

# INHERITANCE SALES BASED ON THE NEW CIVIL CODE

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## Abstract

*Inheritance sales are an agreement by which the heir sells their inheritance rights to other persons. We shall mention that such inheritance rights sales can only take place provided that the inheritance procedure has already been opened, therefore provided that the person whose inheritance is under debate has already ceased to exist and only whether the heir has already accepted the inheritance. Whether heirs sell their inheritance rights before having expressly accepted such inheritance, the sales shall be considered an act of tacit acceptance of the inheritance. By selling their inheritance rights, the heir transmits the buyer, in block/entirely, the universality of the chart of assets which form the inheritance or their share of the inheritance, in case there are other heirs as well. In other words, the inheritance sales is a variety of sales as it has as object either the entire inheritance gathered by the seller (the entire inheritance patrimony, whether the seller is an only heir), or only a share of the inheritance (a fraction of the inheritance patrimony, whether there are other heirs as well). The seller finds himself placed in the heir position, as far as both the rights and the liabilities transmitted by the deceased person are concerned.*

Key Words: *sales, agreement, inheritance rights, universality of assets, heir, legatee.*

JEL Classification: [K15]

## 1. General considerations.

The inheritance sales<sup>1</sup> is an agreement by which the heir sells their inheritance rights to other persons. In compliance with the former civil Code dated 1864, this agreement was consecrated only three articles (1399-1401). Therefore, art. 1399 stipulates that the person selling an inheritance, without specifying in detail the inheritance objects, shall be liable only in their quality of heir. The other articles were referring to the seller and the buyer's liabilities, the former law failing to specify the significance of the inheritance sales.

On the occasion of the new Civil Code enforcement, based on art. 1747-1754, the inheritance sales is given a more ample regulation, appropriate, by mentioning the agreement notion and form, the warranty, the seller and the buyer's liabilities, the inheritance debts liability, and also publicity formalities.

Thus, art. 1747 paragraph 1 of the Civil Code, stipulates that, as far as the sale is concerned<sup>2</sup> by sales we shall understand *the right to pick up an open inheritance or a share of it*. Consequently, by the sales agreement, the heir sells

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<sup>1</sup> For certain details see I. Popa, *Inheritance Sales*, in Law no. 3/2005, p.136-147.

<sup>2</sup> In this section, inheritance is understood and regulated as object of the sales agreement/contract (see G. Gheorghiu, *the New Civil Code. Comments on articles*,. Art. 1-2664, C.H. Beck, Bucharest, 2012, p. 1797).

their inheritance rights to another person<sup>3</sup>. Obviously, whether the inheritance rights alienation is free of charge, the result is a donation and in this case the donation legislation shall be enforced.

We further on mention that the inheritance rights can only be sold subsequent to opening the inheritance procedure, namely after the decease of the person whose inheritance is debated and only provided that the heir has accepted such inheritance. The law forbids, under the sanction of absolute nullity, papers which either alienate or promise to alienate certain eventual rights over unopened inheritances (art. 956 of the civil code). In case a heir sells their inheritance rights before having expressly accepted the inheritance, the sales in question constitutes an act of tacit acceptance of the inheritance.

## 2. Sales object.

By selling the inheritance rights, the heir transmits to the seller, in block/entirely, the universality of the chart of assets which form the inheritance or their share of the inheritance, in case there are other heirs as well. In other words, the inheritance sales is a *variety of sales* because it has as object either the entire inheritance picked up by the seller (the entire inheritance patrimony, whether the seller is the only heir), or only a share of the inheritance (a fraction of the inheritance patrimony, if there are other heirs as well). The seller is placed into the position of the heir, as far as both the rights and the liabilities transmitted by the late person are concerned. That is the reason why he will be able to take any of the required measures to recover the inheritance debts, by inclusively claiming the severance of the joint tenancy with the other heirs<sup>4</sup>.

In exchange, in case the seller sells certain determined assets (rights) of the open inheritance, we shall no longer refer to a *variety of sales* (the inheritance sales), but to a *regular sales*, subject to the general regulations of the sales<sup>5</sup>. Furthermore, legatees of particular title, although a heir, cannot sell an inheritance because they do not get a universality of assets, but only one or more determined assets (rights).

Based on inheritance rights sales agreements, family souvenirs can be sold as well. Based on art. 1141 of the civil code, family souvenirs refer to assets belonging to the family members and to assets which witness their history. This category also includes assets of the sort of family member mails, family archives, decorations, collection weapons, family portraits, documents, as well as any other

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<sup>3</sup>See I. Urs, *Civil Law. Special Contracts. Academic course*, Universul Juridic, Bucharest, 2015, p. 172; C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, *A Romanan Civil Law Treaty*, vol. II, ALL, Bucharest, 1997, p.575.

<sup>4</sup>*Ibidem*.

<sup>5</sup>M. Mureșan, *Civil Law. Special Contracts. Academic Course*, Cordial Lex, Cluj-Napoca, 1999, p.110. F. Deak, *A Treaty of Civil Law /Special Contracts*, the III-rd edition updated and rounded up, Universul Juridic, Bucharest, p.105.

assets of special moral significance for the family in question<sup>6</sup>. We shall conclude that not all the assets can be classified as family souvenirs, but only those which are in connection with the family history.

With reference to *family assets*, art. 1752 paragraph 1 of the Civil code in scripts or family portraits decorations or other similar assets, without significant patrimonial value, but which have significant affective value for the seller, are presumed (simple presumption) not to be included into the transacted inheritance.

If these assets have, nevertheless, significant patrimonial value, the seller shall expressly stipulate in the contract a clause for the reservation of their property, being forced, on the contrary, to pay the buyer the assets price on the sales date (art. 1752 paragraph 2 of the civil code).

### 3. The agreement form.

The inheritance rights sales agreement shall be concluded in authenticated form, under the penalty of absolute nullity (art. 1747 paragraph 2 of the civil code). Therefore, so as to be valid, the contract shall meet both the validity requirements of general agreements (art. 1179 of the civil code), and the special formal requirements (the authenticated form).

### 4. Liabilities of the seller and of the buyer.

Due to the fact that the sales under analysis has as object a university of assets or a fraction of such university, the buyer shall be appropriately transmitted both the assets and the liabilities of the inheritance. Therefore, based on the provisions of art. 1749 and 1750 of the civil code, the following consequences arise:

- the heir seller shall have to hand the buyer *the entire assets*, namely everything included into the inheritance (or according to their inherited share) on the inheritance opening moment, as well as everything subsequently added to the inheritance<sup>7</sup>. Consequently, if not otherwise stipulated, the seller shall have to remit the buyer all the fruits which he has harvested and all the payments received for the inheritance debts before the conclusion of the agreement, the price of the assets sold from the inheritance and also any other asset replacing an asset of the inheritance<sup>8</sup>. As an effect of the sales, the debts which the heir seller had against the *late person* (inheritance), although extinguished by confusion at the moment

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<sup>6</sup> Among other assets which may be considered family souvenirs we shall mention, for example, diplomas and family jewellery. The French jurisprudence admits family jewellery within this category (to this effect, see, H. Capitaint, F. Terre, Y. Lequette, *Les grands arrêts de la jurisprudence civile*, Tome 1, 11-e edition, Dalloz, Paris, 2000, p. 461, quoted by D. Chirică, *Civil Law. Inheritance and Wills*, Rosetti, Bucharest, 2003, p. 34).

<sup>7</sup> See I. Urs, *Civil Law. Special Contract. Academic Course, op.cit.*, p.173; M. Mureşan, *Civil Law. Special Contract. Academic Course, op.cit.*, p.110.

<sup>8</sup> See G. Gheorghiu, *The New Civil Code. Comments on Articles, op.cit.*, p.1798.

of its opening, are revived, because they are elements of the inheritance assets which have passed to the buyer<sup>9</sup>.

- on the other hand, as the buyer is transmitted not only the inheritance assets, but also *the inheritance liabilities*, he will have to pay back to the seller, if not otherwise stipulated, the amounts paid by the latter for the inheritance debts and encumbrances, as well as the amounts which the inheritance (the late person) owes to the seller (as an effect of the sales, are revived, together with the seller's debts towards the inheritance, although they have been extinguished by confusion). Another situation in which the buyer is transmitted not only the inheritance assets, but also its liabilities is regulated by Law no. 53/2003-The Labor code<sup>10</sup> and targets the employee's heirs<sup>11</sup>.

The buyer's liability is explained by the fact that the agreement object is formed of an entire inheritance or of a share of an inheritance, whereas the buyer undertakes all the inheritance debts, inclusively those paid by the seller. It is provided that the inheritance fees paid by the heir seller shall not be given back<sup>12</sup>.

As for the inheritance debts (the late person's debts) against creditors other than the seller, art. 1751 of the civil code' it is stipulated that "*the seller remains liable for the debts of the sold inheritance*". This because the seller cannot alienate the very quality of heir. On the other hand, as the inheritance sales may involve risks for the inheritance creditors, for the satisfaction of their claims<sup>13</sup>, the law provides that they are entitled to pursue to seller heir for the payment of the inheritance debts. Thus, the inheritance sales is not opposable to the inheritance creditors.

Whether the inheritance creditors pursue the heir seller, the latter shall be entitled to turn against the buyer by seeking legal remedy or regress<sup>14</sup>.

The buyer can be thus pursued by the inheritance creditors only by derivative actions, as he has not become their direct debtor<sup>15</sup>.

## 5. Seller's warranty.

An inheritance sales, as any other sale, generates the *warranty liability* to be borne by the seller.

To this effect, art. 1748 of the civil code provides that „by failing to specify the assets which fall under his rights, the seller of an inheritance

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<sup>9</sup>See C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, vol. II, *op.cit.*, p.575.

<sup>10</sup> Law no. 53/2003-the Labor Code, republished by the Official Gazette of Romania, no. 345 dated 18 May 2011.

<sup>11</sup> See Nicolae Roș, *Labor Law. Academic Course*, ProUniversitaria, Bucharest, 2017, pp.408-409.

<sup>12</sup>M. Mureșan, *Civil Law. Special Contracts. Academic Course,op.cit.*, p.110.

<sup>13</sup> See G. Gheorghiu, *The New Civil Code. Comments on Articles, op.cit.*, p.1798.

<sup>14</sup> It was appreciated that, in the absence of express provisions to stipulate joint and several obligations or *in solidum*, the seller's liability to pay the inheritance debts, is subsidiary to that of the buyer (see G. Gheorghiu, *The New Civil Code. Comments on Articles, op.cit.*, p.1798).

<sup>15</sup> See F. Deak, L. Mihai, R. Popescu, *A Treaty of Civil Law. Special Contracts*, the IV<sup>th</sup> updated, vol.1, Universul Juridic, Bucharest, 2006, p. 143; C. Hamangiu, I. Rosetti-Bălănescu, Al. Băicoianu, vol. II, *op.cit.*, p. 576.

warranties only his quality of heir, exception making the case in which the parties have expressly removed this warranty as well”.

Consequently, whether inheritances are sold under contracts which fail to specify the nature or the number of the inheritance assets, the buyer cannot formulate claims against certain goods which he thought to belong to the inheritance in question, but which in reality do not belong to it. In case the buyer is evicted, the seller is liable only whether the eviction is generated by the lack of his heir quality, and not by other causes, because the seller has got both the assets and the liabilities of the inheritance.

The bylaw warranty regulated by art. 1748 of the civil code may be modified by the parties' agreement, through the seller's liability *extension* (by specifying in detail the inheritance assets under sales), *limitation or exoneration* (for the diminution of the seller's inheritance rights by their belonging to another heir; moreover, the parties could even give the sales a random character, as the buyer can undertake all the risks of such operation, while the seller does not even warrant his quality of their; based on this hypothesis, the seller could keep the price – in case of annulment of the sales or of total eviction of the buyer – provided that the sales would have been performed in good faith)<sup>16</sup>.

## 6. Publicity formalities.

Based on art. 1753 paragraph 1 of the civil code, the buyer of an inheritance gets real rights over the real estate of the inheritance only based on the land registry regulations, respectively *only whether this real estate is registered into the land registry* (art. 885 paragraph 1 of the civil code, which shall be nevertheless applied only subsequent to finalizing the land registry works for each administrative-territorial unit and only by opening the land registries for the real estate in question). This because the *buyer's rights derivate from the agreement/contract, not from the inheritance*<sup>17</sup>.

The buyer cannot oppose to tierces the acquisition of other rights included into the inheritance only provided that he has accomplished the formalities required by the law thus rendering opposable the acquisition of each of these rights (art. 1753 paragraph 2 of the civil code).

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<sup>16</sup> F. Deak, op.cit., p.107.

<sup>17</sup>M. Mureșan, *Civil Law. Special Contracts. Academic Course* op.cit., p.111;  
Deak, L. Mihai, R. Popescu, *A Treaty of Civil Law. Special Contracts* op.cit., p.144.

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