RECEPTION OF ROMAN LAW IN THE ROMANIAN LEGAL SYSTEM – THE CONTRACT OF SALE

Adi-Răzvan Marian*
student II course
Faculty of Law, University of Craiova, Romania

1. THE STAGE OF THE ROMANIAN RESEARCH THE RECEPTION OF ROMAN LAW

The reception of Roman law in the Romanian civil legislation was studied for the first time by Cristian Flechetenmacher in piece of work dating from 1840 which remained in manuscript[1], followed by Matei G. Nicolau[2], Valentin Al. Georgescu[3] and Andrei Radulescu[4]. Professor Teodor Sâmbrian has given a lot of importance to this issue, and even studied the reception of the Roman rules regarding the contract of sale[5] in the Romanian legal system before the coming into force of the Romanian Civil Code of 2009. This law introduced new rules regarding the contract of sale and thus broadened the horizon of study on the reception of Roman law.

* E-mail marianadirazvan@gmail.com

1 BUCSAN, C. Cristian Flechtenmacher. – In: *Din gîndirea politico-juridica din Romania*. Figuri reprezentative. București, Editura Științifica, 1964, p. 109.

2 TESSIER, G. Mélanges Paul Fournier. Paris, Recueil Sirey, 1929.

3 IONASCO, T. et GEORGESCO, V. A. La réception du droit romain de Justinien en Occident et celle du droit romano-byzantin en Orient. Milano, Giuffre, 1968; GEORGESCU, V. A. Le droit romain de Justinien dans les Principautés danubiennes au XVIII[e] siècle. – *Studii Clasice*, Vol. 13, 1971.

4 RADULESCU, A. Pagini din istoria dreptului romanesc. București, Editura Academiei Romane, 1970.

5 DOGARU, I. și SAMBRIAN, T. Elementele dreptului civil. Vol. 2. Craiova, Editura Oltenia, 1994; SAMBRIAN, T. Tradiția romano-brizanta a vechiului drept romanesc receptata in unele inovații ale Noului Cod Civil. – In: *Revista de Științe Juridice*, 2012, no. 1, Craiova; Id., Roman law a Main reason of the Everlasting Romanian Civil Code. – In: *Journal of Comparative Law*, 2005, no. 2; Id., Codul Calimach Originile romano-bizantine ale contractului vânzare-comparare in Receptarea antichității greco-latine in culturile Europene. Craiova, Editura Universitaria, 2009.

2. SHORT HISTORICAL VIEW ON OVER THE ROMANIAN CIVIL LAW CODIFICATIONS

The Civil Code of the Principality of Moldavia (the Calimach Code) was drafted under the orders of prince Scarlat Calimach by a commission which included Cristian Flechtenmacher and came into force on 1st October 1817. The sources of Calimach Code were Roman law, Greco-Roman law and the legal customs of the Romanian people. The drafting of the Calimach Code was influenced by the Austrian and French civil codes[6].

The Alexandru Ioan Civil Code was passed in 1864 and came into force on 1st December 1865. This code was developed using the model of Napoleonic Code, while taking into account regulations from the old Romanian law.[7] Over the course of course of time, it was subjected to some alterations, in order to be adapted to suit the new social conditions. This is why the Alexandru Ioan Civil Code even survived the communist era, having been repealed as late as 2011, once with the coming into force of a new civil code.

The Romanian Civil Code was passed in 2009 and came into force on 1st October 2011. The Civil Code of Quebec had significant influence on the drafting of the new Romanian Civil Code[8]. The recodification of the Romanian civil law was completed while having a look at other modern legislations, such as the Italian, Spanish, Swiss and German civil codes, with the purpose of integration in the Western legal culture.

3. THE CONTRACT OF SALE

The Romanian Civil Code defines the contract of sale as a legal contract by which the seller transfers, or obliges to transfer, ownership of an object in exchange for a price which the buyer obliges to pay[9]. In Roman law, the contract of sale was a consensual contract on the grounds of a which a person called seller or vendor (*venditor)* obliged to transfer to another, called buyer or vendee (*emp-*

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6 DARIESCU, C. Norme de drept internaţional privat în Moldova, în prima jumătate a secolului al XIX-lea in Analele ştiinţifice ale Universităţii “Al.I.Cuza” Iasi. Tomul LIV. Ştiinţe Juridice. Iași, Editura Universitarii “Alexandru Ioan Cuza” din Iași, 2008, p. 2.

7 PREDESCU, I. Elogiu Codului Civil. –In: *Revista de Științe Juridice*, 2006, no. 1, Editura Universitaria, Craiova, 2008.

8 Noul Cod civil 2009 – Legea nr. 287-2009 (M.Of. nr. 511 din 24 iulie 2009), Editura Hamangiu, București, 2009, henceforth Romanian Civil Code.

9 Romanian Civil Code – Art. 1650 alin(1).

tor), the tranquil and durable possession of an object in exchange for a sum of money called price (*pretium*)[10]. The essential elements of a valid sale are: the consent, a lawful object and the price[11].

The sale consent represents the agreement between the person who intends to sell and the person who intends to buy[12]. In Roman law, the essential validity requirement for the consent consisted in the capacity to alienate and oblige of the parties (*agere*). Aside from the restrictions which arised from the mere legal personality (*caput*), individuals such as legal guardians (*tutor*), trustees (*curator*) did not have the capacity to alienate the goods of the person they took care of, while custodians and public administrators did not have the capacity to alienate the goods they had in custody[13]. The modern Romanian civil legislation has established the principle of capacity. Both the Romanian Civil Code of 1864[14] and the present Romanian Civil Code[15] have provided that anyone can buy or sell unless a specific provision in the law forbids them to. Some legal prohibitions refer to judges, public prosecutors, lawyers and notaries public who are all forbidden to buy litigious rights that are disputed in the court under the jurisdiction of which they conduct their work and business. Another legal provision refers to legal guardians, trustees and administrators who are forbidden to buy and sell the goods of the person whose affairs they are taking care of[16], similarly to Roman law. If both parties had *agere*, the sale took place at the mere moment they reached an agreement, without further formalities[17]. This rule is retrieved through the Romanian Civil Code of 1864, which stipulated that the sale takes place as soon as the parties agreed over the object and the price. However, a special type of sale appeared during the time of Justinian: *venditio cum scripturam* (sale by deed)[18] . This contract was not concluded until a deed was written, thus derogating from the consensual character of sale. It resembled the solemn contracts, since for its valid conclusion and for the transfer of proper-

10 SAMBRIAN, T. Instituții de drept roman. Craiova, Editura Sitech, 2013, p. 350.

11 Calimach Code – Art. 1413.

12 Inst., 3.23.pr. ab initio.

13 SAMBRIAN, T. Op. cit., p. 350.

14 Romanian Civil Code of 1864 – Art. 1306.

15 Romanian Civil Code – Art. 1652.

16 Romanian Civil Code of 1864 – Art. 1308; Romanian Civil Code – Art. 1653–1655.

17 Paulus, lib. 3. ad Edictum, D. 44.7.38.

18 Cod. 4. 21.17; Inst., 3.23.pr.

ty/possession to operate, some legal condition had to be fulfilled, condition which consisted in the mere writing of the deed. *Venditio cum scripturam* resembles the sale of certain categories of goods nowadays. Taking into account its substantial economical value, real estate (immovable property) cannot be sold with a simple verbal agreement, being mandatory for the parties to draft a deed and sign it at a notary public office.[19]

The object of sale (*merx*) was confined to the goods in circulation (*res in commercio*[20]) and could consist of corporeal property or incorporeal property (*e.g. superficies*)[21]. Likewise, the Romanian Civil Code of 1864, that any good in circulation can be alienated unless its sale was forbidden by law[22]. The new Romanian Civil Code provides that an inalienability clause can also be stipulated in a convention or will.[23]

In Roman law, things owned by another person could be sold[24] (*res aliena*), since the seller was not obliged to transfer the ownership of an object, but to ensure its tranquil possession. Therefore, the contract was valid and there was an assumption that the seller will procure the goods before the fulfillment of his obligation. Even in present day, the contract of sale of a thing owned by another individual is valid[25], but it has a different meaning. By selling another person's thing, the vendor obliges to ensure the transfer of property to the vendee, which takes place either when the vendor subsequently acquires the property of the thing he *sold*, or when the real owner ratifies the contract.

In addition to present goods, future goods (*emptio rei speratae,* which should be literally translated as hoped-for/expected things) could also be sold; however, their sale was conditioned[26]. If the expected goods were actually achieved, the buyer was obliged to pay the price the parties agreed on, regardless of the quantity or quality of the goods. However, in case the expected goods were not achieved at all or were completely destroyed in the crafting process,

19 This requirement is provided by Law no. 247/2005 and Emergency Order no. 210/2008, not by the Romanian Civil Code.

20 Paulus, lib. 33. ad Edictum, D. 18.1.34.1.

21 SAMBRIAN, T. Op. cit., p. 351.

22 Romanian Civil Code of 1864 – Art. 1310.

23 Romanian Civil Code – Art. 1657.

24 Ulpianus, lib. 41. ad Sabinum, D. 18.1.28.

25 Romanian Civil Code – Art. 1683.

26 SAMBRIAN, T. Op. cit., p. 351.

the vendee was discharged of his obligation to pay the price and if he had already paid the price, the vendor was obliged to return it. The Calimach Code seems committed to the Roman legal tradition because future goods could be the object of a contract of sale[27] and the tradition was continued by the following civil codes[28]. Article 1658 of the Romanian Civil Code provides that if the goods are not achieved at all, the contract is rendered void and the buyer is discharged of his obligation to pay the price, while in case the good is only partially achieved, the he was entitled to opt either for the rescission of the contract, or for a proportional price reduction.

In Roman law, hope itself could be the object of a contract of sale. (*emptio spei*)[29]. When someone promised to buy the fish the fisherman would catch that day, he was obliged to pay the price even if the fisherman did not catch anything, because he hadn't bought fish, he had bought the hope that the fisherman would catch fish. The Calimach Code provided one's possibility to buy hope. In this situation, the buyer remained obliged to pay the price even if the hope did not materialize[30]. Although the Romanian Civil Code does not provide the possibility to buy hope, its Article 1658, paragraph 4 analyses the situation in which the buyer assumes the risk the future goods are not achieved. Similarly to *emptio spei*, the buyer is obliged to pay the price even if the expected goods are not achieved.

The price (*pretium)* is an essential element of sale without which the contract of sale is void.[31] The price consists of a sum of money *(pretium in pecunia numerata consistere debet*[32]*);* this is the main difference between the contract of sale and the contract of exchange. Aside from having to be expressed in a sum of money, the price must fulfill other requirements: the price must be real, fixed or at least determinable and just. (*Pretium debet esse verum, certum, iustum*)[33]. The same requirements can be found in the Calimach Code which rules that the

27 Calimach Code – Art. 1709.

28 Romanian Civil Code of 1864 – Art. 965 par. (1).

29 Pomponius, lib.9. ad Sabinum, D. 18.1.8.1.

30 Calimach Code, Art. 1427, Art. 1709–1710.

31 "Sine pretio nula venditio est" (Ulpianus, lib.1. ad Sabinum, D. 18.1.2.1).

32 Inst. 3.23.1.

33 Ulpianus, lib.28. ad Sabinum, D. 18.1.7.1; Inst. 3.23.1.

price must be: “a sum of money”, “true”, “decided upon” and “fair”[34] According to Article 1660 of the Romanian Civil Code, the price consists of a sum of money and must be “serious” and “fixed or at least determinable”. We will proceed to analyze each requirement and demonstrate that only the words preferred by the legislator have changed over the course of time.

For the Romans, *pretium verum* meant that the sum of money should be large enough and had to be effectively paid. The price was not *verum* when it was simulated or unreasonable[35]. The price was „simulated” when it was stipulated in the contract, but the parties had no intent to pay it. In such case, although the contract of sale was void, it could produce the effects of a donation if the latter’s validity conditions were fulfilled. This is what the Romanian Civil Code defines as conversion of a void contract: the interpretation of a void contract so as to produce some effects, rather than none[36]. The price was “unreasonable” when it was disproportionate to the value of the object (*e.g.* selling immovable property in exchange for a *sestertius*)[37]. In the present, according to the Romanian Civil Code, Article 1660, Paragraph (2), the price is required to be “serious”, while according to Article 1665, the contract of sale is voidable when the price was stipulated by parties without the intent to be paid and when the price is so disproportionate to the value of the object that it is obvious that the parties did not consent to a sale.

Price was *certum* when it was fixed (at the time the contract was concluded) or determinable (if it was not fixed, but it could have been calculated later on, using objective criteria), validity conditions which are required even after the coming into force of the new Civil Code. In the Justinian era, it was permitted for the price to be fixed by a third party[38] and this rule was retrieved in the Romanian legal system through the Calimach Code and later through the Civil Code of 1864[39]. It is worth mentioning that in the Justinian law, the contract was void if the third person could not or did not want to fix the price[40], regulation which also

34 Calimach Code – Art. 1415.

35 SAMBRIAN, T. Op. cit., p. 352.

36 Ulpianus, lib.28. ad Edictum, D. 18.1.36; Romanian Civil Code – Art. 1260 par. (1).

37 Ulpianus, lib.69. ad Edictum, D. 19.2.46.

38 SAMBRIAN, T. Op. cit., p. 352.

39 Calimach Code – Art. 1417; Romanian Civil Code of 1864 – Art. 1304.

40 Cod., 4.38.15; Inst. 3.23.1.

was retrieved by the Calimach Code.[41]. The Roman tradition in this matter was abandoned once with the coming into force of the Romanian Commercial Code of 1887, which, in order to prevent the voidance of the contract, stipulated that if the person appointed by the parties to determine the price did not want or could not fix it, the parties had to appoint another person to accomplish the task. This rule is maintained by the Civil Code of 2009, whose 1662nd article provides the procedure to follow in such situation.

Iustum pretium meant that the sum of money was required to match the real value of the goods. Before Justinian, with the exception of the minors younger than 25 years who could be granted *resolutio in integrum ob aetatem*, the parties were „permitted" to try to outwit one another[42]. In the Justinian Era, the vendor who suffered an abnormal harm *(laesio enormis*), by selling the goods for a price of exchange less than half their real value was entitled to rescind the contract and be granted *restitutio in integrum.*[43]. Yet, the vendee was entitled to keep the goods if he paid the vendor the difference to the just price.[44]. In much the same way as Roman law, the Calimach Code provided that if one of the parties (seller or buyer) suffered a harm of more than half the price, he was entitled to rescind the contract of sale. Moreover, the same rule was to be applied to any bilateral onerous contract[45]. Civil Code of 1864 does not enforce *laesio enormis* as one of the grounds for nullity. The contract could only be rescinded only if the damaged party was underage[46], similar to the *restitutio in integrum ob aetatem*. Although the Civil Code of 2009 does not expressly require the price to be just, this validity condition results from a systematic analysis of its provisions. Lesion (or harm; *laesio enormis*) is defined as a significant imbalance in the parties' rights and obligations and is considered to be a vice of content and thus ground for relative nullity. According to Article 1221 of the Romanian Civil Code, the lesion exists when one of the parties, taking advantage of the other's vulnerability, lack of experience or lack of knowledge, stipulates on his benefit a service which is considerably more valuable than his own service. Arti-

41 Calimach Code – Art. 1417.

42 Ulpianus, lib.11. ad Edictum, D. 4.4.16.4.

43 Cod. 4.44.2; Cod. 4.44.8.

44 SAMBRIAN, T. Op. cit., p. 353.

45 Calimach Code – Art. 1422, Art. 1251.

46 Romanian Civil Code of 1864 – Art. 1157.

cle 1222 paragraph 2 provides that the contract is voidable if the value with which the party was harmed is more than half the current value of the object. This means the new Civil Code reverts to the Justinian tradition of just price.

As the contract of sale is a synallagmatic contract, it creates mutual obligations for both parties. The seller is bound to transfer ownership of property, to preserve and deliver the goods and to warrant against eviction and against any latent defects of the goods, while the buyer is generally bound to pay the price.

The seller's obligation to transfer ownership to the buyer is expressly mention by the Romanian Civil Code at Article 1673. The transfer of ownership takes place at the conclusion of the contract, in spite of the fact that the goods have not been handed over and the price has not yet been paid[47]. In Roman law however, the seller was not bound to transfer ownership, but to ensure the tranquil possession of the object[48]. This was more of a theoretical assertion, because, on one hand, transfer of possession led the buyer acquiring ownership by *usucapio* and, on the other hand, there were exceptional cases in which the vendor was forced to transfer ownership. One of these cases was the scenario in which the seller was in fact the legal owner of the object.[49] Therefore, although theoretically the contract of sale was not intended for transfer of ownership, in reality it led to the acquisition of ownership by the vendee.

The seller's obligation to preserve the goods stipulated by the Calimach Code and the Romanian Civil Code of 1864[50] is no longer expressly provided by the current Civil Code, but it is implied, deriving from the obligation of delivery. The obligation to preserve the object is closely related to the risk in the sale contract, which refers to who bears the risk for the fortuitous destruction of the goods that intervenes between the conclusion of the contract of sale and the actual delivery of the goods. Over the course of time, legislator found different solutions to this burning issue. As I mentioned earlier, in Roman law the contract of sale itself did not transfer ownership; this meant that, at least theoretically, the

47 Romanian Civil Code – Art. 1674.

48 Africanus, lib.8. Quaestionum, D. 19.1.30.1.

49 SAMBRIAN, T. Op. cit., p. 356.

50 Calimach Code – Art. 1423; Romanian Civil Code of 1864 – Art. 1313.

vendor remained the owner of object he sold and, according to *res perit domino* principle, should have borne the risk of its fortuitous destruction. In the contract of sale, the risk of fortuitous destruction was borne by the vendee (*emptoris est periculum*). In the Roman jurisprudence it was stated that after the conclusion of the contract of sale, any advantage or disadvantage regarding the condition of the object only concerns the buyer[51]. In the Romanian legal system, before the coming into force of the Civil Code of 2009, the risk in the contract of sale was passed to the buyer once the right of ownership has been transferred to him[52], which lead to the same situation: the vendee bore the risk of fortuitous destruction of the goods although he had not been put in possession. This rule was unfair, because, the buyer had had no control over the goods and no chance to prevent their deterioration. Article 1274 of the Romanian Civil Code now puts an end to this inequity, providing that the risk in contracts transferring property (including the contract of sale) remains to be borne by the debtor of the obligation to deliver to goods (namely, the seller). It is further explained that in the event of fortuitous destruction of the goods, the debtor of the obligation to deliver the goods (namely, the seller) in no longer entitled to consideration (namely, to receive payment) and in case he has already received it, he is obliged to restitution.

The obligation to deliver the goods is performed by handing them over to the buyer so that he can exercise a full, exclusive and undisturbed possession.[53]. In this matter, nothing has greatly changed: in the present[54], just like two millennia ago[55], the delivery of the goods must take place in the location and at the time the parties agreed upon, the goods must be sold with along with all their accessories intact (*accesorium sequitur principale*) and with fruits (revenue) derived from them beginning with the day they were sold.

The seller is bound to warrant against both eviction and latent defects. Eviction (*eviction*) is the vendee's dispossession of the object he bought due to a

51 Paulus, lib. 33 ad Edictum, D. 18.6.8; Inst. 3.23. 3; Cod. 4.48.1.

52 Romanian Comercial Code of 1887 – Art. 62.

53 Romanian Civil Code – Art. 1685.

54 Romanian Civil Code – Art. 1692.

55 Ulpianus, lib.32. ad Edictum, D. 19.1.11.13; D. 19.1.13.10; D. 19.1.13.13; D. 19.1.13.18.

third person's right that existed at the time of the sale, right which was recognized by judicial decision. Latent defects are hidden faults which render the goods unusable or reduce their value in such a manner that had the buyer known about the faults, either he would not have bought the goods or he would have paid a smaller price as consideration.

In Roman law, the seller was bound to indemnify the buyer in case of eviction[56]; however he was released from this obligation if the buyer had known that the seller was not the legal owner of the object[57] or if the parties concluded a *pactum de nonpraestanda evictione* (an agreement between the parties which released the debtor from the obligation to warrant against eviction)[58]. The idea of warranty against eviction is retrieved in the Romanian legal system through the Calimach Code, which provided that in case eviction occurred, it was the seller, and not the evictor, who was obliged to refund the buyer.[59]. The Calimach Code also provides a cause for exemption which existed in Roman law: the person who knowingly bought from a non-owner (*non dominus*) a thing of which he was later dispossessed by judicial decision lost the right to indemnity[60]. According to the Civil Code of 1864, the parties could agree to exclude or restrict liability for eviction[61] (that is the other cause of exemption existing in the Roman law). Nevertheless, both the Romanian Civil Code of 1864 and the new Civil Code provide that the stipulation discharging the seller of his warranty against eviction does not exempt him of his obligation to refund the buyer the price, unless the latter bought the object at his own risk, having known the risk of eviction[62]. In addition to that, the New Civil Code introduces new rules, in order to protect the *bona fides* purchaser[63]: the person obliged to warrant against eviction cannot evict the beneficiary of the warranty; the evictee is also entitled to damages, in addition to a full refund; all subsequent acquirers will be guaranteed against eviction.

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56 D. 21.1; Cod. 8.45.

57 Paulus, lib.5. ad Plautium, D. 18.1.57.2–3; Cod. 8.45.48.

58 Papinianus, lib. 11. Responsorum, D. 21.2.68. pr.; Cod. 8.45.2–6.

59 Calimach Code – Art. 434.

60 Calimach Code – Art. 1247.

61 Romanian Civil Code of 1864 – Art. 1338.

62 Romanian Civil Code of 1864 – Art. 1340; Romanian Civil Code – Art. 1698.

63 Romanian Civil Code – Art. 1696–1706.

According to Article 1707 paragraph (2) of the Romanian Civil Code, a defect is a hidden if it could not have been discovered by a reasonably thorough inspection before the sale. Liability for latent defects originates from the rules enforced by the aedilis curulis for slave and animal trades[64]. In the time of Augustus, *aedilis curulis* forced the sellers to make statements in which to indicate any possible defects of the animals or slaves they intended to sell in the market[65]. If the statements were inexact, the buyer was entitled to ask either to be granted a *restitutio in integrum* or to have price reduced proportionally to the gravity of the faults[66]. In the Justinian era, the sale system used in the markets became generally applicable, thus the seller was held liable for latent defects wherever the contract was concluded[67]. The Calimach Code retrieves the Roman tradition relating to the warranty against latent defects. The seller was held liable for giving false accounts regarding about the qualities of the object and also for hiding with bad faith (*mala fide*) its faults[68]. The Civil Code of 1864[69] and the Civil Code of 2009[70] both provide that the vendor is obliged to warrant the buyer against the latent defects of the goods. Faults in the goods shall attract strict liability (which does not depend on negligence or intent to deceive). Moreover, in the particular situation in which the vendor had knowledge of the defects and did not disclose them, the buyer may choose from a list of remedies which include: having the object replaced or repaired for free, having the price reduced or the rescission of the contract in addition to damages[71].

Under Roman law, there were cases in which the vendor was exempted from his obligation to warrant against the defects of goods. The vendor owned no indemnity if the vendee had known or could have known about the defects at the moment the contract of sale was concluded[72]; similar provisions can be found in the Calimach Code and in the Romanian Civil Code of 1864[73]. Addition-

64 SAMBRIAN, T. Op. cit., p. 358.

65 Labeo, quoted by Ulpianus, lib.1. ad Edictum Aedilium currulium, D. 21.1.1.1.

66 Ulpianus, lib.1. ad Edictum Aedilium currulium, D. 21.1.31.16.

67 SAMBRIAN, T. Op. cit., p. 359.

68 Calimach Code – Art. 1420.

69 Romanian Civil Code of 1864 – Art. 1352.

70 Romanian Civil Code – Art. 1707 par. (1).

71 Romanian Civil Code – Art. 1710, Art. 1712 par. (1).

72 Ulpianus, lib.1. ad Edictum Aedilium currulium, D. 21.1.1.6.

73 Calimach Code – Art. 1245; Romanian Civil Code of 1864 – Art. 1353.

ally, the parties could agree to restrict or even exclude liability for the latent faults, rule which was retrieved trough the Civil Code of 1864[74]. The Roman tradition is continued by the new Civil Code, which, yet provides that the stipulation which restricts or excludes liability shall be void with respect to the defects the seller had knowledge of and did not disclose[75].

The buyer is mainly bound to pay the price and take over the goods.[76] In Roman law, payment (*dare pretium*), consisted in transferring ownership of some quantity of precious metal which served as price, while nowadays the price is expressed in money[77]. The buyer is bound to take over the goods at the place and at the time agreed upon; any delay in taking over the goods will result in him being forced to pay for the costs of preservation[78]. Under Roman law, the buyer owed default interest on price, whether or not he had received a notice of default (*mora emptoris*)[79]. Similarly, according to the Romanian Civil Code of 2011, the vendee owes default interest on price, starting with the day he acquires the ownership, if the goods generate civil fruits or natural fruits (*res fruttifere*) or starting with the day of the delivery if the goods bring him benefits, without generating fruits (*res infruttifere*), unless it was stipulated otherwise in the contract[80].

4. TRANSFER OF OWNERSHIP. DELIVERY (*TRADITIO*)

It has already been said for a number of times that, in Roman law, ownership was not transferred at the conclusion of a contract of sale. Ownership could only be obtained through a specific mode of acquiring property (*e.g. traditio, usucapio)*. *Traditio* consisted in having the transferor deliver the object to the transferee, on the grounds of a contract which explained the transfer of ownership.[81]. For movable property, delivery simply meant handing over the goods,

74 Romanian Civil Code of 1864 – Art. 1354.

75 Romanian Civil Code – Art. 1708.

76 Calimach Code – Art. 1424; Civil Code of 1864 – Art. 1361; Romanian Civil Code – Art. 1719.

77 Ulpianus, lib. 32. ad Edictum, D. 19.1.11.2: "*Emptor autem nummos venditoris facere cogitur*" (The buyer is obliged to pay the pric"); Paulus, lib. 32 ad Edictum, D. 19.4.1.pr.

78 Ulpianus, lib. 32 ad Edictum, D. 19.1.13.22; Cod. 4.49.16; Romanian Civil Code – Art. 1511 par.(2).

79 Ulpianus, lib. 32 ad Edictum, D. 19.1.13.20; Cod. 4.32.2; Cod. 4.54.5.

80 Romanian Civil Code – Art. 1721.

81 SAMBRIAN, T. Op. cit., p. 187.

while the delivery of immovable property was fictive (*traditio ficta*). The most common form of *traditio ficta* was *traditio symbolica*, which consisted in handing over a symbolic object which enabled factual control over property (*e.g.* the keys to the house)[82].

Nowadays, *traditio* (as a mode of acquiring property) has very little applicability. The term for delivery ("traditiune") is mentioned in the Romanian Civil Code, Article 1011, paragraph (4) which provides that corporeal property of value not exceeding 25000 lei may be the subject of a manual gift. A manual gift is made by delivery following an agreement. Likewise, Article 1588 [paragraphs (1) and (3)] stipulates that financial assets incorporated in bearer bonds may only be traded by handing over the papers on which the bonds are issued; an agreement without further delivery is not sufficient for the trade to place. Perhaps the most interesting application of delivery in sales and purchase is the event when the owner sells the same object to more than one person. Article 1275, paragraph (1) stipulates that the vendee who obtains *bona fides* possession of the object becomes the owner, although his contract was concluded at a later date than the others. This is to say that ownership is transferred to the person to whom the vendor has handed the object, although the vendor had already sold the same object to a third party.

According to the Civil Code of 2009, Article 885, paragraph (1), the transfer of ownership of immovable property does not take place at the conclusion of the contract of sale-purchase. What is rather needed for acquiring ownership is to have the property right recorded in the land register. The deed of sale serves as legal instrument for property registration, and the vendor is bound to hand over the legal documents that are necessary for property registration. For this reason the transfer of real estate is similar to *traditio symbolica*.

5. CONCLUSIONS

The reception of Roman law in the Romanian civil legislation was a factor of modernization in the transition from feudalism to capitalism when thinking about the Calimach Code and in the process of integration into the Western European culture, when thinking about the Civil Codes of 1864 and 2009. The

[82] SAMBRIAN, T. Op. cit., p. 187.

massive reception of Roman law is thoroughly reflected in the regulations regarding the contract of sale, which are overwhelmingly of Roman heritage. The provisions regarding the contract of sale that can be found in the Romanian civil codifications (the vast majority of which I could not transcript due to size limitation) seem to have been copied from Roman legal texts, but in fact they haven't. This impressive resemblance is the result of the assimilation of Roman tradition by the people living in the Romanian territories. Some differences do exist, but they are rather insignificant on the whole. Over the course of time, the alterations of the civil laws in this matter were mostly focused on detail, with the purpose of improving the Roman rules so that to make the suit the social conditions of the present.