

LAW

Sales Contract

Immersion

German - English

for Secondary Education

Theory and Exercises



Textbook Law

| | | |
|-----------|---|-----------|
| 1. | Basics | 3 |
| 2. | Public and civil Law | 5 |
| 3. | Procedural law | 15 |
| 4. | Legislative process | 17 |
| 5. | Reasons for formation of obligations | 19 |
| 6. | Formation of contract | 23 |
| 7. | Fulfilment of contract | 34 |
| 8. | Sales of contract | 42 |
| 9. | Foreclosure | 58 |
| 10. | Rent contract | 68 |
| 11. | Employment contract | 76 |
| 12. | Tax | 86 |
| 13. | Family law | 90 |
| 14. | Inheritance Law | 99 |
| 15. | Property law | 111 |
| 16. | Company law | 113 |
| 17. | Criminal law | 127 |
| 18. | Intellectual property and competition law | 132 |
| 20. | Glossary | 140 |

Trial Chapter: Sales Contract

| | | |
|------|---|----|
| 8.1 | What sales contracts have you conducted today (or yesterday)? | 4 |
| 8.2 | Express your will at conclusion of contract | 4 |
| 8.3 | What obligations occur to a purchase/sales contract? | 6 |
| 8.4 | Where is the place of performance? | 7 |
| 8.5 | When is the performance due? | 7 |
| 8.6 | Which formal requirements are relevant for a sales contract? | 8 |
| 8.7 | When does the buyer assume ownership? | 8 |
| 8.8 | What violations of contracts can occur at fulfilment of a sales contract? | 9 |
| 8.9 | What can the buyer do in case of delayed delivery? | 10 |
| 8.10 | What can the buyer do if the seller delivers defective goods? | 13 |
| 8.11 | When do obligations lapse/become time-barred? | 15 |
| 8.12 | What can the buyer do if the seller does not perform? | 16 |
| 8.13 | Transfer of benefit and risk | 17 |
| 8.14 | Summary sales contract | 18 |
| | Tasks 1 - 8 | 19 |
| | Sales Contract-Case | 26 |

Happy learning and lots of success using and applying all you have memorized.

Adliswil, october 2016

Patrick Kohler

Teacher for law and economics

KV Zürich Business School

Paul Muller

Teacher for law and economics

Kantonsschule Limmattal, Urdorf ZH

testAREAL GmbH

Ahornweg 13

8134 Adliswil

info@testareal.ch

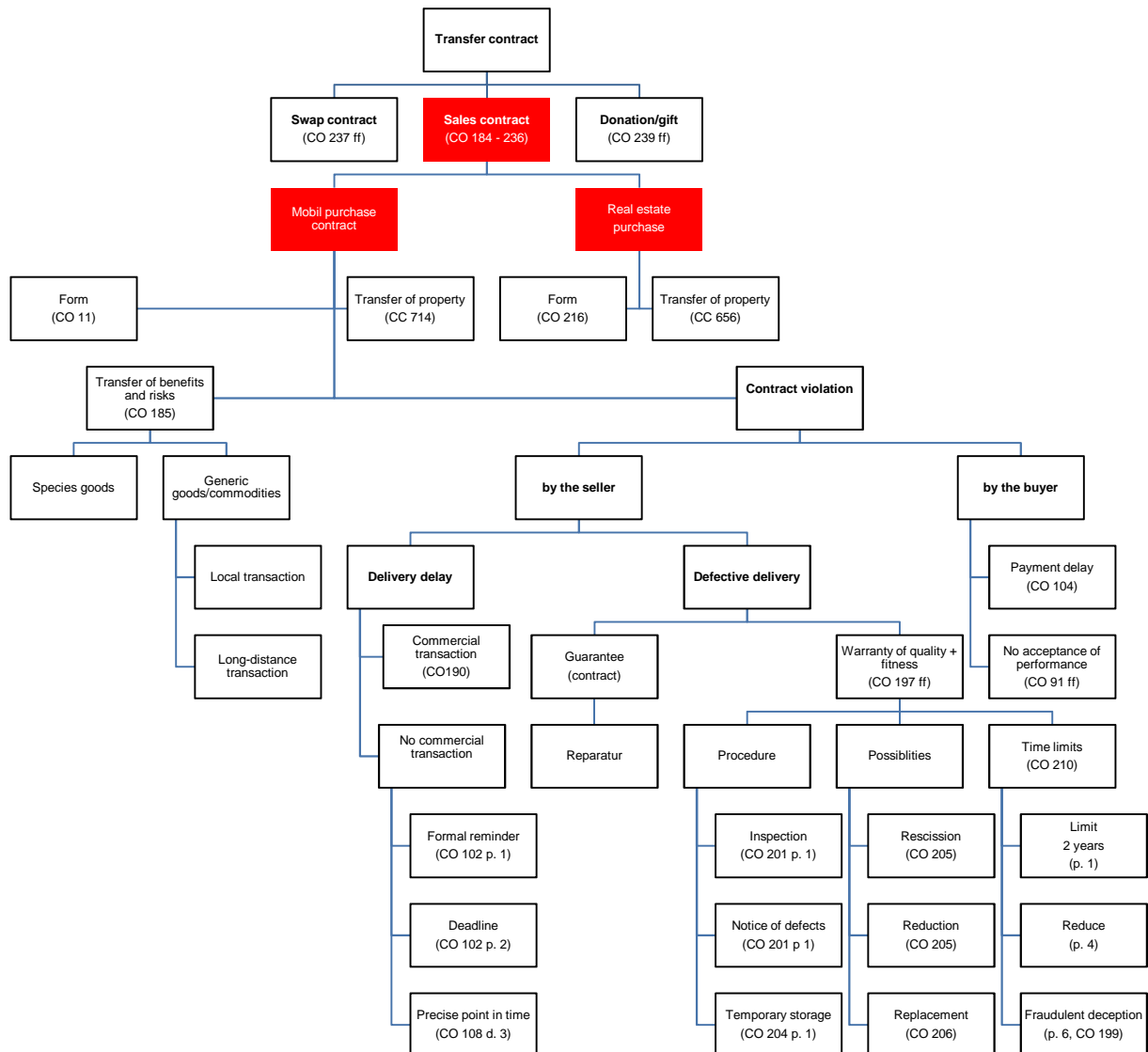
The entire text book can be bought at www.testareal.ch/de/lehrmittel

Solutions see: www.testareal.ch/de/immersion

1st edition 2016

Without consent of the publisher the reproduction of the text or parts of it is prohibited.

8 Sales contract

**Sales contract (CO 184)**

¹ 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.

² ...

³ ...

8.1 What sales contracts have you conducted today (or yesterday)?

Purchase/sales objects can be tangible (e.g. pizza) or intangible assets (e.g. energy), mobile (e.g. table) or immobile objects (e.g. house).

Chattel sale (CO 187 - 215)

Mobile goods

E.g.:

pizza, table, etc.

Sale of immovable property (CO 216 - 221)

Immobile goods

E.g.:

house, apartment

Piece goods (species goods)

Purchase of specific goods

E.g.:

race horse "Frankel", 2nd hand car

Generic goods

purchase object is only defined by generic features

E.g.:

5 kg tomatoes, one "Pizza Siciliana", new car, etc.

8.2 Express your will at conclusion of contract

The conclusion of a contract requires a **mutual expression of intent** by the parties.

(**Consensus:** proposal = acceptance, CO 1 p. 1).

Mutual expression of intent (CO 1)

¹ The conclusion of a contract requires a **mutual expression of intent** by the parties.

² The expression of intent may be expressed or implied.

Binding offer

Each offer is basically binding.

E.g.:

Display of merchandise with price tag in shop windows, directly addressed offer in written (CO 7 p.3)

Non-binding offer

The offeror has to state that he does not want to be bound.

E.g.: „While stocks last“ (CO 7 p.1) prospectus, price lists, ads, on-line offers in the internet (CO 7 p.2)

Invitation to offer (enquiry)

Temporary offer

The person proposing contract conclusion with a time limit to fulfil, is bound to his proposal until time expiry (CO 3, p.1). He is again free, if there is no acceptance of the proposal before time expiry (CO 3, p.2).

E.g.:

Prices effective until 15 June 20x5.

Unlimited offer

Proposal **without** determination of due date.

Offer among those present (CO 4)

Where an offer is made in the offeree's presence and not immediately accepted, then the offeror is no longer bound to it (CO 4 p.1).

Contracts concluded by telephone among contract parties or their representatives are deemed to have constituted (CO 4 p.2).

E.g.:

Oral communication or telephone calls.

Offer among absentees (CO 5)

Where an offer is made in the offeree's absence and no time limit for acceptance is set, it remains binding on the offeror until an answer could be duly and promptly expected (CO 5 p.1) (normally ca. 1 week).

E.g.:

Via mail, fax or e-mail.

E.g.:

Hanna who is ordering in a restaurant, is actually proposing a contract offer. She bases her offer on the host's **menu offer**. The host though is not bound to his menu offer. A menu card is an **invitation to offer (enquiry)**. The host therefore proposes his menu as well as the related prices. If the host does not have the dishes anymore, or if he does not want to sell e.g. alcohol to his guest, no binding contract has materialized.

The guest's order is therefore an offer. Normally the guest concludes that the pizza ordered is sold for the price on the menu. The host can then decide whether he wants to accept or reject the offer. Only if there is a mutual agreement, a binding contract is constituted.

8.3 What obligations occur to a purchase/sales contract?

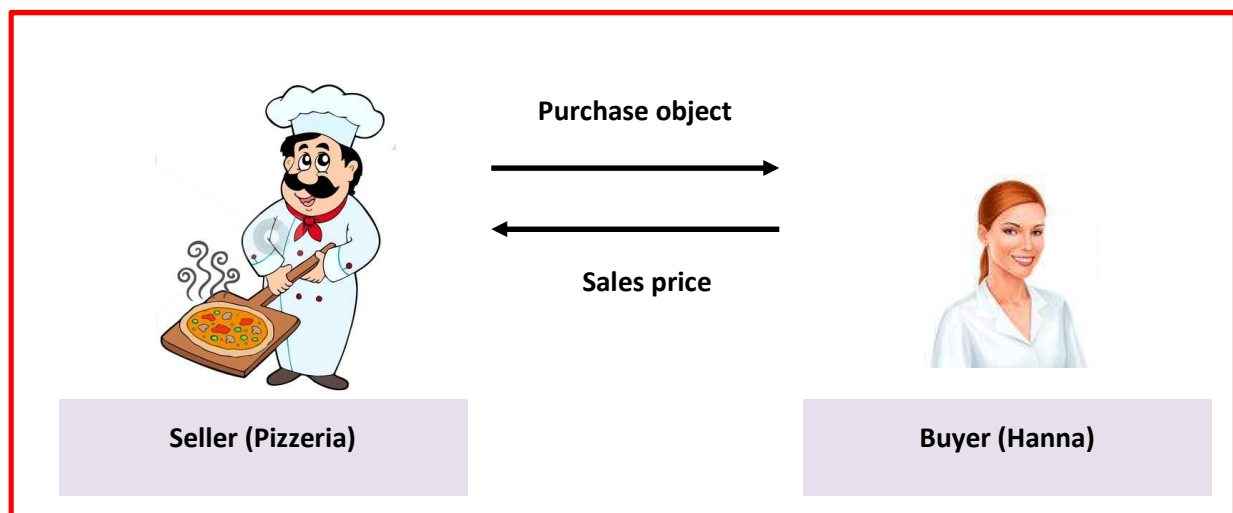
An **obligation** is a legal relationship among two or more persons in which one person (**creditor**) has a legal right to demand contract **performance** and the other person (**debtor**) has the legal duty to perform, i.e. to pay the **debt**.

Sales contract (CO 184)

¹ 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.

² ...

³ ...



E.g.:

The guest can demand the delivery of an ordered meal (creditor), and has to pay the purchasing price (debtor). On the reverse, the Pizzeria is debtor of the pizza and creditor of the sales price.

8.4 Where is the place of performance?

The place of performance is the place where the debtor has to fulfil his performance.

Place of performance (CO 74)

¹ The place of performance is determined by the intention of the parties as stated expressly or evident from the circumstances.

² Except where otherwise stipulated, the following principles apply:

1. **pecuniary debts** must be paid at the place where the creditor is resident at the time of performance;
2. where a **specific object** is owed, it must be delivered at the place where it was located when the contract was entered into;
3. **other obligations** must be discharged at the place where the obligor was resident at the time they arose.

³ Where the obligee may require performance of an obligation at his domicile but this has changed since the obligation arose, thereby significantly hindering performance by the obligor, the latter is entitled to render performance at the original domicile.

The place of performance is defined in the **contract (concessionary law, CO 74, p. 1)**.

If there is no contractual agreement, the law defines the place of performance:

Money debts (CO 74 p. 2 d.1)

At place of residence of creditor

debt to be brought "Bringschuld"

Trade debts (CO 74 p. 2)

It depends:

collectable debt ("Holschulden")



Species goods (d. 2)

Place where the purchased good is at contract conclusion.

Generic goods (d. 3)

Place of residence of debtor of goods.

E.g.:

Both the place of performance (pizza delivery, e.g. at Hanna's home) as well as the sales price of the pizza.

8.5 When is the performance due?

The time for performance can be **arbitrarily agreed on**. If the parties have not agreed on a specific time, then CO 75 defines the time of performance:

Time of performance (CO 75)

Where no time of performance is stated in the contract or evident from the nature of the legal relationship, the obligation may be discharged or called in **immediately**.

The parties have to perform *pari-passu* (quid pro quo) ("Zug um Zug") (CO 184 p.2).

E.g.:

Hanna gets the pizza after baking and she has to pay it after eating. At the same time pre-payment or a purchase with an invoice is possible. The pizza can also be ordered for a specific time.

8.6 Which formal requirements are relevant for a sales contract?

Sales contract for mobile goods

The sales contract for **mobile goods** (species- and generic goods) has **no required form**. (CO 11). However, for important contracts the written form is suggested to safeguard proof and details.

E.g.:

Hanna can buy the pizza free of form, i.e. an oral consent is enough.

Purchase of land

The **purchase of land** requires a **public certificate** (CO 216).

E.g.:

Hanna's parents buy a cottage in Wales. The sales contract has to be certified at the notary.

Form of contracts (CO 11)

¹ The validity of a **contract is not subject to compliance with any particular form unless a particular form is prescribed by law**.

² In the absence of any provision to the contrary on the significance and effect of formal requirements prescribed by law, the contract is valid only if such requirements are satisfied.

Sale of immovable property (CO 216)

¹ A contract for the sale of immovable property is valid only if done as a **public deed**.

²

³

8.7 When does the buyer assume ownership?

Sales contract for mobile goods

Purchasing **mobile goods** (species- and generic goods) the buyer assumes ownership at **hand-over of the goods** (CC 714 p.1).

E.g.:

Hanna assumes ownership of a land lot upon registration in the land register.

Purchase of land

When purchasing **land** or **real estate** the buyer assumes property rights with the entry in the **land register** (CC 656 p.1).

E.g.:

Hanna's parents assume ownership with the entry in the land register.

Property of mobile goods (CC 714)

¹ Transfer of chattel ownership requires the **delivery of possession** to the acquirer.

² A person who in good faith receives possession of a chattel as owner will become its owner even if the transferor is not authorised to alienate it as long as his or her possession of it is protected according to the provisions governing possession.

Immobile property (CC 656)

¹ The acquisition of land ownership must be **recorded in the land register**.

² ...

8.8 What violations of contracts can occur at fulfilment of a sales contract?

It is distinguished between violations by the **seller** or the **buyer**.

| By the seller | | Description | Law | E.g.: Hanna is ordering a pizza for 8 p.m. |
|---------------|--|--|------------------|--|
| a. | Delayed delivery = debtor's delay | The seller does not deliver on time. | CO 102 CO 190 | The Pizzaiolo does not deliver on time. |
| b. | Defective delivery | The seller delivers the goods in bad shape. | CO 197 | Hanna's pizza "Siciliana" is missing olives. |
| c. | Non-performance | The goods owed cannot be delivered any longer. | CO 97 | The pizza oven is defect. Pizzas cannot be delivered any longer. |

| By the buyer | | Description | Law | E.g. |
|--------------|---|---|------------------|--|
| a. | Default of acceptance = creditor's default | The buyer refuses to accept the delivery of flawless goods. | CO 211 CO 91 | Hanna does not open the door for the Pizza service as she does not hear the bell answering a telephone call. The delivery boy drives to the next customer after waiting a while. |
| b. | Late payment = debtor's delay | The buyer does not pay on time. | CO 102 CO 214 | Hanna has not enough money in her wallet and can therefore not settle the bill. |

8.9 What can the buyer do in case of delayed delivery?

The seller does not deliver the ordered goods on time (= **debtor's delay**). Depending on the agreement when to fulfil and whether the goods are destined for commerce or personal use the buyer has the following options:

In principle, in order to put the supplier in default, a **reminder** is needed (CO 102 p.1). A formal reminder is a clear request to the debtor to immediately perform. The reminder is not bound to a form. In addition, the buyer has to forward a **grace period** for the delivery. Upon its non-performance the buyer has **three options** (CO 107 p.2):

| Three options | | |
|--|--|--|
| The purchased item is a species good : | The purchased item is a generic good and the good can be bought somewhere else, only more expensive: | The purchased item is a generic good . It can be bought cheaper at another place: |
| Delayed delivery + delay damage compensation | Waiver + compensation due to non-performance of contract. | Waiver + compensation for void contract (compensation for transaction costs) |
| E.g.: The old timer "Rolls-Royce Silver Shadow" cannot be delivered by another garage. | E.g.: The ordered "BMW 135i drive" can only be bought from another garage owner at a more expensive price. The buyer makes a covering purchase and asks for the price difference. | E.g.: The ordered new "BMW 135i xDrive" can be bought even cheaper from another garage owner. The buyer receives e.g. the travel expenses. |

Three options (CO 107)

¹ ...

² *If performance has not been rendered by the end of that time limit, the obligee may compel **performance in addition to suing for damages** in connection with the delay or, provided he makes an immediate declaration to this effect, he may instead forego **subsequent performance** and either **claim damages for non-performance** or **withdraw from the contract altogether**.*

8.9.1 Commercial transactions (CO 190)

Commercial transaction is a purchase in order to re-sell. For commercial transactions the assumption applies that the buyer waives his claims, if he does not immediately complain after delayed delivery and then claims compensation due to non-performance. A grace period is therefore not needed. (CO 190).

| Conditions | | Procedure | |
|-------------------------------------|--|------------------------|---|
| <input checked="" type="checkbox"/> | Commercial transaction (trade): The purchased item is specified for resale. | Reminder | No |
| <input checked="" type="checkbox"/> | A specific delivery date was agreed upon. | Grace period | No |
| | | Right to choose | Automatic: Waiver to receive goods + compensation claims for non-performance |

Commercial transaction (CO 190)

¹ Where in **commercial transactions** the contract specifies a **time limit** for delivery and the seller is in default, the presumption is that the buyer will forego delivery and claim damages for non-performance.

² However, if the buyer prefers to demand delivery, he must inform the seller without delay on expiry of the time limit.

E.g.:

The pizzaiolo orders 2'000 pizza boxes from the pizza box importer to be delivered on 15 June 20x5, 9 am.

If the purchased items are bought for resale, but no delivery date had been agreed on, then it is an ordinary reminder trade. (CO 102 p.1).

8.9.2 Formal reminder trade (CO 102 p. 1)

| Conditions | | Procedure | |
|-------------------------------------|---|---------------------|---------------|
| <input checked="" type="checkbox"/> | No commercial transaction (goods for personal consumption) or commercial transaction (trade). | Reminder | Yes |
| <input checked="" type="checkbox"/> | No specific delivery time had been agreed on | Grace period | Yes |
| | | Options | Three options |

Formal reminder trade (CO 102)

¹ Where an obligation is due, the obligor is in default as soon as he receives a formal **reminder** from the obligee.

² ...

E.g.:

The Pizzaiolo buys a software in order to better manage his inventory. Delivery time is agreed on by end of June.

8.9.3 Expiry date trade (CO 102 p. 2)

| Conditions | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | No commercial transaction |
| <input checked="" type="checkbox"/> | A specific delivery time was agreed upon and performance is still desired after the due date. |

| Procedure | |
|--------------|---------------|
| Reminder | No |
| Grace period | Yes |
| Options | Three options |

Expiry date trade (CO 102)

¹ ...

² Where a **deadline for performance** of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party, the obligor is automatically in default on expiry of the deadline.

E.g.:

The pizzaiolo buys a software in order to better manage his inventory.

Delivery date: 15 June 20x5, 9 am.

8.9.4 Fixed time trade (CO 108 d. 3)

| Conditions | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | No commercial transaction |
| <input checked="" type="checkbox"/> | A specific delivery date had been agreed upon. Performance after late delivery is useless. |

| Procedure | |
|--------------|---------------|
| Reminder | No |
| Grace period | No |
| Options | Three options |

Fixed time trade (CO 108)

No time limit need be set:

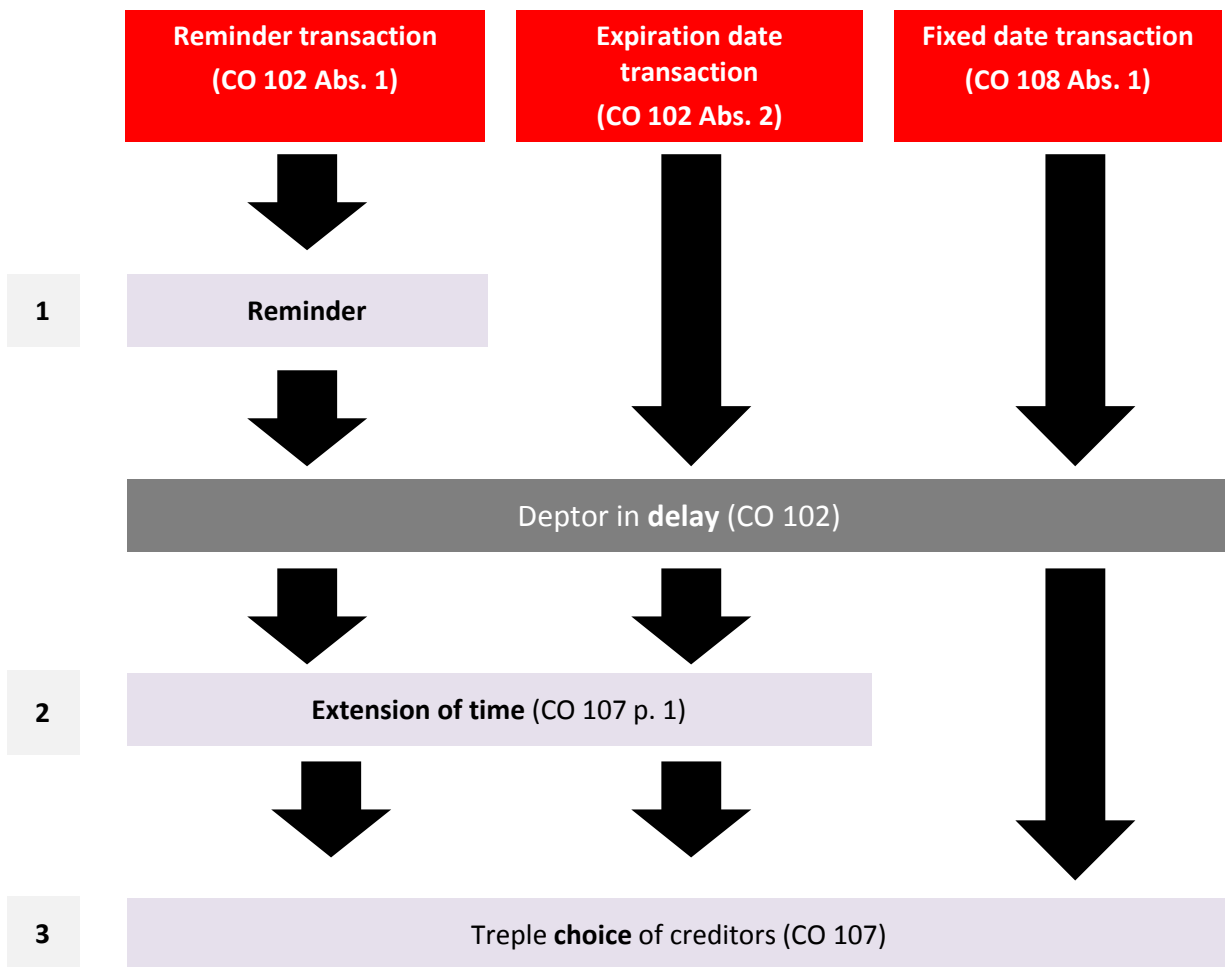
1. ...

2. ...

3. where the contract makes it clear that the parties intended that performance take place at or **before a precise point in time.**

E.g.:

- The pizzaiolo buys a software in order to better manage his inventory. To be delivered not later than 15 June 20x5.
- Orders for a specific event, e.g. wedding cake, etc.



8.10 What can the buyer do if the seller delivers defective goods?

In principle the seller is liable that the goods arrive in good condition. (= **warranty of quality and fitness**, CO 197 ff). In case of defective delivery, the buyer has three duties:

| Duties | |
|-------------------------------------|--|
| <input checked="" type="checkbox"/> | IMMEDIATE inspection (CO 201) |
| <input checked="" type="checkbox"/> | IMMEDIATE duty of disclosure (= notice of defect , CO 201) Open defect: immediately after inspection Hidden defect: immediately within two years (CO 210) |
| <input checked="" type="checkbox"/> | Obligation to store the item until clarification of case (CO 204) |

Notice of defects (CO 201)

¹ The buyer must **inspect the condition** of the purchased object as soon as feasible in the normal course of business and, if he discovers defects for which the seller is liable under warranty, must **notify him without delay**.

² Should he fail to do so; the purchased object is deemed accepted except in the case of defects that would not be revealed by the customary inspection.

³ Where such defects come to light subsequently, the seller must be notified immediately, failing which the object will be deemed accepted even in respect of such defects.

Obligation to store (CO 204)

¹ A buyer who complains that an object sent from another place is defective is obliged **to place it in temporary storage**, provided the seller has no representative in the place in which it was received, and cannot simply return it to the seller.

² ...

³ ...

Upon a justified **notice of defect**, the buyer can choose among rescission, reduction of price or replacement delivery.

Rescission (CO 205)

E.g.:

To stop the purchase and to waive receiving the goods.

Reduction (CO 205)

E.g.:

Demand price reduction (rebate) and keep the goods.

Replacement (CO 206)

E.g.:

Replacement of defective good with flawless good.

Repair is no legal option. Often though repair work is defined in the terms and conditions.

Rescission or reduction (CO 205)

¹ In claims for breach of warranty of quality and fitness, the buyer may sue either **to rescind the contract** of sale for breach of warranty or to have the **sale price reduced** by way of compensation for the decrease in the object's value.

² Even where the buyer has brought action for rescission the court is free to order a reduction in the price of the object if it does not consider rescission justified by the circumstances.

³ If the decrease in the object's value is equal to the sale price, the buyer may only sue for rescission.

Substitute performance (CO 206)

¹ Where the contract of sale is for delivery of a specified quantity of fungibles, the buyer may choose to bring action either for rescission or for a reduction in the sale price or to **request other acceptable goods of the same kind**.

² Where the purchased objects have not been sent from another place, the seller may discharge his obligation to the buyer by immediately delivering acceptable items of the same kind and making good any loss or damage the buyer has suffered.

With hidden defects the **period of limitation** is in principle two years.

Sellers of 2nd hand goods have to grant at least a one year warranty. However, this warranty does not apply to corporations (CO 210 p.4).

Time limits (CO 210)

¹ An action for breach of warranty of quality and fitness becomes time-barred **two years** after delivery of the object to the buyer, even if he does not discover the defects until later, unless the seller has assumed liability under warranty for a longer period.

² ...

³ ...

⁴ An agreement to reduce the limitation period is null and void if:

a. the limitation period is reduced to less than two years, or less than one year in the case of second-hand goods;

b. the object is intended to be used by the buyer or his or her family; and

c. the seller is acting in the course of his or her professional or commercial activities.

⁵ ...

⁶ The seller may not invoke the limitation period if it is proved that he wilfully misled the buyer. The foregoing does not apply to the 30-year period under paragraph 3.

8.11 When do obligations lapse/become time-barred?

Claims (e.g. to pay the purchasing price) have to be brought forward within a certain time. The general limitation period is 10 years (CO 127). However, most of the price claims lapse after 5 years (CO 128).

Time-barred (CO 127)

All claims become time-barred after **ten years**, unless otherwise provided by federal civil law.

Time-barred (CO 128)

The following become time-barred after **five years**:

1. claims for agricultural and commercial rent and other rent, interest on capital and all other periodic payments;

2. claims in connection with delivery of foodstuffs, payments for board and lodging and hotel expenses;

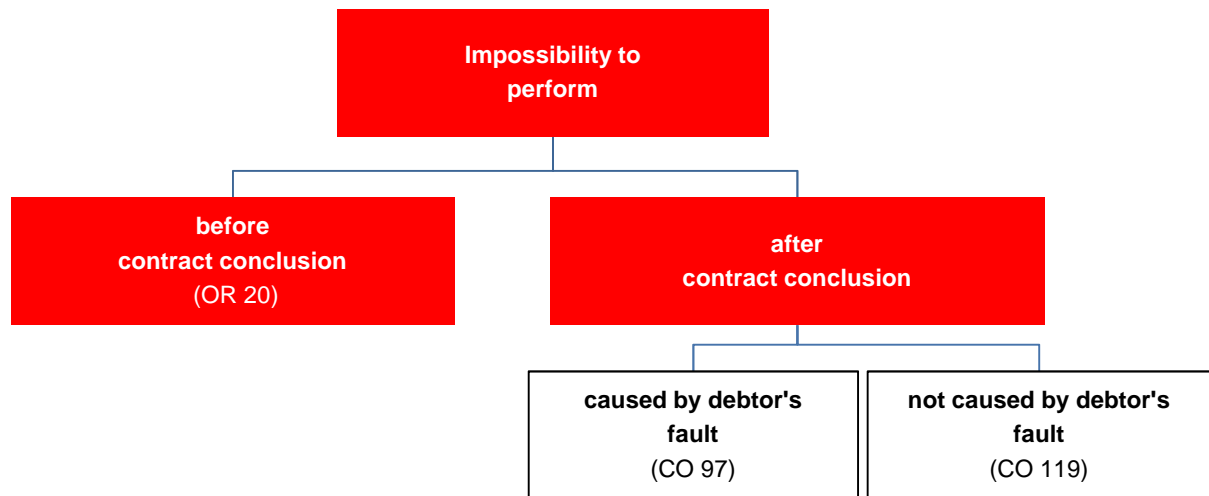
3. claims in connection with work carried out by tradesmen and craftsmen, purchases of retail goods, medical treatment, professional services provided by advocates, solicitors, legal representatives and notaries, and work performed by employees for their employers.

E.g.:

Hanna owes money to a restaurant owner. This debt lapses after 5 years.

8.12 What can the buyer do if the seller does not perform?

The debtor does not perform at all as the performance (species goods) is not possible anymore.



Impossibility at the beginning

The contract is void.

E.g.:

The purchased item (e.g. a car) is already broken/burned out at the time of contract conclusion.

CO 20

No contract has been constituted.

Subsequent impossibility

The seller cannot prove that he has no guilt regarding the impossibility to perform.

E.g.:

It cannot be delivered, as the seller had not ordered the item in time.

CO 97

The seller has to reimburse the buyer for the damage caused by the non-performance of the contract.

The seller can prove that he has no guilt regarding the impossibility to perform.

E.g.:

The seller explains that the ordered PCs were meanwhile faced out.

CO 119

The seller's duty to perform expires. He has hence no right to claim performance in return (sales price).

8.13 Transfer of benefit and risk

The purchased item is accidentally destroyed after contract conclusion but before delivery.

E.g.: Purchase of a 2nd hand car



Conclusion Sales contract 09:00 a.m.

Buyer and seller agree to hand-over the purchased good at 5:30 pm.

Destruction of purchased product 11:00 a.m.

The purchased item (2nd hand car) is destroyed by lightning stroke or earth quake after contract conclusion but before delivery.

Transfer of purchased good 17:30 p.m.

The buyer has to pay the sales price, although he does not get the car. The risk of default of species goods was assumed by the buyer at contract conclusion (CO 185 p.2)

Risk

Risk of **accidental** default or accidental deterioration of purchased item between contract conclusion and delivery.

Benefit

Claim for fruits and yield and/or a value increase of the purchased item between contract conclusion and delivery.

Benefits and risks (CO 185)

¹ The benefit and risk of the object pass to the buyer on conclusion of the contract, **except where otherwise agreed or dictated by special circumstance.**

² Where the object sold is defined only in **generic terms**, the seller must select the particular item to be delivered and, if it is to be shipped, must hand it over for dispatch.

³ ...

Species goods (CO 185 p. 1)

At contract conclusion.

Generic goods (CO 185 p. 2)

As soon as the goods are separated.

= **local transaction**

As soon as the goods are ready to be mailed/forwarded

= **distance transaction**

Attention:

Dispositive nature, i.e. through contract another agreement is possible (e.g. **INCOTERMS**¹ in international trades).

¹ **INCOTERMS**: Acronym for International Commercial Terms
© www.testareal.ch

8.14 Summary sales contract

| | | Form at contract conclusion | Transition of benefit and risk* | Transition of property rights |
|----------------|---------------|---|---|---|
| Mobile goods | Species goods | Form open (CO 11 p.1) In practice normally in written to secure evidence. | Contract conclusion (CO 185 p.1) | Handover of goods (CC 714 p.1) |
| | Generic goods | Form open (CO 11 p.1) In practice normally in written form to secure evidence. | Local transaction: As soon as the goods are separated (CO 185 p.2) Distance transaction: As soon as the goods are forwarded (CO 185 p.2) | Handover of goods (CC 714 p.1) |
| Immobile goods | | Public certification (CO 216 p.1) | Public certification (CO 220) | Entry in land register (CC 656 p.1) |

*Transaction of the “benefit and risk” is only significant if the property rights are not immediately assumed after contract conclusion.

Tasks

Task 1²

Hobby-cyclist B. Feldmann from Niederdorf (BL) visits the bicycle dealer T. Schutz on 25 May 2000 and is given an oral offer for a new bicycle for CHF 4'200.- The bicycle dealer emphasizes that his supplier always adjusts prices mid-year and that therefore the delivery time is 3 – 4 weeks. Judge whether the following statements are true (t) or false (f) concerning the above mentioned circumstances. Please correct the wrong statements.

| No. | Statement | T/F |
|-----|--|-----|
| 1. | The bicycle dealer's offer is not binding, as it was not in written. | |
| 2. | As B. Feldmann lives in Niederdorf (BL) and T. Schmutz' bicycle shop is located in Oberdorf (BL) CO 5 is applicable. | |
| 3. | If B. Feldmann agrees with the contract beginning in June, he cannot step back from the contract anymore due to delay of the debtor. | |
| 4. | According to CO 71 it is a purchase of generic goods. | |
| 5. | The ownership of the bicycle is being transferred to B. Feldmann with the payment. | |
| 6. | If T. Schutz delivers the bicycle for B. Feldmann too late then CO 190 is applicable as the seller is registered in the company registry. | |
| 7. | If B. Feldmann asks the dealer to send the bicycle to his home in Niederdorf (BL) then he has to pay the transport costs. | |
| 8. | A fortnight after the delivery the bicycle frame breaks due to a material defect. At this time the warranty claim against the seller is already time-barred. | |

² Solutions see: www.testareal.ch/de/immersion

Tasks

Task 2

Receiving the clothes ordered from Jeans import-AG, M. Rossi, the owner of „Boutique Basilea“, realizes that several blue jeans have faulty sewing. He complains at the supplier's.

- a) What is the technical term of this complaint according to the CO?

.....

- b) The CO constitutes three choices for M. Rossi. Explain the three variations.

.....

.....

.....

- c) Which of the three choices M. Rossi should choose and why?

.....

Task 3

On 16 July Peter Dubach buys a grandfather clock from an antique dealer from Basel for this hotel. It is a rare object. It was agreed that the clock should be delivered on 23 July and paid on 27 August.

- a) When are benefit and risk transferred? Tick the right answers.

- b) When ownership is transferred? Tick the right answers.

| task a) | task b) | |
|--------------------------|--------------------------|-----------------|
| <input type="checkbox"/> | <input type="checkbox"/> | on 16 July |
| <input type="checkbox"/> | <input type="checkbox"/> | on 23 July |
| <input type="checkbox"/> | <input type="checkbox"/> | on 27 August |
| <input type="checkbox"/> | <input type="checkbox"/> | On another date |

- c) The warranty states: "We thank you for your purchase. We restored and checked the clock. We grant a three-year warranty." In which point does this warranty differ from the supplementary provisions of the CO? Explain with the relevant articles of the CO.

.....

- d) Peter Dubach gets the clock on 23 July. He examines the clock and realizes that it does not work, obviously a warranty claim. Peter Dubach wants to assert a warranty claim. Name two duties he has to fulfil after the examination of the clock.

.....

- e) Which legal choice is reasonable in this case? Please explain.

.....

Tasks

f) Is it allowed to sell goods without warranty? Tick the right answer and also state the relevant article.

yes
no

Article:

Task 4

a) A. Schwarz, a friend of B. Breu, buys a second-hand bicycle for CHF 400.- in Breu's Bike Corner Breu. Short of cash, she can only pay the bike with her September salary. Breu gives her an invoice with the remark: "bought as seen". The invoice states "payable within 10 days of purchase date". As Breu needs to clean the bike and check the breaks, Anita Schwarz can only get it at the Bike Corner a few days later.

Judge whether the statements are true or false.

| Statement | T | F |
|--|--------------------------|--------------------------|
| It is a species goods purchase | <input type="checkbox"/> | <input type="checkbox"/> |
| A. Schwarz assumes legal ownership of the bicycle paying the sales price. | <input type="checkbox"/> | <input type="checkbox"/> |
| Benefit and risks are transferred to Anita Schwarz at the time of delivery/handover. | <input type="checkbox"/> | <input type="checkbox"/> |

b) On 22 September 2005 A. Schwarz realizes that the rear mud shelf is badly twisted. Immediately she reports this to B. Breu claiming a price reduction of CHF 50.- Is she entitled to this reduction. Explain your answer.

yes
no

Explanation:

.....

c) A friend of A. Schwarz told her that bike saddles with special upholstery are very comfortable. Therefore, she buys such a special saddle at the Breu Bike Corner for CHF 109.- Nevertheless she does not sit comfortably on the saddle during the next Sunday bicycle outing. She therefore returns the saddle to Bike Corner, requesting refund as she was wrong in this saddle. As a secretary of a lawyer she knows that a contract can be disputed according to CO 23 and 24. However Beat Breu does not agree. Who is right? Explain your answer.

A. Schwarz
B. Breu

Explanation:

.....

.....

Article:

Tasks

Task 5

At the end of October 2016 Beat Seiler asks his co-worker Consuela Alonso to buy a better coffee machine for the Cafeteria Phoenix LTD Consuela auctions a second-hand coffee machine in an online auction from restaurant "Bären" in Liestal on 11 November 2016 for CHF 1'200.- The machine is supposed to be delivered as soon as possible. The payment is due 10 days after the delivery. However, the coffee machine has not yet arrived at the Cafeteria on 20 January 2017.

a) Among which parties has a sales contract been constituted in the case above?

.....

b) Under which circumstances can the buyer of the coffee machine retreat from the contract due to delayed delivery? Tick the right numbers.

- | | | |
|---------------------------|----------------------|---------------------------------|
| 1. Replacement delivery | 2. Discuss together | 3. Give back the good |
| 4. Extension of time over | 5. Agree on due date | 6. Declare an extension of time |
| 7. Notice of defect | 8. Reminding seller | 9. Start insolvency procedures |

.....

c) Above delivery and payment is agreed on at different dates. Explain why this agreement is possible with the right legal technical terms, although CO 184 p. 2 demands settlement quid pro quo.

.....

d) Name the following dates for the case above.

Date of contract conclusion

Date of transfer of benefit and risks

Tasks**Task 6**

Katja Koller shows interest in a TV-set at the company „Gysin Medien AG“ on 18 February. The branch manager explains that the TV is not in stock presently, but should be available on Friday, 22 February. Katja orders the TV. On Saturday, 23 February she wants to pick up the TV. The branch manager talks about supply problems. According to him the TV should be ready to be picked up on Monday at lunchtime. Because Katja meanwhile was told by a friend that there is another retailer is selling an even cheaper and better TV, she tells the branch manager that she would like to waive the purchase of the JVC-gadget. The branch manager does not agree and insists that Katja buys the TV.

a) Is the delivery of the TV due? If yes, since when?

.....

b) Was Katja, the buyer, entitled to retreat from the contract on Saturday? Explain, including the relevant articles of the CO.

.....

.....

.....

.....

.....

.....

.....

c) Assumption: After the branch manager’s assurance that the TV will be available on 22 February the buyer requires “that the TV then has to be there at all costs and that this shall be the latest delivery date.” The branch manager answers: “No problem, the TV will be there.” Will this change your answer at b). Explain, including the relevant articles.

.....

.....

.....

.....

Tasks

Task 7

On 10 March 2013 “Simplon GmbH” offered in a personal letter a “Simplon Bicycle” to its customer Sarah Gruber from Zug for the following conditions:

Special offer: Simplon Bicycle

CHF 1'395.-, incl. 8% VAT

Delivery date: End of April 2013



- a) On 29 March 2013 Mrs. Gruber orders a “Simplon Bicycle” for the offered conditions. Does “Simplon GmbH” follow up this order? Tick the right answer and explain your answer, including CO article.

yes
no

Explanation:

- b) Which of the following answers regarding the “Simplon Bicycle” case is true, which is false?

| Statement | T | F |
|---|--------------------------|--------------------------|
| A “Simplon Bicycle” is a species good. | <input type="checkbox"/> | <input type="checkbox"/> |
| A buyer of a “Simplon Bicycle” assumes ownership as soon as the bicycle is loaded to Simplon GmbH’s the delivery lorry. | <input type="checkbox"/> | <input type="checkbox"/> |
| Selling through the internet it is always an “on site purchase”, i.e. valid without form. | <input type="checkbox"/> | <input type="checkbox"/> |
| According to CO the buyer of a “Simplon Bicycle” has to pay for transport costs. | <input type="checkbox"/> | <input type="checkbox"/> |

- c) A few weeks later: “Simplon GmbH” orders from BMC AA, its bicycle supplier, one hundred “Simplon Bicycle” for resale. As the bicycles are not in stock, the parties agree on delivery on 15 April 2013. On 20 April the bicycles have not yet arrived at the “Simplon GmbH”. Without declaration to the BMC-dealer the “Simplon GmbH” buys 100 bicycles from another supplier. Is this legally possible? Tick the right answer. Explain your solution, incl. the relevant complete article. Potential damage claims needn’t be addressed.

yes
no

Explanation:

Tasks

- d) At the same time Mrs. Seiler orders for herself a "Simplon Bicycle" as she intends to participate in a bicycle tour in Italy in August. As "Simplon GmbH" informs her that the bicycles are presently not in stock, they agree for delivery on 30 April 2013. On 3 May 2013 the "Simplon Bicycle" has not arrived yet at Mrs. Seiler's. Disappointed Mrs. Seiler buys without consultation a bike from another seller. On 7 May 2013 the "Simplon Bicycle" is however delivered to Mrs. Seiler. The "Simplon GmbH" insists on payment of the invoice. Is Mrs. Seiler's action legally correct? Tick the right answers and explain your solution, incl. complete article. Potential damage claim needn't be addressed.

- yes
no

Explanation:

Task 8

A fruit trader buys 100 kg bananas for CHF 2.-/kg. He is going to sell them for CHF 3.-/kg. In case of delayed delivery what is the legal foundation?

- a) The fruit trader is entitled to buy the bananas from another supplier for CHF 2.50/kg.

- b) The fruit trader is entitled to buy the bananas from another supplier for CHF 1.80/kg.

- c) The fruit trader cannot buy the bananas from another supplier as he urgently needs them due to the market day being scheduled for tomorrow where he rents a booth.

Sales Contract-Case

Starting point:

Heidi has been running a small sales-outlet at the flea market ‚Kanzlei Zurich‘. She is specialized in second hand hi-fi appliances: no high end devices, but items of good quality, though not new any more, still of good use for some time. With her sales outlet Heidi wants also to promote awareness against our contemporary wasteful society.

In the morning of 19 March 2016 Peter is passing by at Heidi’s booth. He is interested in the offered tape-deck (playback device for compact cassettes). The price is not indicated. Therefore he approaches Heidi to ask. As he subsequently needs to catch the train to La-Chaux-de-Fonds to his grandmother’s 90th birthday, he would like to know whether Heidi could exceptionally deliver the tape-deck to his home on Sunday, as this would make it much easier for him, indeed. Heidi takes a look at the device and offers it for CHF 200.- Peter nods and asks once more regarding delivery, Otherwise his neighbour could also receive the tape in the afternoon. There should be an acceptable solution for both sides. Heidi says, she could probably make an exception and deliver the tape at a later point in time. Sunday, though would not be possible. Peter is about to suggest another date when his cellphone rings. He walks away from the booth to answer the call.

Meanwhile Holger appears. He runs a small shop for second hand electrical appliances. He also likes the tape-deck. He reckons that it would be exactly the model a customer of his has asked for. Heidi knows Holger from earlier deals. She recognizes the look in his eyes and offers him to sell the tape for CHF 300.-. Holger answers that he needs to check a few more things and says goodbye. Shortly afterwards Peter is back. Heidi opens to him that meanwhile another person has inquired about the tape and that he could buy it now for CHF 400.-

Answer all the following questions and name all relevant legal articles (also those that “only” refer further).

Tasks

Task:

- 1) Peter is shocked. He blames Heidi of illegal conduct and that she is bound to her offer. Heidi refers to her right of freedom of contract.
Takes sides first with Peter and then with Heidi. Argue in detail about Peter's and Heidi's position.

- 2) Finally Heidi has a guilty conscience and agrees to sell the tape to Peter for CHF 200.-. They agree that Peter will get the tape at Heidi's home on Wednesday, 13 April 2016 at 7pm. At the due date Heidi does not open her door. Peter waits half an hour and leaves then home again.
 - a) Peter wants to buy the tape deck absolutely. What claims Peter can raise against Heidi and how does he have to proceed?

 - b) How would the legal situation change if Holger were in Peter's position? Reason briefly.

 - c) Heidi had forgotten the handover date. When she remembers the agreement, she drives with the tape to Peter's address on the evening of 14 April 2016. Fortunately they had exchanged addresses and telephone numbers. On the way Heidi stops for a moment at the petrol station in Seebahnstrasse. When she was paying the petrol bill, Ueli breaks the window on the passenger side, snaps the tape and disappears. Heidi and the police appearing shortly afterwards cannot do anything. *What are the legal consequences regarding the sales contract? Explain in detail.*

- 3) On 20 April 2016 the police finds the tape conducting a broad anti-electronic-receiving-raid in Ueli's apartment. As Heidi has the habit to put her name, address and telephone number on her goods and Ueli was careless enough not to remove it, the police is able to give back the tape deck– in good condition – to Heidi on 25 April 2016. Without delay she contacts Peter to finally conclude the deal. Peter enjoys the use of the tape deck for a few days until it suddenly breaks down. In the repair shop they say that the tape has a fabrication error and that it is rather astonishing that it had worked so long. *What claims can Peter forward against Heidi and how does he have to proceed?*