

## 8 Sales Contract (CO 184 ff)

### Task 1

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.	F
	<b>Also oral offers are binding.</b>	
2.	As B. Feldmann lives in Niederdorf (BL) and T. Schmutz' bicycle shop is located in Oberdorf (BL) CO 5 is applicable.	F
	<b>It was an oral offer, hence among attendees.</b>	
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.	T
4.	According to CO 71 it is a purchase of generic goods.	T
5.	The ownership of the bicycle is being transferred to B. Feldmann with the payment.	F
	<b>With the transfer/delivery of the bicycle (CC 714)</b>	
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.	F
	<b>The bicycle is not meant for resale.</b>	
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.	T
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.	F
	<b>No, only after two years (CO 210)</b>	

### 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?

**Notice of defects**

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

**Replacement: Cancelling the contract**

**Reduction: Decrease of price**

**Replacement: New delivery of flawless goods**

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

**Replacement (he cannot sell faulty goods)**

### 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 checked="" type="checkbox"/>	<input type="checkbox"/>	on 16 July
<input type="checkbox"/>	<input checked="" 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.

**The CO constitutes a warranty period of two years (CO 210 p.1)**

- 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.

**Reporting requirements and retention obligation**

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

**Replacement, possibly reduction of price**

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

yes   
no

Article: CO 199

#### 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 checked="" type="checkbox"/>	<input type="checkbox"/>
A. Schwarz assumes legal ownership of the bicycle paying the sales price.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Benefit and risks are transferred to Anita Schwarz at the time of delivery/handover.	<input type="checkbox"/>	<input checked="" 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: Due to the agreement "bought as seen", she is not entitled to claim any compensation.

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: The contract is not contestable (voidable) as the circumstances do not constitute an essential error but only an unessential error (error of motive).

Article: CO 24 p. 2

#### 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 on-line 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?

"Climbing-Hall Magnet". (Beat Seiler) and restaurant Bären

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  |

Phoenix AG and restaurant Bären

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.

Because this is an additional (dispositive) condition

d) Name the following dates for the case above.

Date of contract conclusion 11 November 2016

Date of transfer of benefit and risks 11 November 2016

## 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?

**Since Friday, 22 February**

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

**The buyer was *not* entitled to retreat from the contract. Friday, 22 February is the time of fulfilment, i.e. it is an expiry date. Therefore the seller got in default (CO 102, p2).**

**If a seller gets into default the buyer has to allow for adequate additional time that the seller can fulfil his obligation, all before the buyer can retreat from the contract (CO 107).**

**If the TV is there on Monday, it would be delivered within an acceptable time frame and the buyer got into default of acceptance not buying the TV.**

- 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.

**In this case it is a commercial fixed date transaction according to CO 108c. 3.**

**The buyer is entitled to retreat from the contract without an additional time allowance.**

**The buyer has to declare his retreat without delay, i.e. one day after the expiry date.**

## 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:

**The acceptance (29 March 2013) of the proposal of 10 March 2013 took place too late. "Simplon GmbH" does not need to follow up the order, even when the delivery date was only fixed at the end of April (CO 5, p.1).**

- 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 checked="" 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 checked="" type="checkbox"/>
Selling through the internet it is always an "on site purchase", i.e. valid without form.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
According to CO the buyer of a "Simplon Bicycle" has to pay for transport costs.	<input checked="" 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:

**The "Simplon GmbH" has the right to retreat from the contract after 15 April 2013. The "Simplon GmbH" has not asked for a later delivery from BMC-AG (CO 190, p.2). Therefore the purchase from the competitor is lawful. (CO 190, p.1 + p.2)**

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: This case is an expiration date business. (CO 102, p.2). Mrs. Seiler has to

allow for a grace period in spite of the fixed date for delivery.

Only after this grace period she can waive the contract (CO107, p.2).

Mrs. Seiler has to buy the "Simplon Bicycle".

#### 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.

Waiver of later delivery plus compensation for non-performance.

Compensation = expenses + 100 kg à 0.50 = CHF 50.- (CO 107 p. 2)

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

Withdrawal + compensation for expenses (CO 107 p. 2)

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.

Delayed delivery + compensation for delayed delivery

e.g. 3 hours no sales (CO 107 p. 2)

#### Purchase Contract Case

1a) According to CO 1 and 2 the central question is whether consensus has been reached in all relevant parts?

Peter: "Agreement in all essential points (delivery conditions are not essential) has been reached; Heidi forwarded a binding offer regarding good and price, which I accepted impliedly by nodding."

Heidi: "There was no agreement in all essential points. Delivery conditions were still negotiated. In addition, my quotation was not a binding offer but only an invitation to quote. Therefore, the Peter's accept does not constitute consensus."

2a) Case does not state any reason impossibility to perform ► according to CO 102 II no delay of debtor. Date of performance/hand over was agreed on (expiry date deal) and failed by Heidi. ► Acc. to CO 103 I Heidi is obliged to pay compensation for delay claims (e.g. rent expenses for substitute appliance) and also for accidental loss or damage. (Peter is entitled to reconsider this decision and to give up the primary will (tape deck) and to choose another option)

2b) "nothing" if, according to CO 190/91, no commercial transaction had constituted as there were no two commercial dealers present (although this is possible as no regularity and volume is requested to constitute a commercial business transaction.) or alternatively  
According to CO 190 II Holger has to immediately indicate that he still wants to receive the good as in a commercial business transaction one assumes that a delay leads to a cancellation (CO 190 I)

2c) Performance is not possible anymore due to theft without seller's negligence; according to CO 185 I in sales contracts benefits and risk is being transferred to the buyer at contract conclusion; here the seller Heidi was in delay (see a), therefore she still bears the risk acc. to CO 103 I, even after contract conclusion. ► Heidi has to pay back the already paid sales price.

3) Case of material guarantee: Acc. to CO 197 I material guarantee is the liability of the seller for assured properties of the sold good as well as missing defects diminishing the fitness of the good for the expected use.  
According to the case a suitable 2nd hand tape deck should not break down after such a short time. There is a significant defect. It does not matter whether the seller knew it or not. (CO 197 II). There is no hint that Peter had not examined the good upon receipt, upon which he would have to inform Heidi immediately (CO 201 I).  
► According to CO 205 I Peter can choose between replacement (void of contract) or reduction (replacement of price or lower price, e.g. for repair costs to amend defect.)