Sale by Description

- Implied **condition** that the goods shall correspond with the description.
- If the delivered goods fail to correspond with the description, it will be a breach of contract (rather than breach of warranty)
- Mainly for fungible, unascertained goods.
- If the buyer relies solely (no opportunity for buyer to inspect the thing sold) or principally (even with an opportunity to inspect the goods) on the seller's description, sale of 'specific' goods may also be regarded as sale by description?
    - A thing sold as "nearly new" through correspondence or through internet.
    - Displayed thing which is sold as "authentic property of Charles I".
    - Sale of seeds, mushroom germs "in stock"

Remedies

- Usual remedies for **breach of contract** available.
- Can the buyer demand replacement of the defective goods with goods corresponding with the description? Yes. Art. 581(2)
- Can the Seller **insist** on replacement when the Buyer demands refund/return ?
- Vehicle recall? After sales service? Even when the goods were sold to a third party? Customary law?

Defect of goods selected for delivery. Art. 581

- Art 580 (defect of specific good) applicable.
- Buyer may demand replacement (as replacement is possible). Art 581(2)

- Buyer’s remedy available for 6 months from learning the defect. Art. 582
- 94Da23920: Hiking shoes sold as per sample. Shoes were inspected and accepted. Upon acceptance, payment was made. Shoes turned out defective. Arts. 580 and 581 applicable. Failure to discover not-so-easily-discoverable defect does not constitute ‘contributory negligence’. Buyer’s “due diligence” is for the benefit of the buyer (in the sense that the buyer may refuse to conclude the contract or refuse to accept the delivered thing), not of the seller. In principle, however, buyer’s ‘contributory negligence’ must be taken into account in assessing the damage (even though the seller’s warranty liability is ‘strict liability’).