

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

Dragos CHILEA*

“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.”¹

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 Code² and is also found in the civil legislation of other countries of the European Union.

* Ph.D., Professor, George Emil Palade University of Medicine, Pharmacy, Science, and Technology of Targu Mures, ROMANIA.

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 Code³.

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 Agriculture⁴.

This administrative requirement was removed by the Act of 8 June 1998⁵. 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".⁶

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*
