LEGAL CHARACTERISTICS OF THE SALE

Associate Professor, Ph.D., Nicolae GRĂDINARU
"Constantin Brâncoveanu" University of Pitesti, Romania
E-mail: nicolaegradinaru@yahoo.com

Abstract: *The Civil Code no longer refers to sale-purchase but only to the sales contract. According to art. 1650 of the Civil Code, the sale is the contract by which the seller conveys or, as the case may be, undertakes to convey to the buyer the property of a good in exchange for a price that the buyer undertakes to pay. A dismemberment of title or any other right may also be conveyed by sale. In addition to these regulations, which make up the "common law", Romanian legislation also includes, in matters of sale and purchase, other rules, of a special character, applicable only to certain sales.*

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According to art. 1650 of the Civil Code, the sale is the contract by which the seller conveys or, as the case may be, undertakes to convey to the buyer the property of a good in exchange for a price that the buyer undertakes to pay.

As it follows from the definition of the contract, the sale is a consensual, synalagmatic contract (the parties have mutual interdependent obligations), with onerous, commutative and transferable title.

A) is a synalagmatic contract because at the conclusion of the contract mutual and interdependent obligations are born for both parties (seller and buyer). According to art. 1171 of the Civil Code, the contract is synalagmatic when the obligations arising from it are mutual and interdependent. Otherwise, the contract is unilateral even if its execution entails obligations for both parties.

The contract of sale and purchase is "a synalagmatic contract" (bilateral), because it creates mutual obligations between the parties, as follows: the seller undertakes to transfer to the buyer the property of the thing sold or, as the case may be, the right sold, to hand over the good to the buyer and to guarantee the buyer against the eviction and defects of the good, and the buyer undertakes to pay the sale price and take over the purchased good, the performance of one of the parties being the cause of the obligation assumed by the other party.

The reciprocity and interdependence of obligations creates the prerequisites for a presumption of economic balance between the services of the parties to the sale-purchase contract (Rudareanu, 2006, p.88).

The interdependence of obligations is the result of the will of the parties.

As an exception, the law can intervene and ensure the interdependence of obligations and reciprocity by ensuring a balance between the parties, as is Law no. 193/2000 on abusive clauses, thus, in art.1 it is provided that any contract concluded between professionals and consumers for the sale of goods or provision of services will include clear, unambiguous contractual clauses, for the understanding of which no specialized knowledge is required.

In case of doubt about the interpretation of some contractual clauses, they will be interpreted in favor of the consumer.

Professionals are prohibited from stipulating abusive clauses in contracts concluded with consumers (Law no. 193/2000 on abusive clauses in contracts concluded between professionals and consumers, republished in M. Of. no. 543/03.08.2012).

According to art. 2 paragraph 2 of Law no. 193/2000, by professional is meant any authorized natural or legal person, who, based on a contract that falls under the scope of this law, acts in the framework of his commercial, industrial or production activity, artisanal or liberal, as well as any person acting for the same purpose in its name or on its behalf.

The civil code also applies to relations between professionals, as well as to relations between them and any other subjects of civil law, in art. 3 para. 2 professionals are defined as all those who operate an enterprise.

The exploitation of an enterprise constitutes the systematic exercise, by one or more persons, of an organized activity consisting in the production, administration or disposal of goods or in the provision of services, regardless of whether or not it has a profit-making purpose.

According to art. 2 point 3 of Directive 2011/7/EU of the European Parliament and of the Council on combating delays in making payments in commercial transactions (Directive 2011/7/EU of the European Parliament and of the Council on combating late payments in commercial transactions, published in the Official Journal no. 48 L/23.02.2011).
"enterprise" means any organization, other than a public authority, that carries out an independent economic or professional activity, even if that activity is carried out by a single person.

According to art. 2 point 2 of Law no. 72/2013 on measures to combat the delay in the execution of obligations to pay sums of money resulting from contracts concluded between professionals and between them and contracting authorities (Law no. 72/2013 on measures to combat the delay in the execution of obligations to pay sums of money resulting from contracts concluded between professionals and between them and contracting authorities, published in M. Of. no. 182/02.04.2013), professional is - any natural or legal person who operates a business for profit.

The notion of professional is also provided by art. 2 of GEO no. 34/2014 as being any natural or legal person, public or private, who acts in the framework of his commercial, industrial or production, craft or liberal activity in relation to contracts which falls under the scope of this emergency ordinance, as well as any person acting for the same purpose, in its name or on its behalf (GEO no. 34/2014 regarding consumer rights in contracts concluded with professionals, published in M. Of. no. 427/11.06.2014).

B) is a contract with onerous title. It is a "contract with onerous title", because each contracting party seeks to obtain a certain personal patrimonial benefit, that is, the seller wants to receive the price, and the buyer wants to become the owner of the purchased thing.

According to art. 1172 paragraph 1 of the Civil Code, the contract by which each party aims to obtain an advantage in exchange for the assumed obligations is onerous.

C) is a "commutative contract", because, at the time of the conclusion of the contract, the parties know the existence and extent of their mutual obligations, so that there are no chances of gain or loss for one of the parties or for both parties, i.e. the obligations do not depend on a future and uncertain event (hazard).

According to art. 1173 paragraph 1 of the Civil Code, the contract is commutative in which, at the time of its conclusion, the existence of the rights and obligations of the parties is certain, and their extent is determined or determinable. Thus, at the moment of concluding the contract, the existence of the rights and obligations of the parties is certain, and their extent is determined or determinable. Therefore, the commutative contract is characterized by the fact that the mutual benefits to which the parties are obliged are known by the parties at the time of concluding the contract.

The sales contract, being commutative, differs from random contracts that depend on a future and uncertain (uncertain) event, such as: insurance contract, maintenance contract, life annuity contract, sale of litigious rights, etc.

According to art. 1173 paragraph 2 of the Civil Code, the contract is random which, by its nature or by the will of the parties, offers at least one of the parties the chance of a win

and at the same time exposes it to the risk of a loss, which depends on a future and uncertain event.

The contract is random if the existence or extent of the benefits of the parties or only one of them depends on an uncertain future event. The advantages that the parties will obtain or the losses are not known because the parties have committed themselves to each other depending on a future event and uncertain as to its realization or at least the time of its realization. The event constitutes for each of the parties, at the same time, a chance of winning and a risk of loss.

Each of the parties aims to make a profit and avoid incurring a loss, and these chances cannot be evaluated at the time of concluding the contract, but only at the time of fulfillment or non-fulfillment of the event.

The sales contract is commutative as a rule, but there are also exceptions such as the sale of litigious rights "the right is litigious if there is a started and unfinished process regarding its existence or extent" (art. 1653 of the Civil Code).

The litigious right is that right which is the subject of a trial before the court, but also the rights regarding which a dispute may arise in the future (Deak, 1998, p.320).

The sale of litigious rights is a speculative operation, the thing that is the object of the contract is bought at a price below its value due to the uncertainties in which it is located. The seller cannot sell the thing at its real value, but he can sell it, even if at a lower price, he cannot guarantee the existence of the right because he would guarantee winning the lawsuit, which is not possible.

The buyer acquires the litigious right at an advantageous price, at his own risk, but he can obtain a right that, if he wins the lawsuit, the value of the purchased right is higher than the price he paid for it.

D) is a "consensual" contract, because it is considered concluded when the parties have agreed on the thing sold and on the price, that is, the parties have expressed their agreement in this sense. The simple agreement of will is sufficient for the conclusion of the contract to be valid without any other formality.

According to art. 1178 of the Civil Code, the contract is concluded by simple agreement of will of the parties if the law does not impose a certain formality for its valid conclusion.

According to art. 1174 paragraph 2 of the Civil Code, the contract is consensual when it is formed by the simple agreement of the parties.

Thus, in principle, the sale-purchase contract is created by the mutual agreement of the parties, who express their consent to the terms and conditions of the contract, no other formality being necessary for the validity of the contract (Art. 1240 paragraph 1 of the Civil Code. The will to contract can be expressed verbally or in writing).

The will to contract can be expressed verbally or in writing.

The will can also be manifested through a behavior that, according to the law, the agreement of the parties, established practices between them or customs, leaves no doubt about the intention to produce the corresponding legal effects.

The written document confirming the conclusion of the contract can be under a private or authentic signature, having the probative force provided by law (Art. 309 paragraph 2 of the Code of Civil Procedure. No legal act can be proved with witnesses, if the value of its object is greater than 250 lei. However, it is possible to prove with witnesses, against a professional, any legal act, regardless of its value, if it was done by him in the exercise of his professional activity, except in the case where the special law requires written evidence).

According to art. 1242 of the Civil Code, the contract concluded in the absence of the form which, undoubtedly, the law requires for its valid conclusion, is struck by absolute nullity.

If the parties agreed that a contract should be concluded in a certain form, which the law does not require, the contract is considered valid even if the form was not respected.

Except for the cases provided by law or if the will of the parties does not result in the contrary, the property is transferred to the buyer by right from the moment of the conclusion of the contract, even if the good has not been delivered or the price has not been paid yet.

From this rule of consensualism, the law stipulates in the situation of certain contracts the obligation of a certain form in addition to the consensus of the parties in order for those contracts to be validly concluded under the penalty of absolute nullity, such as the conclusion of solemn contracts, i.e. the law stipulates the requirement to fulfill a certain form at the conclusion of the contract to be valid under the penalty of absolute nullity, and at the conclusion of electronic contracts, thus, the contract is solemn when its validity is subject to the fulfillment of some formalities provided by law (art. 1174 paragraph 3 of the Civil Code), as is the case with contracts of alienation by legal documents between households of land within the village or outside the village that must be concluded in authentic form (at the public notary), under the penalty of absolute nullity. This form is required as a condition ad validitatem, i.e. that contract to be validly concluded must, under penalty of absolute nullity, be concluded in the form required by law, i.e. authentic[3].

In terms of real estate sales, the transfer of property from the seller to the buyer is subject to the provisions of the land deed.

In the case of real estate registered in the land register, proof of ownership is made with the land register extract.

According to art. 557 paragraph 4 of the Civil Code, with the exception of specific cases provided by law, in the case of immovable property, ownership is acquired by registration in the land register[4].

Registration in the land register is carried out on the basis of the authentic notarial document, the final court decision, the heir certificate or on the basis of another document issued by the administrative authorities, in cases where the law provides for this.

Thus, according to art. 1244 of the Civil Code, in order to be entered in the land register, the agreements that transfer or constitute real rights and which are to be entered in the land register must be concluded by an authentic document, under the penalty of absolute nullity - as is sale - purchase of real estate. Thus, in order to be entered in the land register,

[3] According to art. 79 paragraph 1 of Law no. 36/1995, the legal documents for which the law provides the authentic form ad validitatem will be drawn up only by public notaries.

[4] Art. 553 paragraph 2 of the Civil Code, vacant inheritances are ascertained through a succession vacancy certificate and enter the private domain of the commune, city or municipality, as the case may be, without registration in the land register. The buildings in respect of which the right of ownership has been waived according to art. 562 para. (2) they are acquired, without registration in the land register, of the commune, city or municipality, as the case may be, and enter their private domain by the decision of the local council.

Art. 887

Real rights are acquired without registration in the land register when they come from inheritance, natural accession, forced sale, expropriation for reasons of public utility, as well as in other cases expressly provided by law.

However, in the case of forced sale, if the tracking of the property was not previously noted in the land register, the real rights thus acquired will not be able to be opposed to third parties acquiring in good faith,

In the cases provided for in para. (1), the owner of the rights thus acquired will not be able to dispose of them through the land register until after the registration has been made.

contracts that transfer or constitute real rights must be concluded by an authentic document, under the penalty of absolute nullity.

From the analysis of these texts it follows that the sale of real estate (land with or without constructions) must be concluded in authentic form under the penalty of absolute nullity[5].

The sanction for failure to comply with the form required ad validitatem is the absolute nullity of the contract concluded in violation of the legal norm provided by law[6].

The contract concluded in violation of the law provided by law.

According to art. 45 of Law no. 46/2008, the administrators of the public property forest fund take measures to liquidate the enclaves and correct the perimeter of the forest fund and merge the public property lands through land exchanges based on authentic documents[7].

According to art. 1242 paragraph 1 of the Civil Code, the contract concluded in the absence of the form that, undoubtedly, the law requires for its valid conclusion, is struck by absolute nullity.

If the parties agreed that a contract should be concluded in a certain form, which the law does not require, the contract is considered valid even if the form was not respected. For example, even if the parties agreed to conclude a contract in the form of an authentic document with the object of a car and in the end concluded the contract in the form of a document under private signature, it is valid because the law does not impose the solemn form in this situation.

The authentic form is not required as a condition ad validitatem in the case of sales of cars that are movable goods, but ad probationem, that is, the document is necessary to constitute evidence. Deletion and registration is done according to OG no. 78/2000 regarding the homologation, issuance of the identity card and certification of the authenticity of road vehicles in order to sell, register or register them in Romania[8].

For their commercialization, registration or registration in Romania.

The vehicle identity card contains data about the vehicle and the owners in whose names it was successively registered.

Vehicle data is entered by R.A.R. and, as the case may be, by the holder of the type approval of the entire vehicle.

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[5] Art. 24 paragraph 3 Law no. 7/1996 on the cadastre and real estate advertising, republished in M. Of. no. 83/07.02.2013, amended by Law no. 127/2013 published in M. Of. no. 246/ 29.04.2013, Law no. 214/2013 published in M.Of. no. 388/28.06.2013, Law no. 221/2013 published in M. Of. no. 434/17.07.2013, Law no. 68/2014 published in M.Of.nr.352/13.05.2014, GEO no.8/2014 published in M.Of.nr.151/28.02.2014, GEO no.11/2014 published in M.Of.nr.203/ 21.03.2014.
Order no. 700/2014 regarding the approval of the Regulation on approval, reception and registration in the cadastre and land register records, published in M. Of. no. 571 bis/31.07.2014.
The right of ownership and other real rights over a real estate will be registered in the land register on the basis of the authentic notarial document or the heir's certificate, concluded by a notary public in office in Romania, of the final and irrevocable court decision or on the basis of an act issued by the administrative authorities, in cases where the law provides for this, by which they were established or validly transmitted.

[6] According to art. 79 paragraph 1 of Law no. 36/1995, the legal documents for which the law provides the authentic form ad validitatem will be drawn up only by public notaries.

[7] Law no. 46/2008 Forestry Code, republished in M.Of. no. 611/12.08.2015, amended by Law no. 232/2016 published in M. Of. no. 972/05.12.2016/, by Law no. 175/2017 published in M.Of. no. 569/18.07.2017.

[8] OG no. 78/2000 regarding the homologation, issuance of the identity card and certification of the authenticity of road vehicles with a view to their commercialization, registration or registration in Romania, published in M.Of. no. 412/30.08.2000 with subsequent amendments.

Data about the owners are registered by the competent authority that carries out the registration, according to the law.

The competent authority that carries out the registration registers the owner of the vehicle in the owners column of the vehicle's identity card.

When the vehicle is disposed of, its last owner is obliged to hand over the vehicle's identity card to the acquirer.

When deregistering a road vehicle, as a result of its permanent removal from Romania or its disassembly when it is removed from use, the competent authority that carries out the deregistration has the obligation to retain the vehicle's identity card and send it to the R.A.R. On the vehicle's identity card, it is mentioned Vehicle permanently removed from Romania or Vehicle dismantled.

According to art. 1245 of the Civil Code, contracts that are concluded by electronic means are subject to the formal conditions provided by the special law[9].

Thus, the parties can agree, based on contractual freedom, that the validity of the contract depends on a certain written form. For example, according to art. 6 of Law no. 455/2001 regarding the electronic signature, the document in electronic form to which an electronic signature has been incorporated, attached or logically associated, recognized by the one to whom it is opposed, has the same effect as the authentic act between those who signed it and those who represents their rights.

Regarding the ad probationem form, we specify that, according to art. 309 paragraph 2 of the new Code of Civil Procedure, no legal act can be proved with witnesses, if the value of its object is greater than 250 lei[10].

At the same time, the Civil Code provides in art. 1241 that the document confirming the conclusion of the contract can be under a private or authentic signature, having the probative force provided by law.

E) is a property transfer contract. The contract of sale and purchase is "a transfer contract of ownership" because, through it, the transfer of the right of ownership from the seller to the buyer, i.e. the obligation to give, is carried out.

The seller is obliged to transfer the ownership of the sold good to the buyer.

Along with the property, the buyer acquires all the accessory rights and shares that belonged to the seller.

If the law does not provide otherwise, the provisions relating to the transfer of property are also applied appropriately when a right other than the right of ownership is transferred through the sale (art. 1673 of the Civil Code).

The transferable character of ownership is enshrined by the provisions of art. 1674 Civil Code, according to which, except for the cases provided for by law or if the will of the parties does not result in the contrary, the ownership is transferred by right to the buyer from the moment of the conclusion of the contract, even if the good has not been handed over or the price has not been paid yet.

The transfer of real rights is carried out according to art. 1273 of the Civil Code, thus, real rights are established and transferred by the agreement of the parties, even if the assets

[9] Law no. 365/2002 on electronic commerce, republished in M. Of. no. 959/29.11.2006. Law no. 455/2001 on the electronic signature, published in M. Of. no. 429/31.07.2001.

[10] Legea nr.134/2010 Codul de procedură civilă, republicată în M.Of.nr.247/10.04.2015, a intrat în vigoare la 15 februarie 2013, modificată prin OUG nr.1/2016 pentru modificarea Legii nr.134/2010 privind Codul de procedură civilă precum şi a unor acte normative conexe, publicată în M.Of.nr.85/04.02.2016, modificată prin Legea nr.310/2018 publicată în M.Of.nr. 1074/18.12.2018.

have not been handed over, if this agreement covers certain assets, or by individualizing the assets , if the agreement covers goods of the same kind.

The rule of ownership transfer at the time of consent of the parties applies only to individually determined goods (certain goods), that is, a car, a painting, a computer, etc., even if the good has not been handed over and the price has not been paid.

According to art. 7 point. 42 of the Fiscal Code by transfer is understood - any sale, assignment or alienation of the right of ownership, the exchange of a right of ownership with services or with another right of ownership, as well as the transfer of the fiduciary patrimonial mass within the operation of trust according to the Civil Code[11].

According to art. 1275 of the Civil Code, if someone has successively transferred the ownership of a tangible movable asset to several persons, the one who acquired in good faith the effective possession of the asset is the owner of the right, even if his title is dated later.

The acquirer is in good faith who, at the time of taking possession, did not know and could not know the obligation previously assumed by the alienator.

If none of the acquirers has obtained effective possession of the tangible movable property and the claim of each of them for the delivery of the property is enforceable, the one who notified the court first will be preferred.

In terms of real estate sales, the transfer of property from the seller to the buyer is subject to the provisions of the land register (art. 1676 of the Civil Code).

However, according to art. 557 paragraph 4 of the Civil Code, regarding the acquisition of property, in the case of real estate, the right of ownership is acquired by registration in the land register.

And art. 1244 of the Civil Code provides that, apart from other cases provided by law, the agreements that transfer or constitute real rights that are to be entered in the land register must be concluded by authentic document, under the penalty of absolute nullity.

According to the provisions of art. 888 of the Civil Code, registration in the land register is carried out on the basis of the authentic notarial document, the final court decision, the heir's certificate or on the basis of another act issued by the administrative authorities, in cases where the law provides for this. And art. 885 paragraph 1 provides that, subject to legal provisions to the contrary, the real rights over the immovables included in the land register are acquired, both between the parties and towards third parties, only by registering them in the land register, based on the act or the fact that justified the registration.

Disregarding these formalities imposed by law lead to the fact that the right of ownership is not transferred from the seller to the buyer and do not lead to the loss of the transferable nature of the sale, so that, in the case of the sale of immovable property, the property is not transferred at the time of the conclusion of the contract as stipulated art. 1674 of the Civil Code, which represents the rule, but with the fulfillment of the conditions imposed by the law, namely the registration in the land register.

Thus, according to art. 1676 of the Civil Code, in matters of real estate sales, the transfer of property from the seller to the buyer is subject to the provisions of the land register.

From the analysis of the texts it follows that, the acquisition of real estate properties[12]it is done by an authentic document under the penalty of absolute nullity, the transfer of ownership is carried out on the date of entry in the land register, which is made on

[11] Law no. 227/2015 on the Fiscal Code, published in M. Of. no. 688/10.09.2015.
[12] Art. 7 point 35 of the Fiscal Code. Law no. 227/2015 on the Fiscal Code, published in M. Of. no. 688/10.09.2015.
real estate - any land, building or other construction erected or incorporated in a land.

the basis of an authentic document, authenticated by the notary public, of a final court decision, which is also an authentic document , pronounced by a court, such as in the case of the pronouncement in a declaratory action, the decision in the case of an inheritance division or division of the assets of the former spouses, a claim action, etc., of an heir certificate or a document issued by the administrative authorities as in the case of the property title issued on the basis of Law no. 18/1991 on the land fund, or the document attesting to a voluntary sharing act.

From the analysis of the texts we can conclude that:

- the right of ownership over an immovable asset is not transferred to the buyer on the date of signing the sale-purchase contract, on the date of delivery of the asset, on the date of payment or any other time agreed by the parties, but as provided by law, upon completion of the registration formalities in the land register.

- the sale-purchase contract is concluded in the form of an authentic document or, as the case may be, by a final court decision[13].

Thus, according to the text on the transfer of ownership in the case of immovable assets from the seller to the buyer, although the buyer has concluded a sales contract, paid the price and received the asset, he is not the owner of this asset until the acquisition of the property is approved through an administrative procedure provided by Law no. 7/1996, i.e. by registration in the land register, considering that the right of ownership is not transferred by law in the case of real estate, from the seller to the buyer, but based on the text expressly provided by the law .

The question arises, what do people who own land through a title deed and cannot register this land in the land register for various reasons acquire, are they not owners until they are registered in the land register?, what legal regime do they have during this period.

The law implementing the Civil Code clarifies this situation in the provisions of art. 56 of Law no. 71/2011[14], so that, the provisions of the Civil Code regarding the acquisition of real real estate rights through the effect of their registration in the land register are applied only after the completion of the cadastral works for each administrative-territorial unit and the opening, on request or ex officio, of the land registers for the respective buildings, in in accordance with the provisions of the cadastre and real estate advertising law no. 7/1996[15].

Until this date, the registration in the land register of the right of ownership and other real rights, based on the documents by which they were validly transmitted, constituted or modified, is done only for the purpose of being enforceable against third parties.

The Civil Code provides in art. 885 paragraph 1 of the Civil Code that, subject to legal provisions to the contrary, the real rights over the immovables included in the land register are acquired, both between the parties and against third parties, only by registering them in the land register , based on the act or fact that justified the registration.

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[13] According to art. 885 paragraph 4 of the Civil Code, the final court decision or, in the cases provided by law, the act of the administrative authority will replace the voluntary agreement or, as the case may be, the owner's consent.

[14] Law no. 71/2011 for the implementation of Law no. 287/2009 Civil Code, published in M. Of. no. 409/10.06.2011, GEO no. 79/2011 for the regulation of measures necessary for the entry into force of the Law no. 287/2009, published in M. Of. no. 696/30.09.2011 approved by Law no. 60/2012 published in M. Of. no. 255/ 17.04.2012, modified by GEO no. 1/2016 for the amendment of Law no. 134/2010 on the Code of Civil Procedure as well as some related normative acts, published in M. Of. no. 85/04.02.2016.

[15] Law no. 7/1996 on the cadastre and real estate advertising, republished in M. Of. no. 720/24.09.2015, amended by GEO no. 57/2015, GEO no. 35/2016, Law no. 243/2016, GEO no. 98/2016, Law no. 105/2019. Order no. 700/2014 approves the Regulation on approval, reception and registration in the cadastre and land register records, published in M.Of. no. 571 bis/31.07.2014, modified by Order no. 1340/2015.

This regulation is not a novelty in Romanian legislation, it was also regulated by Decree-Law no. 115/1938, which, at least initially, was designed to be applied throughout Romania, together with the Charles II Civil Code from 1940. Thus, in art. 17 paragraph 1 of Decree-law no. 115/1938 it is stipulated that the real rights over the immovables will be acquired only if between the one who gives and the one who receives the right there is an agreement of will on the constitution or displacement, based on a stated cause, and the constitution or displacement was registered in the land register[16].

According to art. 857 of the Code of Civil Procedure, by adjudicating the building, the adjudicator becomes the owner. From this date, the adjudicator has the right to fruits and revenues, owes interest until full payment of the price and bears all the burdens of the building.

Through tabulation, the adjudicator acquires the right to dispose of the purchased property, according to the rules of the land register.

From the date of registration, the property remains free of any mortgages or other encumbrances regarding the guarantee of receivables, creditors being able to realize these rights only from the price obtained. If the auction price is paid in installments, the encumbrances are extinguished upon payment of the last installment.

Mortgages and other real encumbrances, as well as real rights established after noting the tracking in the land register, will automatically be deleted, except for those for which the adjudicator would agree to be maintained; also, the real rights established after the registration of any mortgage will be deleted ex officio, if the sale was made under the conditions provided for in art. 846 para. (7),[17] all notations made with compulsory prosecution, with the exception of the notation of the appeal against the auction minutes, if this was not resolved by the remaining final decision, the prohibition of alienation or encumbrance, if any, as well as the promise to conclude a future contract, if until the date of adjudication, the beneficiary of the promise did not register in the land register the right acquired under the contract that was its object.

If the property was awarded with the payment of the price in installments, the adjudicator will not be able to alienate it or strike it, without the consent of the pursuing creditors, before the full payment of the price.

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[16] Decree no. 115/1938 for the unification of provisions regarding land records, published in M. Of. no. 95/27.04.1938, amended by, Law no. 450/1940, Law no. 241/1947 for implementation in Transylvania of the law for the unification of provisions regarding land records of April 27, 1938. Decree no. 378/1960 for the modification of some provisions, in connection with the reorganization of the activity of the State Notary, from Decree no. 40/1953 regarding the notarial succession procedure, Decree no. 2142/1930 for the operation of central land registers for railways and canals, Decree Law no. 115/1938 for the unification of provisions regarding land records, Decree Law no. 511/1938 for the implementation in Bucovina of the law for the unification of provisions regarding land records, Law no. 163/1946 for the provisional replacement of destroyed, stolen or lost land records with land records, Law no. 241/1947 for the implementation in Transylvania of the law for the unification of provisions regarding land records, Law no. 242/1947 for the transformation of provisional land records from the old kingdom into land publicity records, the Code of Civil Procedure and other normative acts, repealed by art. 230 letter g of Law no. 71/2011.

[17] Art.846 (6) If the building is encumbered by any right of usufruct, use, habitation or servitude established after the registration of a mortgage, at the first sale term the calls will start from the highest price offered or, failing that, from the fixed in the publication, reduced by the value of these rights calculated according to art. 837 para. (2)7) If due to the existence of the rights shown in para. (6) a sufficient price could not be obtained to cover the previously registered mortgage claims, calculated according to the data from the land register, the bailiff will resume the auction for the sale of the property free of those rights on the same day; in this case, the calls will start from the price mentioned in the sales publication, without the decrease shown in paragraph. (6).

According to art. 246 of the Criminal Code, the act of removing, through coercion or corruption, a participant from a public auction or the agreement between participants to distort the award price is punishable by imprisonment from one to 5 years[18].

The law also imposes certain conditions and certain formalities in the case of the sale of goods, respectively the transfer of ownership rights in the case of these goods, such as the case of weapons and ammunition[19].

When the object of the sale is goods of the same kind, including goods of a limited kind, the ownership is transferred to the buyer on the date of their individualization by handing over, counting, weighing, measuring or by any other means agreed upon or imposed by the nature of the good.

If, however, several goods are sold in bulk and for a single and global price, the property is transferred to the buyer as soon as the contract has ended, even if the goods have not been individualized.

When selling by sample or model, ownership is transferred at the time of delivery of the good.

The risk of the destruction of the goods sold

If the transfer of ownership operates at the time of consent, the risk of accidental loss of the asset belongs to the buyer, unless the seller had the obligation to deliver the asset and was delayed by the buyer or when the parties agreed that the transfer of the right to property to be realized at another date.

If the good, object of the sale, perishes through a fortuitous event or force majeure, after the parties have agreed, the contract being validly concluded, according to the "res perit domino" principle, the risk of destruction is borne by the buyer, since he became the owner at the moment that the contract was validly concluded. So, the seller will be freed from the delivery obligation, and the buyer will have to pay the price, even if he has not yet received the object of the contract.

At the same time, according to art. 1274 of the Civil Code, in the absence of a contrary stipulation, as long as the asset is not delivered, the risk of the contract remains with the debtor of the delivery obligation, even if the property has been transferred to the acquirer. In case of accidental destruction of the asset, the debtor of the delivery obligation loses the right to consideration, and if he received it, he is obliged to return it.

However, the defaulting creditor assumes the risk of accidental destruction of the asset. He cannot free himself even if he proves that the property has been lost and if the obligation to surrender has been executed on time (Rudareanu, 2006, p. 89).

The Civil Code establishes the general rule according to which the risk is borne by the debtor of the obligation that is impossible to execute, and it applies both to non-translative synalagmatic property contracts and translatable synalagmatic property contracts.

According to art. 558 of the Civil Code, the owner bears the risk of the asset's destruction, if it has not been assumed by another person or if the law does not provide otherwise.

In synalagmatic contracts whose object is the transmission of the right of ownership over a certain asset, the "res perit debtori" rule does not apply, but the "res perit domino" rule, i.e. the risk is borne by the owner.

[18] Law no. 286/2009 on the Criminal Code, published in M. Of. no. 510/24.07.2009, entered into force on February 1, 2014.
[19] Law no. 295/2004 on the arms and ammunition regime, republished in Official Gazette no. 814/17.11.2011 amended by Law no. 288/2011 published in Official Gazette no. 892/2011.

In such contracts, the property is transferred by the effect of the consent of the parties, and the risk of the destruction of the good remains the responsibility of the acquirer, even if the tradition (handover of the thing) has not been made. If the delivery debtor is at fault, the thing perishing after he was delayed in delivering it, the risks are borne by the delivery debtor.

According to art. 1672 of the Civil Code, the seller has the following main obligations: to transfer ownership of the good or, as the case may be, the right sold; to hand over the property; to guarantee the buyer against eviction and defects of the good.

The practical usefulness of the exact determination of the moment of the transfer of ownership lies in the fact that the risk of losing the sold good, due to force majeure, is different, depending on how the good is determined individually (cert) or good of the same kind.

The conditions for the immediate transfer of ownership.

The principle of immediate transfer of ownership (and risks) from the moment the contract is concluded operates only if the following conditions are met:

a) The seller must be the owner of the thing sold, and the contract must be validly concluded.

To be validly concluded, the contract must be concluded in the form required by law, and when the law does not impose a certain form, in the form established by the parties or, where the law does not require simple agreement of will, it is sufficient for a contract to be validly concluded without any other formality.

According to art. 1228 of the Civil Code, in the absence of a legal provision to the contrary, contracts can also apply to future assets.

According to art. 1658 of the Civil Code, if the object of the sale is a future good, the buyer acquires the property at the moment the good is realized[20].

Regarding the constructions, the corresponding provisions regarding the land register are applicable[21].

In the case of the sale of goods of a limited kind that do not exist at the time of the conclusion of the contract, the buyer acquires the property at the time of individualization by the seller of the sold goods. When the good or, as the case may be, the limited kind is not realized, the contract produces no effect.

And art. 1230 provides that the object of the contract can be formed from the property of another, thus, unless the law provides otherwise, the property of a third party can be the object of a benefit, the debtor being obliged to procure them and pass them on to the creditor or, as the case may be, to obtain the consent of the third party. In case of non-execution of the obligation, the debtor is responsible for the damages caused.

According to art. 1683 of the Civil Code, the sale of property to another is regulated, thus, if, on the date of conclusion of the contract on a specific individual property, it is owned by a third party, the contract is valid, and the seller is obliged to ensure the transfer of ownership from its owner to the buyer.

The seller's obligation is considered to have been executed either by his acquisition of the good, or by the ratification of the sale by the owner, or by any other means, directly or indirectly, that procures the buyer ownership of the good.

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[20] art. 1658 paragraph 5 of the Civil Code the good is considered realized on the date on which it becomes fit to be used according to the destination for which the contract was concluded..

[21] art. 242 paragraph 3
In the case of real estate that is the subject of the transfer, ownership and other real rights are acquired only by registration in the land register

If the law or the will of the parties does not result to the contrary, the property is transferred to the buyer by right from the moment of the acquisition of the good by the seller or the ratification of the sales contract by the owner.

If the seller does not ensure the transmission of the ownership right to the buyer, the latter can request the resolution of the contract, the return of the price, as well as, if necessary, damages.

When a co-owner has sold the joint property and subsequently does not ensure the transfer of ownership of the entire asset to the buyer, the latter can request, in addition to damages, at his choice, or a reduction of the price proportional to the share he did not acquire- o, or the resolution of the contract in the event that he would not have bought if he had known that he would not acquire ownership of the entire good.

In the mentioned cases, the extent of damages-interest is established, accordingly, according to art. 1702 and 1703 of the Civil Code. However, the buyer who at the time of the conclusion of the contract knew that the good did not belong entirely to the seller cannot request reimbursement of expenses related to autonomous or voluptuous works[22].

b) The things that are the subject of the contract must be individually determined (for example: a jewel, a painting, a plot of land, a house, etc.) or determinable. In the case of generically determined goods, the transfer of ownership cannot occur from the moment of the conclusion of the contract because the goods to be effectively acquired by the buyer are not known, the transfer of ownership operates when these goods will exist and will be individualized by measuring, weighing, counting .

Consequently, there is no question of risk transfer either, because things of the kind cannot be lost, they are fungible (can be replaced) and the debtor must hand over goods in the quality and quantity stipulated in the contract. At the stipulated term or, in default at the request of the buyer, the seller must individualize the thing sold and hand it over. Otherwise, he will be liable for the non-execution of the assumed obligation.

In the case of such things, the transfer of ownership (and risks) occurs at the moment of individualization, which is usually done by handing over the thing sold to the buyer (handover that is done in all cases and counts as individualization) but it should not be confused with this, individualization it can also be done by other methods that ensure the identification of things as belonging to the buyer, for example: by labeling the parcels or handing them over to a carrier to be transported to the buyer (Deak, 2001, p.16).

According to art. 1678 of the Civil Code, when the object of the sale is goods of one kind, including goods of a limited kind, the property is transferred to the buyer on the date of their individualization by handing over, counting, weighing, measuring or by any other agreed or imposed method of the nature of the good.

In the case of generic goods, which are sold by weight, measure or number (for example, a quantity of grain, fruit, raw materials, etc.), ownership is transferred from the seller to the buyer at the time of their individualization by counting, measuring or weighing which are usually done at the time of delivery of the good. The risk of accidental loss belongs to the seller who will have to hand over to the buyer a good of the same quality and quantity as the lost one. If the quality is not stipulated in the contract, a medium quality good will be delivered.

[22] Art. 581 and 585 of the Civil Code
Art. 578 paragraph 3 letter c
Voluptuous expenses, when they are made for the simple pleasure of the person who made them, without increasing the economic value of the property.

According to art. 1486 of the Civil Code, if the object of the obligation is goods of the same kind, the debtor has the right to choose the goods to be handed over. However, he is only released by handing over goods of at least average quality.

In the case of the sale of similar goods, if the goods, object of the contract, are accidentally destroyed, the seller will not release himself from his obligation, until he hands over to the buyer another quantity of goods of the same kind, because he can procure such goods, according to the principle expressed by the "genera non pereunt" rule.

There are, however, situations in which the object of sale is goods of the same kind by their nature, but which are individualized by the place where they are located (in the warehouse, the silo, the barn in a certain place), thus establishing that all or a particular one is sold part (½; ¼ etc.), the sale being known as: "block sale"[23].

When the transfer of the right of ownership operates at the time of the realization of the agreement of will of the parties.

According to art. 1680 of the Civil Code, when selling by sample or model, ownership is transferred at the time of delivery of the good.

c) The thing sold must exist or exist in the future with certainty. In the case of the sale of future goods (for example: things to be made, a future harvest) although they may form the object of the contract, the transfer of ownership can only operate at the moment when they have been executed, finished, the harvest harvested, in a condition to be handed over to the buyer, if they are individually determined (certain) goods, and if the executed work is of a kind, after individualization by measurement, weighing or counting.

The risks are transferred to the buyer together with the right of ownership, if he has not assumed the risk of non-performance of the future work from the moment of concluding the contract and independently of the transfer of ownership (Deak, 2001, p.17).

According to art. 1228 of the Civil Code, in the absence of a legal provision to the contrary, contracts can also apply to future assets.

According to art. 1658 of the Civil Code, the sale of future goods is regulated, thus, if the object of the sale is a future good, the buyer acquires the property at the moment the good is realized[24].

Regarding the constructions, the corresponding provisions regarding the land register are applicable.

In the case of the sale of goods of a limited kind that do not exist at the time of the conclusion of the contract, the buyer acquires the property at the time of individualization by the seller of the sold goods. When the good or, as the case may be, the limited kind is not realized, the contract produces no effect. However, if the non-performance is determined by the seller's fault, he is required to pay damages.

When the good is only partially realized, the buyer has the choice either to request the cancellation of the sale or to claim the corresponding price reduction. The same solution applies in the case of the sale of goods of a limited type, when the limited type was only partially realized and, for this reason, the seller cannot individualize the entire quantity of goods provided for in the contract. If the partial non-realization of the good or, as the case

[23] Art. 1679 of the Civil Code
Bulk sale of goods
If, however, several goods are sold in bulk and for a single and global price, the property is transferred to the buyer as soon as the contract has ended, even if the goods have not been individualized.

[24] art. 1658 paragraph 5
the good is considered realized on the date on which it becomes fit to be used according to the destination for which the contract was concluded.

may be, of the limited type was determined by the fault of the seller, he is required to pay damages.

When the buyer has assumed the risk of not realizing the good or the limited type, as the case may be, he remains obliged to pay the price.

The good is considered realized on the date on which it becomes fit to be used according to the destination for which the contract was concluded.

If at the time of the sale of a specific individual good it had completely perished, the contract has no effect. If the good was only partially lost, the buyer who was not aware of this fact at the time of the sale may request either the cancellation of the sale or the corresponding price reduction.

d) the parties or the law have not delayed the transfer of the property. The parties can, through a special clause, postpone the transfer of the property for a moment after the conclusion of the contract. Such clauses can be provided in the contract because the rule established in art. 1674 of the Civil Code, according to which "property is transferred by right to the buyer from the moment the contract is concluded", is not of public order (imperative) and therefore can be modified by the parties even if the thing sold is individually determined, i.e. certain, and the transfer of ownership can take place on another date agreed by the parties.

Thus, the parties can postpone the transfer of ownership until the fulfillment of a suspensive term (until the term of delivery of the thing sold or payment of the price) or until the fulfillment of a suspensive condition. The suspensive term affects the transfer of ownership only if the parties have expressly provided for the postponement of this effect of the sale-purchase contract, and the suspensive condition postpones the transfer of ownership until the event occurs[25].

Thus, according to art. 1681 of the Civil Code, the sale is subject to trial when it is concluded under the suspensive condition that, following the trial, the good corresponds to the criteria established at the conclusion of the contract or, in their absence, the destination of the good, according to its nature, and art. .1731 of the Civil Code, the sale of the property in respect of which there is a legal or conventional right of pre-emption can be made to a third party only under the suspensive condition of not exercising the right of pre-emption by the pre-emptor.

According to the provisions of art. 884 paragraph 1 of the Civil Code, real rights under a suspensive or resolutory condition are not enumerated. However, they can register provisionally.

According to art. 2524 paragraph 3 of the Civil Code, if the right is affected by a suspensive condition, the prescription begins to run from the date when the condition was fulfilled.

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[25] Art. 1400 of the Civil Code
The condition is suspensive when the effectiveness of the obligation depends on its fulfillment.
Art. 1407 of the Civil CodeIn the case of contracts with continuous or successive execution affected by a resolutory condition, its fulfillment, in the absence of a contrary stipulation, has no effect on the services already executed.
When the suspensive condition produces retroactive effects, in case of fulfillment, the debtor is obliged to perform as if the obligation were simple. The acts concluded by the owner under a suspensive condition are valid and, if the condition is fulfilled, they take effect from the date of their conclusion.
When the resolutory condition produces retroactive effects, in case of fulfillment, each of the parties is obliged to return to the other the benefits they received under the obligation as if it had never existed. The provisions regarding the restitution of benefits are applied accordingly.

The stipulation of a resolutory condition does not affect the transfer of ownership from the moment the contract is concluded to the buyer, but once the condition is met, the seller regains ownership with retroactive effect[26].

According to art. 1401 of the Civil Code, "The condition is decisive when its fulfillment determines the abolition of the obligation.

Until proven otherwise, the condition is presumed to be decisive whenever the maturity of the main obligations precedes the moment when the condition could be fulfilled."

If, by agreement between the parties, the transfer of ownership has been postponed for a moment after the conclusion of the contract, the transfer of risks to the buyer is postponed, by virtue of the law, accordingly, even if the parties have expressly referred to both aspects , or only at one of them. The parties can distinguish between the two aspects, for the buyer to assume the risks before the transfer of ownership or for the seller to bear the risks after the transfer of ownership has occurred (for example: during transportation). Such a distinction must result from a clause expressly provided for in the contract (Deak, 2001, p.16).

According to art. 1651 of the Civil Code, the application of some rules from the sale are regulated, thus, the provisions regarding the seller's obligations are applied, accordingly, to the alienator's obligations in the case of any other contract having the effect of transferring a right, if from the regulations applicable to that contract or from those relating to obligations in general do not result otherwise.

The Civil Code also regulates other forms of sale in which the transferable effect of ownership is not linked to the realization of the agreement of wills, according to the rule of common law.

These forms of sale include: the sale of future goods (art. 1658 of the Civil Code); selling snacks; sale on trial.

The sale of future things is provided by art. 1228 of the Civil Code, according to which "contracts can also apply to future goods".

In the case of making the agreement of will regarding the sale of future things (for example, goods that will be manufactured in the future, a future harvest from a plot of land, an orchard), which does not exist at that moment, but which will come into being in the future , the transfer of ownership will be made only when the thing comes into existence.

In the case of such sales, if the object of the contract are individually determined goods (cert goods), the transfer of ownership can be carried out either at the time when the good comes into being, or at the time of delivery of its takeover, as agreed by the parties.

If the good object of the contract is a generic good, ownership is transferred when it is individualized by measurement or weighing.

The alternative sale is the one whose object is two or more things, of which, at the choice of the entitled person, only one or more is selected, but in any case less than the total amount of those objects (Chirica, 1997, p.14), for example, I sell either the Dacia Logan car or the Ford car. As a rule, the choice will be made by the seller who is the debtor of the delivery obligation.

The transfer of ownership, in the case of such a sale, takes place at the time of selection of the thing or things sold.

The sale of snacks is practiced in the case of the sale of food products and drinks. Art. 1682 of the Civil Code states that: "The sale subject to the condition that the good corresponds to the buyer's tastes is concluded only if he has made known his agreement

[26] Art. 1407 of the Civil Code
The fulfilled condition is assumed to produce effects retroactively, from the moment the contract is concluded, if the will of the parties, the nature of the contract or the legal provisions do not result to the contrary.

within the term agreed upon or established by custom. If such a term does not exist, the provisions of art. 1681 paragraph 2 shall apply"[27].

If the sold good is with the buyer, and he does not pronounce himself within the stipulated term, the sale is considered concluded at the expiration of the term."

If the buyer tastes the product and declares that it does not suit him, the sale is not made, and the seller cannot force him to accept the contract.

The sale on trial is regulated by art. 1681 of the Civil Code, which specifies: "The sale is on trial when it is concluded under the suspensive condition that, following the trial, the good corresponds to the criteria established at the conclusion of the contract or, in the absence of these, the destination of the good , according to its nature.

If the duration of the test has not been agreed upon and custom does not result otherwise, the condition is considered fulfilled if the buyer has not declared that the good is unsatisfactory within 30 days of handing over the good.

If, through the sales contract, the parties have provided that the sold good is to be tested, it is assumed that a trial sale has been concluded." In other words, the sale is subject to a suspensive condition, that of the buyer trying the work. As a rule, this form of sale is practiced when selling cars, machinery, clothing, draft animals, etc.

If, after the test, the buyer finds that the thing does not meet his requirements, the sale is not made. If, however, the buyer declares that the good suits him, the sale is perfected with retroactive effect from the moment when the agreement of will of the parties was made.

If the parties have postponed the transfer of the ownership right through a clause in the contract, through a suspensive term or through a condition, the transfer is postponed until the term is fulfilled or the condition is met. Until the fulfillment of the condition and the fulfillment of the term, the seller remains the owner of the good.

In the case of sales of land and other real estate, the transfer of ownership is transmitted at the time of registration in the land register.

Registration in the land register is necessary for the sale to be enforceable against third parties.

In the case of sales of goods in self-service supermarkets, the contract is considered concluded and the transfer of ownership takes place upon payment of the price at checkout.

If the person who took the good from the shelf does not pay and leaves with the goods, it is not a failure to pay the price of a contract already concluded at the time of placing the goods in the basket, but the commission of the crime of theft (Florescu, 2014).

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[27] Art. 1681 paragraph 2 of the Civil Code
If the duration of the test has not been agreed upon and custom does not result otherwise, the condition is considered fulfilled if the buyer has not declared that the good is unsatisfactory within 30 days of handing over the good.