RIGA GRADUATE SCHOOL OF LAW

MASTER'S THESIS

What are the essential elements needed for the contract of sale to be formed? A comparative study of legal regulation in terms of the conclusion of the sales contract under the Continental and Common Law legal systems with the focus on the legislation of Latvia, Germany, Russia, and the United States of America.

AUTHOR: Yuliya Legay
LL.M 2019/2020 year student
student number M019042

SUPERVISOR: *CARLOS LLORENTE*
LL.M (Hons.), Ph. D. (Hons.)

DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

(Signed) ……..

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ABSTRACT

Today, the sales contract is the most common type of contract of civil and commercial circulation. The movement of material goods in commodity form, which is the basis of any legal obligation, in the contract of sale appears in the purest form and represents direct content.

The work is aimed at studying civil and commercial law relations regarding the analysis of the legal regulation of the conclusion of the contract of sale, in particular, the author carefully examines the elements inherent in this category of contracts, the so-called essential conditions, the agreement of which the parties are required for the occurrence of obligations to each other.

The work has an important *practical and theoretical significance*: there is still no scientific work or research that has been so thoroughly analyzed and disclosed analogous and distinctive elements, which are essential for the formation of sales contracts on the example of just such a combination of countries, which also determines the *scientific novelty* of the thesis. This study can serve as both practical and academic guidance for those planning to conduct commercial (entrepreneurial) activities in these countries, for those engaged in scientific activities in the educational process and in the work of law-making bodies.

The main problem that determines the choice of the topic by the author is the question of what changes should be made to the current Latvian legislation in order to improve and simplify the mechanism of regulation of commercial relations due to the process of concluding a sales contract.

As a result of the analysis, shortcomings in the current legislation were identified and possible solutions to conflicts arising in the process of law enforcement were proposed.

Keywords: sales contract, contract of sale, sales agreement, purchase and sell, buyer, seller, goods, elements, terms, conditions.

SUMMARY

Formation and subsequent effective performance of the sales contract nowadays require special knowledge of the legal framework of several countries. In world practice, despite attempts to unify the substantive legal regulation of sales and purchase relations at the international level, differences in the national legislation of countries, especially those belonging to different legal families, remain. This work is a comprehensive study aimed at extensive special research on the legal regulation of the essential terms of the sales contract in the modern market. The current study is connected with the previous study, which was conducted by the author in the regard to Bachelor's Thesis, however, in this time, the author set a task to compare not only the legislation of the states, which belong to one legal system but the legislation of the countries which are the brightest representatives of different legal families.

The work is based on the codified/uncodified acts of civil and commercial law of the Republic of Latvia, the Federal Republic of Germany, the Russian Federation and the United States of America; laws and regulations, relevant legal literature, materials of case law, scientific publications, electronic resources of various types, as well as some fundamental international acts in the field of regulation of requirements to the formation of a contract of sale.

The work consists of *three chapters*, which analyze the theoretical and practical conclusions about the topical issues related to the sales contract formation in the comparative legal aspect.

In *the introduction*, the author gives a description of the subject and the object of the study, determines the relevance of the thesis, the practical significance, and novelty of the topic, highlights the research issues as well as the problematic situation and hypothesis of the thesis and describes the methodological approach on the basis of which the research was conducted.

Chapter I introduces the major and secondary legal instruments which will be being used throughout the work; characterizes a general concept and legal nature of the contracts of sale, determines its significance in civil and commercial circulations, gives a general legal description of the sales contract, reveals its concept, content, purpose, features, functions, characteristics as well as its differences from other types of agreements, by considering the most interesting and important positions of Latvian and foreign scientists, and by determination of the author's opinion on a number of main issues.

Chapter II gives a legal definition, the core, and specifications of a contract of sale, the scope of application and features, in particular, the subject, the object, the parties, its rights, and

obligations - the content of the sales contract under the legislation of Latvia, Germany, Russia and the USA; reveals the concept of elements of the contract of sale and their significance in civil and commercial law relations, the provisions of international acts in the sphere of concluding sales contracts are considered, the author's view and annotation on several major issues were defined.

Chapter III reveals the list of the essential elements, as well as the terms and conditions based on which the contract of sale enters into force, by comprehensive analyzing the relevant provisions of the commercial and civil legislation of the above-mentioned states and illustrating the distinction and similarity between them, as well as between the domestic and international legislation that regulates this institution of law, provides examples of case law on the subject of the study and making the relevant conclusions on the subject matter.

In *conclusion*, the main results and observations of the study, as well as proposals to improve the effectiveness of the legal regulation of sales contracts are formulated.

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INDEX OF ABBREVIATIONS

CL - Latvian Civil Law

BGB - Bürgerliches Gesetzbuch, German Civil Code

HGB – Handelgesetzbuch, German Commercial Code

CC - Russian Civil Code

UCC – Uniform Commercial Code

INTRODUCTION

In any modern society, all spheres of activity are closely interrelated and interdependent. But it is the economy that determines the dynamics, basic conditions, and quality of life of society as a whole and of each of its citizens individually. An integral part of the economic history of many modern states is the history of entrepreneurs, whose hard work over many generations has created the foundations of economic and political power in these countries and determined their place in the world. "Trade is a type of business activity associated with the purchase and sale of goods, therefore, the basis of trade relations is the civil basis for the purchase and sale of a property[1]." The granting of freedom to individuals and legal entities in the sphere of doing business has given a powerful impetus to the intensive development of property relations and a variety of economic relations of commercial entities, both in the domestic turnover of the country and in their foreign economic activities. A significant place in the settlement of civil law relations is given to issues related to commercial transactions, as well as the contractual obligations arising from them. One of the most popular forms of contractual relations is the contract of sale.

A characteristic feature of our time is the rapid development of international integration processes, increased globalization of trade and financial markets, which have caused the complexity of forms of economic cooperation and legal regulation mechanisms adapted to the needs of the world economy. The main legal instruments for the implementation of domestic and international trade relations between commercial enterprises and various countries is a contract. The number of contracts concluded increases from year to year, the content becomes more complex, and the contract process itself accelerates, which is greatly facilitated by modern achievements of technical progress. This, in turn, leads to the need to review some well-established rules for concluding contracts that no longer meet the needs of the modern market[2].

The relevance of the topic is that the purchase and sale formalized in a contract, the most common type of agreement between participants in civil and commercial relations, especially in the field of business. A contract of sale is one of the main types of obligations to transfer property to ownership or other proprietary rights. Because of this, knowledge of the problems

[1] Boris Puginsky, *Komercheskoye pravo:* Uchebnik. Tret'ye izdaniye. (Commercial law: Textbook. 3rd ed.) (M.: ZAO Yustitsinfor, 2005), p.4.

[2] *See also* Andreas Maurer "The creation of transnational law - participatory legitimacy of privately created norms" (2012) *Center for Transnational Studies (ZenTra) of the Universities of Bremen and Oldenburg Working Papers in Transnational Law* No 03/2012 1 at 13., **quoted** in Juana Coetzee, "Private regulation in the context of international sales contracts", *Law Democracy & Development*, Vol.24, (2020): p.28. Available on: https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/laacydev24&id=28&men_tab=srchresults. Accessed February 28, 2020.

that often occur when the parties are on the stage of the conclusion of the sales contract is an important task when studying such a legal institution as a contract of sale.

Today, commercial activity is at its peak. In a market economy, commodity-money relations are the exclusive form of expression of the business interests of its subjects. The largest production facilities in different countries create millions of demanded products that become the subject of both national and international trade. In this regard, the most appropriate and effective legal form of free-market relations is a commercial transaction, since the results of commercial activities are implemented on the market of goods and services on a contractual basis. The main type of contractual obligation used by participants in international and domestic trade is a contract of the purchase and sale of goods. This agreement has been, is, and will continue to play a dominant role in regulating relations within the global economy. Especially relevant in the conditions of dynamic growth in the volume of commodity exchange, its regulation through purchase and sale agreements becomes. Such agreements form the basis of economic activity of individual economic entities and the entire state as a whole.

The importance of theoretical and practical development of issues related to the contractual regulation of commercial relations is due not only to the needs of legal practice in connection with the need to codify civil and commercial legislation, its harmonization and unification but also to the lack of scientific research on specific narrowly focused issues of legal science.

The object of research is social relations (social connections, dependencies, and distinctions)[3] that arise and are implemented in the sphere of legal regulation of the formation of contracts of sale and its the essential conditions as well as the other related issues of conclusion and formation of the content of the contract of sale.

The subject of the research is the current domestic legislation of Latvia, Germany, Russia and the United States of America; international legal norms related to the regulation of the essential terms of formation of sales contracts concluded in the field of international and domestic commercial relations, the practice of considering controversial points arising from the process of concluding contracts for the sale of goods related to the application of these legal norms.

The problematic situation raised in the paper is an incomplete and insufficient legal settlement: inaccurate and unclear formulation of legal norms that complicates the regulation

[3] *See also* Valery Protasov, *Chto i kak reguliruyet pravo. Teoriya gosudarstva i prava. Problemy teorii prava i gosudarstva.* (What and how the law regulates. Theory of law and state. Problems of the theory of law and the state) (M.: Novy yurist, 1999), pp.39.-45.

of the interaction between subjects of civil and commercial law in the course of the realization of their rights in the process of conclusion of a sales contract.

The hypothesis put forward by the author of the work is as follows: is the Roman law legal system really under enormous pressure from the Anglo-American legal system and in this regard, it has undergone and continues to undergo significant changes in its fundamental principles.

The research tasks are: to analyze the essential elements and characteristics of contracts which involve the purchase and sale of goods; to research and to determine the legal framework and main directions of legal regulation of the Republic of Latvia, the Federal Republic of Germany, the Russian Federation and the United States of America in the field of requirements for the conclusion of sales contracts; to identify the main distinctive features and similarities in terms of essential conditions of sales contracts; to propose measures to improve civil and commercial legislation.

The methodological basis of this research is the following methods of scientific research: method of induction and deduction, analysis and synthesis, method of abstraction, generalization, formal-dogmatic, system-structural, dialectical-logical, comparative, grammatical, teleological (target), method of interpretation of legal norms, modeling method, *which were applied in the process of:* considering the institution of purchase and sale as a single integral system with its integral elements, in particular, such as contracts of sale; identification, by comparison of common and special features of the legal regulation of contractual legal relations of particular countries; studying the evolutionary stages of development of the concept described; analysis of the legal form from a legal point of view; in-depth development of the structural elements of the studied subject; identification of the regularities of the studied phenomena, guided by knowledge of the laws of legal (deontic) logic in order to theoretically substantiate the forms in which the movement to the knowledge of the essence of the phenomenon under study is carried out; determining the ultimate goal in revealing the meaning of the content of a specific analyzed rule of law as part of the legal system, for the purpose of its practical application and implementation; drawing logical conclusions and analyzing them in connection with the impact on the regulation of the sales contracts conclusion, using previously verified facts and circumstances; identifying and describing the best ways and means of resolving conflicts in the course of formation of contracts of sale.

1. THE GENERAL CHARACTERISTIC OF A CONTRACT OF SALE

The starting point for understanding the legal position of the sales contract is the correct definition of the legal instruments that regulate its operation, both at domestic and international levels.

In the following chapters, the author focuses primarily on the legal instruments of local (domestic) character, which are: the Civil Law of Latvia (Civillikums), the Civil Code of Germany (Bürgerliches Gesetzbuch, BGB), the Commercial Code of Germany (Handelgesetzbuch), the Civil Code of Russia (Гражданский Кодекс) and the Uniform Commercial Code (UCC). Simultaneously, another legal material is being used, which is applied when it comes to the issues in relation to international trade and is not fully relevant in the scope of the chosen topic of the research. Among such legal instruments shall be highlighted: the 1980 United Nations Convention on Contracts for the International Sale of Goods, UNCITRAL Legal Guide on International Countertrade Transactions, Incoterms® rules 2020, The Principles of European Contract Law (PECL), Regulation (593/2008) on the law applicable to contractual obligations (Rome I).

Currently, dozens and hundreds of different-level normative acts (both civil and related branches of law, both private and public law) are aimed at legal regulation of relations related to purchase and sale. First of all, it should be emphasized that the current legislation of the countries in question, aimed at regulating legal relations of purchase and sale, is based on generally recognized international norms. International acts have priority over national legislation.

Among the acts aimed at regulating the purchase and sale, one can distinguish:

- United Nations Convention on Contracts for the International Sale of Goods (Vienna, April 11, 1980).[4] The Convention is applicable to contracts of sale and certain contracts for the supply of goods to be manufactured or produced (articles 1 and 3 of the Convention). These contracts deal with movable items, which include, in particular, food, cars, shoes and clothing;

- UNCITRAL Legal Guide on International Countertrade Transactions (prepared by the United Nations Commission on International Trade Law (UNCITRAL) New York,1993). Countertrade transactions are those transactions in which one party supplies goods, services,

[4] The United Nations Convention on Contracts for the International Sale of Goods (CISG), (came into force on 1 January 1988). Available on: https://www.uncitral.org/pdf/english/texts/sales/cisg/V1056997-CISG-e-book.pdf. Accessed February 20, 2020.

technology or other economic value to the second party, and, in return, the first party purchases from the second party an agreed amount of goods, services, technology or other economic value[5];

- INCOTERMS 2020: ICC Official International Rules for the Interpretation of Trade Terms by International Chamber of Commerce, International Commercial Terms - publication of the International Chamber of Commerce[6]. Incoterms is a set of rules used to increase efficiency and bring to standards conditions aimed at concluding supply contracts, which are necessary when preparing documents at the international level. Incoterms contains all the main rights and obligations of contractors, depending on the delivery modes, rules and regulations. The terms of the International Rules are an important trading tool. They are included in sales contracts around the world to provide guidance to importers, exporters, lawyers, carriers, and insurers. Trade terms used in Incoterms are important elements without which it is difficult to imagine the process of concluding sales contracts;

- Uniform Customs and Practice for Documentary Credits (UCP)[7]. Indispensable practical tool for international trade, developed by the International Chamber of Commerce. These rules are used by banks and commercial partners as a document that defines a widely used form of international settlements in the form of a documentary letter of credit, that significantly reduce the risks of import or export transactions due to the exchange of goods and services on the international market;

- Uniform Rules for Demand Guarantees[8]. This set of rules was designed by the International Chamber of Commerce to create a level playing field and ensure an impartial approach to the parties who are granted guarantees, regardless of the legal, economic or social systems in which they operate, i.e. participants of international trade, global partners. They may also be applied as a trade custom or, where required by applicable law, as a specific course of action agreed between the parties under a guarantee or counter-guarantee without explicit reference to these rules;

- Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) in order to clarify the rules on which legislation will be subject to a civil or commercial (sales) contract, the parties to which did not use the freedom to choose the applicable law. Contains

[5] UNCITRAL Legal Guide on International Countertrade Transactions, (New York,1993). Available on: https://www.uncitral.org/pdf/english/texts/sales/countertrade/countertrade-e.pdf. Accessed February 20, 2020.
[6] INCOTERMS 2020. (ICC Publishing, The world business organization, 2020 edition, 2019).
[7] UCP 600: Uniform Customs and Practice for Documentary Credits, (ICC Publishing, Inc.; 2007 edition).
[8] ICC Uniform Rules for Demand Guarantees, including Model Forms, 2010 revision, URDG 758. (ICC Publishing, The world business organization, 2010 edition).

so-called “conflict-of-laws rules” that determine which country's law (not necessarily an EU member state) should apply if the legal relationship contains a foreign element and, accordingly, may be governed by the law of different countries (for example, the law of the seller's country, the buyer's country, or the country where the goods were purchased, in the case of a contract of sale)[9].

All four countries considered in this paper are parties to the United Nations Convention on Contracts for the International Sale of Goods or The Vienna Convention on the International Sale of Goods 1980 (CISG). The Convention is an international legal act that applies automatically to international commercial sales of tangible goods if the seller and buyer are located in member states - countries that have signed the Vienna Convention or if one of the parties is located in a member state and the contract is governed by the law of such a party. Its adoption was due to the need to eliminate legal barriers and differences in the national regulation of the contract of international sale. Although in the past the Convention was usually used infrequently, its exclusion is now generally waived, since the Convention often contains provisions that the parties to the contract consider appropriate and in their interests. The Convention, like any unified act on a particular private law subject, cannot become an exhaustive set of rules. The provisions of the Vienna Convention of 1980 are of a dispositive nature, that is, the parties to the contract are granted the right to exclude its effect, to derogate from any of its provisions or to change its effect (provisions) (Article 6). If the contract of sale does not provide for such derogations, the rules of the Vienna Convention of 1980 should apply to it.

The ICC has developed a model international sale contract, the ICC Model International Sale Contract, specifically adapted for the international sale of finished products intended for resale. The contract was created for use in transactions governed by the Vienna Convention. Its adoption was due to the need to eliminate legal barriers and differences in the national regulation of the contract of international sale. Despite the fact that the Convention unified the rules of international trade based on the interests of its member states - signatories, its unique feature is that in accordance with Article 6, the parties can derogate or change the effect of any of the provisions of the Convention and even completely exclude its application. In addition, the international contract of sale is also regulated by national legislation. This is always the case in a subsidiary manner as a result of the inability to fully regulate the conduct of the parties in

[9] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I). Available on: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R0593. Accessed April 12, 2020.

such a contract or Vienna Convention. Moreover, the contract itself may refer to the specific law of the country party to the contract.

Two of the four countries presented for analysis are members of the European Union, and therefore they are subject to the general rules of European law governing contractual relations on their territory. The legislation of the European Union is supplemented by the national legislation of Latvia and Germany.

The main subject of regulation of the above-mentioned conventions and regulations are international transactions; they do not apply to domestic relations at all or they apply in exceptional cases.

> However, it cannot be said that these international conventions and rules have not to some extent had an impact on national legal acts – their influence is present.[10]
>
> [T]he UCC has indirectly influenced the PECL. Its impact comes from the consanguinity that exists among the PECL, UNIDROIT Principles of International Commercial Contracts (UNIDROIT Principles) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) all of which were influenced by the UCC[11].
>
> Their main goal is to ensure greater transparency in the functioning of commercial organizations by better protecting the interests of third parties and the most vulnerable participants in commercial legal relations[12].

1.1. The concept of a contract of sale

In order to give an extensive and thorough understanding of what the essential elements of a contract of sale are, it is necessary to illustrate the notion of a sales contract per se, which includes legal nature, content, and essence, by giving the opinions of different authors and analyzing the subject of research from different points of view.

In modern conditions, the role of contracts is increasing, which is due to the increasing importance of contractual relations. The contract is one of the most ancient legal structures and acts as the most stable legal form in time.

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[10] Kalvis Torgāns, E. Bušova, "Daži līgumtiesību salīdzinošie aspekti kontinentālās Eiropas un precedentu tiesību sistēmās" (Some comparative aspects of contract law in continental European and precedent legal systems) *Tiesību transformācijas problēmas sakarā ar integrāciju ES.* Starptautiskās konferences materiāli. Latvijas Universitāte, Juridiskā fakultāte. Rīga, (2002): p.108.

[11] Maria del Pilar Perales Viscasillas, The Formation of Contracts & the Principles of European Contract Law, 13 Pace Int'lL. Rev. 371 (2001): p. 372. Available on: https://digitalcommons.pace.edu/pilr/vol13/iss2/5. Accessed April 25, 2020.

[12] Kaspars Balodis, *Latvijas komercsabiedrību darbības tiesiskie aspekti Eiropas Savienības kontekstā. (Legal aspects of the activities of Latvian commercial companies in the context of the European Union).* Tiesību harmonizācijas Baltijas jūras reģionā 20.-21. gadsimta mijā. (Rīga: Latvijas Universitātes Juridiskā fakultāte, 2006): p.49.

> The possibility of applying contracts for such a long period is explained by the fact that it is a flexible legal form in which social relations may be different in nature[13].

With the help of contracts, economic relations are subject to the self-regulation of their participants - the most effective way of organizing economic activities.

> A contract is simply an agreement that defines a relationship between one or more parties (shoppers selecting food in a market contract to purchase the goods for a stated amount)[14].

The contract of sale (contract of sale, sales contract, contract for sale) is one of the most common types of contracts, and therefore the rules governing legal relations related to this type of contract are widely applied in practice by all subjects of civil and commercial law.

> [T]he contract of sale as seen the paradigm instance of contract law[15].

> Companies with international activity, as well as large corporations, enterprises, and corporate conglomerates are the undoubted key players of the large international contracts that move wealth in the world. Wealth moves from one country to another thanks to a great legal invention: the contract. International contracts are the best legal vehicles to ensure exchange between companies from different countries. They ensure such exchange even if there is a border between the contracting companies because the contract can be enforced in several countries, as long as it is a valid contract in the country where it is performed, needless to say[16].

"The difference of contracts for internal and international sales only in the element of foreign[17]." The foreign trade contract for purchase and sale is the most common legal form of foreign economic transaction that mediates a business relationship between the states. Its formation, development of conditions and drafting, conclusion, and execution require special knowledge and skills, taking into account the specific features of the external market.

> It is a legal form designed to serve the sphere of commodity circulation both within the country and in foreign trade.[18]

This leads to a universal and widespread application of the contract of sale in modern law. The contract of sale mediates the transfer of property from one owner to another, most fully expressing the traditional types of commodity exchange. In the new economic conditions,

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[13] *See also* Soili Nyste´n-Haarala, Nari Lee, and Jukka Lehto "Flexibility in contract terms and contracting processes," *International Journal of Managing Projects in Business* (June, 2010), accessed February 28, 2020, doi: 10.1108/17538371011056084.

[14] Karla C. Shippey, *A Short Course in International Contracts: Drafting the International Sales*, 2nd edition, (California: World Trade Press, 2003), p.1.

[15] Basil S Markesinis, Hannes Unberath, and Angus C Johnston, *The German Law of Contract: A Comparative Treatise*, 2nd edition, (Oxford and Portland, Oregon: Hart Publishing, 2006), p.493.

[16] Alfonso-Luis Calvo Caravaca and Javier Carrascosa Gonzalez, "Lex Mercatoria y Arbitraje Privado Internacional" (Lex Mercatoria and Private International Arbitration), *Cuadernos Derecho Transnacional*, Vol.12, Nr.1, (2020): p.69, accessed February 28, 2020, doi: https://doi.org/10.20318/cdt.2020.5180

[17] Sasha Dukoski and Svetlana Veljanovska, "The price in the contract of sale", accessed February 28, 2020, doi: 10.20544/HORIZONS.A.21.2.17. P.21.

[18] Vladimir Popondopulo and Darya Nefedova, "Torgovoye pravo: predmet regulirovaniya, mestp v sisteme prava" (Trade law: subject of regulation, place in the legal system). *Aktual'nye problemy nauki i praktiki kommercheskogo prava.* Sbornik nauchnyh statey 6. (M.: Wolters Kluwer, 2007): p.4.

the scope of application has significantly expanded due to the replenishment of economic turnover with new types of property.

1.2. Legal nature of a contract of sale

> Purchase and sale are one of the most important institutions of civil and commercial law. The known history of legal regulation of this agreement dates back almost four thousand years. In the course of centuries-old development of legal systems, a kind of natural selection of rules on sale and purchase took place. Random, unsuccessful provisions were eventually eliminated, giving way to more reasonable and high-quality ones, and the level of legal technology increased. The legal norms that initially regulated only the purchase and sale gradually acquired the character of general, basic provisions for other civil and commercial transactions[19].

Owing to this, the institution of purchase and sale has had a huge impact on the formation of contract law in all legal systems: in historical terms, it has grown almost the entire general part of the Law of Obligations. In turn, the general provisions of contract law have almost entirely extended their effect on commercial relations, in particular in terms of the conclusion of a sales contract.

However, the sale and purchase relationships should be clearly distinguished from the legal form that mediates it — the contract of sale — one of the most frequently used civil and commercial contracts in national and international circulation.

"The main feature of a sales contract is its focus on transferring ownership from the seller to the buyer[20]."

In German legal doctrine and legislation, which are characterized by a detailed study of legal structures, purchase and sale are characterized by the use of real contracts. A contract of sale as an obligation and a contract cannot be understood without real contracts through which ownership of the purchased thing and money is transferred. In this regard, the core of the functional structure of civil law is laid. In the legal aspect, the entire process of purchase and sale is divided into three contracts: a contract of sale that generates only legal claims and two contracts aimed at the implementation of these rights and claims, one for the purpose of transferring ownership of the purchased thing, and the other for the purpose of transferring ownership of money[21].

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[19] Leonid Lopatnikov, *Ekonomiko-matematichesky slovar': Slovar' sovremennoy ekonomicheskoy nauki (Economic and mathematical dictionary: Dictionary of modern Economics)* (M.: Delo, 2003), p. 54.

[20] Vladimir Kofman, *Ponyatiye, priznalki i vidy dogovora kupli-prodazhi: uchebnik (Concept, signs and types of purchase and sale agreement: textbook).* Vol.2. 2nd edition (M.: Vysshaya Shkola, 1983), p.186.

[21] *See also* Jan Schapp, *Metodenlehre und System des Rechts (Method of teaching and system of law)* (Tübingen: Mohr Siebeck, 2009), p.227.

By its legal nature, the contract of sale is consensual, since it is considered concluded from the moment of reaching an agreement on all essential terms; mutual because both the seller and the buyer have the rights and obligations provided for by law and the contract; paid since it is a contract under which one party (the seller) must receive a payment or other counter-provision for the performance of their duties from the other party (the buyer).

"The concept of "sale" necessarily implies contractual arrangements and excludes gratuitous transfers[22]."

Since the contract of sale refers to contracts for the transfer of property to ownership and it is characterized by the fact that the seller undertakes to transfer ownership and the thing itself to the buyer for the appropriate amount, while the buyer accepts it and pays for it, by its legal nature sales contract is a bilateral, reimbursable, and consensual agreement. On its basis, relations are carried out for the exchange of property values created by nature and produced by man, which act as goods in the trade circulation[23].

> The sales contract is a commutative transaction because its legal force depends on certain external circumstances: when concluding a commutative transaction, the amount, level and ratio of mutual obligations of the parties are specifically defined and known to the parties at the time of concluding the transaction (for the thing being sold, the seller receives the price set by the contract)[24].

Thus, the main distinguishing features of the obligations which arise from the contract of sale are compensation of the value of a thing, irrevocable change of the owner of the property- right holder, and the resulting payment of the purchase price in the form of a monetary amount.

1.3. The content of a contract of sale

Despite the change in its socio-economic content, the construction of the contract itself as a product of legal technology remains unchanged. In all legal systems, the main civil legal unit is considered to be the contract of sale and those principles that make up the content of the general part of the Law of Obligations have developed mainly on the basis of normative material related to the sale. Known to Roman law, in modern business relations, essential conditions remain the main criterion for recognizing a contract as concluded, although the

[22] Richard Dickson Cudahy, "The Sales Contract – Formation", *Marquette Law Review*, Vol. 49 (1965-1966): 108-121. Available on: https://heinonline.org/HOL/Page?handle=hein.journals/marqlr49&collection=journals&id=114&startid=114&enddid=127. Accessed February 28, 2020

[23] *See also* Aleksandra Goloshchapova, Konstantin Parmenenkov, and Raisa Savkina, Osnovy kommercheskoy deyatelnosti: Uchebnoye posobie (Fundamentals of commercial activity: Textbook) (M.: MGUK, 2000), p.7.

[24] Osvalds Joksts, *Saistību tiesības saimnieciskos darījumos (Law of obligations in economic transactions)* (Rīga: Turība. Biznesa augstskola, 2003), p.108.

procedure for concluding a contract, as well as the requirements for its content, have undergone significant changes in international commercial relations.

The content of any contract including the contract of sale is formed by a set of conditions on which it is made. It is the terms of the purchase agreement that establish the rights and obligations of the seller and buyer.

> The terms of the purchase agreement with some degree of conditionality can be divided into two types: the terms defining the rights and obligations of the seller and the terms defining the rights and obligations of the buyer[25].

The content of the contract of sale is a set of all its terms, which establish and specify the rights and obligations of the parties. Usually, in any contract of sale, there are groups of conditions that define the obligations of the seller and the buyer, respectively. The conditions that define the seller's obligations include: the condition of the product, the procedure and time of its transfer to the buyer. The terms of the agreement governing the procedure for accepting and paying for the goods define the buyer's obligations.

> The contract is the most widely used way of establishing of obligations. Different legal systems and their differences affect the content, form and structure of the contract. In practice, it mainly affects two legal systems which play a special role in the international arena, namely Civil law and Common law. Distinctions in different legal systems also affect the language and terminology of the agreement, and linguistic aspects should therefore be given an important role in the drafting of the contract[26] .

"A contract is a legally binding agreement, that has a number of elements: there must be agreement and that agreement must be legally enforceable[27]."

> The factor which distinguishes contractual from other legal obligations is that they are based on the agreement of the contracting parties[28].
>
> Basic principles of the law of contracts can be set out with a large degree of certainty. To conclude a contract, the parties must reach agreement, the agreement must be supported by consideration and there must be an intention to create legal relations. The essence of consideration is that something must be given in return for a promise in order to render that promise enforceable[29].

The main difference between the content of a contract of sale and the content of other civil contracts is not in the scheme of the organization of legal relations between their

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[25] Aleksandr Baikov, *Obiazatel'stvennoe pravo: otdel'nye vidy obiazatel'stv. Osobennaya chast' obiazatel'stvennogo prava,* 2 chast' (Law of obligations: certain types of obligations. A special part of the law of obligations. 2nd part). (Riga: SIA «JUMI», 2005), p.25.

[26] Viktorija Jarkina, "Juridiskā tehnika vispārīgo tiesību un civiltiesību sistēmas līgumos" (Legal technique in contracts of common law and civil law systems), *Jurista Vārds* Nr. 38 (890), (2015). Available on: https://juristavards.lv/doc/267308-juridiska-tehnika-visparigo-tiesibu-un-civiltiesibu-sistemas-ligumos/. Accesed February 28, 2020

[27] Jill Poole, *Textbook on Contract Law (*New York: Oxford University Press, 2016), p.27. *See also* Richard Stone, James Devenney, and Ralph Cunnington, *Text, Cases and Materials on Contract Law.* 2nd edition. (London and New York: Routledge Taylor & Francis Group, 2011), p.44.

[28] Ewan McKendrick, Contract Law. Text, cases, materials, 8th edition. (Oxford University Press, 2018), p.4.

[29] Ibid.

participants but in the difference between the subjects of these contracts and the definition of the specifics of their legal regulation. If the subject of the contract of sale is primarily things, then the subject of contracts for the production of works and services - the transfer of information are respectively works, services, and information, and the subject of contracts for the assignment of claims and the transfer of exclusive rights to the results of intellectual activity - property rights.

The rights and obligations of the parties are the content of the sales contract. The main obligations of the parties (general obligations) under para. 2-301 of the UCC are that by virtue of the contract "the seller is obliged to deliver the goods to the buyer and transfer the title to the goods to the buyer, and the buyer is obliged to accept the goods and pay the purchase price for them". As already mentioned, for the validity (or rather, the possibility of enforcement) of a written sales contract, a minimum of conditions, including an indication of the subject of the contract (the goods being sold), is sufficient. The absence of other conditions does not make it impossible to enforce the agreement, but it may cause significant difficulties in its execution, since the parties may have disagreements or disputes regarding mutual rights and obligations. In this case, the US courts will refer to the UCC relevant provisions[30].

The content of the contract is established by Civil Law of the Republic of Latvia on the basis of the principle of freedom of contract. This principle, first, includes the right to enter into a contract with any content. And, secondly, make a deal with any selected counterparty. However, the latter may be restricted, namely, the content of the contract may not be unenforceable or illegal. Illegal content is not only a contradiction to the law, but also to morality – the contract violates moral norms by its content.

> The contract of sale is one of the freest in its form of contracts. Of course, the legislator intervenes, limiting the freedom of contract, but only partially (for example, when the contract is concluded for selfish purposes during the war, for the purpose of their own unjustified enrichment). In other cases, the purchase agreement is relatively free. Recently, due to some difficulties that the subjects face in trade, the law restricts the contract of sale to a slightly greater extent than it was earlier[31].

One of the fundamental principles of German contract law is freedom of contract, which in turn determines the content of a sales contract. Under the German law, the principle of free determination of the content of a contract at the discretion of its parties applies. However, the law provides for certain rules that must comply with the content of the contract. The rules of

[30] *See also* Aleksander Trunin, *Sravnitel'noe pravovedenie. Otdel'nye pravila tolkovaniya dogovorov v prave SSHA* (Comparative Law, Separate rules for interpretationща a contract in US law). Topical problems of Russian law, Nr. 6 (55), (2015): p.183.

[31] Kalvis Torgāns, *Freedom of Private Contracts and Influence of Public Power theory. Civiltiesību, komerctiesību un civilprocesa aktualitātes. Raksti 1999-2008 (Current Topics on Civil, Commercial Law and Civil Procedure)* (Rīga: Tiesu namu aģentūra, 2009), p.139.

the German Civil Code on “General conditions for concluding transactions” establish a number of provisions that restrict the inclusion in the contract of certain conditions that are legally invalid and have no legal force. Contract law per se was based on the classical principle of freedom of contract. The freedom to establish contractual obligations was tempered in the German Civil Code by the few legal conditions for their validity that were customary in civil law. Freedom of contract implies that subjects of civil law are free to decide whether or not to enter into a contract. Freedom to conclude contracts may be one of the most important basic principles of German civil law, but it is also subject to some important restrictions. The actual freedom to formalize the general terms and conditions of business transactions - Allgemeine geschäftsbedingungen (standard form of contract) by the initiator of the contract, however, is subject to content control in accordance with paras. 307-309 of the German Civil Code in order to ensure that the client's interests are sufficiently taken into account to ensure the validity of the contract. These provisions constitute formulated to contracts of terms which specifies one contractual party - the initiator of the contract, which may be the seller or the contractor, for the other party - the counterparty which acts as the buyer, client, customer, upon conclusion of the contract (para. 305 of the BGB). Thus, the initiative to apply comes only from one party in the contract. It does not matter whether these provisions of the contract form an external separate part of it, or whether they themselves constitute the essence of the contract. It also does not matter what the scope of these terms and conditions is, in what form they are drawn up, or what the form of the contract itself is. Moreover, the initiator does not necessarily draw up specific general conditions himself; he can use a third-party form created for a number of contracts once. In this case, the general terms and conditions usually strengthen the rights of the initiator of the agreement and, accordingly, detract from the rights of the client.

1.4. The essence of a contract of sale

The essence of the contract of sale is the termination of ownership or operational management rights on the property of seller and appearance on the same property ownership rights or the right of operational management of the buyer.

In other words, the essence of this contract is that it is based on the transfer of ownership from one person to another person. In this way, it differs from other civil law agreements, for example, from agreements on the transfer of property for temporary possession and use (rent, gratuitous use). In some cases, the sales contract does not transfer ownership rights, but individual property rights: the right of economic management, the right of operational management, or the transformation of one property right into another without changing the

owner. For example, when selling movable property by a state-owned enterprise, which ceases to have the right of operational management, to a state unitary enterprise, which has the right of economic management. The acquisition of ownership rights under this agreement refers to derivative methods of acquiring ownership rights. The contract of sale is the basis for the emergence of a binding, relative legal relationship between the seller and the buyer; at the same time, the buyer acquires the right of ownership of the purchased property, i.e., an absolute right on the property.

> A sales contract is a contract by which a seller transfers or agrees to transfer the ownership of goods to a buyer in exchange for a money price. If ownership is to pass at a future time the contract is called an agreement to sell. The contract, which need not be in writing, may contain express terms. Terms may also be implied by law; for example, that the seller has a right to sell, that the goods correspond with the description under which they are sold, and that the goods are of satisfactory quality and are reasonably fit for the buyer's purpose. Unless the parties agree otherwise the seller must hand over the goods in exchange for the price and the buyer must pay the price in exchange for the goods[32].

The sales contract is the main civil and commercial law agreement the essence of which lies in the execution of obligations for the paid sale of a property. This agreement is used to meet the personal needs of citizens to purchase food, clothing, other consumer goods, residential buildings, apartments, etc. The contract of sale is widely used in the sphere of business and also other professional commercial relations that are not related to personal consumption. In comparison with earlier legislation, the scope of application of the contract of sale is now significantly expanded, since the rules of sale apply vicariously to property rights, results of intellectual activity, trademarks, and service marks, brand names, unless otherwise follows from the content or features of the relevant rules. The general provisions of the contract of sale also apply to the sale of securities and currency, provided that such sale is not subject to special legislative regulation.[33]

[32] Definition of sales contract. Available on: https://www.oxfordreference.com/view/10.1093/oi/authority.20110803100437809. Accessed March 3, 2020,

[33] *See also* Yury Bulatetsky, Anatoly Yazev, eds., *Kommercheskoye (torgovoye pravo): Uchebnik (Commercial (trade) law)* (M.: ID FBK-PRESS, 2002), p.267.

2. LEGAL DEFINITION AND PECULIARITIES OF A CONTRACT OF SALE UNDER THE LEGISLATION OF LATVIA, GERMANY, RUSSIA, AND THE UNITED STATES OF AMERICA

This chapter is aimed at demonstrating the similar and distinctive features of a sales contract's specificity according to the provisions of the legal acts of the represented countries, by using the method of comparative legal analysis.

> From a practical point of view, in recent years, legal acts have been increasingly applied in Common law. On the other hand, the role of judicial practice is increasing in Civil law. In addition, the influence of the European Union on both legal systems. All this shows the development of both legal systems through mutual adjustment. Despite this, Civil law and Common law legal systems still have significant differences, which also affect contracts[34].
>
> The purchase and sale of goods in the United States is regulated by a special codified regulatory act - the Uniform Commercial Code - UCC[35]. It is an example project of federal significance, on the basis of which the trade codes of the States were created. By 1967, the law was adopted by all states (Louisiana adopted it in part, however, did not include the rules on purchase and sale). It was characterized by many lawyers as one of the most successful classifications of the twentieth century. Uniform Commercial Code para. 2-2071 is inadequately equipped to resolve the fundamental questions of sales contract formation and content it was intended to resolve: Have a buyer and a seller concluded a contract for sale? If so, what are its actual and constructive terms[36]?
>
> Contract law is generally understood as common law rules developed by state courts and supplemented by state statutes designed to address particular types of transactions and contracting parties. With the advent of the Restatement Second of Contracts and Article 2 of the UCC, the states embraced a new model of contract regulation. Unless specifically disclaimed by the parties, implied-in-law terms, trade usage, and principles of equity are also part of the agreement, thereby expanding the judicial role in policing "the bargain" and granting remedies[37].

The legal nature of the UCC is determined, firstly, by its implementation in the form of a codified model act providing for a uniform approach to regulating trade in individual US States, and, secondly, by the possibility of recognizing it as a set of rules not only for trade, but also for other business relations. However, the UCC doesn't contain a precise definition of a contract of sale, it only contains indicators that can be used to determine whether a particular contract falls within the definition of a sales contract. This is because historically USA law was

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[34] Jarkina. *supra* note 26.

[35] Uniform Commercial Code (first published in 1952). Available on: https://www.uniformlaws.org/acts/ucc. Accessed March 10, 2020.

[36] Sales Contract Formation and Content - An Annotated Apology for a Proposed Revision of Uniform Commercial Code 2-207 Thatcher, Charles M. South Dakota Law Review Vol. 32 (1987). Available on: https://heinonline.org/HOL/Page?handle=hein.journals/sdlr32&id=1&collection=journals&index=. Accessed March 10, 2020.

[37] Stephen A. Plass, "Federalizing Contract Law", Lewis & Clark Law Review Vol. 24, (2020): p.191. Available on: https://heinonline.org/HOL/Page?handle=hein.journals/lewclr24&id=1&collection=journals&index=. Accessed March 10, 2020.

formed on the basis of English laws as well as on the Common law rules articulated in the decisions of the British courts, and there was no great necessity to create and have written rules.

> The lack on agreed definition of a contract is a product of the way contract law in England has evolved. English contract law is unusual in that it did not develop from some underlying theory or conception of a contract but rather developed around the form of action known as the action of assumpsit. What mattered was the procedure or the form of action not the substance of the claim[38].

The range of objects whose purchase and sale is regulated by Article 2 of the UCC is quite wide, but still limited. Article 2 regulates only the purchase and sale of goods. These include, in accordance with para. 20-105(1) etc., movable things that exist or will exist physically (the latter are called future goods), as well as in respect of which there has not been any conflict dispute about the right. It follows that for the codified regulation of purchase and sale, the American legislator has chosen things that are most often objects of sale, which are not such specific objects as, for example, real estate, electricity, or securities. It is because of this specificity that the purchase and sale of these objects is regulated by other rules (mainly Contract law), which is usually based on judicial precedents.

Here it is important to note that in American law, the institution of the purchase and sale of goods is called somewhat differently than in the law of continental Europe. Article 2 is called "Sales" the same term is used in the text of Article 2 and the legal literature on this issue. The corresponding agreement is called "sales contract" or "contract of sale" — "sales agreement".

German Civil Code (Bürgerliches Gesetzbuch - BGB).[39] German civil law is characterized by dualism. Along with the Civil Code, the Commercial Code (Handelsgesetzbuch – HGB[40]) is also used to regulate private law relations. "German commercial law is called trade law[41]." The main points concerning contracts for the sale of goods are regulated by this codified act. The BGB contains general rules and special provisions relating to sales contracts (Kaufvertrag or Handelsvertrag). The special provisions on sale contained in para. 433 et seq. provide a balanced solution to most issues that may arise during the performance of the contract of sale of goods (for example, in respect of material defects of

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[38] McKendrick, *supra* note 28.

[39] Deutsches Bürgerliches Gesetzbuch (BGB) in der Fassung der Bekanntmachung vom 2. Januar 2002 (BGBl. I S. 42, 2909; 2003 I S. 738), das zuletzt durch Artikel 1 des Gesetzes vom 19. März 2020 (BGBl. I S. 541) geändert worden ist" Available on: https://www.gesetze-im-internet.de/bgb/index.html#BJNR001950896BJNE042302377. Accessed March 20, 2020.

[40] Das Handelsgesetzbuch (HGB) in der im Bundesgesetzblatt Teil III, Gliederungsnummer 4100-1, veröffentlichten bereinigten Fassung, das zuletzt durch Artikel 3 des Gesetzes vom 12. Dezember 2019 (BGBl. I S. 2637) geändert worden ist" Available on: https://www.gesetze-im-internet.de/hgb/index.html#BJNR002190897BJNE026500300. Accessed March 25, 2020.

[41] K.H.-Canaris Capelle. *Handelsrecht (ohne Gesellschafts- und Seehandelsrecht): Ein Studienbuch (Trade law (without Corporate and Maritime law)* 12., neubearb. Auflage. (München und Berlin: C.H. Beck'sche Verlagbuchhandlung, 1967) p. 8.

the goods, limitation of claims, guarantees, transfer of risk, and etc.). However, the obligations of the parties must always first be determined on the basis of the agreed terms of the contract of sale of goods. Therefore, the relevant provisions of the BGB apply only if the contract does not provide for a settlement on a specific issue. In such cases, the provisions of the BGB are supplemented by the provisions of the Commercial Code - HGB. Special rules of trade legislation are aimed at ensuring the stability of trade turnover and eliminating any long-term uncertainty in the legal relations of merchants.

In para. 433 of the German Civil Code, a contract of sale is defined as an agreement under which the seller undertakes to transfer a thing to the buyer and grant him ownership of it, and the buyer undertakes to pay the agreed purchase price to the seller. The seller must provide the buyer with a thing free from the property (material) and legal defects. The buyer, on the other hand, must pay the seller the agreed purchase price and withdraw the purchased item (para. 433). The contract of sale is characterized by describing the main responsibilities of the seller and buyer. An essential feature of the German contract of sale was the differentiation of two significant legal points: a) the agreement of the parties and b) the actual transfer of ownership of the thing to the buyer. The right of ownership and the risk of accidental loss of the item passed to the buyer only after the transfer of the item. A distinctive feature of the contract of sale in the German Civil Code is the consolidation of the rights of repurchase and pre-emptive purchase. The seller must provide the buyer with a thing free from property and legal defects. The buyer, on the other hand, must pay the seller the agreed purchase price and withdraw the purchased item (para. 433).

Speaking about the Latvian national legal system, it follows the tradition of the dualism of private law, that is, the historical division of Civil and Commercial law, and therefore the introduction of Commercial Law was a necessary and natural step. Commercial activity in Latvia is regulated by Civil Law[42] Commercial Law[43] other legislative acts and international legal norms binding on Latvia.

> When Latvia joined the European Union on 1 May 2004, the unification of national commercial law with European Union law was almost complete. By 2004, the practice of applying commercial law had been consolidated. And in this regard, a significant set of theoretical ideas arose, which led to the need to develop a new modern commercial law in our country. Modern commercial law was born in Latvia during the period of

[42] Latvijas Republikas Civillikums. (Civil Law of the Republic of Latvia). Pieņemts: 28.01.1937., spēkā no 01.09.1992., "Valdības Vēstnesis", 20.02.1937, Available on: https://likumi.lv/doc.php?id=225418. Accessed April 2, 2020.

[43] Latvijas Republikas Komerclikums (Commercial Law of the Republic of Latvia). Pieņemts: 13.04.2000.Stājas spēkā: 01.01.2002, Publicēts: Latvijas Vēstnesis, 158/160 (2069/2071), 04.05.2000; Latvijas Republikas Saeimas un Ministru Kabineta Ziņotājs, 11, 01.06.2000. Available on: https://likumi.lv/doc.php?id=225418. Accessed April 2, 2020.

> independence between the two world wars, and the doctrine that existed at that time was associated with the successful merging of national laws with the laws of Western Europe and, especially, Germany. The pre-war doctrine of commercial law continues to influence this area today. Latvia's accession to the European Union in 2004 was a significant incentive and a new benchmark for improving trade legislation[44].

A contract of sale (pirkuma līgums) is understood as a contract under which one party promises to give away a known thing or right for payment of a set amount of money (Article 2002 of the Civil Law). Chapter 13 of the CL contains general provisions and requirements for alienation agreements, including purchase agreements and others related to them.

According to Professor Torgans, this definition is incomplete, since the sales contract in Latvia is consensual and therefore contributes to the emergence of ownership rights for the buyer. This in itself does not create a transfer of ownership, but it contains two opposite promises: to transfer the thing and to pay the agreed amount of money. Only as a result of the execution of the contract, the buyer becomes the owner of the thing, and the seller becomes the owner of the money. The definition does not say to transfer ownership, so in some cases, it is the ownership that is sold as a right. It is illogical to say that the seller gives the property in possession. In some other countries, these cases are ignored and the definition, which emphasizes that a purchase is a change of ownership for a fee, is dominant[45].

> The contract of sale is bilateral (mutual), since the corresponding rights and obligations are evenly distributed between the seller and the buyer, and, accordingly, each of the parties is considered the debtor of the other party, since it bears obligations that are counter-directed: the seller's obligation to transfer the item selected by him to the buyer and the buyer's obligation to pay the seller the purchase price (Article 2021 CL)[46].

Thus, the main distinguishing features of the obligation from the contract of sale are: compensation, irrevocable change of the owner of the property (other right holder) and the resulting payment of the purchase price in the form of a monetary amount.

A contract of sale (договор купли-продажи) is a contract under which one party (the seller) undertakes to transfer property to the other party (the buyer), who undertakes to pay a certain amount of money for it (Article 454 of the Civil Code of the Russian Federation)[47].

The basis of Russian legislation on purchase and sale is Chapter 30 of the Civil Code. It is distinguished by a fairly high level of legal technology, a successful combination of traditional provisions, and new rules that were absent in the previous version of the Civil Code.

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[44] OECD. *Access to Justice for business and inclusive growth in Latvia.* (Paris: OECD Publishing, 2018), p.5.
[45] Kalvis Torgāns, *Saistību tiesības (Law of obligations).* Otrais papildinātais izdevums. (Rīga: Tiesu namu aģentūra, 2018), p.247.
[46] Baikov, *supra* note 25, p.13.
[47] Гражданский Кодекс Российской Федерации (Civil Code of the Russian Federation: Grazhdanskii kodeks RF (GK RF)), (редакция, действующая с 16 декабря 2019 года)) Российская газета (Russian Gazette (Rossiyskaya Gazeta)). Available on: https://rg.ru/2008/03/24/gk1-dok.html. Accessed February 28, 2020.

The legal regulation of the contract has become more complete and detailed, resulting in a sharp reduction in the need for numerous by-laws.

Among the purchase and sale agreements, there are contracts where sellers and buyers, when selling or purchasing goods, act within the framework of their business activities. Certain special rules relating to obligations related to business activities are applied to legal relations arising from such agreements. For example, according to Article 1403 of the Civil Law of the Republic of Latvia, a legal transaction is an action performed in a lawful manner to establish, change or terminate a legal relationship. And Article 388 of the Commercial Law contains a legal definition of a commercial transaction, which reads as follows: legal transactions of a merchant related to commercial activities.

> This provision has a very broad scope of application. For example, a furniture seller sells furniture to a sworn notary who purchases it to set up his office. This transaction is commercial in relation to the seller. In turn, the notary purchases furniture not as a consumer, but in order to carry out their professional activities. Although this transaction is not commercial for a notary, the same provisions of the Commercial Law will apply to it (the transaction)[48].

The same rule applies to the distinction between contract of sale and commercial contract of sale.

> The commercial sales contract must be directly related to the merchant, at least on one side (a subjective criterion) and to the performance of his professional activities[49].

Under the legislation of the Federal Republic of Germany, trade transactions are understood to be transactions concluded by merchants and related to their business or commercial activities. It is important to keep in mind that the legislation does not contain a general or absolute, i.e. always applicable concept or definition of a trade transaction. In some articles of the BGB, a transaction is considered as a trade because it is made by a merchant. In others, a transaction is a commercial transaction because it mediates business activity (in the terminology of the Commercial Code – commercial craft) and is considered commercial by virtue of the law itself (para.1 of the HGB). The main criterion for applying special rules of commercial law to a particular contract, which in principle supplement or modify general civil rules of fundamental importance, is the subject matter of the transaction: if it includes an

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[48] Kaspars Balodis, "Komercdarījumu vispārīgo noteikumu vieta un loma Latvijas privattīesibu sistēmā" (The place and role of general provisions of commercial transactions in Private Internation Law system*)* **cited** in Lauris Rasnačs, Sergejs Rudāns, Mazzoni, A.u.c. *Komerctiesību aktuālie jautājumi Latvijā un Eiropā. Komercdarījumi. Atbildība. Komercstrīdi (Topical issues of commercial law in Latvia and Europe. Commercial transactions. Liability. Commercial disputes)* (Rīga: Tiesu namu aģentūra, 2013), p.63.

[49] *See also* Kaspars Balodis, Jaunais komercdarījumu regulējums un tā piemērošana (The new regulation of commercial transactions and its application). *Jurista Vārds*, 26.05.2009., Nr. 21. *See also* Vineta Vizule, *Komercdarījumi pa jaunam. Kas jāzina par Komerclikuma jauno D daļu (Commercial transactions in a new way. What do you need to know about the new D part of the Commercial Law).* (Rīga: Lietišķas informācijas dienests, 2009), p.14.

entrepreneur and the latter carries out commercial activities, then the rules on trade transactions should be applied to such a transaction. Para. 344 of the HGB establishes the presumption of a trade transaction: transactions carried out by a merchant are, in case of doubt, considered to be related to the handling of his trade business.

The main part of the second book of the German Civil Code is devoted to contract law. A contract was understood as a legal relationship between two or more persons. The content of the contract could be any "provision" as a positive action or abstention from it. Of the more than 20 types of contracts regulated by the German Civil code, the most common were contracts for the sale and employment (labor) contracts. In para. 433 of the German Civil Code, the contract of sale is constructed as a contract of obligation in which however the real legal orientation of the contract on the transfer of ownership is clearly expressed.

However, under Russian law, this circumstance does not give grounds for distinguishing the so-called business or commercial contract of sale as an independent type of contract of sale. The specifics of legal regulation of obligations related to the implementation of business activities are equally relevant to any obligation arising from any civil contract, and cannot serve as a criterion for distinguishing a special "business" contract of sale. On the contrary, the general provisions on sale and purchase (para. 1 of chapter 30 of the CC) apply to all contracts of sale, regardless of whether their parties are engaged in business activities.

When entering into a contract of sale, it is very important to correctly formulate the terms and conditions, which in the future will prevent disagreements in the interpretation of the signed contractual agreements. The importance of this condition also lies in the fact that the basic concept of a simple contract of sale is very often compounded by practical aspects in the content of the contract. The urgency of the issue becomes even more significant when partners interact, regulating their actions with legislative and regulatory documents of different countries.

3. THE ESSENTIAL ELEMENTS OF THE SALES CONTRACT AND ITS LEGAL REGULATION ACCORDING TO THE LEGISLATION OF LATVIA, GERMANY, RUSSIA, AND THE UNITED STATES OF AMERICA.

3.1. The essential elements of the sales contract

> There are significant differences between the Common law and Civil law legal systems which affect the understanding of the binding force of the contracts, its content and the terminology used. There is a different approach between the two legal systems in the translation of contracts and the hierarchy of sources of law affecting the content of the contracts. The use of concepts and legal terminology which is imputable and exists in only one legal system should be avoided when drafting contracts[50] .

The main characteristics are the elements of a sales contract. These include: parties; object; price; term; form; the order of conclusion.

The elements of a sales contract traditionally include parties, its rights and obligations i.e. content, object, subject (goods), price, form. The following is a comparative description of the elements of the sales contract in the countries listed for analysis.

> The range of essential conditions depends on each contract: the price and object are essential only in contracts affecting land relations. If the term of execution is not specified, then a reasonable period of time will apply[51].
>
> To conclude a sales contract, the parties must come to an agreement on its essential terms, which are the subject of the contract and its price. The same opinion is held by the Latvian legislator[52].
>
> From article 1470 of the Civil Law of the Republic of Latvia, we see that the most important elements of the content of a legal act (civil transaction) without which it cannot exist determine the very nature of the legal act. This is why these components are an integral part of every transaction – "... without which the intended transaction is impossible". For example, a contract of sale requires an agreement of the parties, an item, and a price, including a price agreement. Without these three elements, there can be no sales contract[53].
>
> If we consider the essential terms of the contract provided for by the legislation of Russia, then these terms are understood as conditions directly defined by acts of legislation for their inclusion by the parties in contracts of the corresponding type. Therefore, failure by the parties to include at least one of these conditions in the contract will certainly lead to non-conclusion of the contract[54].

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[50] Jarkina *supra* note 26.

[51] Christopher Osakwe, *Sravnitel'noe Pravovedenie: Skhematicheskii Kommentarii (Comparative Law: Diagrammatic Commentary)* (M:Yurist Law Publishers, 2008), p.154.

[52] Osvalds Joksts, Saistību tiesības saimnieciskos darījumos (Liability rights in economic transactions) (Rīga: Turība. Biznesa augstskola, 2003), p.16.

[53] Konstantīns Čakste, *Civiltiesības: Lekcijas. Raksti (Civil law: Lectures. Articles)* (Rīga: Zvaigzne ABC, 2011), pp.54,162.

[54] Yan Funk, *Pravo mezhdunarodnoy torgivli: dogovory mezhdunarodnoy kupli-prodazhi tovarov i mezhdunarodnogo torgovogo posrednichestva (International Trade Law: international sales contracts and international trade intermediation).* (Minsk: «Dikta», 2005), p. 73.

Questions of essential conditions fall within the scope of the law applicable to the contract. In particular, according to Article 1215 of the Russian Civil Code they include the rights and obligations of the parties, the interpretation of the contract, the consequences of the invalidity of the contract. Given that the list of provisions defined in this Article is non-exhaustive, other issues should also be included, including the conclusion of a contract and grounds for invalidity. In particular, essential are the terms on the subject of the contract, the terms that are named in the law or other legal acts as essential or necessary for this type of contract, as well as all those conditions on which an agreement must be reached at the request of one of the parties (Article 432 of the CC)[55].

In order for the agreement to be recognized as concluded, it must be agreed by the parties. They constitute the necessary minimum for the formation of the content of the relevant legal relationship. This distinguishes them, on the one hand, from the usual conditions implied by the parties and do not require agreement, since they are provided for by dispositive rules, on the other - from random ones, which are such by their objective nature and do not affect the fact of concluding the contract.

The rule provided for by international legal norms and legislation of many countries on the possibility of "splitting" a contract and subordinating its parts to different legal statutes should not serve as a basis for "splitting" essential conditions (except for the essential conditions of mixed contracts), which is explained by the importance of preserving the integrity of the contractual obligation.

The German Civil Code has its own peculiarities regarding the essential terms of the contract, for example, para. 154 states that until the parties have agreed on all the points of the contract (über alle Punkte eines Vertrags), the agreement on which matters, even if the other party is notified of it, the contract is not considered concluded. Understanding individual items is not mandatory, even if they are spelled out. If the parties have agreed to conclude a contract in writing, in case of doubt, it is considered not concluded until this happens[56].

> Similarly, in the case of offer and acceptance, where the traditional approach is that the offer as an offer must contain all essential terms of the contract, but acceptance must

[55] *See also* Decision № 2-165/2019 2-165/2019~M-165/2019 M-165/2019 in case № 2-165/2019 *E. Ustimova v public joint stock company "Asia-Pacific Bank»*, September 27, 2019. Available on: https://sudact.ru/regular/doc/9Int5Azv9Hbv/. Accessed March 20, 2020.

[56] *See also* Führich, E. *Wirtschaftsprivatrecht. Bürgerliches Recht. Handelsrecht. Gesellschaftrecht (Economic private law. Civil Law. Commercial law. Company law),* 11., aktualisierte und beart. Aufl. (München: Verlag Franz Vahlen, 2012), p.27.

> fully conform, and any amendments to the terms of this agreement that additional elements should be taken into account[57].
>
> German commercial law applies the principles of a "commercial confirmation letter" (kaufmännisches Bestätigungsschreiben), according to which an oral contract can be cancelled by letter from one party or another on modified terms, if the recipient of the letter does not object to it without undue delay. In Commerce, a party's silence is considered consent[58].

Comparing these provisions with the national law of Latvia, it is important to note that a contract concluded legally imposes on the contracting party the obligation to perform what was promised, and neither the exceptional difficulty of the transaction nor the subsequent difficulties in its performance give this party the right to withdraw from the contract, even if the other party receives compensation for collateral losses[59].

> The contract is concluded to achieve a certain economic benefit and therefore the performance of the contract is the main goal of the contractual relationship[60].
>
> In this sense, Articles 1588-1588 of the Civil Law are very important. References to the requirements of these articles are also very common in decisions of the Civil Affairs Department of the Supreme Court of Latvia, in which, according to Article 1588, the court recognizes that the obligation of performance is absolute[61].

With regard to this concept, it should be noted that the provisions of Article 1587 of the CL apply only to contracts that have been legally concluded. While the shortcomings of the contract, which are contrary to the law, morality and ethics, as well as the principle of good will, give the parties the right not to perform the obligations assumed under the contract. In this regard, it should be noted that the Principles of European Contract law, unlike Latvian Civil Law, do not distinguish between force majeure and transactions made with defects of will. The approach itself is based on these principles, where a defect of will is one of the grounds for granting a party the right to declare a contract invalid by notifying the other party[62].

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[57] Juris Bojārs, *Starptautiskās kontraktu tiesības (International Contract Law).* Staptautiskās privattiesābas IV sējums. (Rīga: Latvijas Universitāte, 2015), p.3.

[58] Robert Bradgate and Fidelma White, *Commercial Law* (Oxford University Press, 2012), p.13.

[59] *See also* Par līguma formas neievērošanas sekām (Consequences of non-compliance with the contract form) Augstākās tiesas Senāts Spriedums Lietā Nr. SKC–183 Rīgā 2000.gada 26. aprīlī, *a/s "Hanzas maiznīca" pret SIA "Rakstnieku savienības Literatūras fonds", Jurista Vards* 25. Maijs 2000 /Nr. 21 (174). Available on: https://juristavards.lv/doc/7021-par-liguma-formas-neieverosanas-sekam-nr-skc-183/. Accessed May 13, 2020.

[60] Kalvis Torgāns, Eiropas Līgumu Tiesību Principi un Latvijas civiltiesības (Principles of the European Contract Law and Latvian civil law). *Latvijas Zinātņu Akadēmijas Vēstis*, A., 2002. 56. sēj. Nr. 4/5/6(621/622/623): pp. 34.-41.

[61] Augstākās tiesas Senāta Civillietu departamenta 2007.gada 24.oktobra spriedums lietā Nr.SKC-729/2007; 2008.gada 11.jūnija spriedums lietā Nr.SKC-259/2008; 2008.gada 11.jūnija spriedums lietā Nr.SKC-25/2011, Senāta 2010.gada 12.aprīļa rīcības sēdes lēmums lietā Nr.SKC 563/2010, **cited in** Kalvis Torgāns (ed.), Jānis Kārkliņš and Agris Bitāns, *Līgumu un deliktu problēmas Eiropas Savienībā un Latvijā (Contractual and tort problems in EU and Latvia* (Rīga:Tiesu namu aģentūra. 2017), p.83.

[62] *See also* Jānis Kārklinš, Visparējo līgumtiesību attīstība Latvijā pēc neatkarības atgušanas un nākotnes perspēktivas kontekstā ar Eiropas Komisijas risinājumiem virzībā uz vienotu Eiropas līgumtiesību izstrādi (The evolution of general contract law in Latvia after regaining independence and in the context of the future perspective with the European Commission's solutions towards the development of a single European contract law). *Latvijas*

> This concept is based on the doctrine in accordance with which, under certain circumstances, civil liability does not occur in the event of non-performance of obligations assumed under the contract. In this doctrine, two principles collide. The first (pacta sunt servanda) makes the contract binding on the parties who have concluded it - the contract is enforceable regardless of whether any circumstances have changed after its conclusion. The second principle (rebus sic stantibus) determines that the parties are equal when entering into a contract and therefore non-performance of the contract is allowed due to a fundamental change in circumstances. The legal doctrine recognizes that in certain cases certain exceptions are allowed in the sphere of contract performance. However, there must be clearly defined conditions under which a party can invoke this position and then withdraw from its obligations[63].
>
> Pacta sunt servanda the basic principle of UNIDROIT is specified in such a way that, because the contract has already been concluded on existing terms, its execution is mandatory for the parties. It is allowed to change or terminate the agreement only in cases stipulated by these rules or by agreement of the parties. This principle also determines that if one party has not fulfilled its obligations under the contract, the other parties can only withdraw from the performance of their obligations in extreme cases, under circumstances beyond their control[64].

If we consider significant conditions of the agreement as conditions, breach of which an injured party is entitled not only to recover damages but also to terminate the contract, it is clearly impossible to determine the range of conditions which, if absent, the contract is considered not concluded.

3.2. Parties

The parties of the contract of sale are the seller and the buyer. As a general rule, the seller of the goods must be its owner or have other limited proprietary rights, from which the seller's authority to dispose of the property that is the goods follows. The parties to the contract of sale — the seller and the buyer - can be any participants in civil turnover (individuals and legal entities, the state as a whole, state and municipal entities). Any person recognized as a subject of civil rights and obligations may be a buyer under a contract of sale. By purchasing a product under a contract of sale, the buyer generally becomes its owner. Public legal entities can act as a seller when selling state or municipal property that is not assigned to the legal entities formed by them.

The parties to the purchase agreement are the seller and the buyer. They can be any capable individuals, not fully capable individuals (in respect of property provided to them for independent management, small household transactions) and legal entities. Anyone who has

Universitātes Žurnāls „Juridiskā zinātne”, 2012, №3, p. 142. Available on: http://www.lu.lv/fileadmin/user_upload/lu_portal/apgads/PDF/Juristu-zurnals_3.pdf. Accessed April 25, 2020.

[63] *Ibid.*

[64] Bojārs *supra* note 57, p.40. *See also* Kalvis Torgāns (ed.) *Latvijas Republikas Civillikuma komentāri. Saistību tiesības (1401.-2400. p.) (Commentaries for the Civil Law of the Republic of Latvia. Law of obligations).* (Rīga: Mans Īpašums, 2000), pp. 117-118.

the right to freely alienate the item being sold can sell it, and anyone who is not prohibited by law from purchasing it can buy it (Article 2003 of the CL). However, the possibility of their participation in certain types of purchase agreements is determined by both the inherent features (the scope of legal capacity, the nature of real rights) and the nature of the contract itself.

In the United States the parties of the contract of sale include the seller and the buyer. In Latvia analogically - the seller and the buyer: under the contract of sale, one party (the seller) undertakes to transfer the sold item and transfer ownership of it to the other party (the buyer), and the buyer undertakes to accept the purchased item and pay the price to the buyer. In Germany the parties of the agreement are the seller and the buyer. In Russia the parties are the seller and the buyer, which can be certain participants in civil circulation (individuals and legal entities, country, state, and municipal entities).

> The legislation of Latvia does not specify the special legal capacity of legal entities, but it is enough to look at banking, stock exchange and insurance operations to understand that not every right holder can freely initiate contractual relations. There is no complete freedom of contract for individuals who wish to enter into contracts for state and municipal procurement[65].
>
> In all contracts, in which a benefit is intended to each party, or in the language of the legal scholars, in contracts commutative and synallagmatic, the obligation of one party is the consideration of the obligation of the other. They are mutually dependent, and each stands to the other in the double relation of cause and effect. The rights of the parties are derived from the nature of the contract, and each is entitled. to all the advantages which it gives him[66].
>
> In the Anglo-American legal system, there is a general principle that a contract is not binding if it is not based on consideration. This approach is due to the fact that common law countries developed a legal framework that later became known as the doctrine of consideration[67].

The transfer of legal ownership of goods in international transactions is regulated neither by Incoterms 2020 nor the Vienna Convention of 1980. But it is regulated by national law. Consequently, while the parties are free to determine which specific transfer mechanism will be provided for in the retention clause, they must ensure that the method they choose is permitted by applicable national law.

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[65] Lauris Rasnačs, Sergejs Rudāns, Mazzoni, A.u.c. Komerctiesību aktuālie jautājumi Latvijā un Eiropā. Komercdarījumi. Atbildība. Komercstrīdi (Topical issues of commercial law in Latvia and Europe. Commercial transactions. Liability. Commercial disputes) (Rīga: Tiesu namu aģentūra, 2013), p.212.

[66] *The American Jurist & Law Magazine*. Vol. 15 (Boston: W. H. S. Jordan, Successor to Samuel Colman. Russell, Shattuck, and Co, 1836) Contract of Sale - Civil Law, p.49, accessed February 28, 2020. https://heinonline.org/HOL/Page?collection=journals&handle=hein.journals/amjlm15&id=57&men_tab=srchresults

[67] Farnsworth E.A. *Comparative Contract Law*. Reimann M., Zimmermann R. (edt.) The Oxford Handbook of Comparative Law. (Oxford University Press, 2006), p. 908, **quoted in** Viktorija Jarkina "Juridiskā tehnika vispārīgo tiesību un civiltiesību sistēmas līgumos" (Legal technique in contracts of common law and civil law systems), *Jurista Vārds* Nr. 38 (890), (2015). Available on: https://juristavards.lv/doc/267308-juridiska-tehnika-visparigo-tiesibu-un-civiltiesibu-sistemas-ligumos/. Accesed February 28, 2020.

As can be seen, the fundamental moment in all countries is the moment of transfer of ownership, but the understanding of this moment and the resulting consequences can be interpreted by partners in different ways. For example, in the United States, special importance is given to performance guarantees: the concept of guarantees; implied warranties; persons in whose favor the guarantees apply; remedies for breach of guarantees. Law, doctrine, and practice play an important role in determining when property ownership is transferred from sellers to buyers. In accordance with para. 433 of the BGB, the seller of goods must not only transfer it to the buyer, but also transfer ownership. The moment of transfer of ownership under the contract determines the time from which the buyer has the right to dispose of the thing and when the risk of accidental loss or damage to the thing passes to the buyer. This happens simultaneously with the transfer of the thing (para. 929). The transfer of a document of title is equivalent to the transfer of a thing (para. 929). An exception is made in cases where the buyer already owns the item or can take possession of it without the seller's assistance (para. 930), or when the seller cedes to the buyer its right to claim the item from a third party (para. 931).

For this reason, it is important to clearly define the moment when property rights are transferred to buyers.

Any legal system attaches great importance to the process of transferring ownership of goods (things, products, goods, property) under contracts, including their essential conditions (subject matter, price, responsibility of each party for compliance with the terms of the contract, additional conditions, including the terms, place and procedure for transferring goods, its transportation and insurance, and the procedure for calculating).

> Because a contractual relationship is made between two or more parties who have potentially adverse the interests, the contract terms are usually supplemented and restricted by laws that serve to protect the parties and to define specific relationships between them in the event that provisions are indefinite, ambiguous, or even missing[68].

Despite the apparent imbalance of rights and obligations between the seller and the buyer (as a rule, the seller has more responsibilities), it must be borne in mind that any right of the buyer corresponds to the seller's obligations, and vice versa, the buyer's obligation corresponds to the seller's rights. It should be taken into account that the rights and obligations may be provided for by law, as well as by the rules of the contract between the parties.

"If the seller knows more about the item than the buyer (or vice versa), the information on the market is deemed to be asymmetric (non-identical)[69]."

[68] Shippey *supra* note 14.

[69] Robert Cooter and Thomas Ulen, *Law & Economics,* Pearson, 2011, p. 41., **quoted in** Laura Ratniece, "Tiesību ekonomiskās analīzes piemērošana ANO Konvencijai par starptautiskajiem preču pirkuma-pārdevuma līgumiem"

> In the context of CISG, Article 35, which sets standards for the quality of goods and Article 38, which provides for the buyer's obligation to verify the quality of the goods, could be mentioned as an example of the concept of "informational asymmetry", which can be used in international trade law, in particular, by studying CISG[70].

Thus, it is common for all countries to have two entities in the contract of sale: the seller and the buyer.

3.3. Object and subject

The object of the agreement is an essential condition of the sales contract. The object of the contract of sale is the seller's actions to transfer the goods to the buyer's ownership and, accordingly, the buyer's actions to accept this product and pay the set price for it. The contract may be concluded for the sale of goods available at the time of conclusion of the contract and the goods to be manufactured in the future, or already existing but not owned by the seller at the time of conclusion of the contract.

The basis (purpose, direction) of the agreement. The question of the object of the contract of sale is closely related to the question of its basis. The term "basis" in civil science is usually understood as the objective purpose of a given agreement or, in other words, its objective orientation. The contract of sale, itself acting as the basis for the emergence of the corresponding rights and obligations, at the same time has a specific basis that is achieved by its implementation. At the conclusion of any contract, the parties may have different goals and be guided by them, but for Civil law, it is not any goal that is of interest and significance, but the direct immediate goal for which a particular contract is made.

> The purpose of the contract of sale is of an economic nature, namely, the acquisition of an object in the property to obtain benefits from it. So, the essential condition is the promise to transfer the thing. However, in some cases, the buyer may have a different interest, for example, to purchase a land plot with a forest in the property, but not immediately start any economic activities. It is important that this person is recorded in the land registers as the owner – this means that he has acquired this right. If in the first case, after receiving the goods in actual possession (holding), difficulties may arise with the settlement of documents or proof of the legality of the acquisition, in the second case, difficulties may arise either with the transfer of immovable property or the presence of movable property in nature, or its transfer[71].

(Application of the legal economic analysis on the UN Convention on Contracts for the International Sale of Goods), *Jurista Vārds* Nr. 3 (1113) (2020). Available on: https://juristavards.lv/doc/275944-tiesibu-ekonomiskas-analizes-piemerosana-ano-konvencijai-par-starptautiskajiem-precu-pirkuma-pardevuma-ligumiem/. Accessed February 28, 2020.

[70] Laura Ratniece, "Tiesību ekonomiskās analīzes piemērošana ANO Konvencijai par starptautiskajiem preču pirkuma-pārdevuma līgumiem" (Application of the legal economic analysis on the UN Convention on Contracts for the International Sale of Goods), *Jurista Vārds* Nr. 3 (1113) (2020). Available on: https://juristavards.lv/doc/275944-tiesibu-ekonomiskas-analizes-piemerosana-ano-konvencijai-par-starptautiskajiem-precu-pirkuma-pardevuma-ligumiem/. Accessed February 28, 2020.

[71] Kalvis Torgāns, Zinātnisks *pētījums "Civillikuma Saistību tiesību daļas modernizācijas nepieciešamība un aktuālo privāttiesiskā regulējuma tendenču (UNIDROIT, ELTP) iespējamā ietekme uz Civillikuma Saistību tiesību*

> Any connection occurs as a result of any purpose. This goal is called causa the foundation for the emergence of an obligation. For example, the buyer is obligated to pay the purchase price, and the seller is obligated to hand over the item. This relationship exists independently of the grounds and is performed as an abstract obligation[72].

"The abstractness of the transaction means that its validity does not depend on the legal basis of the transaction, it detached from it [73]."

Under the German legal doctrine, the fundamental importance of the form of the contract was for a special type of obligation – abstract (their existence initially was a feature of the German Civil Code). The distinctive feature of an abstract obligation (an abstract promise to pay a debt, a bill of exchange) was a complete break with the usual basis in contract law (causa). The subject of the obligation here is the promise itself, in written form (§ 780 of the BGB). The abstract nature of such obligations - separation from "*causa"* (from Latin cause/reason/motive) expanded the possibility of their assignment, which was very beneficial for trade and banking activity. In this regard, the basis or causa of a transaction is a typical legally significant purpose for a transaction of this type, which determines the legal nature and validity of the transaction. In this case, the basis *"causa"* of the transaction must be legal and feasible, otherwise the transaction will be considered invalid. For example, if a person does not have the right to buy a weapon, the transaction must be declared invalid as having an illegal basis - the purchase of a weapon by a person who does not have the right to carry it. Causal transactions always have a certain basis and are made for the purpose of buying property, renting it, etc. If there is no reason the causal transaction is invalid. Thus, under the German legislation, the object of the contract is the transfer of a thing, item (goods), and the right of ownership to it.

The object of the contract should be understood as the actions of the obligated person, which cannot be separated from the material object or material result that such actions are aimed at. In the agreement, the essential terms are expressed in the form of the respective rights and obligations of the parties. Their connection with material objects is shown in the fact that the terms on the subject of the contract individualize the subject of performance. In the absence of clear instructions in the contract on its object, performance under it becomes impossible, and the contract in fact loses its meaning and therefore should be considered non-concluded.

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daļas modernizāciju" (Necessity of modernisation of Civil Law liability law and possible impact of current trends of private law regulation (UNIDROIT, ELTP) on modernisation of Civil Law liability law) Rīga, (2007. Aprīlis – decembris).

[72] Čakste, *supra* note *53*, p. 134.

[73] Signe Zaharova, *Civiltiesības. Saistību tiesības (Civil law. Law of obligations)* (Riga: SIA „Biznesa vadības koledža", 2008), p. 34.

First of all, the essential conditions include the terms on the subject of the contract. It on the subjects of contracts and they vary. For example, a sales contract, a barter agreement, a property lease agreement, a refit contract, and so on. Thus, the subject of the contract makes it easy to distinguish one contract from another, while this is not always possible by the nature of the actions performed under the contract.

The subject of the contract of sale is any property - both movable and immovable. The subject of sale must be considered established if the content of the agreement allows to determine the name and quantity of goods. Goods can be any things: movable and immovable, defined by generic or individual characteristics, consumed and non-consumed, divisible and indivisible (including complex), as a general rule at the time of conclusion of the contract, owned by the seller on the right of ownership. The only exception to the list of possible goods is money (except foreign currency), which is due to the very nature of the contract of sale. Property (primarily exclusive) rights to the results of creative activity may be the subject of purchase and sale in cases where this does not contradict the nature of such rights and is not prohibited by a special regulatory regime. The purchase and sale of intangible goods is also impossible, since they are usually attributes that individualize the personality of their owner, or necessary conditions for its existence, and therefore, in principle, cannot be alienated. The results of intellectual activity - inventions, industrial designs can also not be sold as such.

In accordance with Articles 1412 and 2005 of the Civil Law, the subject of a sales contract may be all items which are permitted to alienate and may be alienated, meaning not only tangible things (but not actions) but also the rights in rem and obligations. The sale of immovable property is the alienation of an item, which is permitted by the first sub-section of Chapter 13 of the Civil Law, providing for the rights and obligations of the contracting parties which arise therefrom. Consequently, the sale of real estate cannot be classified as an unauthorized activity or contrary to good virtues. Article 1415 of the Civil Law regarding unauthorized activities in the field of a sales contract shall apply to the purchase and sale of things that are prohibited by law at all, such as the purchase or sale of drugs. Article 1415 of the Civil Law applies to actions which, per se, are illegal or immoral but, nevertheless, are the subject of a transaction[74].

[74] *See also* Par labticīga pircēja tiesībām un pirkuma līguma spēku (About the rights of a bona fide buyer and the validity of the sales contract), Augstākās tiesas Senāta spriedums Lieta Nr. SKC–521 2003.gada 5. novembrī, *I.S. un B.K. pret M.K. un D.Z. Jurista Vārds* 16. Decembris 2003 /Nr. 45 (303). Available on: https://juristavards.lv/doc/82108-par-labticiga-pirceja-tiesibam-un-pirkuma-liguma-speku/. Accessed April 2, 2020.

The subject of contract of sale may be movable property that has not been withdrawn from the private law (Article 407 of the Commercial Law of Latvia).

Traditionally, the subject of a contract of sale includes things or property in their physical form. Both ready-made and not yet made (“future”) items are sold. If we refer to § 2-105 of UCC, it states that the product must already exist and be individualized before the right to it must pass to the other party. Today, in most states, especially those that use the Anglo-American system of law, non-material goods can increasingly become the subject of obligations along with corporeal things. This may include property rights (industrial, literary, artistic, scientific, and generally intellectual), shares, bonds, and other types of securities that include the corresponding claims.

§ 2 of the UCC regulates only the purchase and sale of so-called "goods". This term should be understood as, in accordance with § 2-105 (1) etc., movable things that exist or will exist physically - future goods (the unborn young of animals growing crops and other identified (identified) things that are separate from real estate).

As a general rule Russian legislation establishes the goods can be any items that are not withdrawn from civil circulation, which are owned by the seller, or will only be created or purchased by the seller: securities, currency values, property rights. In relation to the subject of the contract of sale, the Russian Civil Code defines a special rule: the condition of the contract of sale of the goods is considered agreed, if the contract allows you to determine the name and quantity of the goods (Para. 3 of Article 455). This provision applies only to the product, and it does not limit the essential terms of the contract of sale that determine its subject matter. The absence of other clauses in the contract text that regulate the seller's actions in transferring the goods to the buyer and the buyer's actions in accepting and paying for the goods is compensated for by the dispositive rules that determine the procedure and timing of these actions. So, in cases where the contract of sale does not entail the seller's obligation to deliver the goods or transfer the goods to the buyer at its location, the seller's obligation to transfer the goods to the buyer is considered fulfilled at the time of delivery of the goods to the carrier or the organization of communication for delivery to the buyer, unless the contract provides otherwise (para. 2 of article 458 of the CC). The term of performance of the seller's obligation to transfer the goods to the buyer is determined by the contract of sale, and if the contract does not allow to determine this term, - in accordance with the rules provided for in article 314 i.e. within a reasonable time after the obligation arises, and upon its expiration - within seven days from the date of the buyer's request for the transfer of the goods (para. 1 of article 457). As for the subject of the obligation, for which the buyer is the creditor, as a general rule, the latter must perform actions

that, in accordance with the usual requirements, are necessary on his part to ensure the transfer and receipt of the relevant goods (para. 2 of article 484), as well as pay for the goods directly before or after the transfer of the goods by the seller (para. 1 of article 486). Thus, in order to recognize a contract of sale as concluded, the parties are really required to agree and provide directly in the text of the contract a condition on the quantity and name of goods. All other conditions related to the subject of the agreement can be determined in accordance with the dispositive rules contained in the Civil Code.

In accordance with Article 7 Vienna Convention, if issues related to the subject matter of its regulation are not expressly resolved in it, they are to be resolved in accordance with the general principles of the Convention; in their absence — in accordance with the law applicable by virtue of private international law. The question of which of the contractual terms are material depends on their recognition as such by the rules of the applicable law under which the relevant contractual relationship falls. In the legal systems of various countries, as well as in the Convention, the subject of the contract of sale is always recognized as an essential condition of the contract of sale.

3.4. Price and quantity

An important element of the contract of sale may be the price and the discretion of the parties in setting it can often lead to a significant separation of the value of the goods from its price. Formally, price remains a converted form of value (exchange value), but in fact it depends entirely on the ratio of supply and demand. A huge impact on the price of goods can have not only internal properties in the form of quality and durability, but also aesthetic and ergonomic aspects, including attractiveness, simplicity, fashion and convenience. The combined effect of these and other factors is characterized by a large variation and constant change in the prices of goods that have the same purpose and constant change.

The price in the purchase and sale agreement is usually agreed by the parties themselves, i.e. it is contractual condition. However, the procedure for determining the price may be different. It can be set directly, i.e. by specifying a certain amount of money to be paid for one unit of goods or for the entire product sold (for example, 1 million euro for 1 ton of goods). It is also possible to fix prices by specifying the order in which they are determined (using additional criteria) without specifying a specific value. In addition, prices for certain groups of goods that are of particular importance to the national economy may be directly set or regulated by the state. The most typical of these methods of price determination are: the establishment of prices at stock prices of the relevant goods in a particular exchange, the reference price to the

average price of similar goods for a certain period at the place of performance of the contract, the determination of the prices of the goods by a third party (usually a disinterested professional appraiser).

> The provisions of the Civil Law of the Republic of Latvia are directly taken over from the Codex Justinianeus, not all of them are consistent with modern civil law understanding. According to the Codex, the purchase agreement was invalid if the parties had not agreed on the purchase price. However, today, even million-worth sales contracts do not contain an agreement on price. International sources point out that the absence of a purchase price does not serve as a reason to invalidate the sales contract. The UNIDROIT principles and The Principles of European Contract Law presume that the parties of the contract who had not agreed on the purchase price wanted the market price to be applied to the contract. A similar provision is expressed in Article 55 of the CISG, which is binding on Latvia. Such a solution is also possible in the context of the CL. The text of Article 2017(2) permits the application of market price in the sales contracts in which the parties have not agreed on the purchase price provided that the seller has delivered the object of the purchase agreement. However, the application of that provision by analogy makes it possible to avoid the requirement of the delivery of the object and to apply that provision even if the performance of the contract has not yet been initiated[75].
>
> Res per pecuniam aesti matur et non pecunia per rem. (The items are expressed in money, not money in assets). Under the definition of price means monetary compensation the buyer gives the seller for the realization of the contract. As a rule, the price is really value expression of a good or service. In fact, the practice price coordinating producers and consumers in the market for goods and services. The price may be fixed and determinable. So the price of the commodity can be specified in a single measure or a lump sum for the entire quantity of the goods or the service[76].

A price condition that is necessary for a purchase and sale agreement (in some countries it is directly referred to as an essential condition (para. 433 of the German Civil Code), in others - the price condition is recognized as a normal condition, and if it is not included in the contract, it is determined on the basis of dispositive rules (articles 2-305 of the Uniform Commercial Code of the United States).

German law does not establish any clear requirements for the price (for example, the method or place of payment), leaving this to the discretion of the parties. The price condition of the agreement must be expressed in a certain amount or contain an indication of the method for determining the price. The price may be set by a court if the third party obligated to set the price fails to do so or sets a clearly unfair price (para. 319). The price must be expressed in monetary terms. If a thing is transferred as payment, it will be a relationship under a barter agreement (para. 480 of German Civil Code), in the absence of counter-performance – a relationship under a gift agreement (para. 516). A contract of sale may be declared invalid by a

[75] Aleksandrs Fillers, "Pirkuma līgums bez vienošanās par pirkuma maksu - vai tas ir spēkā?" (Sales contract without the agreemnt on purchase price - is it valid?), *Jurista Vārds* Nr. 30 (832) (2014). Available on: https://juristavards.lv/doc/264949-bpirkuma-ligumsb-bez-vienosanas-par-pirkuma-maksu-vai-tas-ir-speka/. Accessed February 28, 2020.
[76] Dukoski and Veljanovska, *supra* note 17.

court if the mutual obligations of the parties are clearly disproportionate, which implies, among other things, that the price of the contract does not correspond to the value of the thing sold under it (para. 138). If the price provisions are not agreed between the parties, paras. 270 and 271 of the German Civil Code apply. As for the place of payment, the buyer is obliged to transfer funds at his own risk and expense to the seller at the seller's place of residence (para.270). In cases where the term of performance is not specified or does not follow from the circumstances, the seller may demand payment immediately, and the buyer may make it immediately (para. 271).

In accordance with article 2015 of the Civil Law of Latvia price does not necessarily correspond to the actual value of the goods: the price agreement depends on many factors such as market conditions, customer needs in specific goods, the seller quickly and in as many as possible to sell the goods, and finally, the personal relationship between the parties. The two terms used in article 2042 “ordinary value” and “actual value”, according to Professor Sinaisky, are equal in meaning: this is the value that is normally inherent in each thing and is a reflection of its true value[77].

The price, being a mandatory condition of the sales contract, only reflects the paid nature of this type of transaction. Therefore, it is not a ground for invalidating a notarized contract of sale of real estate if the actual value of the property exceeds the price specified in the contract, except in cases of entering into a transaction under a set of difficult circumstances, provided in Article 123 of the Civil Code of the Russian Federation. In contrast to the previous legislation, under which the price was an essential condition of the contract of sale, under the current legislation, the price is an essential condition only for certain types of contract of sale (sale of real estate, sale of goods in installments). If we refer to Article 485, we can see that the absence of a specific number in the text of the agreement does not prevent the implementation of the contract. So, in this situation, the price is determined by analogy, i.e. the product is subject to payment at the price that is charged for similar products in comparable conditions. In other words, this rule says that the price is not an essential condition. However, here it need to be clarified: article 485 is located in Chapter 30 of the CC, which is called "General provisions on sale and purchase". However, if we go through all types of sales contracts, we can see that for some of its types, the general rules for determining the price do not apply. Among them: real estate sales agreement - Article 555 specifies that the text which does not specify the price entails recognition of the agreement null and void; the lease agreement for a building or

[77] Vasilijs Sinaiskis, *Saistību tiesības (Law of obligations) Latvijas civiltiesību apskats* (Rīga: Latvijas juristu biedrība.1940), p. 92., **quoted** in Kalvis Torgāns, *Saistību tiesības (Law of Obligations)* Otrais papildinātais izdevums (Rīga: Tiesu namu aģentūra, 2018), p. 257.

structure - the provisions of Article 654 in respect of price uncertainty are identical to the terms of Article 555; the retail purchase and sale agreement and other agreements in which a consumer is a party - Article 500 specifies that the price must be declared before or at the time of conclusion of the contract, i.e. the purchase. Accordingly, if such a condition is not met, it will be a violation of the legislation protecting the rights of the consumer. As a result, the transaction will be considered not concluded. Thus, for certain types of sales contracts under Russian law, the price is an essential condition, without which the contract will be legally recognized as not concluded.

In contrast to the Russian doctrine of civil law, where the price of a sales contract is not always considered as an essential condition of the contract, in the civil legislation of the Republic of Latvia it is fixed as one of the essential conditions of the sales contract (Article 2004 of the Civil Law)[78]. The purchase price according to the article cannot depend on the whim of one of the parties and must be determined. It is usually determined by agreement of the parties. Its value does not necessarily correspond to the value of the item of purchase. An item can be sold at a price lower than its actual value. It is only important that it is not set for the appearances since in this case the purchase agreement is transformed into a gift agreement (Article 2020). The price of the purchase agreement can be set either directly - by specifying a certain amount of money for the entire product as a whole or for its unit, by pointing to the state without specifying its value. The purchase price can simply be made dependent on the occurrence of a future event or opinion. Price contract (purchase price) is established in the form of money which is one of the qualifying contract characteristics that distinguish it from the barter contract (maiņas līgums, Article 2091 of CL), the price of which is not expressed in money - the parties to the contract agree to its setting not only in the form of some material, tangible things, but also claims and other rights (Article 2091).

For example, under the UCC if the requirements of para. 2-201 regarding formal requirements are met, the parties do not necessarily have to specify the exact price of the property being sold in the sales contract. Failure to specify the purchase price may be dictated by the need to take into account the price situation, if the contract is expected to be performed at some time in the future. The buyer or seller can specify in the contract the criteria according to which the price of the subject of the contract (the goods being sold) will be determined. This

[78] *See also* Par pirkuma cenu kā pirkuma līguma sastāvdaļu (About the purchase price as part of the sales contract) Augstākās tiesas Senāta Civillietu departamenta spriedums Lietā Nr. SKC–238 2008. gada 11. jūnijā, *"Raiņa bulvāra nams" pret I.Z. Jurista Vārds*, 16. Septembris 2008 /Nr. 35 (540) Tiesību prakse. Available on: https://juristavards.lv/doc/180919-par-pirkuma-cenu-ka-pirkuma-liguma-sastavdalu/#komentari. Accessed April 12, 2020.

criterion can also be a third party that the parties trust to determine the price at a certain time. In these cases, the price is set indirectly (it can be determined from the terms of the agreement). If the price is not specified in the contract either directly or indirectly, i.e. the price condition remains open (open price term), it is assumed that the parties have agreed on a "reasonable price".

In the case of an open price condition, the reasonable price is determined based on the prices of identical or similar goods in the given area and the economic situation of the parties and the specifics of the contract concluded by them. It is interesting that the American legislator considered it necessary to take into account not only the prices charged for these goods in local markets "under comparable circumstances", as required by Article 55 of the Vienna Convention or para. 3 of Article 424 of the Civil Code of the Russian Federation, but also "subjective factor" not just as "comparable circumstances", but as the state of the seller and the buyer, the features of the goods that are the subject of the sales contract. In order to avoid the need to perform the sales contract in conditions where the purchase price was determined by an American court taking into account the above circumstances and in this regard is completely unprofitable for the counterparty, the latter must insist on including the price condition in the contract directly or indirectly (in the latter case, the parties can refer to the quotations of known commodity exchanges existing on a certain day during the term of the contract). Leave the determination of the price to the discretion of the American court in most cases is not desirable.

In the United States, in contrast to the price condition, the quantity of goods sold is essential, since the complete absence of written contract instructions about this deprives the contract of judicial protection (the possibility of enforcement). However, like the price, the quantity of goods can be determined not only directly, but also indirectly. In American trade practice, there are two common ways to indirectly determine the quantity of goods sold: based on the requirements of the buyer or on the capabilities of the seller. Contracts containing a quantity condition defined by the first method are called requirement contracts, and the second is called output contracts. In this case, the party that is actually charged with determining the quantity of goods sold in accordance with the chosen method must act in good faith. Under these conditions, one party that acting as the seller and wishing to sell its goods in as large quantities as possible can conclude a contract of delivery, while in the case where the terms offered by another party - seller appear to the buyer to be favorable and the latter has information that the seller has a significant amount of the relevant goods, it is advisable to conclude a contract of demand. When choosing the form of a sales agreement, one must ensure that nothing in the concluded agreement contradicts the selected conditions. In addition, when

both sides are interested in buying and selling the greatest possible quantity of goods the parties may conclude a contract on the sale of so-called "exceptional circumstances", under which the seller undertakes to use its best efforts to sell the maximum amount of the relevant goods and the buyer agrees to the maximum in support and has no right to refuse goods due to the buyer exceeding the desired quantity. This form of contract should be approached with caution, since, for example, the limited capabilities of one party in these circumstances may lead to a dispute.

Under the German legislation the quantity of the product being sold can be set by measures of weight, length, volume, area, in pieces, or by specifying the method for determining it. The product must be passed in a certain range, that is, the ratio of types, models, sizes, colors, and other characteristics. The range of goods is a purely contractual condition that must be determined solely by agreement between the parties. German trade legislation contains many important rules related to trade agreements, and they are formulated as dispositive. Thus, if the parties are absent-mindedly approaching the wording of the contract and its text is not clear how to determine the measure, weight, currency, calculation of time and distance, then it is considered, according to para. 361 of the Commercial Code of Germany HGB, that the determining factor for this contract is the measure, weight, currency, calculation of time and distance in force at the place where the contract is to be executed.

The quantity can be provided in weight measures (tons, kilograms, pounds and etc.), area (square meters, inches, yards), and pieces. Sometimes the contract specifies only the total amount of goods purchased, and in this case the quantity is determined by dividing the total amount by the cost of one unit of goods. The quantity of goods to be transferred to the buyer is stipulated in the contract of sale in the appropriate units of measurement or in monetary terms. A condition on the quantity and range of goods can be agreed upon by establishing in the contract the procedure for determining it. Inaccurate indication of the quantity of the goods are being sold may lead to adverse legal consequences in the future if any cases arise between the parties.

So, in the case № SKC – 185, in accordance with concluded sales contract the buyer purchased the property belonging to the seller, together with all its accessories and everything that can ensure the buyer's right to do so. The contract of sale for the object of the transaction does not have any more precise instructions. When evaluating the terms of the contract, the Civil Court Board stated that the parties expressed themselves fairly accurately with regard to the subject of the transaction, indicating that the subject of the transaction is immovable property, and the contract does not contain any special characteristics or features that characterize this thing. The transaction participant (buyer) who acquires the item must decide

in a timely manner to what extent it is necessary to specify the parameters and quality indicators that characterize the goods (Article 2007 of the CL of Latvia)[79].

The quantity of goods to be transferred to the buyer must be determined in the contract in the appropriate units of measurement or in monetary terms. At the same time, it is possible for the parties to agree in the contract only on the procedure for determining the quantity of goods (para. 1 of Article 465 of the Civil Code of the Russian Federation). This is important because the quantity of goods is related to the essential terms of the contract and its absence in the contract leads to the recognition of the contract as not concluded. In any variant of determining the quantity of goods, the contract is recognized as concluded if its content allows you to determine the number of goods to be transferred to the buyer at the time of execution of the contract. If the contract of sale the range is not defined and not set the order of its definition, but from the obligation implies that the goods must be passed in the range, the seller is entitled to transfer to the buyer goods in the assortment based on the needs of the buyer, which were known to the seller at the time of conclusion of the contract, or refuse performance of the contract (para. 2 of Article 467 of the Civil Code).

3.5. Quality of goods

As a general rule, is the quality of the product an essential condition of the contract of sale? According to some researchers[80], the quality of the product is an essential condition of a sales contract. Such a contract will not be considered concluded and the seller will not be required to transfer the certain item, and the buyer will not be required to pay the appropriate price, if the contract does not clearly reflect what qualities this item. In some jurisdictions the condition of quality is not an essential condition of the contract of sale, but the circumstances mentioned above are precisely the name of the product that allows it to be identified among such objects. As for the quality condition, the product must always be of good (satisfactory) quality.

The specifics of regulating certain types of contract of sale under German law depend on what kind of thing is being sold: movable or immovable, determined by generic or individual

[79] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2009. gada 3.jūnija Spriedums Lietā Nr. SKC – 185 Par to, kādi priekšmeti kā piederumi ir pirkuma līguma objekts (On what items as accessories are the object of the contract of sale). *E. B. pret A. L.* Available on: http://www.at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/civillietu-departaments/klasifikators-pec-lietu-kategorijam/civillikums/ceturta-dala-saistibu-tiesibas-1401-2400pants/trispadsmita-nodala-prasijumi-no-atsavinajuma-ligumiem-2002-2111pants/pirma-apaksnodala-pirkuma-ligums-2002-2090pants?lawfilter=1. Accessed April 25, 2020.

[80] See also *Business Essentials: Company and Commercial Law.* Course book. (London: BPP Learning Media, 2010), p. 141. *See also* Bartlett v Sidney Marcus Ltd (1956) (Court of Appeal), **cited** in Ewan MacIntyre, *Essentials of business law* (Pearson UK, 2018).

characteristics, interchangeable or irreplaceable. To determine the subject of the contract of sale, you must specify the name, quality and quantity of the product being sold. The quality of a product can be determined based on a description, sample, standard, or it can be combined. If the contract does not contain a description of the goods in terms of quality, the seller must provide the goods of medium category of quality (para. 243 of German Civil Code).

> [G]erman sales law currently distinguishes again between defects in the legal status and defects in quality. In the case of defects in the legal status, the seller is liable for those defects that exist at the time in which ownership is transferred[81].
>
> As main criteria of differentiation are proposed: visibility of the defect, remediability by taking away the right of a third party or a preponderance in principle of the one regime or the other[82].

During the term of the purchase agreement, a number of problems may arise regarding the performance of obligations, such as, for example: the inability to perform, the delay of the debtor or creditor. Such problems are typical not only for the contract of sale, but also for any other contract. The contract of sale is executed by transferring the object of sale and ownership of it (para. 433 of the BGB). But there may be cases when the purchase is made, and the defects of the item were revealed after that. This refers to disadvantages (defects) in a broader sense – those that reduce the quality of the thing, its value, prevent the use of the thing for its intended purpose, or make it unusable at all.

Thus, in the court's decision in BGHZ 117, 260 V. (V ZR 268/90)[83] - the defendants sold the building to the plaintiff under a notarized contract. In the contract, they assured him that it had no hidden defects. Otherwise, the entire guarantee of structural condition was excluded. Later, the applicant noticed that there was a dampness in the basement apartment. After receiving an expert opinion on the causes of damage, the plaintiff stated that the dampness was caused by the lack of external insulation of the basement walls and that the defendant was aware of this fact. The plaintiff demanded that the defendant reimburse the costs of repairing the defects and compensate for the loss of the ability to use the apartment in the basement. The District Court rejected the claim for payment of these amounts and interest on them for reasons

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[81] RGZ 111, 86, 89; Erman/Grunewald (Fn. 15) § 434 para. 10; Münchener Kommentar/Westermann (Fn. 15) § 434 para. 13., **quoted** in Stefan Grundmann, "European sales law – reform and adoption of international models in German sales law", *European Review of Private Law* 2&3: 239-258, ©*Kluwer Law International*, (2001): p. 251.

[82] BGHZ (Supreme Court reporter) 67, 134; BGH, Neue Juristische Wochenschrift (NJW) 1972, 1462 for public law restrictions; ERMAN/GRUNEWALD (Fn. 15) § 434 para. 2 et seq.; Münchener Kommentar/WESTERMANN (Fn. 15) § 434 para. 4; SOERGEL/HUBER (Fn. 25) § 434 para. 9 et seq., **quoted** in Stefan Grundmann, "European sales law – reform and adoption of international models in German sales law", *European Review of Private Law* 2&3: 239-258, ©*Kluwer Law International*, (2001): p. 251.

[83] Bundesgerichtshof Urt. v. 21.02.1992, Az.: V ZR 268/90. (Case law. Lack of an external insulation material) - BGHZ 117, 260 V. (V ZR 268/90). Available on: https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=BGH&Datum=21.02.1992&Aktenzeichen=V%20ZR%20268/90. Accessed March 16, 2020.

of joint and several liabilities. The Supreme Court granted the claim for its main reasons and returned the case to the District Court for a decision on the actual amount due. The defendants filed another appeal against this decision. The court accepted the second defendant's subsequent appeal in full, and the first defendant's appeal only as far as it related to the award of compensation for loss of use.

> Here it is appropriate to emphasize that the seller's liability for defects in the product characteristics does not depend on its fault. Thus, the seller's fault is not a condition for claims arising from the seller's liability for defects in the product[84].

In a contract, quality can also be specified in the description, which means a list of consumer characteristics that determine quality requirements, or in a sample of the product. In the latter case, we are talking about a reference copy of the product being sold. When carrying out business activities, such samples may be passed to the buyer in advance. The largest distribution of sample sales is in retail sales.

If the quality of the goods has not been stipulated by any methods, then the general rule provided in para. 2 of Article 469 of the Russian Civil Code, is applied: if the contract of sale does not contain conditions on the quality of the goods, the seller must transfer to the buyer the goods suitable for the purposes for which such goods are usually used. If the seller, at the conclusion of the contract, was informed by the buyer of the specific purposes for which the goods were purchased, the seller must transfer to the buyer the goods suitable for use in accordance with these purposes (para. 3 of Article 469). The specific purpose of purchasing the product may be explicitly specified in the contract or communicated to the seller in the process of preparing the conclusion of the contract. However, in any case, the buyer must inform about the specific purpose of purchasing the product before entering into the contract.

By transferring the product to the buyer, the seller guarantees that the product will meet the requirements for its quality within a certain period of time. This period is called a warranty period. The warranty period can be set in the contract itself. Sometimes they arise from regulations that set technical standards (GOST, ГОСТ[85]) for determining the quality of products. In this case, they cannot be changed by agreement of the parties.

> According to Article 35(2)(b) CISG, the goods have to be fit for any particular purpose expressly or impliedly made known to the seller at the time of the conclusion of the contract. Such particular purpose could, for example, be use of the goods in a specific

[84] Sandra Rimša, and Philipp Schwartz, *Saistību tiesības: sevišķā daļa (Law of obligations: special part)* (Rīga: EuroFaculty, 2001), p.43.

[85] Interstate standard (GOST) is a regional standard adopted by The Euro-Asian Council for Standardization, Metrology and Certification (EASC) of the CIS. Interstate standards are applied voluntarily on the territory of the Eurasian economic Union. In 1992, the CIS members concluded an agreement that recognized the existing standards of the USSR" GOST "as interstate, while retaining the abbreviation "GOST" for the newly introduced interstate standards.

> way of processing, the use of the goods in a specific country having certain special standards, for example because of religious or cultural reasons. In the specific cases, the particular purpose could also be the goods' ordinary purpose, i.e. the purpose for which such goods usually are used for. What is important, is that no matter how extraordinary the purpose is for which buyer needs the goods, if it made this purpose known to the seller at the time of conclusion of the contract and the goods are unfit for this purpose, non-conformity is at hand[86].

The transfer of goods of improper quality significantly infringes on the interests of the buyer, so this element serves as one of the various means of protection[87].

3.6. Form and consequential provisions

All terms and conditions of the sales contract must be concluded in an adequate form. Most often, the parties have the right to choose the form of the agreement, which can be oral or written. However, for the purchase and sale of real estate, the form of the contract is established by law, which is a common condition in all jurisdictions considered in this paper.

For instance, as a general rule, German civil law does not require a special form for the validity of a contract. However, for individual contracts relating to the transactions with land and buildings, a mandatory form is certainly necessary.

The same rule is in Latvian law. Latvian national law provides for the written form of a contract of sale only for international contracts for the purchase of goods, but not for those concluded between Latvian enterprises.[88]

> A written form may be necessary only for securing the transaction by entering the ownership rights in the Land register (koroborēšana); here the written form is not a condition for the validity of the transaction, it is only necessary to perform certain actions after the transaction (Article 1483 of the CL)[89].
>
> In cases where the law does not provide for the conclusion of a transaction in writing, the parties of the transaction themselves can agree on a dispositive written form. Article 1489 provides for two such cases: first, the parties may agree on a written form as a means to facilitate the provision of evidence, and second, in order to make the transaction's validity dependent on its presentation in writing. In the latter case, it is considered in doctrine and jurisprudence that if, by written agreement of the parties, the

[86] Benjamin K. Leisinger, *Fundamental Breach Considering Non-conformity of the Goods* (München: Sellier. European Law Publishers GmbH, 2007), p.14. *See also* Peter Huber and Alastair Mullis, *The CISG: A new textbook for students and practitioners* (München: Sellier. European Law Publishers GmbH, 2007), p.138.
[87] *See also* Russell A. Miller, Peer Zumbansen, *Annual of German and European Law, Volume II/III.* (New York: Oxford, Berghahn Books, 2006), p.122-123.
[88] *See also* Līga Fjodorova, "Starptautiska preču pirkuma līguma forma" (The form of the international contract of sale), *Jurista Vārds* 22. Decembris 2009 /Nr. 51/52 (594/595). Available on: https://juristavards.lv/doc/202486-starptautiska-precu-pirkuma-liguma-forma/. Accessed April 4, 2020.
[89] Sergejs Rudāns, "Darījuma rakstiska forma" (Written form of the transaction), *Jurista Vārds* 15. Janvāris 2008 /Nr. 2 (507). Available on: https://juristavards.lv/doc/169189-bdarijuma-rakstiska-formab/. Accessed May 27, 2020.

written form is an essential part of the transaction, it is fully subject to the regulation of article 1488 CL[90].

As indicated in the Russian law in compliance with the written form of foreign trade transactions, which must comply with and the agreement of the parties on essential terms of the contract, in terms of filling in Article 434 of the CC is relevant to the position of Article 1.11 of the UNIDROIT Principles of International Commercial Contracts (UPICC)[91]. It defines "writing" as meaning any type of message that preserves a record of the information contained in it and capable of being reproduced in a tangible form. Similarly, the issue is addressed in the UNCITRAL Model Law on Electronic Commerce[92], which reflects modern methods of formation of contracts.

The developers of the UCC had the task of freeing the legal aspects of commercial activity from unnecessary formalities inherent in the classical common law of the United States, largely borrowed from England. This also affected the form of the contract. However, the legislator considered it necessary to maintain the minimum requirements for it in order to protect a bona fide business entity from possible unfair behavior of the counterparty. According to para. 2-201, if the contract of sale contains a condition for a purchase price of more than 500 USD, the parties must enter into the contract in writing. This does not mean a contract in the form traditionally known to entrepreneurs, but any written document sufficient to prove the existence of a contract between the parties. If the contract has not been drawn up in writing, a document confirming its conclusion can serve as a confirmation of the fact that the contract took place - a written confirmation, with the mandatory signature of the party to whom the claims are subsequently filed. In any case, the document must indicate the quantity of goods, otherwise the contract is considered unenforceable. American case law believes that such a document does not necessarily indicate who is the seller and who is the buyer of the goods, what is the price of the subject of the contract, the time and place of the contract. The minimum requirements for the content of a written document on a contract of sale are specified in para. 2-201: names and signatures of the parties who intend to be bound by such a contract, indications of the subject matter of the contract and its quantity. All this information does not

[90] Aleksandrs Fillers, "Darījumu rakstiskas formas regulējums Civillikumā" (Regulation of the written form of transactions in the Civil Law), *Jurista Vārds* 29. Oktobris 2013 /Nr. 44 (795). Available on: https://juristavards.lv/doc/261342-darijumu-rakstiskas-formas-regulejums-civillikuma/. Accessed April 4, 2020.
[91] The UNIDROIT Principles of International Commercial Contracts, 4th edition, 2016. Available on: https://www.unidroit.org/instruments/commercial-contracts/upicc-model-clauses. Accessed April 10, 2020.
[92] UNCITRAL Model Law on Electronic Commerce (1996) with additional article 5 bis as adopted in 1998. Available on: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-04970_ebook.pdf. Accessed April 10, 2020.

have to be contained in one specific document, if necessary, it can be obtained by analyzing several documents (exchange of letters, telegrams, facsimiles, etc.).

This understanding of the written form of the contract has become widespread in international legal practice and has been recognized in Russian law (see para. 2 of article 434 of the CC). Failure to comply with para. 2-201 UCC does not entail the invalidity of the contract of sale in whole or in part. Adverse consequences for the parties will be manifested in the fact that such a contract is deprived of judicial protection, becomes unenforceable. This does not mean that it is impossible to perform the contract voluntarily and get the benefits that each of the parties expected at its conclusion. However, it will be impossible to go to court in this case. For, example if we have the situation when the parties, based in America and Russia enter into a contract of sale, this requirement of American law is extremely necessary for the Russian side to take into account. When entering into a sales contract subject to American law, the Russian side should insist on writing all the terms of the transaction, especially since "a simple written form" of foreign economic transactions is mandatory by virtue of para. 3 of Article 162 of the Civil Code of the Russian Federation. The parties' choice of American law as applicable to the contract does not mean that this law will govern absolutely all matters arising in connection with the sale and purchase transaction. The law chosen by the parties will only govern the binding statute of the transaction.

3.7. Term

A contract of sale may be concluded with the condition that it is executed by a strictly defined deadline. This is possible if its content implies that the buyer loses interest in the contract if the deadline is violated. The seller is not entitled to perform such an agreement before or after the expiration of the term without the consent of the buyer and if the buyer has not exercised the right to refuse to perform the agreement. However, based on the conducted research it should be mentioned that term generally is not an essential element of the sales contract, but for some types of the contracts, for example for a contract of delivery or purchase by installments it obviously becomes so. The term of the agreement is determined by the calendar date, the expiration of the time period set by the parties, specified for an event that must inevitably occur, or the moment of demand for performance immediately. The time period may be set for the fulfillment of the seller's obligation to transfer the goods and the fulfillment of the buyer's counter-obligation to pay the purchase fee. for example, article 2049 of the Latvian Civil Law provides for the termination of the buyer's right if they miss the payment deadline set by the contract.

The time of performance by the seller of its obligation to transfer the goods to the buyer is determined by one of three options: first, in the presence of the contract on obligations of the seller for delivery of goods the date of delivery of the goods to the buyer; secondly, if in accordance with the contract the goods must be delivered to the buyer at the place of location of the goods - the moment of placing the goods at the buyer's disposal at the appropriate place; thirdly, in all other cases the time of delivery of the goods to the carrier or organization of communications[93].

Thus, the date of the document confirming the acceptance of the goods by the carrier or the communication organization for delivery to the buyer should be recognized as the term of performance of the obligation. The date when the seller fulfills its obligation to transfer the goods is extremely important, since this date usually determines the moment when the risk of accidental loss or damage to the goods passes from the seller to the buyer.

3.8. Other provisions

In Germany and Latvia, it is necessary for the formation of a contract to have mandatory elements in the offer - certainty, which implies the inclusion of essential conditions in it, and the intention of the party who made the offer to conclude the contract. The relationship between these elements is determined on the basis of legal rules on the interpretation of contractual terms, which usually give priority to the intention - will of the party. The same approach is provided for in various international legal instruments, including the Vienna Convention (Article 8) and the UNIDROIT Principles of International Commercial Contracts. It differs from the approach expressed in the Article 431 of the Civil Code of the Russian Federation, according to which, when interpreting a contract, preference is given primarily to "the literal interpretation of the words and expressions contained in it". However, in the USA there is completely another approach to the interpretation of contractual provisions by courts:

> When filling in gaps in the contract, the judge is guided not by the hypothetical will of the parties (as opposed, for example, to the approach in German and Swiss law), but by the principle of fairness, proportionality of the rule created to specific circumstances and is guided by the same actual expectations of the parties[94].

The mandatory conditions for the validity of contracts under German civil law include the consent of the parties “on all points of the contract”, and consent is interpreted mainly as the consent of the parties’ will (and not the consent of their wills). The transaction, despite the

[93] *See also* Alexander von Ziegler, *Transfer of Ownership in International Trade.* International Chamber of Commerce. The world business organization. (Wolters Kluwer, Law & Business, 2011), pp.205-206.
[94] Romeo Cerutti, *Das U.S. amerikanische Warenkaufrecht mit rechtsvergleichenden Hinweisen auf das schweizerische und das deutsche Recht, das CISG sowie die UNIDROIT Principles.* (Zürich: Schulthess Polygraphischer Verl., 1998), p. 541., **quoted** in Trunin *supra* note 30, p. 197.

uncertainty of the parties will, is valid if there is an expression of the parties' will. The relatively new "theory of will" adopted in the German Civil Code was intended to give contractual relations greater certainty and stability in the interests of civil circulation.

The acts of international private law unification reflect elements of various legal systems. However, if they are applied as a contractual condition, the provisions perceived in them that contradict the mandatory legal norms to be applied cannot be used. In particular, the author considers the provision of Article 2.1.14 of the UNIDROIT Principles incompatible with the requirements of the law of Continental Europe and Russian law (based on Art. 2-204 of the UCC) for the contract with open terms, even if it concerns essential conditions of the contract.

As in the law of Continental Europe countries, in the American trade law, the conclusion of a contract provides for an offer to conclude a contract on certain terms - offer and the response of the person to whom the offer is sent, agreeing to accept the offer and conclude the contract on the proposed terms - acceptance. In accordance with para. 2-205, a written offer sent is irrevocable for the period specified in the offer, and in the absence of such indication, for a reasonable time, in any case not exceeding three months. Although this provision on an irrevocable "firm" offer applies only to professional entrepreneurs (merchants), it is substantially similar to the corresponding provisions of Article 436 of the Civil Code of the Russian Federation. This provision applies to Russian legal entities that specialize in the sale of certain types of goods and are therefore considered professional entrepreneurs in the relevant field.

In American trade law, full compliance with the terms of the offer and acceptance is not required for the validity of the contract to be concluded. A clearly worded written agreement to enter into a contract sent within the period specified in the offer, which at least partially changes the terms of the offer, is recognized as acceptance, unless the response to the offer explicitly states that the contract will be considered concluded only if the offeror expressly agrees to the changes proposed by the acceptor, or if the offer does not explicitly state that acceptance will be considered acceptance of all the proposed terms[95]. For the validity of the acceptance and the contract to be concluded, it is necessary that the offeror does not object to such acceptance within a reasonable period of time. However, even if these conditions are met, the agreement will not be considered concluded if the acceptance significantly changes the terms proposed in the offer. In this case, as in domestic law of Germany, Latvia and Russia, the response to the offer will be no more than a new offer that also needs to be accepted.

[95] *See also* Gerhard Dannemann and Stefan Vogenauer, *The Common European Sales Law in Context: Interactions with English and German Law.* Deutsche Forschungsgemeinschaft (OUP Oxford, 2013), p. 273.

If the acceptance is valid, the moment when the sales contract is concluded is determined by the moment when the acceptance is sent to the offeror. This approach (the so-called "mailbox or postbox theory", "posting rule") originally was peculiar to the Anglo-American legal tradition and differed significantly from the law of the continental legal system, which determined the conclusion of the contract by the moment of receipt of acceptance by the offeror.

Adams v Lindsell (1818) 1 B & Ald 681, was the first court case of Anglo-American contract law that established the "mailbox rule". The defendant sent to a plaintiff an offer to sell wool and asked him to reply to him via post ('in course of post'). After receiving an offer, the plaintiff posted a letter of acceptance, but due to the delay, the defendant didn't receive the letter on time and sold wool to another person. The plaintiff sued him for a breach of contract. The court ruled that if a letter of acceptance is sent (the letter of acceptance was placed in the post box) such an offer can be accepted by post and thus the contract was valid[96].

The 1980 United Nations Vienna Convention (CISG) also defines the conclusion of a contract at the time of receipt of acceptance by the offeror (Articles 23,18). However, over time, due to the globalization and gradual unification of the world trade process and this concept was adopted by the Civil law legal system.

> In cases in which the contract is accepted by acts of performance of the type described in PECL Article 2:205(3), under the dispatch rule, the contract is concluded when performance of the act begins. In common-law systems, when an acceptance is dispatched by mail or telegram, it is referred to as the mailbox or postbox rule, in the German system as Ubermittlungstheorie or Absendetheorie, and in the Spanish system as Teoria de la Expedición or the Expedition Theory. The contract is concluded when the offeree sends his acceptance to the offeror. Besides the CISG, which adopts the Expedition Theory as an exception to the Receipt Theory, the Spanish Commercial Code also adopts this theory in order to determine when a commercial contract has been concluded.109 The Expedition Theory leads to one important consequence: the transmission risk of the acceptance has to be borne by the offeror[97].
>
> In Germany and a number of other European countries, the "mailbox principle/rule" has been adopted, it means that an agreement is concluded from the moment the addressee receives consent in "his mailbox"[98].
>
> With the development of e-Commerce, this distinction becomes less important or even disappears. In addition, large transactions are not usually concluded by exchanging letters. However, in some cases, ignorance of the law can lead to negative legal consequences[99].

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[96] Adams v Lindsell. *Case Summary. Contract Law Case.* Law Teacher. Available on: https://www.lawteacher.net/cases/adams-v-lindsell.php. Accessed April 30, 2020.
[97] del Pilar Perales Viscasillas *supra* note, p. 395.
[98] Kalvis Torgāns, "Komerclikumā jāiestrādā Eiropas Līgumu Tiesību Principu normas". *Civiltiesību, komerctiesību un civilprocesa aktualitātes. Raksti 1999-2008 (Current Topics on Civil, Commercial Law and Civil Procedure):* pp. 323, 316-328. (Riga: Tiesu namu aģentūra, 2009).
[99] Kalvis Torgans, *Latvian Contract Law and the EU.* Juridica international. Law review university of Tartu (1632). 2001. pp. 38-43.

"Since the turn of the century, "mass contracts" and standardization have reached a new level through online trading[100]."

An important condition is the place where the seller must deliver the goods, in order for its obligation to deliver the goods (one of its main obligations) to be considered fulfilled, since it involves the transfer of rights to the goods (title) and the risk of death from the seller to the buyer. In the absence of provisions of the contract to the contrary, the seller's obligation to deliver the goods to the buyer is performed at the seller's place of business, and in the absence of such, at the seller's location. In this case, the actual placing of the goods at the disposal of the buyer and subsequent transportation of the goods at the expense of the buyer will take place, however, referred to as shipment or delivery.

In the absence of provisions of the contract to the contrary, the seller's obligation to deliver the goods to the buyer is performed at the seller's place of business, and in the absence of such a place (for example, when the buyer is an individual consumer) - at the seller's location. In this case, the actual placing of the goods at the disposal of the buyer and subsequent transportation of the goods at the buyer's expense will take place, however, referred to as delivery. Therefore, it is necessary to clearly define the place of transfer of rights to the goods and the risk of their accidental destruction, and clearly understand what rules will apply in the absence of such provisions in the contract. The procedure for delivery of goods by sellers, including its "shipment", in the United States is regulated in detail by Article 2-503-2-505 of the UCC.

The place of delivery of the goods and the transfer of risks of accidental loss of the goods may be determined in the contract directly or through the use of trade terms. This is a rare example where generally accepted terms of trade and their interpretation are fixed directly in the act of national legislation, since usually their interpretation exists only in the materials of international organizations or local codifications. The most famous set of rules for the interpretation of trade terms is INCOTERMS, prepared by the International chamber of Commerce. American trade and law enforcement practices have had a significant impact on INCOTERMS. However, there are some differences between INCOTERMS and UCC trade terms. Therefore, when using a trade term in a contract of sale subject to American law, it is necessary to explicitly specify the method of its interpretation (INCOTERMS or provisions of American law), since in the absence of such an indication, the court is likely to apply American interpretation, which in some cases can be less advantageous for another party, than more

[100] Reiner Schulze, "The New Shape of European Contract Law*", Journal of European Consumer and Market Law,* Vol. 4, Issue 4 (2015): p.143.

familiar INCOTERMS. In any case, it is advisable to know the normative interpretation of trade terms provided by the UCC.

Often, when concluding a contract of sale, in addition to a contract with a condition, there may be a contract on payment in installments with retention of ownership of the good. This clause means that the ownership of the item will pass to the buyer only after paying the full price for the product. The retention of title clause is common in international trade. It provides that the seller retains ownership of the goods until the purchase price is paid in full, and that it may claim the goods back if the price is not paid. Retention of title provisions become crucial if the buyer becomes insolvent or if several creditors are fighting to obtain the buyer's remaining assets. If there is a valid retention of title clause for the goods, the seller can claim the goods even if the buyer is bankrupt.

Under the Latvian civil legislation, the right of retention of title[101] means that a merchant has the right to hold the property of another merchant until the claim is satisfied, and can also satisfy his claim by selling the property at auction. The right of retention does not apply to a third party who has obtained a commercial pledge for the object being held. In this case, the provisions of Section 40 of the "Law on commercial pledge" (Latvijas Republikas Komercķīlas likums) apply[102]. Also, the right of retention does not apply to a third party who legally obtained any other property right to the object being held before using the retention right.

Besides that, according to the Article 2068 of the CL Instalments Purchase (Nomaksas pirkums) means that the seller based on the meaning of Article 2034 reserves the right of ownership of the thing sold until the buyer has paid the full amount of purchase price or in such a way that the right of ownership of the goods again passes to him if the buyer does not pay for this product. Thus, an installment purchase involves two contractual structures, which will determine the following for each: the seller remains the owner of the thing until the full payment of the contract price, and the buyer immediately after the conclusion of the contract acquires ownership of the purchased thing. If there is any doubt about the counterparty's intentions the presumption is that the seller is the owner of the item until the purchase price is fully paid (Article 2069 of the CL).

[101] Here it is should be noted that retention of title provision was contained in the Code of local laws of Baltic provinces (Свод местных узаконений губерний Прибалтийских (Остзейских). Законы гражданские. СПб. 1891). It is of particular interest for the reason that it contained general rulings on the subject of the right of retention of title, which was used in drafting the Civil Code of the Russian Empire. In this regard, they note a fairly deep degree of elaboration and a high level of legal technology. *See* Mihail Braginsky (ed.), Aktual'nye problemy grazhdanskogo prava (Relevant issues of the Civil Law) (M:Norma,2002), p.30.

[102] Latvijas Republikas Komercķīlas likums. Pieņemts: 21.10.1998. Stājas spēkā: 01.03.1999, Publicēts: "Latvijas Vēstnesis" 337/338 (1398/1399), 11.11.1998. Available on: https://likumi.lv/ta/id/50685-komerckilas-likums. Accessed May 10, 2020.

So, in the case № SKC – 139, a contract of sale by installments was concluded – the parties have agreed on the payment of the purchase price in installments. The text of the contract does not specify that the payment period may be extended. The specific claim has been brought because, after securing the property rights in the Land register (Zemesgrāmata), the buyer has not paid the remaining part of the price. Consequently, the plaintiff according to the Article 2070 of the CL has the right to demand the cancellation of the contract and the return of the sold property, because the price was not fully paid in due time[103].

The legal consequences known to commercial law of retention of title have a partial similarity to the right of pledge, since the holder, in accordance with the procedure provided for in Article 400 of the Latvian Commercial Law, has the right to sell the property in order to satisfy its claims[104].

It should be noted here that German trade law also stipulates the right of retention (Eigentumsvorbehalt). The right of retention of ownership is defined in para. 369 of the Commercial Code HGB. The basic principle of a retention-of-title clause is that the seller remains the owner of the goods until the buyer pays the full purchase price for the goods. If the seller of the goods retained title until the purchase price was paid, then in case of doubt, it should be assumed that the ownership is transferred provided that the purchase price is paid in full (para. 449 of the German Civil Code). Thus, under the retention-of-title clause, the seller has the right to demand the return of the goods if the buyer fails to make payment and the seller withdraws the contract of sale (para. 449). Under German law the following types of retention of title clauses have become common business practice: if a buyer buys an item for resale to third parties, the parties often agree to an extended retention-of-title clause. For example, in a retail business, a merchant usually orders products from a seller with long payment terms in order to sell the product to end customers and pay the supplier out of the sales proceeds. This only works if the seller has the right to transfer legal ownership of the product to final customers. In this case, the parties agree that the seller has the right to sell the goods in the ordinary course of business and that the seller's payment requirements to end customers are imposed on the seller to protect its legal position.

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[103] Latvijas Republikas Augstākās tiesas Senāta Civillietu departamenta 2008. gada 2. aprīļa Spriedums lietā Nr. SKC – 139 Par pirkuma līguma atcelšanu (On canceling a sales contract). *Josifs Š. pret Vilni O.* Available on: http://at.gov.lv/lv/judikatura/judikaturas-nolemumu-arhivs/civillietu-departaments/klasifikators-pec-lietu-kategorijam/civillikums/ceturta-dala-saistibu-tiesibas-1401-2400pants/trispadsmita-nodala-prasijumi-no-atsavinajuma-ligumiem-2002-2111pants/pirma-apaksnodala-pirkuma-ligums-2002-2090pants. Accessed May 12, 2020.

[104] Andra Rektiņa-Hitrova, "Komersanta aizturējuma tiesības" (The right of detention of a merchant). *Jurista Vārds* Nr. 47 (24.11.2009): p.19. Available on: https://juristavards.lv/doc/200763-komersanta-aizturejuma-tiesibas/. Accessed February 28, 2020.

So from decision BGHZ 75, 221 VIII. Civil Senate (VIII ZR 289/78) B of the District court (Landgericht)[105] we see that the defendant sold seven trucks to the plaintiff, with retention of title until the final payment of the purchase price, and transferred the vehicles to the plaintiff's possession. Later, the defendant and the plaintiff amended the contract of sale, according to which the trucks were to remain in the ownership of the defendant as security for all current and future basic and ancillary requirements arising from all existing business relationships. After that, the defendant provided the plaintiff with several loans. Further, the defendant demanded the return of the vehicles, since the plaintiff allegedly failed to fulfill its obligations in respect of payments. On the same day, the defendant took the vehicles from the plaintiff and sold them to third parties. The plaintiff was of the opinion that he had acquired ownership of five vehicles because he had paid the purchase price in full and he claimed damages from the defendant. The district court (Landgericht) and the Supreme court (Oberlandesgericht) ruled in favor of the plaintiff. Further appeal was not successful.

As for the transfer of ownership (title) of the goods to the buyer, this in any case does not occur before the goods that are the subject of the contract of sale are identified for the purposes of the contract (identified to the contract), separated for these purposes from other similar goods at the seller's place of business or elsewhere (para. 2-401 UCC). If the seller is obliged to deliver the goods to the carrier, the title passes to the buyer at the time the goods are transferred to the carrier. If, under the terms of the contract, the seller is also obliged to deliver the goods to the destination at its own expense and risk, the title passes to the buyer at the time of delivery of the goods to the buyer, i.e. when the buyer acquires a real opportunity to pick up the delivered goods, regardless of whether he uses this opportunity or not. This should be borne in mind for the buyers, who, depending on the terms of the contract, will be required to accept the goods either at the seller's place of business (in case of uncertainty of the place of performance of the contract) or at a place specified by the parties.

Under Russian law, a contract of sale may provide that the seller retains ownership of the goods transferred to the buyer until payment for the goods or other circumstances occur. Then the buyer is not entitled to transition to it ownership right to alienate the goods or dispose of them otherwise, unless otherwise provided by law or contract or does not follow from appointment and properties of the product. If, within the period stipulated in the contract, the goods supplied will not be paid or will not come other circumstances in which the right of

[105] Peter Schlechtriem, Basil Markesinis and Stephan Lorenz (eds), *Translated German Cases and Materials.* Translated by Mrs. Irene Snook. BGHZ 75, 221 VIII. Civil Senate (VIII ZR 289/78) B. The University of Texas at Austin. School of Law. Available on: https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=915. Accessed April 13, 2020.

ownership passes to the buyer, the seller may require the buyer to return the goods to him, unless otherwise provided for by the contract (Article 491 of the CC).

This agreement benefits both the seller and the buyer. The seller will thus be protected from incurring losses in case of loss of the item, as well as in case of actual insolvency of the buyer, he will receive the entire cost of the item in advance. In turn, this payment procedure allows the buyer to make payments over a long period of time. The parties can agree on the following options: the buyer acquires the goods in legal possession, but the seller is the owner of the goods until the full payment is made (classical retention of title clause para. 455 of the German Civil Code); the seller transfers the right of ownership to the buyer, but in case of default on the price of the thing by the buyer, the right is transferred back to the seller.

CONCLUSIONS/SUGGESTIONS

The special significance of the institution of a sales contract in modern law is due to the great flexibility and breadth of its application because, in essence, contract of sale is the most universal form of commodity and monetary exchange and the fundamental unit of civil and commercial law. The progress of technology and science, the complexity of the economic life of society not only lead to the emergence of new legal forms but also manifest themselves in the development of traditional institutions such as buying and selling.

Trade circulation requires a certain systematization and standardization of the terms of contracts for the sale of goods at the level of legislation. If there are a significant number of entities involved in trade, there are often difficulties and contradictions between contractors, both at the stage of conclusion and at the stage of execution of contracts of sale. This is due to the fact that the specific actions taken by the subjects of commercial relations during the implementation of transactions come from a different understanding of the provisions of the law. A very important condition for entering into a sales contract is the correct wording of the terms, which helps to avoid differences in the interpretation of the signed contract agreements. In this regard, it is necessary to formulate the norms of civil and commercial legislation precisely, definitely, clearly and exhaustively.

The legal specificity of the topic required the author to apply the method of comparative law. In three chapters of this work, comparative legal material is widely used. In view of the above, having examined the case law of the states concerned in a selected topic, the author believes that, in order to protect the rights and legitimate interests of subjects of civil and commercial relations and, whereas, having the wrong application and interpretation of existing law, it would be reasonable and appropriate a number of changes and additions to the existing Latvian legislation, in particular:

1. Article 407 of the Commercial Law of the Republic of Latvia states that goods is a movable thing that has not been withdrawn from private legal circulation. The legislator does not explain how a transaction involving the participation of a merchant in the alienation of real estate is qualified. In this case, the merchant's transaction will be treated as an ordinary legal transaction, which is contrary to Article 388 of the Commercial Law. In this regard it is necessary to revise the content of Article 407 to state it in the following wording:

“A commercial contract of sale is one in which the seller undertakes to sell and the buyer undertakes to buy the goods and pay the agreed price; and in which at least one of the parties is

the merchant. Goods within the meaning of this article is any movable property put up for sale that has not been withdrawn from private law circulation. When alienating real estate property, if one of the parties is a merchant, it is necessary to follow the rules of Civil Law and other legislative acts, such as Land Register Law of the Republic of Latvia. However, this does not deprive it of the status of a commercial transaction."

2. It is necessary to distinguish the definition of sales contract in terms of consumer transactions in the context of its differences from a commercial or ordinary sales contract and to introduce a new article to read as follows:

"Consumer transaction is a legal transaction of any individual (natural person) committed primarily in the scope of private interests, to meet its own needs, which cannot be attributed to commercial business or independent professional activity of the person."

3. Since commercial law as the scope of merchants is the most fast-changing and developing area of law, it seems reasonable to introduce an article providing the possibility of unilateral withdrawal of a merchant from the commercial sales contract, such as a change of conditions and circumstances, which were absent at the time of conclusion of the contract and modify it to read:

"A unilateral right of refusal to perform the obligations under the contract of sale in respect of the merchant is possible in case of changes or force majeure that have arisen through no fault of the merchant, making it impossible to continue the execution of the sales contract. In case of unilateral withdrawal from the contract, the person initiating the termination of legal relations is obliged to compensate all losses incurred by the counterparty."

4. To distinguish at the legislative level, the concepts of "non-performance" and "improper performance" of obligations arising from the conclusion of contracts between subjects of commercial law. To give clear definition of what actions fall under the non-performance of obligations in general and under the performance of them, but not in full, as well as to provide for a different degree of responsibility for each of the above concepts. This is important for the most accurate and, most importantly, fair classification of the types and amounts of sanctions applied to the debtor, as well as for simplifying the qualification of this type of civil tort in the work of judicial authorities.

Having carried out a comparative characteristic of the elements of the contract of sale of the researched countries, the following conclusions can be drawn. In any of the countries considered, the essential terms of a sales contract are its parties, subject and price. At the same time, the legislation allows the possibility of concluding a contract of sale without specifying

the price. The parties may, at their discretion, recognize any additional condition as essential (the quality of the product, the method or time of delivery, etc.). A common feature of all the countries studied is the presence of two subjects in the contract of sale: the seller and the buyer. In some countries, the law requires a written form for contracts worth more than a certain amount. Even if this condition is not met, the transaction remains valid, but the parties lose the right to refer to the evidence if a dispute arises.

Since the in the development of civil and commercial legislation of the Republic of Latvia, the provisions of the German legal doctrine were largely used, since a detailed study of certain provisions of the Civil law and Commercial law reveals quite obvious "kinship" with the German Civil code. The content of the civil and commercial law norms of the Republic of Latvia is largely mediated by the spirit of German law, despite the fact that it was also strongly influenced by the legal doctrine of French law and the provisions of the Swedish Civil Code of 1734. A similar situation has developed in the case of the Russian Civil Code, in which the spirit of German law is also clearly felt. The last small remark aims to show common and different features in the legal regulation of conclusion of a sales contract not only of two trading partners, but also of sisters who came from the same legal family.

Taking into account all the above, in conclusion, the author considers it necessary to emphasize the point that for the proper and legal exercise of their civil rights and obligations on the issue of sale and purchase, it is important to know all aspects of the current civil and commercial legislation, as well as the ability to apply these rules when concluding a contract of sale.

The conclusions formulated in this paper can be used for further research on the evolution of civil and commercial legislation. However, as shown by a study, the American experience of codification of commercial law may not be used in states of Civil law legal system in its pure form, primarily because of the cultural-historical conditions and national specifics of formation the conceptual foundations of commercial law. This means that the possibility of using the American experience of codification of commercial law should be understood in the context of improving trade law in general, no matter in what form these rules are rebuked.

All national legal systems and legal families are affected by the processes of globalization without exception, but this influence is most visible in Roman law and Anglo-American law systems - within each of these legal families and in the relations that arise between them. The above allows to conclude that despite all the significant technical and legal differences which are determined by the structure and stages of development of the historical formation of the two legal systems, a lot of peculiarities, which were initially inherent to the

Anglo-American legal system have been successfully implemented into the Roman law system and they are being used for quite a long period. In this respect, the hypothesis put forward by the author was confirmed only in part because the influence of the Anglo-American system of law is not a one-way movement, but a mirroring process that is carried out by the Roman law system in return as well.

When summing up the results of the work, the author believes that she has achieved the goals and objectives set during the study of the topic of the contract of sale. All aspects related to the contract of sale and its elements, as well as the content of the contract of sale in modern legal relations were fully studied and outlined in this work.

In conclusion, it should be emphasized that in order to ensure a stable and steady increase in the welfare and quality of life of the population, it is necessary to rely on the experience of legal systems of other countries that have been formed over the centuries. Only in case of deliberate systematic improvement of standards of their own country and the perception of legal experience in industrialized countries, which should not be a blind imitation of, and take into account the economic, social, cultural and other features of the recipient country will be able to achieve the perfect delivery mechanism for comprehensive legal protection of the rights and interests of subjects of public legal relations. It is obvious that in the process of improving trade legislation, it is pointless to copy the legal norms adopted in other countries. However, in order to maintain effective relations in the modern market, it is necessary to know and take into account the specifics of solving similar problems of legal regulation of trade in other countries.

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