
 - a. It is a fixed amount
 - b. It is certain with reference to another thing certain
 - c. If the determination is left to the judgment of a specified person or persons, subject to the following rules:
 - Should such person or persons be unable or unwilling to fix it, the contract shall be inefficacious, unless the parties subsequently agree upon the price.
 - If the third person or persons acted in bad faith or by mistake, the courts may fix the price.
 - Where such third person or persons are prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed the seller or the buyer, as the case may be.

Some Notable Rules on the Price

- a. Gross inadequacy of the price does not affect a contract of sale, except when it may indicate a defect in the consent, or that the parties intention indicates a donation or some other act or contract;
- b. If the price is simulated, the sale is void.
- c. The fixing of the price cannot be left to the discretion of one of the contracting parties. However, if the price is fixed by one of the contracting parties is accepted by the other, the sale is perfected;
- d. If the price cannot be really determined in accordance to the rules set by law or in any other manner, the contract is void (inefficacious), as the buyer cannot fulfill his duty to pay;
- e. However, if a thing has been parted or delivered to and appropriated by the buyer, he must pay a reasonable price therefore;

E. CAPACITY TO BUY OR SELL

Gen. Rule: All parties who are capacitated may enter into a contract of sale.

1. Rule on Sales between Husband and Wife.

Under the NCC, as a general rule, they are prohibited from donating or selling property from each other during the marriage, except:

- a. When a separation of property was agreed upon in the marriage settlement
- b. When there has been judicial separation of property.

2. Rule on Persons holding a fiduciary relation with respect to certain properties:

Under Art. 1491 of the NCC, the following cannot acquire by purchase, even at public or judicial auction, in person or through the mediation of another person, to wit:

1. **The guardian** – the property of the person or persons who may be under his guardianship.
2. **Agents** – The property whose administration or sale may have been entrusted to them, unless the consent of the principal has been given.
3. **Executors and administrators** – the property of the estate under administration
4. **Public Officers and Employees** – the property of the State or of any subdivision thereof, or of any government owned and controlled corporation, or institution, the administration of which has been entrusted to them. This prohibition shall apply to judges and government experts who in any manner whatsoever, take part in the sale.
5. **Justices, Judges, Prosecuting Attorneys, Clerks of Superior and inferior courts and other officers and employees connected in the administration of justice.** – the property and the rights in litigation or levied upon on execution before court within whose jurisdiction of territory they exercise their respective function. This prohibition shall apply to lawyers with respect to properties and rights which may be the object of the litigation they are handling by virtue of their profession.
6. **Any other persons specially disqualified by law.**

F. Perfection of contract of sale

1. A contract of sale is perfected at the moment there is a meeting of the minds upon:
 - a. The thing or which is the subject of the sale; and
 - b. The price.
2. In case of sale by auction, the contract is perfected when the auctioneer announces its perfection by the fall of the hammer or in any other customary manner.

Rules in case of sale by auction

- a. When sale by auction is perfected? - when the auctioneer announces its perfection by the fall of the hammer, or in any other manner.
- b. Rights of parties before perfection:
 1. Any bidder may retract his bid - because the bid is merely an offer and an offer may be withdrawn at any time before acceptance.

2. The auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

c. Rights of Parties after perfection

1. The winning bidder cannot retract his bid nor can the auctioneer withdraw the goods since there is already a perfected contract.

d. Right of the seller to bid - The seller may bid at the auction provided the following requisites are present:

1. The right to bid must have been reserved expressly by or on behalf of the seller;
2. His right to bid must not be prohibited by law or stipulation;
3. Notice must be given that the sale is subject to a right to bid by or on behalf of the seller.

F. When is the ownership of thing sold transferred to the vendee?

1. Upon ACTUAL; or
2. CONSTRUCTIVE Delivery
3. The parties may however stipulate that the ownership shall not pass to the vendee until the latter shall have FULLY PAID the contract price (Contract to sell)

Actual Delivery

The thing is understood to be delivered when it is placed in the control and possession of the vendee.

Legal or Constructive Delivery

1. **Legal formalities** (Art 1498 of the Civil Code)
 - By execution of public document
2. **Symbolical Tradition or Traditio Symbolica**
 - Such as the delivery of the key of the place where the movable sold is being kept
3. **Traditio Longa Manu**
 - by mere consent or agreement
4. **Traditio Brevi Manu**
 - If the buyer had already the possession of the object even before the purchase, as when the tenant of the car buys the car, that is, he becomes possessor as owner thereof
5. **Traditio Constitutum Possessorium**
 - Opposite of Brevi Manu, the possession as owner changed into possession as lessee

Notes on Transfer of Ownership

1. It is essential for a seller to transfer ownership and therefore, the seller must be the owner of the things sold. (Nobody can dispose of that which does not belong to him).
2. But although the seller must be the owner, he need not be the owner at the time of the perfection of the contract. It is sufficient that he is the owner at the time the object is delivered, otherwise he may be liable for breach of warranty against eviction.
3. Indeed, the seller may not be the owner at the time of perfection because, after all, future things or goods may be sold.

4. A person who has a right over a thing may sell such right. Hence, a usufructuary may generally sell his usufructuary rights.

G. Distinction between contract of sale and contract to sell

Contract of Sale	Contract to Sell
1. The title passes to the vendee upon delivery of the thing sold	1. By agreement, ownership is reserved in the vendor and is not to pass until full payment of the price
2. Non-payment is a negative resolutive condition	2. Full payment is a positive suspensive condition
3. Vendor has lost and cannot recover ownership until and unless the contract is resolved or rescinded	3. The title remains in the vendor, when he seeks to eject the vendee because of noncompliance by such vendee with the suspensive condition stipulated, he is enforcing the contract and not resolving the same.

Sample Problem:

“A” agrees to sell a sewing machine to “B” for 3,500 in cash, and places the machine aboard the truck owned by “B”, while the latter goes home to fetch money. Before B returns, “C” appears and claims ownership of the sewing machine, exhibiting a document signed by “B” selling the machine to “C”. “A” rejects “C” alleging that he is still the owner thereof.

Q. Is there a contract perfected?

Yes. All the essential elements to constitute a valid contract is present.

Q: Is the contention of “A” that he is still the owner, correct?

Yes. The agreement of the parties indicates that the sale is in cash. Hence, there is a reservation on the part of the vendor of his right of ownership over the thing sold. The delivery of the thing sold to the truck of the vendee does not vest ownership over the vendee, such ownership maybe vested only upon the actual payment of the actual price.

Q: Is the case at bar a contract of sale or a contract to sell?

The case at bar is a contract to sell considering that the ownership over the property is reserved in the vendor and is not to pass to the vendee until full payment of the purchase price.

H. Distinction between contract of sale and contract of piece work

Contract of Sale	Contract of Piecework
1. The object/article is manufactured in the ordinary course of business of the obligor	1. The article is to be manufactured specially for the customer upon his special order
2. The article is offered in the general market	2. The article is not offered mfor the general market

I. How to determine if a contract is a barter or sale:

1. If the consideration of the contract consists partly in money and partly in another thing, the transaction shall be characterized by the **manifest intention** of the parties;
2. If such intention **does not clearly appear**, it shall be considered **a barter** if the value of the thing given as part of the consideration **exceeds the amount** of the money or its equivalent, otherwise it is sale.

Rule to determine whether a contract is a sale or barter

- a. First Rule : Intent
- b. If intent does not clearly appear:
 1. If the thing is more valuable than money - BARTER
 2. If 50:50 – SALE
 3. If the thing is less valuable than money – SALE

J. Rules on promise to buy/sell

1. **Bilateral promise** - one party promises to buy and the other party promises to sell a determinate thing at an agreed price.

This is as good as a perfected sale; For enforceability, the rules in Statute of Frauds must be observed.

2. **Unilateral Promise** - here the promise to buy or to sell a determinate thing at a certain price is made by only one of the parties. The promise may be accepted or not and shall have the following effects:

- a. If not accepted the promise - no legal effect.
- b. If accepted the promise:
 - If supported by a consideration distinct from the price, the promise is binding upon the promisor.
 - If it is not supported by any consideration distinct from the price, the promise is not binding upon the promisor. Accordingly, the promisor can withdraw his promise by informing the promisee of such withdrawal even before the lapse of any option period given to the promisee.

K. Distinction between option contract and earnest money

Option Contract	Earnest Money
1. It is an agreement granting a privilege to buy or sell within an agreed time and at a determined price. (unilateral promise to buy or sell)	1. Money advanced by the vendee to the vendor in a contract of sale
2. It is a separate and distinct contract from that which the parties may enter into upon consummation of the option.	2. The money forms part of the contract price
3. It is supported by a consideration distinct from the price.	3. The money serves as proof of the perfection of the contract.

L. Rule on “on sale or return” and “on trial/on satisfaction”

On sale or Return	On Trial or on satisfaction
1. When the goods are delivered to the buyer “on sale or return” to give the buyer an option to return the goods instead of paying the price, the ownership passes to the buyer on delivery, but he may revest ownership in the seller <ol style="list-style-type: none"> by returning or tendering the goods within the time fixed in the contract, or if no time has been fixed, within a reasonable time 	1. When goods are delivered to the buyer “on approval”, or “on trial”, or “on satisfaction” or other similar terms, the ownership thereon passes to the buyer <ol style="list-style-type: none"> When he signifies his approval or acceptance to the seller or does any other act adopting the transaction; If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, if no time has been fixed, on the expiration of a reasonable time.

Problem 1:

A sold his piano to B, who immediately paid the price. Because the piano was at the repair shop at the time the contract was perfected, no delivery was made. Before delivery could be made, C, a creditor of A, who has filed a suit against him, attached the piano.

Q: What right has B over the piano?

B. acquired personal right (jus ad rem) over the piano. Hence, he can compel A to deliver the piano to him in accordance with the contract

Q: Can B oppose the attachment levied by C?

No, B has not acquired ownership (real right) over the property yet for lack of delivery. As of the time of attachment, the ownership of the property remains at the vendor.

Q: What remedy, if any, has B had against A?

He may seek indemnification for damages

Problem 2:

a. S delivered to B a videocam on sale or return. Did B become the owner upon delivery?

ANS: Yes, in view of the delivery.

b. In the preceding problem, can B return the videocam even if he finds nothing wrong with the quality of the goods?

ANS: Yes, the discretion to accept or return the thing delivered belongs to B as buyer.

- c. In letter (a), if B does not return the videocam in due time, what will be the consequences of his inaction?

ANS: The sale will be considered absolute and the price may be recovered since after all, the delivery had been made.

- d. In letter (a) if B had not yet returned the goods, does he have to pay for them even if the videocam has been destroyed by a fortuitous event?

ANS: Yes, for the ownership has been transferred to him, and being the owner, he bears the loss.

M. Some Rules on Sale on Approval or Trial or Satisfaction

- a. The risk of loss remains with the seller, although there has been delivery until the sale becomes absolute;
Exceptions:
1. If buyer is at fault;
2. If the buyer has expressly agreed to bear the loss.
- b. The buyer must give goods a trial except when it is evident that it cannot perform the work intended;
- c. The period within which the buyer must signify. If y his acceptance commences to run only when all the parts essential for the operation of the object have been delivered;
- d. If it is stipulated that a third person must satisfy approval or satisfaction, the provision is valid, but the third person must be in good faith. If refusal to accept is not justified, the seller may still sue;
- e. Generally, the sale and delivery to a buyer who is an expert on the object purchased is not obviously a sale on approval, trial, or satisfaction.

N. Rules on double sale

1. The determination of who has preferred right (who becomes the owner) in case the same thing had been sold to different buyers is governed by the following:
- a. Movables -ownership shall be transferred to the person who may have first taken possession thereof in good faith;
- b. Immovable Property:
- **(First Registrant in good faith)** The buyer who first registered in good faith; good faith means the registrant is not aware that there was a prior buyer or that somebody else is in possession of the property sold with prior claim of ownership.

- **(First possessor in good faith)** Should there be no inscription or registration, ownership shall pertain to the person who in good faith was first in the possession; and
- **(Oldest title)** - in the absence of inscription and possessor, the property shall be considered owned by the person who in good faith presents the oldest title—first in time, stronger in right.

O. Sale of Real Property in Installments

Recto Law (Art. 1484) - Remedies available to the vendor in case of breach of contract of sale of personal property the price of which is payable in installment payment

1. Exact Fulfillment of the obligation should the vendee fail to pay;
2. Cancel the sale, should the vendee's failure to pay cover two or more installments;
3. Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In the last case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any Agreement to the contrary shall be void

The above-mentioned remedies are alternative and not cumulative.

Requisites:

- a. There must be a contract;
- b. The contract must be one of sale;
- c. The thing sold is personal property;
- d. The sale must be on the installment plan;
- e. The said property is used as security for the loan under a chattel mortgage;
- f. Foreclosure of chattel mortgage on the thing sold shall bar recovery of any deficiency;
- g. A stipulation that the installments or rents paid shall not be returned to the buyer shall be valid insofar as the same may not be unconscionable under the circumstances.

Maceda Law

In all transactions or contracts involving the sale or financing of real estate on installment payments, including residential condominiums apartments but excluding industrial lots, commercial buildings, and sales to tenants under RA 3844 as amended by RA 6389, where the buyer has paid at least two years of installments, the buyer is entitled to the following rights in case he defaults in the payment of the succeeding installments:

1. To pay without additional interest, the unpaid installment due within the total grace period earned by him, which is hereby fixed at a rate of one month grace period for every one year of installment payments made: Provided, that this right shall be exercised by the buyer only once in every five years of the life of the contract and its extensions, if any;
2. If the contract is cancelled, the seller shall refund to the buyer the cash surrender value of the payments on the property equivalent to fifty percent of the total payments made and, after five years of installment, an additional 5% every year but not to exceed 90% of the total payments

made: Provided that the actual cancellation of the contract shall take place after 30 days from receipt by the buyer of the notice of cancellation or the demand for rescission of the contract by notarial act and upon full payment of the cash surrender value to the buyer.

3. In case where less than two years of installments were paid, the seller shall give the buyer a grace period of not less than 60 days from the date the installment became due. If the buyer fails to pay the installment due at the expiration of the grace period, the seller may cancel the contract after 30 days from receipt by the buyer of the notice of the cancellation or demand for rescission of the contract by a notarial act.
4. Under number 2 and 3 above, the buyer shall have the right to sell his rights or assign the same to another person or to reinstate the contract by updating the account during the grace period and before the actual cancellation of the contract. The deed of sale or assignment shall be done by notarial act.
5. The buyer shall have the right to pay in advance any installment or the full unpaid balance of the purchase price at any time without interest and to have such full payment of the purchase price annotated in the certificate of the title covering the property.

Rules in Maceda Law:

1. If the buyer has paid at least two years installment:

- a. In case the buyer defaults in paying the installment payments. The buyer has a grace period of one month for every year of installment payment. The buyer can pay the unpaid installment interest free during this grace period.
- b. The foregoing right shall be exercised by the buyer only once in every five years of the life of the contract.
- c. The seller can cancel the sale if the buyer still failed to pay within the grace period. The following must be complied with if the seller wishes to cancel:
 - Give a notarized notice of cancellation or demand for rescission of the contract by a notarial act;
 - There must be full payment of the cash surrender value, if any.
 - The actual cancellation shall take place after 30 days from receipt by the buyer of the notice of cancellation or the notarial demand for rescission and upon full payment of the cash surrender value.
 - Amount of cash surrender value - 50% of the total payments made plus after five years of installments, an additional 5% every year.
 - The amount of CSV should not exceed 90% of the total payments made; and down payments, deposits and options on the contract shall be included in the computation of the total number of installment payments made.

2. If the buyer has paid less than two years installment:

- a. Grace period - the buyer may pay within 60 days from the date the installment became due.

- b. Cancellation - in case of non-payment within the 60-day grace period, the seller may cancel the sale after 30 days from receipt of the buyer of the notice of cancellation or demand for rescission.

II. OBLIGATIONS OF THE VENDOR

A. Obligations of the Vendor

1. To transfer ownership (cannot be waived)
2. To deliver the thing sold (cannot be waived) - including its accessions and accessories in the condition in which they were upon perfection of the contract. All of the fruits shall pertain to the vendee from the day on which the contract is perfected.
3. To warrant the object sold (this can be waived or modified since warranty is not an essential element of the contract of sale) - the vendor is liable for breach of warranty against eviction and warranty against hidden defects and encumbrances;
4. To preserve the thing from perfection to delivery, otherwise he could be liable for damages. To take care of the thing sold with the diligence of a good father of a family unless the law or the stipulation of the parties requires another standard of care.

- B. Sale by a person who is not the owner of the thing sold -The buyer acquires no better title than the seller had, except in the following cases:**
1. When the true owner is estopped or precluded by his conduct from denying the vendor's authority to sell;
 2. Where the sale is made by the registered or apparent owner in accordance with recording or registration laws;
 3. Where the sale is made pursuant to a statutory power of sale under the order of a court of competent jurisdiction;
 4. Where the purchase is made in a merchant's store, or in fairs, or markets, in accordance with the Code of Commerce and Special Laws

Note: As far as the third exception is concerned, it must be observed that if the object which was sold at the public sale is movable property, the true owner who had lost or who has been unduly deprived of it can still recover the same from the vendee. However, if the latter had acquired it in good faith, such owner cannot obtain its return without reimbursing the price paid therefore.

C. Time and place of delivery of the thing sold

- a. Place of Delivery**
1. Agreement (express or implied)
 2. If no agreement – get the usage of trade
 3. If no usage - the buyer must get them at the seller's business place or residence. Exception: in the place where the goods are found

- b. Time of delivery**
 - 1. Agreement (express or implied);
 - 2. If no express agreement, the delivery must be done within a reasonable period of time;
 - 3. What is reasonable is a question of fact, depending upon circumstances provable even by evidence aliunde (extrinsic evidence);
 - 4. Among the circumstances that may be considered are the following
 - a. Character of the goods
 - b. Purpose intended
 - c. Ability of seller to produce the goods
 - d. Transportation facilities
 - e. Distance through which the goods must be carried
 - f. Usual course of the business in that trade
 - 5. Premature delivery generally is not allowed because a term is for the benefit of both parties.
- D. Expenses of delivery** - the seller bears the expenses of an incidental to putting the goods into a deliverable state, unless otherwise stipulated.
- E. When is a seller not bound to deliver the thing sold?**
 - a. If the vendee has not paid him the price;
 - b. If no period for the payment of the price has been fixed in the contract;
 - c. If a period has been fixed for the payment of the price, the seller is bound to deliver the thing sold. However, the seller is not bound to deliver if the buyer loses the right to make use of the period.
- F. Rule when QUANTITY delivered is LESS than that agreed upon**
 - 1. Buyer may REJECT; or
 - 2. Buyer may ACCEPT what have been delivered, at the contract rate
- G. Rule when the QUANTITY delivered is MORE than that agreed upon**
 - 1. Buyer may REJECT ALL; he must not be burdened with the duty of segregation, if he does not so desire.
 - 2. Buyer may ACCEPT the good AGREED upon and may reject the rest;
 - 3. If he gets all, he must pay for them all at a contract rate
- H. What are the rights of the buyer when quantity or quality of goods delivered is different from that which the seller contracted to sell?**
 - 1. Reject the goods - because the creditor cannot be compelled to accept partial payment;
 - 2. Accept the goods - the buyer must pay for the goods at the contract rate. If the buyer has used or disposed of the goods before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than fair value to him of the goods so received.
- I. What if the goods delivered are mixed goods of different description? The buyer may:**
 - 1. Accept the goods agreed upon and reject the rest, if the sale is divisible;
 - 2. Reject the whole of the goods, if the sale is indivisible.

Note: If the contract is indivisible, the buyer may reject the whole of the goods.

J. When is a seller deemed to be unpaid seller?

1. When the whole of the price has not been paid or tendered; and
2. When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer or otherwise

Note: The term seller includes any person who is in position of the seller, such as an agent of such seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself, paid, or is directly responsible for the price.

Remedies of an unpaid seller

Notwithstanding that the ownership of the goods has been passed to the buyer, the unpaid seller of goods, as such, has the following remedies:

1. A lien on the goods or right to retain them for the price while he is possession of them;
2. In case of insolvency of the buyer, a right of stopping the goods *in transit* after he has parted the possession of them;
3. A right of resale;
4. A right to rescind the sale

Where the ownership of the goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-existent with his rights of lien and stoppage in transit where the ownership has passed to the buyer.

When is right to retain the goods available to the unpaid seller?

1. Where the goods have been sold without any stipulation as to credit
2. Where the goods have been sold on credit, but the term of the credit has expired; and
3. Where the buyer becomes insolvent

Note: The seller may exercise his right of lien or retention notwithstanding that he is in possession of the goods as agent or bailee for the buyer

When does an unpaid seller lose his lien on or right of retention over the goods?

1. When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the ownership in the goods or the right to the possession thereof;
2. Where the buyer or his agent lawfully obtains possession of the goods; and
3. By waiver thereof

Note: The unpaid seller of goods having a lien thereon, does not loosen his lien by reason only that he has obtained judgment for the price of the goods

Stoppage *in transitu*, definition

It refers to the right of the unpaid seller to resume possession of the goods at any time while they are in transit by virtue of which he will then be entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

This right becomes available to the seller when he has already parted with the possession of the goods and the buyer becomes insolvent.

How is the right of stoppage in transitu exercised?

1. By obtaining actual possession of the goods; or
2. By giving notice of his claim to the carrier or to the other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. The notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent the delivery to the buyer.

When is right of resale available to the unpaid seller?

1. Where the goods are perishable in nature
2. Where the seller has expressly reserved the right of resale in case the buyer should make default, or
3. Where the buyer has been in default in payment of the price for an unreasonable time

Note: Before a resale can be made, it is essential that the unpaid seller should have a right of lien or should have stopped the goods *in transit*

III. Warranties

A. Warranties may be express or implied. Implied warranties are the natural elements of a contract of sale.

1. **Express Warranties of the seller** - an express warranty is an affirmation of fact or any promise by the seller relating to the thing if the natural tendency of such affirmation or promise is to induce the buyer to purchase the same, and if the buyer purchases relying thereon.
2. **Implied Warranties of the seller** - Unless a contrary intention appears, the following are deemed included in a contract of sale even without an express stipulation.

B, Warranty against eviction/Warranty in case of eviction - this is an implied warranty that the seller has a right to sell the thing at the time when the ownership is to pass and the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

- The warranty may be eliminated by stipulation, so long as the stipulation was agreed upon in good faith;
- Any stipulation exempting the vendor from the obligation to answer for eviction shall be void, if he acted in bad faith.

Requisites for the enforcement of warranty in case of eviction:

1. The vendee has been evicted;
2. The eviction was by virtue of final judgment;
3. The eviction was based on the ground on a right prior to the sale or an act imputable to the vendor and;
4. The seller must be summoned in the suit for eviction at the instance of the buyer.

Waiver of Warranty in case of eviction - may be conciente or intencionada:

1. The waiver is **conciente** when buyer made the waiver without the knowledge of the risks of eviction - the seller shall only pay the value which the thing sold had at the time of the eviction;
2. The waiver is **intencionada** when the buyer made the waiver with knowledge of the risks of eviction and assumed its consequences - seller is NOT liable.

Liabilities of the seller in case of breach of the said Warranty - the buyer shall demand from the seller: (V-I-C-E-D)

1. The return of the **value** which the thing sold had at the time of the eviction, be it greater or less, than the price of the sale;
2. The **income** or fruits if he has been ordered to deliver them to the party who won the suit against him;
3. The **cost** of the suit which caused the eviction and in a proper case, those of suit brought against the vendor for the warranty;
4. The **expense** of the contract, if the vendee has paid them
5. The **damages** and interests and ornamental expenses if the sale was made in bad faith.

C. Warranty against hidden defects - this is an implied warranty that the thing shall be free from any hidden faults or defects or any change or encumbrance not declared or known to the buyer;

Requisites:

1. The defect must be hidden (not known and Could not have been known);
2. The defect must exist at the time the sale has been made;
3. The defect must ordinarily have been excluded from the contract;
4. The defect refers to which would render the thing unfit for the use for which it is intended or
5. should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof he would not have acquired it or would have given a price for it.

Remedies - In case of breach of warranty against hidden defects within the prescriptive period of **six months** from the delivery of the thing. The buyer may elect between:

- a. Withdrawing from the contract also known as accion redhibitoria with damages
- b. Demanding a proportionate reduction of the price also known as recoupment with damages.

D. Warranties under the Consumer Act (RA No. 7394)

1. Consumer products are goods which are primarily for personal, family, household or agricultural purposes which shall include but not limited to goods, drugs, cosmetics, and devices;
2. Any seller or manufacturer who gives an express warranty for consumer products is required to do the following:
 - a. Set the terms of warranty in clear and readily understandable language and clearly identify himself as the warrantor;
 - b. Identify the party to whom the warranty is extended;
 - c. State the products or parts covered;
 - d. State what the warrantor will do in the event of a defect, malfunction, or failure to conform to the written warranty and at whose expense;
 - e. State what the consumer must do to avail of the warranty rights;
 - f. Stipulate the warranty period.

Period of Warranty - It is also mandated that all written warranties or guarantees issued by a manufacturer, producer, or importer shall be operative from the moment of sale. The period of warranty shall be:

1. The parties may stipulate the period within which the express warranty shall be enforceable. If the implied warranty on merchantability accompanies an express warranty, both will be of equal durations;
2. Any other implied warranty shall endure not less than 60 days nor more than one year following the sale of new consumer products.

E. Redhibitory defect of animals - if the hidden defect of animals, even in case a professional inspection has been made, should be of such a nature that expert knowledge is not sufficient to discover it, the defect shall be considered as redhibitory;

Notes:

1. The sale of animals suffering from contagious diseases shall be void;
2. A contract of sale of animals shall also be void if the use or service for which they are acquired has been stated in the contract and they are found to be unfit therefor;
3. If a veterinarian, through ignorance or bad faith should fail to discover or disclose it, the veterinarian shall be liable for damages;

Prescriptive period - the redhibitory action based on the faults or defects of animals, must be brought within **40 days from the date of their delivery** to the vendee.

V. Obligations of the Buyer

- A.** The obligations of the buyer/vendee are as follows:
1. **To accept delivery**; in the following manner:
 - a. Express acceptance. He intimates to the seller that he is accepting the goods;
 - b. When he does any act in relation to the goods which is inconsistent with the ownership of the seller;

- c. When he retains the goods after the lapse of a reasonable time without intimating to the seller that he has rejected them.

2. To pay the price of the thing sold at the time and place stipulated in the contract.

- B. When can the vendee suspend payment of the price?
 - 1. Should the vendee be disturbed in the possession or ownership of the thing acquired or
 - 2. Should he have reasonable grounds to fear such disturbance, by a vindictory action or action to recover or a foreclosure of mortgage.

Note:

- 1. The suspension is effective until the vendor has caused the disturbance or danger to cease, unless the latter gives security for the return of the price in a proper case, or it has been stipulated that, notwithstanding any such contingency, the vendee shall be bound to make the payment.
- 2. A mere act of trespass shall not authorize the suspension of the payment of the price.

VI. Actions for Breach of Contract of Sale of Goods

Basic Remedies

1. Specific Performance - action to recover price by seller of goods is available to the seller. It can be maintained by the seller in three instances:

- a. The ownership of the goods has passed to the buyer and he wrongfully neglects or refuses to pay for the goods according to the terms of the contract of sale;
- b. The price is payable on a certain day, irrespective of delivery or of transfer of title and the buyer wrongfully neglects or refuses to pay such price;
- c. When the buyer refused to receive the goods upon the seller's offer to deliver.

2. Action for damages - Available when the buyer wrongfully neglects or refuses to accept and pay for the goods.

3. Rescission by the seller - The seller can give notice of rescission where the goods have not been delivered to the buyer and the buyer has:

- a. Repudiated the contract of sale;
- b. Has manifested his ability to perform his obligations, or;
- c. Has committed a breach thereof, the seller may totally rescind the contract of sale of his election so to do to the buyer.

VII. Extinguishment of Sale

A. A contract of sale is extinguished by:

- 1. The same causes as all other obligations;
- 2. Redemption (Conventional redemption and Legal redemption)

B. **Conventional Redemption** - also known as **Pacto de retro sale**. (right to redeem)

By **express agreement**, the seller is given the right to repurchase the thing sold.

Period - The right of redemption should be exercised within the following period:

- a. Within the period agreed upon which **should not exceed ten years** from the date of the contract;
- b. In the absence of an express agreement, the seller should redeem within four years from the date of the contract.

How exercised - the seller must:

1. Give his express intention to repurchase;
2. Payment or valid tender of the redemption price. The redemption price consists of the following:
 - a. The price of the sale;
 - b. The expenses of the contract;
 - c. Necessary and useful expenses made on the thing sold

Effects of Redemption:

1. Any money, fruits, or other benefits to be received by the vendee as rent or otherwise shall be considered as interest which shall be subject to usury laws;
2. The apparent seller may ask for the reformation of the instrument;
3. The buyer is subrogated to the seller's rights and actions.
4. Failure to redeem shall have the effect of consolidation of ownership in the person of the vendee.

- C. Equitable Mortgage** - a transaction which shows the intention of the parties that it is a sale with a right to repurchase.

A deed of absolute sale shall be presumed to be an equitable mortgage in any of the following cases:

- a. When the price of a sale with right to repurchase is unusually inadequate;
- b. When the seller remains in possession as lessee or otherwise;
- c. When upon or after the expiration of the right to repurchase, another instrument extending the period of redemption or granting a new period is executed;
- d. When the purchaser retains for himself a part of the purchase price;
- e. When the seller binds himself to pay taxes on the thing sold;
- f. In any other case where it may be fairly inferred that the real intention of the parties is that the transaction shall secure payment of a debt or the performance of any other obligation.

Note: In case of doubt, a contract purporting to be a sale with right to repurchase shall be construed as an equitable mortgage.

- D. Legal Redemption** - Legal redemption is the right to be subrogated, upon the same terms and conditions stipulated in the contract, in the place of one who acquires a thing by:
1. purchase or
 2. dation in payment or

3. by any other transaction whereby ownership is transmitted by onerous title.

VIII. Condominium: an interest in real property consisting of a separate interest in a unit in a residential, industrial or commercial building and an undivided interest in common, directly or indirectly, in the land on which it is located and in other common areas of the building

Condominium Corporation: a corporation which holds title to the common areas, including the land, or the appurtenant interests in such areas for the purpose in which the holders of separate interest shall automatically be members or shareholders, to the exclusion of others, in proportion to the appurtenant interest of their respective units in the common areas

Interest in real property: Any transfer or conveyance of a unit or an apartment, office or store or other space therein, shall include transfer or conveyance of the undivided interest in the common areas, or in a proper case the membership or shareholdings in the condominium corporation, provided, however, that where the common areas in the condominium project are held by the owners of separate units as co-owners thereof, no condominium unit therein shall be conveyed or transferred to persons other than Filipino citizens or corporations at least 60% of the capital of which belong to Filipino citizens, except in case of hereditary succession.

Documents to consider

- a. Master deed
- b. Declaration of restrictions
- c. Articles and by-laws of the condominium corporation or association

Rights of condominium owner:

- a. Exclusive right to paint, repaint, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floor, windows, and doors bounding his own unit;
- b. Exclusive right to mortgage, pledge or encumber his condominium and to have the same appraised independently of other condominiums but any obligation incurred by such condominium owner is personal to him;
- c. Absolute right to sell or dispose his condominium unless the master deed contains a requirement that the property be first offered to the condominium owners within a reasonable period of time before the same is offered to outside parties

Obligations of a condominium owner:

- a. Pay realty tax of his unit
- b. Share realty tax on land and common areas
- c. Pay condominium dues and other assessments
- d. Share in the insurance of common areas
- e. Comply with restrictions of the condominium project
- f. Give right of first refusal to the condominium corporation or unit owners in case of sale (if required in the master deed)

Grounds for partition of common areas (or dissolution of condominium corporation):

- a. That 3 years after damage or destruction to the project which renders material part thereof unit for its use prior thereto, the project has not been rebuilt or repaired substantially to its state prior to its damage or destruction;
- b. That damage or destruction to the project has rendered $\frac{1}{2}$ or more of the units therein untenable and that condominium owners holding in aggregate more than 30% interest in the common areas (or of the members of the corporation, if non-stock, or the shareholders representing more than 30% of the capital stock entitled to vote, in case of dissolution of condominium corporation) are opposed to repair or restoration of the project
- c. That the project has been existence in excess of 50 years, that is obsolete and uneconomic, and that condominium owners holding in aggregate more than 50% interest in the common areas (or of the members of the corporation, if non-stock, or the stockholders representing more than 50% of the capital stock entitled to vote, if a stock corporation, in case of dissolution of condominium corporation) are opposed to repair or restoration or remodeling or modernizing of the project;
- d. That the project or a material part thereof has been condemned or expropriated and that the project is no longer viable, or that the condominium owners holding in aggregate more than 70% in the common areas (or of the members of the corporation, if non-stock, or the stockholders representing more than 70% of the capital stock entitled to vote, if a stock corporation, in case of dissolution of condominium corporation) are opposed to continuation of the condominium regime after expropriation or condemnation of a material portion thereof;
- e. That the conditions for such partition by sale (or dissolution) set forth in the declaration of restrictions, duly registered in accordance with the term so RA 4726, have been met;
- f. Voluntary dissolution of condominium corporation: By affirmative vote of all the stockholders or members thereof at a general or special meeting duly called for the purpose, provided that all the requirements of Title VI of the Corporation Code are complied with.

Rules affecting condominium projects:

1. Non-forfeiture of payments: No installment payment made by a buyer in a subdivision or condominium project for the lot or unit he contracted to buy shall be forfeited in favor of the owner or developer when the buyer, after due notice to the owner or developer, desists from further payment due to the failure of the owner or developer to develop the subdivision or condominium project according to the approved plans and within the time limit for complying with the same. Such buyer may, at his option, be reimbursed the total amount paid including amortization interests but excluding delinquency interests, with interest thereon at the legal rate. (Section 23, PD 957)
2. Failure to pay installments: The rights of the buyer in the event of this failure to pay the installments due for reasons other than the failure of the owner or developer to develop the project shall be governed by RA 6552.