

Table of Contents

CHAPTER 1. INTRODUCTION TO LOUISIANA SALES LAW

III. WHAT IS A SALE?

§ 1:9 Sale as a type of contract

§ 1:10 Distinguishing between a sale and a contract to build

IV. CHOICE OF LAW

A. CHOICE-OF-LAW APPROACH—GENERALLY

§ 1:12 Relationship between Article 3515 and remaining choice-of-law articles

B. CHOICE-OF-LAW APPROACH IN CONTRACTS

§ 1:15 General choice-of-law principle for contracts

§ 1:18 General choice-of-law principle for contracts—Party autonomy in contracts

CHAPTER 2. PRICE

§ 2:2 Price certain or determinable

§ 2:4 Intent that a price be paid

§ 2:7 No price fixed price in sale of some movables

CHAPTER 3. TRANSFER OF OWNERSHIP AND RISK OF LOSS

I. TRANSFER OF OWNERSHIP

A. THE IMMEDIATE-TRANSFER-OF- OWNERSHIP RULE

§ 3:3 Transfer of ownership compared to transfer of risk of loss

B. EXCEPTIONS TO THE IMMEDIATE- TRANSFER-OF-OWNERSHIP RULE

§ 3:8 Things that must be individualized

III. THINGS IN TRANSIT

B. RISK OF LOSS OF THINGS IN TRANSIT

§ 3:26 Risk of loss for things in transit—General principles

CHAPTER 4. SALES SUBJECT TO CONDITIONS

I. SALES SUBJECT TO CONDITIONS

A. TYPES OF CONDITIONS

§ 4:3 Definition of condition

II. THE “CONDITIONAL SALE”

A. RECEPTION OF THE CONDITIONAL SALE

§ 4:16 Payment of the price as a suspensive condition—The conditional sale

C. CONDITIONAL SALES OF IMMOVABLES

§ 4:23 Legislative response—Regulation of the bond for deed

§ 4:25 Call for change in treatment of immovables

CHAPTER 5. AGREEMENTS PREPARATORY TO THE SALE

II. CONTRACT TO SELL

A. GENERAL PRINCIPLES GOVERNING THE CONTRACT TO SELL

§ 5:7 Definition of contract to sell

§ 5:8 Requirements for contract to sell

§ 5:9 Contract to sell subject to the happening of a condition

B. EFFECTS OF THE CONTRACT TO SELL

§ 5:10 Legal consequences of the contract to sell

C. CONTRACTUAL EXCLUSION OF SPECIFIC PERFORMANCE

§ 5:11 Agreements affecting the right to specific performance

III. OPTION TO BUY OR SELL

B. FORMAL REQUIREMENTS OF THE OPTION

TABLE OF CONTENTS

TO BUY OR SELL

§ 5:16 Must meet formal requirements of sale

C. EXERCISE OF THE OPTION

§ 5:20 Acceptance of option

IV. RIGHT OF FIRST REFUSAL

B. TRIGGERING THE GRANTEE'S RIGHT OF FIRST REFUSAL

§ 5:26 What triggers the right of first refusal?

C. LEGAL EFFECTS OF ACCEPTANCE AND OF REJECTION BY GRANTEE

§ 5:28 Time for acceptance

§ 5:29 Legal effects of grantee electing not to purchase

V. TIME LIMITS FOR OPTIONS AND RIGHTS OF FIRST REFUSAL

§ 5:33 Effect of article 2628 on stipulated time requirement of option

§ 5:34 Time limitations for “clothed” options and rights of first refusal

VI. APPLICATION OF REGISTRY PRINCIPLES TO THE PROMISE OF SALE

§ 5:37 Registry provisions that apply to the promise of sale

VII. IMPLIED WARRANTY OF MERCHANTABILITY

§ 5:43 When is a title suggestive of litigation?

§ 5:44 Conclusions about implied warranty of merchantability

CHAPTER 6. FORM REQUIREMENTS FOR THE CONTRACT OF SALE

I. FORM REQUIREMENTS FOR CONTRACT OF SALE

B. IMMOVABLES

§ 6:6 Party represented by mandatary

II. THE WRITING REQUIREMENT

§ 6:7 The writing requirement—An overview

A. THE ELEMENTS OF A WRITING

§ 6:10 Writing must sufficiently describe thing sold

B. TYPES OF WRITINGS RECOGNIZED IN LOUISIANA

§ 6:11 The authentic act

§ 6:12 The act under private signature

§ 6:13 Bilateral act signed by one party

C. EXCEPTIONS TO WRITING REQUIREMENT FOR IMMOVABLES

§ 6:16 Delivery plus admission

§ 6:17 Special considerations for promise of sale

CHAPTER 7. SALE BY A NON-OWNER: MOVABLES

§ 7:4 Article 518—Consent transfers ownership of a movable

§ 7:9 Registered movables

§ 7:13 Acquisitive prescription—Buyer in good faith or in bad faith

CHAPTER 8. SALES OF IMMOVABLES BY NON-OWNERS: THE PUBLIC RECORDS DOCTRINE

§ 8:5 Form of instruments

§ 8:8 Third party in good faith

§ 8:13 Lis pendens and the public records doctrine [*New*]

CHAPTER 9. THE SELLER'S OBLIGATION TO DELIVER THE THING SOLD

II. DELIVERY OF MOVABLES

§ 9:13 Place of delivery

III. DELIVERY OF IMMOVABLES

§ 9:22 The rules in combination—Presumption of sale per aversionem

CHAPTER 10. THE WARRANTY AGAINST EVICTION

I. SCOPE OF THE WARRANTY AGAINST EVICTION

A. ELEMENTS OF THE WARRANTY AGAINST EVICTION

§ 10:5 Buyer's danger of losing the thing

§ 10:7 Partial eviction

TABLE OF CONTENTS

B. ENCUMBRANCES ON THING SOLD

§ 10:9 Encumbrances declared by seller excluded

**C. WARRANTY AGAINST EVICTION
COMPARED TO OTHER SALES
WARRANTIES**

§ 10:14 Comparison with warranties against redhibition and of fitness

§ 10:15 Comparison with implied warranty of merchantability

**III. BREACH OF WARRANTY—BUYER'S
RECOVERY**

B. THREE CATEGORIES OF SALES

2. Non-Warranty Sale

§ 10:27 What is a non-warranty sale?

C. ELEMENTS OF RECOVERY

§ 10:32 Price—Partial eviction and undeclared encumbrances

§ 10:33 Other Elements of Damage

D. THE QUITCLAIM DEED

§ 10:34 The Code's definition of quitclaim

§ 10:35 Identifying a quitclaim deed

IV. BUYER'S RIGHT OF SUBROGATION

§ 10:39 Buyer's right of subrogation for breach of warranty against
eviction

VI. THE AFTER-ACQUIRED TITLE DOCTRINE

§ 10:48 Scope of the after-acquired title doctrine

**CHAPTER 11. THE WARRANTY AGAINST
REDHIBITORY DEFECTS**

I. WHAT IS A REDHIBITORY DEFECT?

§ 11:2 Redhibition is based on two types of defect

§ 11:3 Nature of the buyer's rescission claim

§ 11:5 What type of defect supports rescission?

§ 11:6 Must a defect affect the thing physically?

**II. SELLER'S LIABILITY FOR BREACH OF
WARRANTY**

§ 11:11 Liability of the good faith seller in general

- § 11:14 Liability of bad faith seller
- § 11:15 Manufacturer's knowledge presumed
- § 11:16 Manufacturer not defined
- § 11:18 Price reduction
- § 11:21 Bad faith seller's liability for damages
- § 11:22 Bad faith seller's liability for attorney fees
- § 11:23 Non-waivable liability of manufacturer
- § 11:24 Usefulness of defective thing as credit against seller's obligation

III. SUBROGATION RIGHTS AND WAIVER OF WARRANTY

- § 11:29 Subrogation of buyer to seller's right in redhibition
- § 11:33 Buyer has no claim in redhibition against persons who contracted with seller
- § 11:34 Waiver of warranty against redhibitory defects and other warranties

IV. LIBERATIVE PRESCRIPTION

- § 11:35 Prescription—Good faith seller ignorant of the defect
- § 11:36 Prescription—Residential or commercial immovable
- § 11:37 Prescription—Seller with knowledge of the defect
- § 11:40 Repairs and interruption of prescription

V. SPECIAL RULES

- § 11:44 The warranties of fitness
- § 11:45 Lack of a specified quality
- § 11:47 Redhibition, warranty of fitness, and the Louisiana Products Liability Act
- § 11:48 The New Home Warranty Act

CHAPTER 12. THE SALE OF MOVABLES

I. BATTLE OF THE FORMS

- § 12:4 The current law—Article 2602

III. REMEDIES FOR BREACH

B. BUYER'S BREACH

- § 12:16 Judicial dissolution

CHAPTER 13. LESION BEYOND MOIETY

- § 13:2 An overview of lesion
- § 13:6 Proving fair market value and lesionary price *[Retitled]*
- § 13:8 Mixed sales
- § 13:10 Variations on the price

TABLE OF CONTENTS

CHAPTER 14. THINGS THAT MAY BE SOLD

§ 14:4 Litigious rights

§ 14:7 No sales of future succession rights

§ 14:8 Events taxed as sales *[New]*

CHAPTER 15. THE SELLER'S RIGHTS

I. THE BUYER'S OBLIGATIONS

§ 15:3 The parties' correlative obligations

III. SELLER'S ENTITLEMENT TO DISSOLVE THE SALE

A. GENERAL PRINCIPLES GOVERNING THE SELLER'S RIGHT TO DISSOLVE

§ 15:10 Nature of seller's right to dissolve

§ 15:11 Seller's right to dissolve compared to seller's other rights

IV. BUYER'S RIGHTS WHEN SELLER SEEKS DISSOLUTION

A. IMMOVABLES

§ 15:17 Residual rule for immovables

Table of Laws and Rules

Table of Cases

Index