

## THE SALE AND PURCHASE OF HORSES - LEGAL, THEORETICAL AND CASELAW ASPECTS IN ROMANIAN AND FRENCH JURISPRUDENCE

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“On a single day of Grand Prix in Paris, an American athlete was telling general Faverot De Kerbrech that he saw passing on the Champs-Elysees more real horses than in a whole year in New York.”<sup>1</sup>

**ABSTRACT:** *The sale-purchase agreement is probably the oldest contract that first appeared in the form of verbal agreements, more related to the honor, the word, the honesty of the buyer and the seller, and which subsequently, took on a written form and became regulated by written rules.*

*Just as in the case of the sale of foods that may be tried out, the sale with a trial period is a variant of the sale-purchase contract.*

*There are forms/variants provided by law and are among the first forms of such transactions at the time when, as they say, the seller and buyer “shook hands” on the agreement, and the transaction was concluded even without a written form and relying only on their “word” or “honour”, the firm expression of the will of the two parties to sell and buy, respectively, as well as the price demanded and accepted.*

*Under these conditions “the sale with a trial period” is a manner of selling and buying that is present today and which sometimes is also a practice encountered in the case of the sale-purchase of horses.*

*Given the multitude of transactions and their object that can be encountered, it is only natural that many varieties of the sale-purchase contract imposed by the specifics of the sold and purchased good appeared as well.*

*Thus, the varieties commonly encountered on the “free market” are the “sample sale” and the sale “with a trial period”.*

*In most cases, sellers are professionals, but buyers can be either professionals or simple individuals who want to purchase the respective goods, and in the case of the latter the legislation provides additional protection measures.*

*The sale with a trial period is regulated by the provisions of Article 1681 of the Civil Code<sup>2</sup> and is also found in the civil legislation of other countries of the European Union.*

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<sup>1</sup> Grasset d’Orcet, *Histoire du cheval à travers les âges*, Editura E/dite, Paris, mai 2005. p.318.

<sup>2</sup> Art 1681 The sale with a trial period in the Romanian Civil Code "(1) The sale has a trial period when it is concluded under the suspensive condition that, following the trial, the good should correspond to the criteria established at the conclusion of the contract or, in the absence thereof, to the destination of the good, according

*According to the legal provisions it is considered that the sale has a trial period when it is made under the suspensive condition that the good constituting the object of the sale needs to meet the established criteria, or destination, according to its nature.*

*It has been admitted that goods such as automobiles, animals, clothing and shoes can be the object of such sales.*

*In this study, we will examine the matter of selling "with a trial period" with specific reference to the sale of horses and by presenting legal regulations, as well as jurisprudence in Romania as well as in France.*

*In the French legislation, regulations for the sale of horses are provided in the Civil Code, the Commercial Code, the Consumer Code, but also the Rural Code<sup>3</sup>.*

*The legal rules in France on the sale of horses, which also apply to the exchange, are essential, as many transactions per year concern horses. The French Institute of Horse and Equitation records more than 95,000 horse transactions per year.*

*For a long time the trade of horses was considered as an activity that has particular risks. Consequently, the activity was regulated by a Law of April 12, 1941 requiring horse traders to hold a professional certification under the control of the Ministry of Agriculture<sup>4</sup>.*

*This administrative requirement was removed by the Act of 8 June 1998<sup>5</sup>. After that date the trade and intermediation of horse transactions have become freely exercised.*

*Transactions in general and horse transactions in particular can be carried out between professionals, between professionals and simple consumers, or only by the latter.*

*In this respect, the French Consumer Code provided for the legal guarantee of conformity and defined the notions of "professional" and "consumer".<sup>6</sup>*

**KEYWORDS:** *sale with trial period; hidden defects or latent defects; conditions regarding the transfer of property; retroactive dissolution of the contract; sale of horses.*

**JEL Code:** *K00, K15, K33*

#### *Definition of the consumer*

The legal guarantee of conformity has been established for the benefit of consumers in order to ensure their protection from professional sellers. The resulting action will not be applicable to sales between professionals or those concluded only between "consumers". On the contrary, when the consumer-professional relationship does exist, the benefit of the legal guarantee of conformity is of public order and no contrary clause can allow the buyer to give it up, according to Art. L211-17 of the French Consumer Code.

Thus, it becomes essential to characterise the consumer and, in contrast, the professional. In this regard, Art. L 211-3 of the French Consumer Code sets out the outline of these terms by indicating that the guarantee of conformity, "is applicable to contractual relationships between the seller acting in the course of his business and the buyer acting

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to its nature. (2) If the duration of the test has not been agreed and the custom does not result otherwise, the condition shall be deemed to have been met if the buyer has not declared that the good is unsatisfactory within 30 days of the delivery of the good."

<sup>3</sup> Isabelle Couturier, Edith Dejean, *Code rural et de la pêche maritime - Code forestier*, annoté et commenté, 43<sup>e</sup> édition, Dalloz, Paris, 2023.

<sup>4</sup> Loi du 12 avril 1941 Production, commerce et utilisation des chevaux et mulets - <https://www.legifrance.gouv.fr>.

<sup>5</sup> La loi n° 98-565 du 8 juillet 1998 relative à la partie législative du livre VI (nouveau) du code rural est venue abroger les dispositions de la loi du 12 avril 1941 relative à la production, au commerce et à l'utilisation des chevaux et mulets - <https://www.senat.fr/questions/base/2014/qSEQ140411192.html>

<sup>6</sup> Yves Picod; Nathalie Picod; Eric Chevrier, *Code de la consommation*, annoté et commenté, 28<sup>e</sup> édition, Dalloz, Paris, 2023

as a consumer”. Compared to the imprecision of these notions, jurisprudence has helped to shape them.

In a general manner, it is found that the judges retain a broad conception of the notion of sales professional, a notion that goes far beyond those individuals constituted as horse traders. Thus, the manager/facility owner of an equestrian center falls into this category, the one whose object of activity is limited to teaching horseriding, he who sells on his own behalf a horse resulting from his breeding practices<sup>7</sup>. Also part of this category is an instructor who works with the title of liberal profession.<sup>8</sup>

Regarding the consumer, the Consumer Code does not give any definition. According to the text of the European Directive of 1999<sup>9</sup>, it refers to any natural person acting for purposes which are not part of his professional or commercial activity.

It follows from this definition, which is imposed in French law, that only the competency to buy is not enough to make him a genuine professional. In other words, the amateur “connoisseur”, remains a consumer, as long as they seek only to meet his personal or family needs and not those of a business or a liberal profession.

In practice, will be considered a consumer, the buyer of a horse who:

- even though was the owner of several horses and knows perfectly this sector, he did not organize this passion in order to get a profit<sup>10</sup>;
- aims to become a riding teacher, but is not yet the holder of a diploma that will allow him to exercise this profession<sup>11</sup>;
- is a student in economy being considered as a “amateur connoisseur”, in terms of competition practice<sup>12</sup>;

This action is associated with the sale of horses, since the latter constitute movable tangible property. In two judgments of principle of 12 June 2012, the First Civil Chamber of the Court of Cassation states that the consumer-buyer cannot be judged under the restrictive provisions of the French Rural Code, all the more so since he is not obliged to justify a derogatory convention from it. Thus, the rules deriving from art. L 211-1 and the following of the French Consumer Code apply in a principal manner, to sales of animals intervening between a seller acting in the course of his professional or commercial activity and a buyer acting as a consumer; the other actions in the guarantee are subsidiary.

Professionals can also be represented by companies, companies dealing with the sale, purchase, intermediation of horse transactions<sup>13</sup>.

#### *Completion of sale*

In accordance with Article 1583 of the French Civil Code<sup>14</sup>, it is stipulated that a sale is legally “perfected” if the seller and the buyer have agreed on the good and the price.

<sup>7</sup> Grand Tribunal of Bordeaux, 22.12.2006, nr. 06/06457.

<sup>8</sup> Court of Appeal Bourges, 10.01.2008.

<sup>9</sup> Directive 1999/44/CE du Parlement européen et du Conseil, du 25 mai 1999, sur certains aspects de la vente et des garanties des biens de consommation - <https://eur-lex.europa.eu/legal-content>

<sup>10</sup> Court of Appeal Limoges, 18.08.2006, nr. 06/0687

<sup>11</sup> Court of Appeal Poitiers, 01.10.2010, nr. 09/01213, CA Bordeaux, 11.09.2008, nr. 108/07

<sup>12</sup> Court of Appeal Rouen, 16.09.2009, nr. 08/42085.

<sup>13</sup> Mădălina Botină, Ion Turcu, *Dreptul afacerilor întreprinderii vol. 1*, Editura C.H. Beck, București, 2014.

<sup>14</sup> Xavier Henry; Alice Tisserand-Martin; Guy Venandet; Pascal Ancel; Estelle Naudin; Nicolas Damas; Pascale Guiomard, Code civil, annoté, Dalloz, Paris, 2023.

This means that the property has been transferred to the buyer, “even if the object has not yet been delivered, and the price paid”.

Thus, the contract of sale is born long before the taking into possession of the animal.

Consequently, any buyer must know that he will have to be responsible for, barring the existence of a contradictory clause provided for in the contract, any damage suffered by the horse after the time of sale, but before that of delivery, according to the Latin adage “res perit domino”.

As a first example is the situation of buying a horse that will be received 15 days later. Two days after delivery, the animal dies of septicemia. Accordingly, the buyer intends to turn against the seller, invoking a latent defect, anterior to the sale, but which manifested only after the sale. The Grenoble Court of Appeal rejected his request, finding that the parties did not want to postpone the moment of the transfer of ownership and that veterinary expertise does not give the possibility to assert that this horse was the carrier of a deadly disease at the time of sale. Moreover, according to Article 1583 of the French Civil Code, the buyer assumes all the consequences of the loss of the animal<sup>15</sup>.

#### *Regarding the subject of the sale*

A horse is a good that is well-individualizable or easily individualizable. Accordingly, the choice of the buyer must take into account an animal whose identity is indisputable, otherwise, we may have to deal with an error, theft, or deception. Buying a mare can be followed by the birth of a foal, which was not known at the time of sale. In this case, often encountered, the owner of the mare will be declared the owner of the foal. It is the consequence of Article 547 of the French Civil Code which states that: “the product of the animals belongs to the owner by way of accession”<sup>16</sup>.

In the presence of such an unforeseen event, the owner of the foal will be able to turn against the seller, in particular to obtain the certificate of breeding, from which results the origin of the animal, and there is an obligation to hand over this document.

#### *Regarding the price*

In order for the sale to be made, the parties must agree on the object, but also on its price. On this last point, there is the principle of contractual freedom: the buyer and the seller freely agree on the price to be paid. “Specialists, as they are everywhere, even in America, were outraged to see fantastic prices being paid on ugly, badly built horses, with loud, hard, but they were proving an extraordinary speed over a short distance”<sup>17</sup>.

The price can be represented by a sum of money, but it can consist of a benefit in kind. If the price is paid by handing over another good of equivalent value, we will speak of an exchange, with the applicable legal rules being the same as for sale. In the field of horse racing there are sales at which the price is completed at “the first race won”<sup>18</sup>.

All these understandings must be clearly certified by a document, without which the seller will not be able to obtain satisfaction.

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<sup>15</sup> Court of Appeal Grenoble, Decision 20 September 1999.

<sup>16</sup> Court of Appeal Paris, 7 May 2004

<sup>17</sup> Grasset d’Orcet, *Histoire du cheval à travers les âges*, Editura E/dite, Paris, mai 2005. p.317.

<sup>18</sup> Court of Cassation, The First Civil Section, 15 January 1963

Auction sales and sales “through advertising” present specific price aspects. The first ones developed considerably in the sales of horses. They are defined in art. L320-2 of the Commercial Code of France, being those who “assume the intervention of a third party acting as a trustee of the owner or of his representative to propose and award a good to the one who gives more at the end of a procedure for placing in competition, open to the public and transparent”. This text states, inter alia, that such sales are open to anyone who can bid and no hindrance can be brought to the freedom to bid.

Sales “through advertising” are a particular category in the world of racing, the principle being simple: all horses registered in a particular race are for sale. Potential buyers are invited to submit an application bulletin indicating the price at which they want to buy one of the participating horses, and the one who offers the most will become the owner and must immediately pay the promised amount.

With regard to the date of consent, in the absence of a clear document, the courts will take into account the conduct of each of the contractors in order to determine the actual date of sale. For example, the closing date of the sale may be fixed on the day on which a buyer paid a first payment to the seller, having completed the administrative documents in his name and having also chosen the name of the animal<sup>19</sup>.

#### *Form of the contract*

The case-law considers that, taking into account the practice of the profession, buyers find themselves in material impossibility within the meaning of Article 1348 of the French Civil Code to obtain a proof of sale document. Incidentally, when the sale is concluded between two traders and in the interests of business, any form of proof will be admitted, according to Art. L110-3 of the Commercial Code of France.

“Designing a sales contract is a security guarantee for both parties limiting the risks.”

“Horse sale is regulated in France by several codes: Rural Code - for latent defects, Civil Code - for hidden vices prior to the sale and the mourning, the, as well as the Consumer Code - for defects of conformity if the seller is a professional, and the buyer a consumer.”<sup>20</sup>

On sales between professionals, issuing an invoice is mandatory according to prov. art. L44 paragraph 1-3 of the French Commercial Code.

In transactions concluded between a professional seller and an individual, the invoice will not be issued unless the buyer requests it. However, Article 134 paragraph 1 of the French Consumer Code states that “-professionals sellers must remit to any interested person requesting, a copy of the conventions commonly proposed”.

It is preferable that all horse purchasers sign a sales contract that traces the essential obligations of each party.

This contract will allow proof of the existence of the sale, but also its date, the date of delivery, as well as possibly certain particular clauses, for example, to which activity the horse is destined.

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<sup>19</sup> Court of Cassation The First Civil Section, 6 June 2000.

<sup>20</sup> Emmanuelle Brengard, *Avoir un cheval à soi*, Editura Glénat, Grenoble, September 2013, p. 65.

*Sale with deposit*

Quite often the buyer gives an amount to the seller even before the delivery of the purchased horse. This amount can be qualified in two very different ways: either it is a split payment or it is a deposit. The split payment is a first installment of a sale price. Everyone must respect their commitment without being able to divest themselves of the sale.

In contrast, the deposit constitutes the price of a notice clause. This means that until the full execution of the delivery obligation, the seller and the buyer can, both one or the other, decide to terminate the contract. But, as Article 1590 of the French Civil Code shows, the exercise of this possibility will entail the loss of the deposit for the buyer and the obligation of the seller to pay double to the buyer.

To clarify things, Art. L114 paragraph 1 of the French Consumer Code states the principle that, in sales between professionals and consumers, “except for provisions contrary to the contract”, the amounts paid before constitute a deposit.

Frequently, a horse will first be “tried” by a prospective buyer or a person it mandates for this purpose, such as a vet, a, in order to appreciate the qualities before the sale is concluded.

The situation becomes very important, if, for example, the horse injures itself during the trial period. If an attempt has been agreed, the sale is deemed to have ended under “condition precedent”, pursuant to Article 1857 of the French Civil Code. That means two things. First, the stipulation of an attempt can never be presumed. It is necessary that the parties to the contract agree in advance on this attempt in order for such a condition precedent to take effect. Then the contract does not come into effect unless the prospective buyer declares himself satisfied with the qualities of the animal.

In the absence of conditions imposed by the parties, the sale of horses is pure and simple, that is, it has effect immediately after obtaining the consents, there is a firm sale. It is the duty of the person who invokes the existence of a suspensive condition to prove it with the help of a document, a practice, but also taking into account the circumstances of the sale.

Consequently, if the buyer wants to benefit from the trial period in order to appreciate the qualities of the animal, he must prove that the contract presupposes such a condition precedent.

It should be noted that there is no practice to impose a systematic attempt on horses, and vet visits for purchase are not mandatory.

However, a court ruled that a rider practicing jumping competitions over obstacles for over ten years and who already owned several horses would make a mistake if he did not make a prior visit when buying a horse for 23,000 euros<sup>21</sup>.

Such a mistake prevents, according to that ruling, the unforeseeable buyer from demanding the resolution of the sale.

In the absence of any customs and written clauses, the original buyer will be able to rely on circumstantial elements that characterize the will to have a trial. For example, were ruled as sufficient circumstantial elements: the absence of the seller's protest on the occasion of the takeover of the animal or the fact that the sales certificate was not completed on delivery of the animal. It will also be considered, a sale concluded “with

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<sup>21</sup> Court of Appeal Rouen, 1 December 2004.

trial” if the price payment and the registration card remittance do not occur until the horse has been subjected to a training period and a veterinary examination by the prospective buyer.

The parties to the contract have a great deal of freedom in the establishment of contractual terms. Usually, the condition precedent will be based on the establishment of a favorable veterinary visit or on the verification by the prospective buyer of the sports or psychological qualities of the animal. The duration of the test will vary depending on the modalities. The case-law tends to consider that the fixing of an eight-day duration for the trial period is usually taken into account in the absence of an agreement to the contrary.

Nothing prohibits the parties from agreeing on an imprecise term, such as, for example, participation in competitions whose dates cannot be determined precisely in advance. Under this assumption, the attempt will last until the participation is effective<sup>22</sup>.

The buyer who tries a horse must be vigilant. Thus, keeping the animal at the end of the trial period without making any observations on its behaviour or skills necessarily implies confirmation by the buyer, which perfects the contract. The buyer can no longer overturn his consent, even if the result of the veterinary visit after the end of the trial period confirms the existence of a defect. At the same time, a refund occurring within a period of 4 months shall not be considered late if, at the end of the test, the prospective buyer has issued unfavourable comments on the sporting qualities of the animal.

Where the condition precedent is based on an objective event such as a favourable veterinary examination, the buyer may not refuse to keep the animal if this examination is satisfactory<sup>23</sup>.

For example, one buys a pony from a farm. The contract stipulates that the sale will become effective subject to the consent of the buyer's veterinarian and after a period of two months counted from the day of delivery. This sale is undeniably made “with a trial”. A few weeks later, the buyer denounces the contract on the grounds that the pony is not in satisfactory health. A veterinary certificate indicates, in particular, that he suffers from neurological damage to the skull, but also to the spinal cord and brain stem: the future of his sports performance is reserved and unfavorable.

The farm considers, from their point of view, that the sale can no longer be called into question. The Dijon court of appeal does not agree with them. In fact, the Court notes the presence of the condition precedent and points out that veterinary certificates are not similar to an accident that might have occurred while the horse was at the prospective buyer. Consequently, as long as the denunciation took place before the expiry of the trial period and for a reason provided for in the contract, it is valid: the farm must repay the amount paid and take back the pony.

An identical solution is applied in the assumption that the horse suffers from a hidden vice, limp, which later manifested itself after the end of the trial period, but which finds its origin during the trial, without the buyer having made a small mistake.

#### *Delaying delivery*

Since the sale is “perfected” at the time of the agreement on the work and price, the delivery or taking possession of the animal can intervene later, without the date of sale

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<sup>22</sup> Court of Appeal Nancy, 27 March 2000

<sup>23</sup> Court of Appeal Dijon, 10 April 2003

being changed. Art. L114-1 of the French Consumer Code requires the seller of a good, the value of which is higher than 500 euros, who has committed to deliver it to an unprofessional buyer, indicate the deadline on which he will execute the delivery. In case of non-compliance with this date, after 7 days and in the absence of a force majeure event, the buyer may denounce the delivery by registered letter with acknowledgement of receipt.

*Informed consent of the buyer*

Article 1109 of the French Commercial Code<sup>24</sup> states that consent is not valid unless it has been vitiated by error, fraud or obtained by violence. In the matter of the sale of horses, the error committed by the buyer and the seller's fraud is common.

The rules on consent play an important role when the buyer is not satisfied with what he has purchased. Thus, if there is a vice of consent, the judge will decide the retroactive abolition of the contract; each of the contractors will have to be put in the situation prior to the sale. The action in nullity must be filed within 5 years from the date of discovery of a vice of consent, according to Art. 1304 French Commercial Code.

The action in nullity may be brought after the death of the horse if it was caused by a reason on which the consent was vitiated. If the death is caused by a contagious disease, the legal term of referral to the judge of 45 days is not opposable to the buyer.

When the sale is canceled by a court, the seller must refund the price received, and the buyer will refund the horse. Article 549 of the French Commercial Code states that "fruit" such as racing earnings or foals, remain the property of the buyer if it was in good faith. Moreover, if the animal was to die or was resold before the cancellation of the sale, the buyer will be obliged to refund only an indemnity equivalent to the value of the horse on the day of sale, amount that may differ from the price paid.

*Consent vices in the sale of horses*

"Error is not a cause of nullity of the convention unless it concerns the very substance of the thing that is its subject", according to Art.1110 of the French Commercial Code. This is an error on substantial qualities. This means that a party to the contract, most often the buyer, he formed a false idea of an aspect which he considered essential in the contract and which the seller perceived in the same way.

Thus, the buyer of a sports pony can not invoke an error, due to the presence of a melanoma, to the extent that the animal has never ceased to participate in competitions, and that tumor did not prevent its use<sup>25</sup>. It is not a question of substantial quality even when we are dealing with an error committed regarding the conditions of acquiring the track record of a sports pony<sup>26</sup>, or on the breed of the animal, he said, where the latter is not the determining reason for the purchase or if the animal is not a breeder<sup>27</sup>.

Instead, it was considered that not entering the competition field may constitute an error if the use of the animal for sport was a decisive condition of the contract<sup>28</sup>.

The Nimes Court of Appeal refused to cancel a sale after it found that a mare had an anatomical anomaly due to which it was unfit for breeding, because it was not

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<sup>24</sup> Nicolas Routchevsky, Eric Chevrier, Pascal Pisoni, *Code de commerce*, annoté, Dalloz, Paris, 2023.

<sup>25</sup> Court of Appeal Versailles, 18 November 2010.

<sup>26</sup> Court of Appeal Caen, 07 May 2002.

<sup>27</sup> Court of Appeal Paris, 31 March 2000, Court of Appeal Limoges, 25 January 2007.

<sup>28</sup> Court of Appeal Amiens, 23 March 2000.

demonstrated that the mare was bought for the exclusive purpose of breeding. In the present case, this mare was changed to a mare that limped by the right hind leg and made it unfit for riding. Moreover, the buyer did not conduct an examination of the reproductive apparatus, until 10 months after the exchange<sup>29</sup>.

An error may concern, first of all, at the identity of the purchased animal. Horses, being in principle well-identified, the buyer may not be obliged to keep a horse that is not the one he wanted to buy. It makes sense to sanction such an error, but in practice it is only rarely encountered.

Buyers most commonly invoke an error regarding the physical or sporting capabilities of horses. Thus, the error regarding the intrinsic sporting value of a racing mare is substantial<sup>30</sup>.

Also, the purchase of a horse that is impossible to ride will be canceled, either because it is too disobedient or because it is touched by an affection, such as a limp that makes it impossible to use<sup>31</sup>. It is also an error when buying, as a sports horse, an animal touched by "navicular disease" in an irreversible manner<sup>32</sup>, or leukemia, or, which makes him unfit for competition. We can also cite the case of a horse presented as being slightly hurt, but which in reality had a basin fracture, or the case of a horse unable to participate in equestrian walks.

Another example is a mare that was bought after winning a race. After delivery, the buyers found that the animal was pregnant and notified the seller of the sale resolution, also asking for the payment of damages. The court of cassation received these requests and validated the decision rendered in the appeal, by which the former owner of the mare was convicted. For the judge, there is no doubt that if the buyers knew the gestation state of the mare at the time of sale they would not have bought it, with certainty, because their goal was to buy a racehorse and not a breeder.

There is thus an error on the substantial quality of the sold mare. The fact that it was bought in a race does not change this hypothesis: such sale is not liable to oppose a warranty action for consent vices. In this case, the seller was also convicted of fraud, for the absence of information, because he did not present the true situation of the mare, until after the conclusion of the sale.

Certain errors in substantial qualities cannot be invoked by the buyer through a nullity action and are considered as non-excusable. This is the case every time the buyer shows a reprehensible naivety.

For example, the case of the person who is buying a sports pony without checking the size of the animal in advance.

Thus, a competition pony was bought at auction. After the sale the owner realized that the pony exceeds the authorized size for competitions for ponies (1.48m), so his sports projects were considerably compromised, the buyer notifying the company that had organised the sale at auction, the bailiff and the seller. Before the courts he invoked the error of which he was the victim, as well as the hidden vice that the animal had. The Paris Court of Appeal rejected the buyer's claims. In its ruling, it found that the auction sales

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<sup>29</sup> Court of Appeal Nimes, 4.10.2012.

<sup>30</sup> Court of Cassation, The First Civil Section, 5 February 2002.

<sup>31</sup> Court of Appeal, Ax-N-Provence, 28 October 2004

<sup>32</sup> Court of Appeal Grenoble, 5 December 2000.

catalogue contained a height compatible with the participation in pony competitions and no measurement was organised in the context of this sale. Consequently, it was the duty of the prospective buyer to make the vet check on the size of the pony he intended to buy. It was thus considered that there was no error with respect to substantial qualities<sup>33</sup>.

Fraud results from the behavior of one of the cocontractants. This, due to some maneuvers, will mislead the other party and, as a consequence, determine their consent.

“Just as France buys wines from Spain and Italy which it resells as French wines, so it did not delay to buy foals from Canada, which, after a brief period spent on its pastures, were resold as French luxury horses.”<sup>34</sup>

Fraud, which most often comes from the seller, can translate into positive acts or a simple reluctance to disclose information that, if known, would undoubtedly have led the buyer not to contract. The fraud is therefore found to be the origin of an error that could lead to the nullity of the sale and the establishment of damages. Moreover, at criminal level, fraudulent workmanship may constitute the scam offense punishable by 5 years in prison and 375,000 euros fine according to Art. 313-1 of the New French Criminal Code or that of cheating on substantial qualities provided by Art L. 213 - 1 of the French Consumer Code.

It is up to the complainant to prove a fraud and, in particular, to prove that the other party intended to deceive. The case-law also requires that fraudulent manoeuvres exceed the normally permissible threshold for all commercial transactions.

There is fraud if the seller hides certain aspects of the animal, forgetting to mention them to the buyer, or making them temporarily invisible.

The case-law gives numerous examples of fraudulent manoeuvres. With the title of positive acts we can cite: the preparation of false documents aimed at making a mare appear as a specimen of the breed “quarter horse”<sup>35</sup>.

As regards the fraud by reluctance, the following have been sanctioned with the nullity of the sale: breeding a racing mare<sup>36</sup>, an important operation of the dorsal vertebrae that made the horse unfit for competitions<sup>37</sup>, relapsing colic known to the seller<sup>38</sup>, old chronic bronchitis<sup>39</sup>.

Instead, it is not fraudulent to unintentionally underestimate the faults that a horse has before the sale. Thus, a disgruntled buyer can not claim fraud when he himself could notice a defect of aplomb of a horse, “panard”<sup>40</sup>, on the basis of a veterinary report drawn up before the sale, but also when he himself trained<sup>41</sup> the horse, which he then bought.

The court of appeal of Aix-en-Provence annulled, for fraud, the sale of a 13-year-old horse presented by the seller as being only 7 years old. This horse was bought for horse

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<sup>33</sup> Court of Appeal Paris, 31 March 2000

<sup>34</sup> Grasset d’Orcet, *Histoire du cheval à travers les âges*, Editura E/dite, Paris, mai 2005, p. 311.

<sup>35</sup> Court of Appeal Montpellier, 5 decembrie 2000.

<sup>36</sup> Court of Cassation, 5 February 2000.

<sup>37</sup> Court of Appeal Paris, 5 December 2003

<sup>38</sup> Court of Appeal Dijon, 6 September 2005

<sup>39</sup> Court of Appeal Amiens, 18.09.2008

<sup>40</sup> Explanatory dictionary of the Romanian language, definition, about horses whose hind legs are pointed from the knees apart - <https://dexonline.ro/definitie/panard>

<sup>41</sup> “Le débouillage” it consists of making the horse accept a saddle, a rider or agree to pull a vehicle and understand to accept the basic commands.

rides. Having no documents of origin, it is difficult to determine the age accurately, and the buyer must rely on the good faith of the seller who will inform him.

A veterinary certificate confirms the age given by the seller and does not mention any major medical conditions. However, when using the horse it turns out that it is inadequate. On the occasion of a veterinary examination, the buyer realizes the lie of which he was the victim, but also the flagrant error of the vet.

Going against the practitioner, but also the seller, he will logically get the sale cancelled.

In the matter of the sale of animals Article 213 to 1 of the French Rural Code recalls that the warranty action for latent defects does not exclude a claim for indemnity based on the fraud. These can be done cumulatively, both an action on hidden defects and one based on the fraud.

In order to limit the amount of legal proceedings, the French Rural Code contains a limiting list of latent defects that domestic animals may have. For horses we see the provisions of Art R 213-1 of the French Rural Code, listing the following categories: immobility, pulmonary enphysema, chronic cornage, tic with or without teeth wear, intermittent old limping, isolated vision loss, infectious anemia in horses<sup>42</sup>.

“A latent defect constitutes a cancellation clause of the sale and Art. R213-1 of the French Rural Code states: are recognized as latent defects and lead to actions resulting from Articles 1641 to 1649 of the French Civil Code, diseases or defects as follows: immobility, pulmonary enphysema, tics with or without tooth wear, old and intermittent limping, equine infectious anemia, eye conditions or respiratory tract conditions such as those in which the horse has a breathing disorder related to poor conformation or paralysis of certain parts of the airways.”<sup>43</sup>

If the warranty arising from the French Rural Code applies, the buyer must comply with extremely strict rules. First of all, he must act in a very short time. Thus, according to art. R213-5 French Rural Code, this term is basically 10 days, less for vision loss and infectious anemia in horses, for which it is 30 days. The deadlines begin to run from the day of delivery of the animal. At the same time, in the absence of formal evidence on the date, the time for the term is not considered to have begun.

Secondly, the disgruntled buyer must obligatorily ask the court of the area where the animal is located, to appoint an expert, as provided by Art. R213-3 of the French Rural Code. The original application precedes the action in the warranty itself. The latter may be estimatory, on price reduction, or latent, return of work and price. It must, in accordance with art. R 213-4 of the French Rural Code be registered “before the competent courts according to the rules of common law.

Thus, according to the provisions of the Code of Judicial Organization, the Court of first instance will be competent, whatever the value of the request, subject to the jurisdiction of the judge of proximity, for requests with values below 4000 euros.

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<sup>42</sup> This article states that are considered to be affected by infectious anemia of the animal horses that have been the subject of a disease research through studies and research conducted by the Animal Protection Committee and when the result was positively known by a laboratory approved by the ministry of agriculture

<sup>43</sup> Emmanuelle Brengard, *Avoir un cheval à soi*, Editura Glénat, Grenoble, September 2013, p. 64.

According to Art. L 231-7 of the French Rural Code: “The price reduction action may not be exercised in sales and exchanges of animals, if the seller offers to receive the sold animal by refunding the price and reimbursing the buyer for the expenses incurred for the sale.

*Warranty for hidden defects in the Civil Code*

If an agreement to the contrary, even implicit, has been concluded between the seller and the buyer, the latter may be based on the provisions of Articles 1641 and the following of the French Civil Code, when the horse is afflicted by, what is generally called a “hidden defect”. The hidden defect is defined as representing “those hidden defects of the sold thing that make it unfit for use, or that diminish its use in such a way that the buyer would not have bought it, or would have given only a minimal price if they had known them before”.

For example, were considered as hidden vices: cecity in one eye, a summer dermatitis that makes it impossible to ride the horse outdoors, a distal, evolutionary, interphalangeal arthropathy, incompatible with competition sport, the congenital sterility of a mare intended for breeding, the navicular disease leading to an inaptitude for competition, a sciatica that makes it difficult to manipulate a posterior, or, especially when it needs to be chipped, a major spinal ankylosis that makes any activity difficult, gestation with twins of a mare bought on the occasion of an auction sale, a chest spinal arthrosis.

The notion of hidden vice has also been extended to behavioral problems such as retivity, especially if it prevents participation in competitions or taking walks, when this activity in connection with leisure is the purpose of purchasing the horse.

The buyer acquires for his daughter a competition mare. Subsequently, it is found that the animal obstinately refuses to climb into a van or truck, which makes its transportation impossible. Unsatisfied with this purchase, the buyer acts against the seller, 8 months after the sale, invoking the existence of a hidden defect which renders the sold object unfit for the use in which it was bought according to Art 1641 French Civil Code. Before the courts, the seller imposes on the buyer the rules of the French Rural Code, which lists the limited latent defects, among which there is no claustrophobia and which requires that the action be submitted in a fairly short term, namely 10 or 20 days, depending on the vice found.

The Montpellier Court of Appeal rejects this argument and gives justice to the buyer. First, it accepts to apply the rules of the French Civil Code and not the more restrictive of the French Rural Code respectively art. R-213 and following. For this it finds that the parties have concluded an implicit convention derogating from these rules. This agreement emerges from the destination of the purchased mare. Thus, the Court finds that the seller knew that the buyer's daughter was an emeritus competition rider and that, consequently, the mare must necessarily accept to be transported to participate in competitions.

The French Rural Code also prohibits the exhibition or sale of any animal affected by a disease recognized to be contagious<sup>44</sup>.

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<sup>44</sup> In echideas and donkeys, the following diseases are recognized as contagious: morva, equine pest, dourine, coal fever in mammals, infectious anemia in clinical or latent form, Japanese encephalitis, and, venezuelan equine encephalomyelitis, epizootic lymphagitis, viral meningoencephalomyelitis at echidea, contagious metritis and surra.

The buyer of an infected animal may request the nullity of the contract within 45 days after the delivery of the animal. This term of action is reduced to 10 days, if the animal dies as a result of the disease before 45 days, or if its condition causes mandatory euthanasia.

Only hidden vices constituted before the transfer of ownership will be able to give course to an obligation of warranty. Most often, a report of the judicial expert will allow to determine, with accuracy, the date of constitution of that defect. Thus, the buyer will assume the death of a horse occurred two days after delivery as a result of a septicemia<sup>45</sup>.

If the defect, even before the sale, was apparent at the time of the transaction, no warranty is due by the seller. It is apparently considered the defect of the animal about which the buyer was able to convince himself, according to the provisions of Art.1642 of the French Civil Code. Thus, a visible lesion on an X-ray is not "apparent" in the absence of any written comment explaining the image<sup>46</sup>. Buyers are not required to subject the horse to a purchase veterinary visit, which will result in the lack of evidence of a disease prior to the sale.

Another example, is when after buying a horse intended to compete in jumps of obstacles, the buyer realizes that the animal is extremely disobedient and reluctant. The buyer takes action. In order to demonstrate this, an expertise is required. Starting from all the elements of the file, the judges of the Court of Appeal of Caen appreciated that the retivity is neither innate nor prior to the sale. It is simply a consequence of improper use of the horse. Consequently, the seller is not held responsible.

A professional buyer will be considered as having the opportunity to convince himself of the defects of the work before the sale, with one exception, that in which defects that cannot be perceived. He won't be able to obtain the resolution of selling a high-level horse, if in the presence of two conflicting veterinary opinions he did not proceed to complementary examinations which would have allowed discovery of an injury incompatible with the use for which the horse was bought<sup>47</sup>.

The buyer may choose between two actions: the redhibitory action that leads to the return of the object and price, and the estimative action that results in a decrease in the price of the sold object and, consequently, partial reimbursement, following an assessment by a judicial expert. The choice between these two ways belongs only to the buyer. This option is removed if it is impossible to return the sold work. Such impossibility may result from resale or definitive loss of the animal. But in the latter hypothesis, the seller may be forced to return the entirety of the purchase price, if the loss is the consequence of a hidden vice<sup>48</sup>.

Instead, if the loss comes from a fortuitous case, it must be assumed by the buyer to whom the property has been transferred.

If the resolution of the sale has been obtained, the Court has held that the seller is obliged to refund the price he has received, it cannot obtain an indemnity related to the use of the work or the wear and tear resulting from this use by the buyer<sup>49</sup>.

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<sup>45</sup> Court of Appeal Grenoble, 20.09.1999.

<sup>46</sup> Court of Appeal Paris, 4.10.2002.

<sup>47</sup> Court of Appel Metz, 14.05.2013

<sup>48</sup> Art. 1647 Civil Code

<sup>49</sup> Court of Cassation, The First Civil Section, 21 March 2006

If he was aware of the hidden vices and is considered to have been of bad faith, the seller may also be convicted of covering the damage suffered by the buyer. If the defect is unknown, the seller will have to refund the expenses incurred for sale under Article 1646 of the French Civil Code. In practice, the professional seller is presumed to know the vices that affect the work. The Court of Cassation considers that pension or maintenance expenses incurred by the purchaser after the sale do not constitute expenses incurred by the purchaser. Only the seller of bad faith will be able to be convicted of repaying them. This action in damages can be occur in an autonomous manner, even if the buyer does not request resolution or price reduction.

Art. L211-4 of the French Consumer Code provides that “The seller is bound to deliver a good according to the contract and is liable for the defects of conformity existing at the time of delivery”.

Conformity is defined in art. L211-5 of the French Consumer Code. Thus, the good sold must be "corresponding to the usual use that is expected of a similar good".

As an example, we will note that the following defects are considered to be prejudicial to conformity: limp that makes a horse unusable for a competition, the gestation state of a mare bought to participate in competitions, older locomotor problems in a sports horse, a congenital disease, an auricular fibrillation.

However, it is up to the buyer to prove the use or characteristics expected by the conclusion of the contract.

In the absence of such evidence, he cannot invoke a defect of conformity. That is why, the action brought by the buyer concerning a mare devoid of genitals was rejected when he was unable to prove that it had been sold for the purpose of it is used in reproduction.

As regards live animals, the case-law recalls that the misunderstanding between the horse and its rider is not sufficient to characterise or highlight a conformity defect, as long as the animal is fit to be used according to the sales convention. Also, in applying the rules of the French Civil Code, the defect known to the buyer or which he could not ignore at the time of sale, may not give the right to a warranty, according to Art. L 211-8 of the French Consumer Code.

According to Art. L211-7 of the Consumer Code of France, a particular rule is established, relating to the burden of proof of the character prior to the sale, of the defect alleged.

According to this text, “conformity defects occurring within 6 months from the delivery of the good are presumed to exist at the time of delivery, in the absence of proof to the contrary. The seller can combat this presumption if it is not compatible with the nature of the good or the defect of conformity invoked.”

The presumption allows the buyer to overturn the burden of proof if he is able to demonstrate that a defect of conformity has occurred in the 6 months following the sale. Beyond these 6 months, he will have to prove in a probative manner the precedence of the defect; most often, there will be interest to request the appointment of a judicial expert in emergency regime.

The possibility to request resolution, as well as the reduction of the price, for the defect of conformity is provided in art. L211-10 of the consumer code.

If repair and replacement of the good are impossible, the buyer may return the good and receive the price or keep the good and return part of the price.

*Obligations of the seller*

The delivery of the sold object consists in the submission to the new owner of the object of the contract, according to its provisions, as stipulated in Art. 1604 of the Consumer Code of France. This is of great importance, because the buyer cannot be imposed a good different from the one he chose. This delivery is prior to any physics, the animal must be delivered, but it is equally legal, as long as, in equestrian matter, the, this requires that the copy be the one on which they have agreed. This conformal delivery will look at the age of the animal when it constitutes an item on which the seller has undertaken<sup>50</sup> or also on its entry in a genealogical book.<sup>51</sup>

The sporting aptitude may also be a cause of violation of the obligation to deliver, starting from the moment when the animal does not present at the date of delivery the qualities promised by the seller. For example, the failure to deliver is that of the seller for a horse who, at the time of sale, is experiencing degenerative arthropathy in both anterior legs, a disease whose normal development implies an inability to participate in sports. In that case, the court found that the parties had agreed on the sale of an obstacle jumping contest horse. Undeniably, the disease from which he suffers excludes the horse from such use. In return, the seller complied with its obligation to deliver if a horse has the qualities envisaged. If it subsequently proves unfit for the agreed use, the buyer will only be able to act on the basis of the guarantee for defects or defects of conformity.

The penalty for non-compliance with the delivery obligation by the seller varies according to the will of the buyer. Thus, Article 1610 of the French Commercial Code provides that: "If the seller violates the delivery obligation within the time limit agreed by the parties, the buyer may, at his choice, be able to, to require the resolution of the sale or to be in possession if the delay is due only to the facts of the seller". Thus, it was possible for the buyer of a sports horse to obtain in 2012 the resolution of the sale occurred in 2002, due to the fact that the seller could not submit the registration card of the animal. The seller was thus obliged to resume possession of the animal and return the sale price.<sup>52</sup> If he had preferred to keep the horse, the buyer could obtain damages for repairing the damage caused by a delayed delivery.

*Obligation to deliver documents to the horse*

The transfer of ownership of a horse is indissociable from the official documents accompanying it. According to the provisions of Article 1615 of the Consumer Code of France, it is specified in this respect that "the obligation to deliver the work also involves the accessories and everything that is intended for its perpetual use".

In equestrian matters, the case-law considers that the administrative documents relating to the horse constitute an accessory to the animal and must necessarily be included in the scope of the obligation to deliver.<sup>53</sup> But according to the Court of Cassation, the transmission of these documents is not required unless they are necessary for the normal use of the horse. Thus, it is possible for the seller to keep the registration card of the animal

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<sup>50</sup> Court of Appeal Dijon, 4.04.2003: 5-and-a-half-year-old horse, according to the invoice, but in reality he was 6 or 7 years old.

<sup>51</sup> Court of Appeal Bordeaux, 10.01.2008: pony withdrawn from a stud-book after sale, due to validation of his paternal filiation

<sup>52</sup> Court of Appeal Grenoble, 17 December 2012

<sup>53</sup> Court of Appeal Lyon, 16.01.1907

under certain conditions, since this does not prevent participation in competitions or its transportation.<sup>54</sup> Instead, the certificate is registered in the SIRE file provided by art. D 212-47 The French Rural Code must necessarily accompany the horse on the occasion of its movements. The French Rural Code provides that the seller or donor of a horse is obliged to deliver immediately to the new owner the identification document of the horse and the registration card after he has docked them.<sup>55</sup>

In a broad sense, the delivery obligation refers to the fulfillment of administrative procedures that lead to a full use of the animal's capabilities by the new owner. Thus, the lack of a declaration of change of owner or even the non-declaration of the sale by the parties to "the parent company" may assume the contractual responsibility of the seller.

Regarding the administrative documents regarding reproduction, if the sold mare is pregnant, we must distinguish two hypotheses: if a foal, the existence of which was unknown at the time of the sale, will be born, the seller will be obliged to remit to the buyer freshly become the owner of the progeny, the mare's certificate of reproduction. If on the contrary, the sale envisaged a pre-pregnant mare, the seller is obliged to provide the buyer with the accessories that constitute the attestation of reproduction and any other documents able to justify the origin of the product that is born.<sup>56</sup>

#### *Right of retention in the profit of the unpaid seller*

The obligation to deliver the object is balanced by the obligation to pay of the price. The seller has a right to retain the good that is being sold until the price is paid, according to Articles 1612 and 2286 - 3 of the French Consumer Code. Consequently, the seller who has not been paid can keep the animal, as well as the administrative documents ancillary to the good sold, and that is until the debt is extinguished by the buyer. The Court of Cassation has ruled that the right of retention is a real right, opposable to all, including third parties not held by the debt.<sup>57</sup> This implies that the unpaid seller can refuse to deliver the administrative documents, even when the horse was resold by its debtor, and the next owner is of good faith.

In case of sale of horses, it is specified in art. R214-15 of the French Rural Code regarding the registration card, that the seller is not obliged to deliver it at the time of sale, unless the full payment of the price has been made.

#### *Obligations of the buyer*

These are certainly less numerous than those imposed on the seller, but they are not of lesser importance. First of all, Article 1650 of the French Civil Code states, which is logical, that "the main obligation of the buyer is to pay the price on the day and place established by sale."

In the absence of provisions to the contrary, the obligation to pay the price appears with the delivery of the horse or its being made available to the buyer. Compliance with this obligation is essential, since the provisions of Article 1654 of the French Civil Code allow

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<sup>54</sup> Court of Cassation, The First Civil Section, 25.10.1978

<sup>55</sup> This obligation goes beyond the contractual sphere, as failure to comply with it is sanctioned by a class 3 contravention

<sup>56</sup> Court of Appeal Paris, 5 July 2002

<sup>57</sup> Court of Cassation, The First Civil Section, 24 September 2009.

the seller who has not been paid correctly to seek the resolution of the sale or the return of the animal.

The proof of payment must be presented in case of dispute by the buyer because, in application of Article 1315 of the Civil Code, the one who claims to be released from his obligation, the, must justify the payment or the fact that caused the termination of its obligation.

We note that as long as the payment has not been made, the old owner can keep the registration card of the horse, and this until the debt is fully extinguished.

*Similar cases are also found in the jurisprudence of Romanian courts.*

On 23.12.2012, a sale-purchase agreement was concluded between the parties whereby the defendant sold the applicant a horse under the suspensive condition of testing of the animal. In the present case, it is not a fraud, a vice of consent at the conclusion of the contract, but a sale-purchase with a trial period concluded on the condition that the good corresponds, on the occasion of the test, to criteria considered by the buyer.

In the immediately following period, the applicant tried out the good and found that it did not meet the criteria envisaged when concluding the contract, as the horse did not pull and beat its hooves. Although the agreement was in the sense of returning the price to him if the good did not correspond to the trial, the defendant refused this by claiming that the animal brought back to him was struck, sweaty, was no longer in the condition in which it had been entrusted to the buyer, but this was refuted by the witnesses who accompanied the applicant to the defendant's home.

The sale has a trial period when it is concluded under the suspensive condition that, following the trial, the good meets the criteria established at the conclusion of the contract or in the absence thereof the destination of the good according to its nature (art.1681 alin.(1) Civil code).

This variety of sale is always concluded under suspensive condition, namely the condition of testing the goods, by the buyer or by an agent thereof. If by the purchase contract the parties have provided that the sold good is to be tried, it is presumed that a tried sale has been concluded, art.1681 par.3 Civil code.

In such a situation, the sale contract is concluded with the agreement of the parties, but the transfer of ownership will be made only after the positive result of the attempt is known.

The purpose of the trial is to determine whether the good meets the criteria set out at the conclusion of the contract.

Since that sale was concluded under a suspensive condition and the good, on subsequent testing, did not meet the criteria envisaged by the applicant, in such a situation, the contract being completely abolished as retroactive, *ope legis*, not by the court, it follows that the seller has no grounds to retain the price, thus, he will be obliged to return to the plaintiff the amount of 1200 lei received from him as value of the good.<sup>58</sup>

In another case, a verbal agreement intervened between the parties during July 2012, a transaction on the basis of which the buyer received a horse from the seller and in exchange for it gave him a horse of his and the amount of 3700 lei.

The buyer was reputed in the area as a person dealing with equine transactions.

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<sup>58</sup> Sentence nr. 333/2015 of 23 April 2015, Tribunal of Topoloveni.

This transaction between the litigants is the fact that the seller handed them over to the buyer, a semi-heavy Lipizzan breed horse purchased specifically for activities in the forest and for the traction and transport of wood material, and according to the agreement, the buyer handed over to the seller the agreed price in the amount of 3700 lei, as well as another horse in return, but who had a lung illness and who could not perform heavy activities and pecuniary equivalent estimated at 2500 lei.

Although at the time of the convention a "test on the spot" was performed, respectively the horse was tested "at the wagon", it was noticed that it seemed fine and was considered good, being taken over and transported to the applicant's home.

The next day, however, the buyer traveled with the horse to the forest and through the activities planned, which had to be carried out with the purchased animal, it was found that "it couldn't be dealt with, because it didn't pull and the animal had aggressive reactions when it was put to work".

These reactions were due to the fact that the animal "was not adapted to working conditions from a young age, but was put directly to work, without being trained in this respect", although the promises from the moment of the transaction consist in the very guarantee of the execution of the work in the forest.

At the same time, it was noted that according to the custom of the place, in this type of sale of a good or animal "on trial", the time interval resides in about seven days and if the good is not appropriate, the good is returned and the price agreed in full is surrendered, without any reduction or collection of a commission.

From the above considerations it was noted that "the deal was broken" and the buyer, on the third day practically, after the transaction was completed, took the purchased horse back to the seller and returned it, taking over the horse handed over in exchange, but without obtaining at the same time the price paid in the amount of 3700 lei.

In the present case, the situation is circumscribed to the type of "sales with a trial period" regulated by the provisions of Article 1681 of the New Civil Code.

Although it is a mixed convention for buying and with exchange elements to make up for the difference in price, the cataloguing of the convention is given by the main good - its object, its, which resides in the traction horse purchased by the buyer and for which the total price was determined by understanding the parties to the total amount of 6200 lei, the, even if the addition of the other animal belonging to the buyer was also aimed at completing the predetermined price difference.

If the duration of the trial has not been agreed on and it does not otherwise result from the usage, the condition is considered fulfilled if the buyer has not declared that the good is not unsatisfactory within 30 days of the delivery of the good.

Also, if the parties have provided through the sales contract that the sold good is to be tried, it is presumed that a tried sale has been concluded.

This type of sale represents a sale subject to a suspensive condition, namely - that of the attempt of the work by the buyer.

Also, in literature, it was claimed that in case of sales with a trial period the buyer can not refuse the good for the simple reason that he does not like it, but only if objectively it is inappropriate, which can be determined by evidence.

In conclusion, *in terms of sales with a trial period*, the sale practically exists but is subject to the trialing condition and if after the test the buyer finds that the good does not meet his requirements, the sale is not carried out, and in the opposite symmetric case, when

the buyer responds in the affirmative, the condition being fulfilled, the sale is performed with retroactive effect from the moment of the realization of the agreement.<sup>59</sup>

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