5. ‘Hidden’ charges and encumbrances (Art 575)

- Where the property is subject to a third party’s superficies, right of way (servitude), registered lease, gage, lien, etc.
- Inapplicable to ‘known’ charges and incumbrances which have been assumed by the buyer (reflected in the contract price)
- Applicable also to known charges and incumbrances which have **not** been assumed by the buyer (as the seller agreed to remove it)? Probably not. Will constitute breach of contract. See Art 576 for the buyer’s remedy in the event the buyer loses the property or had to repay the debt to purge the charges from the property.
- Applicable also to a property sold together with a right of way on another’s property when it turns out that the right of way does not exist. Art. 575(2)

Remedies

- Buyer may claim ‘damage’ (it probably means ‘reduction of price’ and ‘damage if there is loss which is not cured by reduction of price’)
- If the purpose of the contract cannot be fulfilled due to the charges and incumbrances, buyer may terminate the contract.
- Available for 1 year after the buyer became aware of the charges. Art. 575(3)