

**FEATURES CONCERNING THE DEFINITION AND LEGAL BINDING  
OF CONSUMER CONTRACT OF PURCHASE AND SALE**

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*The research aims to analyze the theoretical and legal aspects of consumer contract of purchase and sale. Currently the contract of purchase and sale is the most common contract that provides both civil and commercial circuit. The consumer contract of purchase and sale is a genuine contract, a manifestation of will, however, affected by a special legal regime ruled by the Civil Code, Law on Consumer Protection and other regulatory acts.*

**Key words:** *Civil Law, contract, contract of purchase and sale, consumer contract of purchase and sale, civil circuit, goods*

Knowing a century-old trend, the contract of purchase and sale still today is one of the main traditional institutions of civil law. Currently the contract of purchase and sale is the most common contract that provides both civil and commercial circuit. The existence and usefulness of it is determined by the action of economic laws of society which reduce to the movement of goods from manufacturer/owner to consumer. A special importance of the purchase and sale institution lies in the broad scope of the purchase and sale contract. Through this agreement are satisfied people's material and spiritual needs. It is noted that the importance of this agreement to the citizens is not simply to purchase necessary goods of daily life such as: food products, clothing and other goods for personal use, garages, apartments, houses etc. Based on this contract the citizens have the opportunity to sell the excess of goods or goods that have become unnecessary for owners for various reasons over time.

The topicality of the subject results from that, making an analysis of doctrine and national jurisprudence, we find that the contract of purchase and sale is the object of a series of studies and scientific publications at home and abroad, the consumer contract of purchase and sale is paying less attention. This contract was not investigated until now in an apart scientific publication, so the presence of scientific and practical sources in this field is absolutely essential. The more that this contract is the most used of all subjects of law and to facilitate its application in practice requires the development of scientific articles.

At the same time, the aim in view at the elaboration of this article is to operate a general search of the institution of the consumer contract of purchase and sale in terms of the essence, legal nature and specific features thereof, and the obtained results to be laid down as conclusions and recommendations.

In the specialty literature referring to the consumer purchase and sale contract so far there is little scientific works, so the given will be the subject of a deeper research in the future.

In the specialty literature this subject is widely discussed, treated essence, causes, conditions, effects of these relations. The institution of the contract of purchase and sale is analyzed but maybe not enough, in the following manuals which have been consulted in this work, written by civilists who studied on this issue: Gh. Chibac, I. Trofimov, A. Baiesu, A. Blosenco, D. Chirica, M. Muresan, T. Thomas, Motiu Fl. Boro G., L. Stanciulescu, Chirica D.

The present period of time supports radical changes in all sectors of national economy, changes that necessarily require creating an appropriate legal framework, and a rigorous legal foundation. Civil Code will surely allow adaptation of the civil relations to the new reality and establishment of a good order in its relations. Civil Code should be the main regulatory instrument of civil relations of alienation of consumer goods, setting lucidity and rule. Somewhat special nature of these relations requires an increased focus from both the subjects and the legislator at the same time.

Initially, with the emergence of private property, it appears with a special extent, the contract that was meant to ensure the movement of goods through the exchange of a household to another. With no currency as a unit of exchange needs of the early Roman society to be satisfied through exchange contract which was to be transition from the natural household to household based on relations exchange [2, page 23]. As time went by this contract has gained the authority which is the foundation of emergency and development of contract of purchase and sale. From the economic point of view, the sale presents itself as a more evolved version. Sale purchase has taken the form of exchange contract, which of two things, one of them has the equivalent value overall. Later after the appearance of the currency sale purchase takes the meaning of change a thing instead of value called price.

Classical Roman law included the sale purchase contracts that had a consensual character. Based on the contract of purchase and sale a part called, the seller shall submit to an other part, called, buyer a good, and the buyer shall submit to pay an amount of metal called, price. Gaius considered that the agreement of purchase and sale is formed by the will of the parties on the object of the contract and its price, clauses which referred to good and price are being considered essential conditions of the price. It is practiced contract of purchase and sale under suspensive condition, the contract being future goods like next harvest [1, page 32].

Roman society in everyday life often used rules of law which were initially applied exclusively to the sale purchase, then began to be used more widely gaining a general character following benchmarks for the regulation of other types of contractual relationships. Despite this fact or in virtue of this sale purchase institution had a considerable role in the way of formation of contract law in all legal systems.

Multisecular evolution of the contract of purchase and sale as far represents one of the main traditional institutions of civil law. Currently the evolution of economic life is conditioned by the role and importance of the contract of purchase and sale that ensures both the commercial and civil circuit. The existence and usefulness of action is determined by economic laws of society, the impact of economic life that take shape, particularly, in the movement of goods from manufacturer to consumer. The main tool to ensure the movement of goods remains contract of purchase and sale.

The specific role of the institution of the sale purchase is taking shape in field where the contract purchase and sale applies. Through this agreement is ensured material and spiritual needs of people. Remarkably is that the need and importance of the contract is not limited to the purchase of goods for daily needs such as food products, clothing, goods for personal use, garages, apartments, houses. Based on this contract the citizens have the opportunity to sell the excess of goods or goods that have become unnecessary for owners for various reasons over time.

The contract of purchase and sale is widely used by all types of business. Each organization ensures its pursuit of the activity through contract, regardless of its legal form of organization. The contract is the main instrument for achieving the business, a tool that facilitates pursuit of the activity at a high level ensuring raw and technical material purchasing. If technical basis and raw materials can be acquired through donation then the sale of goods produced is not conceivable without the existence of the contract of purchase and sale [7, pag.123]. Through the contract of purchase and sale is ensured both wholesale trade and retail trade, being provided with raw material manufactures with final products for individual consumption. Scientific and technical progress, diversification of economic society, globalization not only outlines new forms of civil-legal contract, but it also affects some traditional institutions such as the sale and purchase.

The contract of purchase and sale is also the main instrument for perfecting the relationships that form the international circuit of goods and values. In the same context through the contract of purchase and sale are established, consolidated and strengthened the relations on international level outlining the trend of unification. In this regard in 1980 had been signed United Nations Convention on Contracts for the International Sale of Goods in Vienna, by this convention the way is smoothing to the international sale. The Convention was ratified by Moldova on October 13, 1994.

The contract of purchase and sale is presented as a generic concept in relation to other varieties of contract, such as: the contract of purchase and sale of immovable property, the contract of purchase and sale

of the company with a unique patrimonial complex, the contract for supply of natural gas and electricity, auctioning. This wide variety of contracts need to be included separately in the Civil Code of the Republic of Moldova, these ones being determined by the particular legal relationships that those contracts form aiming to facilitate and optimize the regulation thereof.

According to the Moldovan Civil Code art.753 par. (1), the contract of purchase and sale, one party (seller) undertakes to deliver a good to the property to the other party (buyer) and he is obliged to take the good and pay the price [3, art.753]. The doctrine defines the contract of purchase and sale as a contract whereby one party seller shifting right to property of a good to the other side, buyer that shall pay the price. [6, page 19].

Any legal phenomenon, process or work "begins" with the concept. Also, the contract of purchase and sales begins with the concept. For definition of contract of sale it is necessary to define the conceptual thinning of the term "treaty". And on this basis, we can talk about the concept of "contract of sale". The contract of sale is one of the types of treaties governing the obligation to transfer the property. This explains the widespread use of contract - the sale of property turnover.

Legal definition of the contract reveals that the sale and purchase is a mutually binding contract for consideration, consensual, ownership transfer. **Legal characteristics of the contract of purchase and sale:**

- The sale-purchase is a mutually binding contract because by concluding it gives birth to mutual obligations for both contracting parties, the seller is obliged to deliver the goods and to ensure the buyer, and the buyer shall pay the price. Being by its nature mutually binding for the contract of sale apply special provisions regarding mutually binding contracts such as termination for non-performance or improperly execution of duty or exception of non-performance.

- The sale-purchase is a contract for consideration. By this act a part purchase a patrimony in exchange of another good patrimonial (art197, paragraph 2 CC) [3 art.197]. The pecuniary nature implies the interest of both parties at achieving a material interest in exchange for benefit to which undertakes, the legal cause obligations of each party contracting with the essential consideration that undertakes the other party, the consideration consists in the receipt by the buyer of the property and the receiving by the seller a reward in cash from the buyer.

- Once the contracting parties have made an agreement on all essential terms of the contract it is considered valid. According to art. 679, paragraph (2) CC, are essential clauses established as such by law or contract resulting from the nature of which, the requirement of a party should be made an agreement. The contract can be achieved by simple agreement between the parties without fulfilling any formality and without remission of sold good and the price at the time of conclusion. Selling is not a solemn and real contract. An exception from the principle of mutual consent in special cases provided by law the selling becomes a solemn contract. For example, land - whether they are located in incorporated area or outside the built-up areas and irrespective of the surface - can be sold (acquired) by legal acts between vivos under absolute nullity (virtual) only if the transaction was concluded in authentic form.

- Sale purchase is a commutative contract. The Civil Code establishes the legal character. Commutative contract is considered as the existence and extent of the services are known by the parties from signing the contract and that contract does not depend on allies a future and uncertain element that would be unlikely to succeed and losses for both parties.

- The sale-purchase is a contract of transferring the property since it was concluded. This means that through the effect of the agreement of willingness (consensu solo) and independently of the handing over the sold good and payment of the price, not only produces the conclusion of the contract, but operate the transfer of ownership from seller to buyer. In this regard in the Roman law the contract of purchase and sale does not have an ownership transfer character, it generated just a juridical relation of obligations, resulting from the transfer of ownership right. In modern law the contract of purchase and sale is transferring the property. The laws of the Member states governing different timing of ownership, Moldovan legislation like the Russian one assigned time of occurrence of ownership to the buyer when submitting goods to the buyer, while regulations of Romanian

Civil Code establishes the time of transmission of ownership at the time of the agreement will, whether held or not delivery of the asset sold if the price was paid.

During the Soviet period the contract of civil law of sale was only applied mainly between citizens and between citizens and retail outlets. The developing relationships between "socialist" organizations related to sale of products and goods, regulated contracts for the supply, contracting, power supply, which had a planned base is considered an independent contractor. In the legal literature of the period, this was due to the fact that "under socialism, the law of value is combined with the law of balanced - balanced development and basic economic law of socialist society. Following the law of value loses its meaning universal, and therefore limited and the scope of the sales contract, mainly used for the implementation of consumer goods, and only a relatively small scale for the implementation of means of production."

By developments in the society, consumerism has emerged as a reaction to the excesses of consumer society and abuse of professionals. He answers to the idea that the consumer is manipulated through advertising and marketing operations, generating artificial needs and illusions of a false abundance [1, p.30]. Consumerism is justified by the fact that traders' freedom competition is not sufficient to regulate the market and requires a security / protection for consumers [7, page 78].

Considering the special regulations, exceptional of the consumer contract of purchase and sale, in the doctrine they were put various questions such as: is the contract consuming a legal operation as understood the contract under civil law or it is a new contract, and in what relation is this agreement with the special classic contracts [9, page 82]?

In specialty literature there are opinions that the consumer contract sale purchase is made, in fact, of two distinguished contracts [9, page 84]: a fund contract and a contract for consumption.

A professional can be any individual or legal entity acting in its commercial activity. And the consumer is any individual or group of individuals constituted in associations acting for purposes outside the commercial activity.

In other words, the fund contract has its own legal regime, by legal overlapping of juridical regime of consumptions. In case of sell consumer will be applied the legal regime of the contract of purchase and sale to the parties of the contract by applying mandatory rules of the law of consumption.

Transition of ownership includes the buyer's account fortuitous risk of destruction or damage of property. Since acquiring the property right buyer bears the risk destruction or damage of property. According to art. 759, paragraph (1) NCC. the risk of accidental destruction or damage of good is transferred to the buyer when the seller has achieved contractual obligations concerning the delivery of good to the purchaser unless the contract provides otherwise. According to art. 760, paragraph (1) CC. surrender obligation of good is considered executed when: a) at the delivery of the asset to the buyer or the person indicated by him; b) at putting good to the buyer or the person specified if the good is to be handed over to his whereabouts [1, page 56]. Putting good to the buyer at the time of individualization is achieved by marking good or otherwise, and if he is ready to surrender deadline and the buyer is informed about it.

According to this concept, the institution "agreement consumption" has the following characteristics: a) "the agreement consumption is not a legal operation" but "a legal ambiguous concept", a mixture of rules of public and private law; b) "agreement consumption" has no legal nature; c) it is not a legal document but a legal regime applicable to specific commercial relationships; d) "agreement consumption" does not require consent, it is an objective legal institution.

A second group of authors argue that "consummation contract" is a real contract, an outgrowth of the manifestation of will, however, affected by a special legal regime. We support this view because: a) there are no general contracts, but only a general theory of contract; b) the right of consummation use the legal institution of classic contracts, in our case of the contract of purchase and sale [9, page 82]. In addition, the right consumption was meant to regulate special contracts when they are concluded between professionals and consumers.

In conclusion we mention that the contract consumption can be found only in the form of a special contract (sale purchase, loan, lease, etc.) where the professional and the consumer are the parties and are covered by specific provisions in the field. So we can not talk about a contract namely consumption, but only about a sale of consumption, a consumption loan, etc. [10, p.16]. The general framework of consumer protection is governed by the Law on Consumer Protection [5 page 132].

Peculiarities of consumption contract cover the following areas: freedom of contract, equality of contractual wills and contractual fraternity [9, page 84].

The consumer contract of purchase and sale has the consumer as a buyer - an individual who has a special position. Besides the general rights that the buyer have, as part the contract of purchase and sale, he also has a number of special rights, such as the guard against the risk of purchasing a product that might affect life, health, heredity and security; the organization in public associations for consumer protection, etc.

Another specific point for this contract is its adhesion character. The totality of the essential causes of the contract is established equally for all buyers.

Another feature of the consumer contract of purchase and sale is that its conclusion is made pursuant to the public offering, which according to art.807 of Civil Code is to expose good label on the storefront, the advertising for goods.

Civil Code establishes special rules regarding conversion of consumer goods [3 page.808].

Generalized the approached information we conclude that the consumer contract of purchase and sale play an important role both in the civil circuit and in entrepreneurial activity. The consumer contract of purchase and sale is a genuine consumer, a manifestation of wills, however, affected by a special legal regime ruled by the Civil Code, Law on Consumer Protection and normative acts. Unfortunately, the Civil Code of the Republic of Moldova does not define distinct the consumer contract of purchase and sale. Moreover, in doctrine and in different normative acts this contract is called differently: the contract sale purchase for consumption, the contract sale purchase of goods for personal use, the contract sale purchase retail. In this context, to avoid the ambiguities regarding the multiple names for the same term we recommend using the concept of "consumer contract of purchase and sale" and propose the following definition of its "the consumer contract of purchase and sale is a sale where the unit retail trade undertakes to convey ownership of goods of adequate quality to the consumer, to provide information and services under the contract, to ensure service level and the consumer undertakes to pay the price set for this good or goods. The object of the retail contract is goods purchased for personal use, household or family".

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