UNIVERSITY "LUCIAN BLAGA" OF SIBIU
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PRE-CONTRACT SALE PURCHASE

DOCTORAL THESIS

-abstract-

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The Pre-sale Agreement - Summary

The theory identified three different conceptions about the preliminary agreement, due to the bigger or smaller similarity to the final sale agreement which is preparing.

When talking about preliminary agreement, the narrower concept takes into account the pre-contract undertaking both parties, the negotiations being thus carried to the end and the essential elements of the future agreement being defined therein. In this view, the principle agreements, the covenants and the letters of intent, the preliminary contracts, the partial contracts determining aspects of negotiation or covenants, preferably are not the preliminary agreements, as the essential elements of the sales to be finalized are not entirely determined. Preliminary agreements would be only the mutually binding promises of sale, arguing that only the mutually binding character would characterize the preliminary agreement.

The average idea on the preliminary agreements sees it as a convention closer to the sales, but still lacking one of its essential elements. Conventions related to negotiations, are thus excluded from this category, but mutually binding promises of sales, unilateral promises of sale and purchase, option covenants and preference options are included.

The third broader concept makes preliminary agreements category to cover any agreement which prepares and prefigures a future contract, binding but provisional agreement. It is considered that the sale would be completed in successive stages, the so-called 'draft agreement' in the German law, and each of those steps (points), leading to achieving an agreement on the final agreement, form a preliminary agreement.

This thesis embraced the average concept, considering that the category of preliminary agreements includes the pre-emption agreements, the unilateral promises of sale and purchase and the bilateral sale promises. Moreover, this view seems to be acquired by the New Civil Code, as well, which regulates the promise to sign the contract under Art. 1279 Para. 4, stipulating the following: "*An agreement by which the parties undertake to negotiate in order to conclude or amend an agreement is not a promise to sign the contract*".

We have dedicated one distinct title to each of these institutions.

The first title, entitled the ***"Preemption Agreement"*** is structured in **five chapters** as follows:

Chapter I, **"*Introduction and form of the pre-emption agreement",*** comprises two sections, the first containing references to the origin, the evolution, the legal nature and the current regulation of the conventional pre-emption law, and the second, dealing with situations where the preference agreement is prepared by the parties either as a convention itself, or arises by virtue of a larger contract or a unilateral act.

Starting from the idea that the right arising from a pre-emption agreement is nothing more than a conventional pre-emptive right, we have shown the evolution from its rudimentary forms found in the Greek and Roman law, marked by the principle of preserving the family property of special importance due to the spiritual link between it and the family and the religious worship, also, knowing substantial transformation in the Byzantine law and reaching the *protimisis right* configuration to protect the economic unity of the village communities.

In the Romanian law, knowing a particular development and an applicability mainly with matters of land alienation, but also in various other areas, until the entry into force of the New Civil Code, the term of "*right of first refusal*" was used to define the priority right to acquire assets conferred by the law to certain individuals. In the event that the priority right was born of the parties' agreement, the term of *"preference right"* was used.

In our study we referred to this latter right, of contractual origin and regarding the conclusion of a contract of sale, hereinafter referred as "*conventional right of first refusal"*.

In this sense, the pre-emption agreement was defined as representing the agreement by which the owner of an asset undertakes that, in case of selling it, gives preference to the beneficiary if he/she agrees to sign the contract under the same conditions and at a price equal to the price offered by a third party.

Examining the legal nature of the pre-emption agreement, we have shown that a part of the theory characterized it as a promise of sale affected by a double suspensive condition, that the seller decides to sell and the beneficiary to manifest the willingness to buy at the price and under the conditions agreed with a third party, while other authors have found that a preliminary agreement is a unilateral promise of sale, because, after the promissory seller taking the decision to sell and making the offer of sale, the agreement becomes a unilateral promise of sale, with the same legal regime.

The **Chapter II**, examined the ***substantive conditions*** of this Convention, which in principle are common to any agreement, highlighting what is specific to this institution. Thus, we have shown the incidence of the legal qualification assigned to the pre-emption agreement, of act of management or disposition through restricting the right to dispose, at the purchaser's choice, on the promisor's consent,

with specific reference to the existence of a right of co-ownership or common (marital) property over the asset, derived from the agreement. We considered that because the promisor either by the offering for sale addressed to the promisee, or by negotiating the conditions of sale with a third party, actually has the ability to freely set the price desired for the sale felt as a restriction on the right to dispose of its property. In this view, pre-emption agreement has the character of an act of administration, and can be validly concluded by one of the co-owners or by one spouse. We made clear on this last point that, if by the conclusion of such contract as promisor, by one spouse only, in light of the New Civil Code, this contract is valid, provided that if the interests of the spouse who did not signed, as regards the matrimonial property have been damaged by the conclusion of the pre-emption agreement by the other spouse, he /she may recover damages from the signatory spouse (Art. 345 Para. 4 in the New Civil Code). With regard to the capacity, we showed that neither the promisor nor the promisee is required capacity to perform acts of disposal, and this will be considered only upon the conclusion of the final sales agreement.

Chapter III entitled ***«Right of first refusal before the event generating the preference »*** was divided into six sections. In the **first section** we went through the **legal nature of the right of first refusal**, underlining its untransferable nature as viewed by the editors of the New Civil Code, contrary to the previous doctrine and jurisprudence, both Romanian and foreign, on this issue.

The second section was dedicated to the **life of the pre-emptive right**. If before the entry into force of the New Civil Code, this issue was governed by the free will of the parties by virtue of the unnamed character of the pre-emption agreement, currently the maximum duration of the conventional pre-emptive right is expressly provided by the law, through mandatory rules from which the parties can not derogate under the provisions of Art. 1730 Para. 2 of the New Civil Code.

Thus, the principle is that, the maximum duration of pre-emption right is the life expectancy of the preemptor.

But in principle, the preemptor's death results in extinguishing the pre-emptive right only when it was created without mentioning any term.

The situation is more difficult when the parties mentioned in the agreement a validity term of the conventional pre-emptive right.

In this case it is necessary to distinguish between the time of death occurrence of the preemptor, as Art. 1740 the final thesis envisaged the date of the pre-emptive right when speaking of five years term. If death occurs during the period up to 5 years elapsed from the date of preemption, the right of first refusal is passed to his /her successors enjoying it for the rest of time until the end of 5 years. If the

preemptor's death occurs after 5 years, from the date the right of first refusal arises, this is terminated, without being transmitted to successors.

The **third section** approached **cases of nullity** of the pre-emption agreement, respectively, change of the intended purpose, interdiction put on the promisor during the pre-emption agreement, destruction or disappearance of the object of the pre-emption right and disappearance of the cause envisaged by the Parties upon the conclusion of the preemption agreement.

Transmissibility of the pre-emption right was analyzed in **section IV** of this Chapter, highlighting the difference between the situation before the entry into force of the New Civil Code and the situation governed by the current regulations of this regulatory document. Thus, in the first situation, the pre-emption right could be the object of an assignment by acts inter vivos, unless this had been established *intuitu personae*, and symmetrically, the promisor's inheritors were held to comply with the obligation assumed by their predecessor. Under the new regulations of the Civil Code, the conventional right of first refusal can not be transferred between acts inter vivos, but it can be transmitted to successors only if agreeing on a validity term of such right and the occurrence of the preemptor's death before the expiration of five years from the date such preemption right was set. Even in the latter case, the preemptor's heirs may invoke this right only during the time remaining between the date of the preemptor's death and the date of fulfillment of five years from the time of the pre-emption right. In terms of the requirement to respect the right of first refusal by the promisor's heirs, the situation remained unchanged.

Section V of this chapter, ***«Obligations of the promisor before the event generating the preferences"*** concerns the freedom of the promisor to sell and his being banned from the conclusion of another preemption agreement, a promise of sale of the property object of the preemption agreement and the conclusion of a rental agreement on the said property.

The first point concerns the fact that, after the conclusion of the preemption agreement, the promisor is free to sell or to keep the property. This freedom is absolute, the promisor having the discretion to dispose of the asset, which it may exercise as he /she wishes. The new Civil Code allows the valid alienation of the property derived from a preemption agreement by the promisor to a third party, provided for stipulating therein the suspensive condition consisting of a failure to exercise the right of first refusal. Thus, the content of Art. 1731 of the New Civil Code provides that, *"The sale of the property on which a right of first refusal is legally or conventionally placed, can be done to a third party, only under the suspensive condition of the preemptor's failing to exercise the right of first refusal."*

The prohibitions mentioned are expressions of the obligation to do nothing to affect the right of first refusal by its holder and the effects of their breach result in attracting contractual liability of the promisor for breach of obligations under agreement.

Chapter IV entitled ***«Event generating pre-emption »*** consists of two sections. **The first section** deals with ***general issues on the event generating pre-emption***. We have considered that it is not possible for a legal act to generate pre-emption, because it necessarily implies a manifestation of willingness of the promisor, showing that, usually, the event generating pre-emption is a legal act, since the promisor who concluded such pre-emption agreement must make the decision of selling its asset.

In connection with the event of generating preemption, we have tried to answer these questions: if the right of first refusal implies the parallel presence of a third party intending to contract with the promisor or it may be exercised in the absence of a third party ? And what if the right of first refusal arises only when the promisor found a possible buyer competing with the holder of the right of first refusal?

The classical doctrine speaks of the need for a firm purchase offer addressed to the promisor by a third party, as in the absence of such an offer; there will never be a true pre-emption. The presence of a third competitor is required for the operation to be included in the pre-emption agreement. This view seems too restrictive because, normally, pre-emption is designed at an equal price and terms, yet it is not essential. What is fundamental for the holder of pre-emption right is to acquire priority in purchasing the property in question .

Under the New Civil Code, the offer for sale made by the promisor to the promisee can take place both before and after contracting the sale with the third party provided for non-exercising the suspension condition of the priority right by the beneficiary.

The property price issue is important enough, but not essential regarding the right of first refusal. For all possible assumptions to be incorporated, it is preferable to say that the preference is exercised on the price and in comparable (not equal) circumstances, because there are pre-emption agreements based on which, by virtue of contractual liberty, the holder of the right of first refusal is offered the possibility to decrease in price. Pre-emption exists anyway, because what is essential for the beneficiary is to be preferred to the third party.

In **section II** we have dealt with the issue of the **right, object of the event generating pre-emption**, showing that for the existence of the event generating such right, the legal operation designed by the promisor must have the same right as that of the holder and which could be exercised under the pre-emption agreement. The contract which, by excellence, determines the efficiency of the right of first

refusal is the contract of sale, no matter if it is affected by modalities (suspensive or resolutive terms and conditions) or accompanied by certain provisions (deferred payment of the price).

If there are inconsistencies between the scope of the pre-emption agreement and the extent of the property for sale, excepting for a particular and express provision of the agreement that would point at and would ban the effectiveness of the conventional pre-emption right in case of sale of only a fraction of the ownership title on which there is a priority purchase right, the pre-emption right is naturally applicable, since the pre-emption agreement is effective for any sale resulting from the split of the property of the initial pre-emption agreement. The existence of a right of first refusal on a part of the property offered for sale shall not constitute an obstacle to this sale and therefore the promisor is free to achieve the global sales with an object wider than the preference. It was considered that, to make up for this freedom recognized to the promisor, there must also operate an extension of the right of first refusal of the promisee to the whole offered for sale. If it seems beneficial, the holder of the right of first refusal should be able to exercise the right of priority, even where it concerns only a part of the property. There is an extension of the right of first refusal, taken as an equivalent of the freedom offered to the promisor to selling a property larger than that of the object of pre-emption.

This concept was embraced by the Romanian legislature, which, in Art. 1735 Para. 2 of the New Civil Code expressly dedicate the possibility of the holder of the legal or conventional pre-emption right to exercise the right on the entire property sold, provided for recording the price set for all goods sold.

We have shown that, subject to fraud, a release for payment does not confer the holder of the pre-emptive right the opportunity to exercise the right .

If the holder of the pre-emptive right can prove the fraud, he may declare the payment invalid and therefore claim to exercise the right on the transfer of the property.

Payment is rather a way of extinguishing obligations, than a way to transfer ownership.

It may be that the value of the property for which payment is made does not correspond exactly to the value of the creditor's claim, in which case the latter one will pay the property owner a sum of money equivalent to the difference between the property value and the debt value. In this situation, depending on the amount paid by the lender, one can qualify the legal nature of the operation concerned and we witness either a payment or a sale.

If value of the property is more important than the money paid by the lender, there is a questionable payment in terms of applicability of the pre-emptive right. Contrary, if the property value is

less than the amount of money, we may consider that there is essentially a true sale, which undisputedly makes the pre-emptive right applicable.

Chapter V entitled ***«Right of first refusal after the event generating the preference»*** is divided into three sections. **Section I, «*Exercise the right of first refusal*»** illustrates how to exercise the right of first refusal and the sales drafted in the agreement. After occurrence of the event generating pre-emption right, namely after the promisor offers the property for sale, a sequence of operations will occur, a whole procedure in which the promisor in the first place and then the holder of the right of first refusal will have to take certain actions resulting in either the removal of the right of first refusal or the purchase by the recipient of the property derived from the pre-emption agreement, as applicable.

The first stage involves the notification addressed by the promisor to the holder of the right of first refusal.

This notice is the start itself of the right of first refusal applicability. According to the New Civil Code, notifying the preemptor on the intention of selling can be done in two ways : through an offer of sale made by the promisor, under Art. 1730 Para. 3 of the Code or by notifying the contents of the contract concluded by the promisor with a third party in accordance with Art . 1732 Para. 1 and 2 of the Code.

The law does not stipulate the form in which the offer of sale (notification) should be made by the promisor, but from the provisions of Art. 1732 Para. 1 and 2 of the new Civil Code, which speaks of the preemptor's notification if the agreement concluded by the promisor with a third party and stating that it must cover the content of the agreement signed with the third party, as well as the full name of the vendor, the property description, the duties imposed on it, the terms and the conditions of sale and the location, one might infer that the sale offer should be in written form. The same conclusion about the necessity of written form is clear from imposition of this form of expressed agreement by the preemptor, taking into account the provisions of Art. 1737 Para. 3, speaking about the notification made by the preemptor to the land registry office that replaces the notification of the agreement referred to in Art. 1732 Para. 3 which produces the same effect.

If the pre-emptive agreement contains no provision allowing the deduction of the parties will relative to its content, it must contain all the essential elements that can offer the recipient the opportunity to make a decision for the purposes of exercising or non-exercising its right of first refusal.

The essential elements of a notice must refer to the sufficient and accurate determination of the object of sale, the sale price and the terms of payment of the price and entry into possession of the property. The proposed price is normally the price offered by a third candidate acquirer, but it may happen that, in the pre-emption agreement the parties had stipulated the priority for purchase at a price

they have determined in advance, when editing the agreement. The validity of such a clause could not be questioned because it is not an infringement of the notion of priority, but rather, it reinforces it because the provision allows the holder of the right of first refusal to consider itself buyer at a price lower than the price offered by a third party, when putting the property on sale. The new Romanian Civil Code, embracing the French jurisprudence and doctrine relative to the content of the notification to be sent to the holder of the conventional preemption right, expressly establishes its mandatory content.

Thus, assuming that the promisor deciding to sell, directly addresses the preemptor, according to Art. 1730 Para. 3 of the Civil Code, he must report on its offer of sale. According to Article 1188 of the Civil Code, *«A proposal is an offer to contract if it contains sufficient information to form the agreement and expresses the intention of the offeror to be bound, in case of acceptance by the recipient».*

Where the promisor has already signed the contract with the third party under the suspensive condition not to exercise the conventional right of first refusal, Art. 1732 Para. 1, the Civil Code provides his /her obligation to send an immediate notification to the preemptor, of the agreement concluded with the third party. Given that the third party has an interest in clarifying the legal situation created by the conclusion of the sale, while pending the preemptor's manifestation of will, the notification of the agreement concluded can be made by the latter one, as well.

According to Para. 2 of the same article, the **notification to the promisor or by the third party to the preemptor** must have a **minimum mandatory content**. Thus, it is necessary to refer to the full name of the seller, to make the property description, to specify the tasks imposed on it, the terms and conditions of sale and to indicate where the property is situated.

According to the provisions of Art. 1730 Para. 3 and art 1732 Para. 4 of the Civil Code, the **deadline for acceptance of the offer to sell or exercise the conventional right of first refusal subsequent to the notice of sale** with the third party, shall not exceed 10 days when it concerns the alienation of movables and not more than 30 days when it concerns the sale of real estate.

These legal provisions are not mandatory, meaning that on their common consent, the parties can agree on longer or shorter terms of acceptance of the offer for sale or exercising the conventional pre-emptive right than those fixed by the legislature. The statutory provisions listed above are applicable whenever the parties have not provided anything about the preemptor's time of acceptance.

Expiration of deadlines provided in the offer of sale made by the promisor to the preemptor in accordance with Art . 1730 Para. 3 Civil Code, without having manifested his /her option in any way, will mean the tacit non-acceptance of it; thus after their fulfillment the promisor is free to sell the property to whom he /she considers appropriate.

Deadlines laid down by the legislator in Art . 1732 Para. 4 Civil Code, have the meaning of limitation periods, on expiry of which the conventional right of first refusal is terminated. Thus, if, after extinguishing the right of first refusal, the promisor nevertheless concludes the sales agreement with the preemptor, this will not happen under the right of first refusal, but the common law.

Where the conventional preemption right was created for several preemptors, indivisible by nature, like the right of choice born of a unilateral promise of sale, its exercise would involve the unanimous agreement of all preemptors.

This solution is currently specifically dedicated by the new Civil Code in Art. 1739, which provides, without distinguishing between the legal right of first refusal and the conventional nature that *«The right of first refusal is indivisible and can not be assigned».*

Thus, considering that for the exercise of this right, the unanimous agreement of all preemptors is necessary, it means that the notification should be sent to each of them.

As regards the response of the pre-emption right holder, option in the sense of acceptance the sales offer can only be express and in writing, while its rejection can be implied.

In this latter case, the option will be implied when the holder of the right of first refusal has not manifested any intent. From his/her silence, one must infer that has declined the offer of sale, assuming that he /she gave up the purchase project, because if he/she had intended to become the purchaser, it would have been absolutely necessary to manifest itself alone and express. Another argument in that the acceptance of the offer of sale by the preemptor must be made in written form is revealed by the interpretation of Art. 1737 Para. 3 of the new Civil Code, under which the land registry office notification of the proof recording the price available to the seller has the same effect and may replace the communication to the seller of the preemptor's agreement to conclude the sale agreement, in accordance with Art . 1732 Para. 3 of the Code.

Another condition for the promisee's option efficacy for the purposes of acquiring property is that its acceptance is accompanied by recording the price available to the seller. This provision is mandatory, failing to meet this requirement, exercise of the right of first refusal is conventionally without effect.

Moreover, even if the third party in the sales contract signed by the promisor would have benefited from the facility of receiving payment terms, this facility is not recognized to the preemptor. Art. 1736 of the Civil Code explicitly prohibits this possibility by stating that «*When the contract with the third party awarded payment terms, the preemptor is not entitled to these terms».*

As regards the **specific modality to achieve the sale** subsequent the acceptance of the conditions of sale by the preemptor, we have shown, that once the sale offer accepted by the promisee, there is an agreement on the subject and the price of sale. To complete the operation, the actual and practical sale is necessary, which may involve a certain time period.

Thus, in the first variant exposed by the legislator in Art. 1730 Para. 3 Civil Code, when the promisor communicate the offer of sale to the promisee and he /she accepts the term and the conditions, the contract of sale will be considered in principle, concluded upon communication of acceptance of the outright offer by the preemptor.

Regarding the second option of closing the sale, the legislature provides in Art. 1732 Para. 1 the new Civil Code that, *"The seller is obliged to notify immediately the preemptor on the contents of the contract concluded with a third party. The notification can be made by the latter one."*

From the interpretation of these legal rules, one might infer that the exercise of the conventional preemption right is always preceded by the conclusion between the promisor and the third of a sale agreement, that in accordance with Art. 1731 of the Code to be considered valid must be consented under the suspensive condition of non-exercise of the pre-emption.

Obviously, in our law, it is not the case, having regard to Art. 1730 Para. 3 of the Code, relating to the offer of sale made to the pre-emptive right holder, as well as in Para. 2 thereof, which provide the possibility for the parties to depart from the rules governing the pre-emption right.

Since Art. 1733 Para. 1 the New Civil Code provides that by the exercise of the pre-emption, the sales contract is considered concluded between the promisor and the promisee, it is clear that, in the case of movables, once the promisor's offer for sale (notification) meets the promisee's agreement, the sale is finalized.

If by definition, we talk of a property, so a real estate sale, this supposes the conclusion of a notarial deed (for land and buildings under Art. 10^1 of the Law no. 114/1996 with subsequent amendments) and fulfilment of real estate advertising formalities.

Thus, if for the ultimate sale, the law requires a binding form, the question is how to conclude the final contract between the promisor and the promisee, i.e., whether it is necessary for them, besides to communicate the offer to sell (notification) and the agreement, must reiterate the agreements as required by the law.

It should be noted that Art. 1733 Para. 1 shows that the final sale is deemed concluded between the promisee and the seller in the conditions of the contract concluded with the third party (presumably the latter one took the solemn form provided by the law for its validity), and that the contract between

the promisor and the third party is cancelled retroactively, which raises a further question mark in relation to the need to conclude or not a formal act of sale between the promisor and the promisee after formulation of the offer for sale (the notification) and the purchase agreement.

We showed that the formulation of the offer for sale (the notification) and the expression of the agreement to purchase, namely just by exercising the pre-emption, give rise to obligations on the parties to conclude in the future the contract in the form required by the law. This would mean that the final sale is completed only upon the official signature of the contract. In case of refusal, the provisions of Art. 1669 Para. 1 of the new Civil Code, concerning the possibility of a court order replacing the agreement, may be applied by analogy.

In the **second section** we dealt with the **penalties that may arise for failure to comply with the pre-emptive right**, showing that they may relate to granting damages, nullity or unenforceability of the contract of sale to the promisee or substituting the purchaser with the holder of the first right of refusal.

In the absence of fraud or if the promisee has no longer the interest in the annulment of the sale concluded between the promisor and the third party in violation of his right of first refusal, the promisor's contractual responsibility will be committed, nevertheless. He/she will have to repair by equivalent the predictable damage caused to the creditor by failure to enforce the preference agreement. The third party signatory assumes the tort liability when a mistake of some kind in the meaning of Art. 1349 of the New Civil Code (Art. 998 - 999 Civil Code of 1864).

The existence of a pre-emptive agreement does not determine the impossibility of a property to be sold, so that the sale of such property to a third party is in principle valid. When the property has been sold to a third party without respecting the right of first refusal of the promisee, it may have an interest in the annulment of the sale, to be able to exercise the right. Only if the promisee can prove the fraud of its interests by the promisor signing the contract of sale with the third party, we recognize the possibility to request cancellation of this agreement. This solution is based on the contract unlawfulness and the principle *«fraus omnia corrumpit»* and to be effective, requires that the holder of the right of refusal that was violated to make a double proof, that of the purchaser's knowledge of the pre-emption agreement and the intention of the promisee to exercise the right.

The third sanction that can be imagined for breaches of obligations arising from the pre-emption agreement is the substitution of the promisee in place of the third-party purchaser. Considered unacceptable by most Romanian and foreign old doctrines, this possible penalty is taken from the legal regime of rights of first refusal that sanction their violations with the possibility of substitution the promisee with the purchaser. However, the sanction of the right of first refusal was adopted by the

Romanian legislature in matters of conventional preemption law. The solution adopted by our new Civil Code on the preemptor substituting the third party buyer for failure to comply the pre-emptive right is found in the newer solutions of the French jurisprudence. In these solutions, however, the promisee being instead of the third party buyer occurs only if the latter one was aware of the existence of the pre-emption agreement and the promisee's intention to rely on it.

We should note that the Romanian legislator aggregated, for infringement of the conventional preemption right, two specific penalties namely, that the substitution of the promisee as the third person who contracted with the promisor, and that the cancellation of this agreement, providing the Art. 1733 Para. 1 that, *"By exercising the pre-emption, the sales agreement is considered concluded between the preemptor and the seller in the conditions of the contract signed with the third party and this latter contract is canceled retroactively."*

It should be also noted that, in our law, the penalty for dissolution of the sales agreement concluded between the promisor and a third party, following the non-exercise of a right of first refusal, under the New Civil Code is applies, whether the third party is of good or bad faith .

Only the bona fide third party will be compensated by the seller, according to Art. 1733 Para. 1 the final thesis, under conditions specific to eviction, while the bad faith third party will naturally receive only the amounts paid for the price for sale and related costs.

It should be noted that although the pre-emption agreement, unlike sales promises, contains fewer elements to be found in the final contract of sale, assuming only the choice of the contractual partner and the indication of the property, having thus a much more diluted binding content, as regards the consent included, actually, in the new Civil Code view, it establishes a situation more favorable and more active to the promisee, than the beneficiary of an unilateral or bilateral promise of sale.

In the **last section** of the title regarding the pre-emption agreement, we have examined the situation of the **contest between preemptors**, when their rights relate to the same property. The right of first refusal is analyzed in view of the new Civil Code as a conventional right of first refusal, but without the force of legal preemptive rights.

This is to be noted as regards solving the situation in which there are several pre-emptive rights of legal or conventional origin, relating to the same property.

Art. 1734 the new Civil Code establishes the rules applicable to competition between preemptors, rules from which no derogation in accordance with the provisions of Art. 1730 Para. 2 of the same code can apply, any contrary clause being deemed unwritten.

Thus, under the law, the holder of a legal right of first refusal will always take precedence over any other conventional pre-emptive right holders, regardless of the publicity formalities. If the right of all competing preemptors has legal origin, then the preemptor preferred by the seller will take priority.

In the case of real estate sales, if all preemptors have rights of first refusal arising from the contract, the one who enlisted first his right in the land registry records will have priority, while for sale of securities, the preemptor with the older firm date /document under private signature acknowledging the convention, will take precedence.

The second title of the thesis entitled ***"The unilateral promise to sell"*** approaches this legal institution, with special emphasis on the character and specificity of the option agreement for sale, taking into account the new regulations of the Romanian Civil Code. This title has been divided into five chapters, as follows:

Chapter I approached the place and the role of the unilateral promise in the process of formation of the final agreement, its concept and its rules. **The role of the unilateral promise of contract** is seen both in the gradual formation of the consent, and in the progressive outline of the final contract.

Thus, in this preliminary agreement, only the promisor consents and undertakes to conclude the final agreement, setting the offer and giving indefeasibility of promise in terms of efficacy, while the promisee is free to decide whether to accept or decline the offer, having control over the process determining the final agreement by exercise of its potestative option right.

The unilateral promise of sale, known in the doctrine and jurisprudence as promise or option of sale, was **defined** as a contract concluded between a person called promisor, who undertakes to another person, called the promisee, to sell a property for a specific price (determined or determinable), within a period (definite or indefinite), while the promisee has the freedom to choose whether to buy it or not.

As regards the legal regulation of the unilateral promise of sale, we have shown that the book V *"About obligations"*, Title IX *"Various special contracts"*, Chapter I *"The sales agreement"*, Section I *"General provisions"*, section 4 is entitled *"The option agreement regarding the contract of sale and the promise of sale"*.

Article 1668 of the future regulations speaks of the option agreement regarding the contract of sale and the next article states that the provisions regarding the right of action sprang from a bilateral promise of sale applies accordingly to the unilateral promise of sale or purchase.

From the different wording of the legal rules contained in Articles 1668 and 1669 in the matter of sales, with reference to the general rules of Art. 1278 and 1279 in the matter of obligations, of the New Civil Code, it is noted that the option agreement regarding the contract of sale and the unilateral

promise of sale are treated by the new Civil Code as two legal institutions that produce legal effects differently, but only by reference to the closeness of each of them to the final sales agreement envisaged by the parties.

The editors of the new Civil Code shared the traditional view that the unilateral promise of sale puts in charge of the promisor the burden of doing, namely to conclude the projected future sale, while for the conclusion of the final sale there is required to complete a new manifestation of the will in this respect. To understand how they the unilateral promise of sale and the option agreement regarding the contract of sale are regulated in the new Civil Code, we should have in view both the special regulations in the sales contract and the general ones under Title II "Springs of obligations", Chapter I "The Agreement".

The new Romanian Civil Code defines, in the section entitled "Effects of the contract" , § 1, "Effects between parties" in Art. 1.278 ***the option agreement*** as, that "*agreement by which one party remains bound by its own declaration of will and the other can accept or refuse it, the declaration being considered a binding offer with the effects provided for in Art . 1.191*."

The following paragraphs provide:

"(2) If the parties have not agreed on a deadline for acceptance, it may be determined by court injunction, summoning the parties".

(3) The option agreement must contain all the elements of the agreement the parties seek to conclude, so that it can be concluded simply by the option promisee's acceptance.

(4) The agreement is concluded by exercising the option in the promisee accepting the declaration of will of the other party as agreed.

(5) Both the option agreement and the acceptance statement must be completed as prescribed by the law for the agreement which the parties seek to conclude".

Art. 1279 Para. 1, without defining the ***promise to contract***, new Civil Code states that the *"Promise to contract must contain all the terms of the contract promised, failing which the parties could not fulfil the promise".*

The following paragraphs of the same article provide:

(2) *In case of breach of promise, the promisee is entitled to damages*.

(3) Also, if the promisor refuses to sign the promised agreement, the court, at the request of the party fulfilling its obligations, may give a court order to replace the agreement, when the contract nature allows it and the legal requirements to validate it are met. The provisions of this paragraph shall not apply to the promise to sign a real contract, unless otherwise provided by the law.

(4) The agreement by which the parties undertake to negotiate in order to conclude or amend an agreement is not a promise to sign the contract".

It is clear that this promise to contract may be both unilateral and bilateral.

Governing a *particular case* of the option agreement, concerning the sales, at Art. 1.668 Para. 1, entitled "**Option agreement regarding the contract of sale**", the new Civil Code states that "*In case of the option agreement regarding the contract of sales relating to an individual determined property, between the date of conclusion of such agreement and option exercise or, where appropriate, that of expiry of the option date, the property, object of such agreement, is not available".*

It is therefore about a temporary provision of unavailability of the property, which is why the parties may provide an unavailability allowance, in which case the contract is onerous and mutually binding.

Para. (2) of the same article provides that: "*When the scope of the agreement is land book registration, the option right is entered in the land registry*", and Para. 3 provides that "*The option right is cancelled ex-officio if by the deadline of the option, no statement of option exercise was recorded, accompanied by the proof of its serving to the other party*".

Regulating the **promise of sale and the promise to purchase**, which are nothing but particular cases of the promise to contract under Art. 1279, the new Civil Code provides in Art . 1.669. paragraph (1) that "*When one of the parties having concluded a **bilateral promise** of sale deny, without solid grounds, to conclude the contract promised, the other party may request a decision to take the place of contract, if all other conditions of validity are met".*

Para. (3) *notes that " The provisions of para. (1) and (2) apply accordingly, in the case of an **unilateral promise of sale or purchase**, as appropriate".*

We should note that, in view of the new Civil Code, in the case of the option agreement, the promisor, currently and anticipated manifests the consent to its subsequent conclusion, this statement is deemed a *binding offer*, whose declaration of revocation, under Art. 1191 Para. 2 of the Code, is without effect. The consent of the promisor in an option agreement is the expression of a binding offer and the expression of the will to maintain that offer available to the promisee for a certain period of time. In other words, the consent of the promisor is actually the consent to the sale itself, generating a potestative right in favor of the promisee: I sell my property if you want to buy it. The holder of the option agreement has a potestative right, whereas, by its unilateral manifestation of will, whenever and if it wants to buy, it will turn the promisor from the owner of the property into the seller of such property.

Leaving aside the fact that the offer (in the classical concept) is a proposal to contract, by which the offeror determines the elements to be considered for the conclusion of the contract, while, in the case of option agreement, such elements are determined by the parties who enter into "the agreement" and not just by the offeror-promisor, it should be noted that in the case of unilateral promise of sale, the promisor forbids itself to sell to someone else, as long as the option was not shown by the promisee, the property being made unavailable without the need of an express provision, it being superfluous in relation to the purpose intended by concluding the promise. Moreover, including the new Civil Code provides in Art . 627 Para. 4 this, stating: ”*The perpetuity clause is implicit in the conventions giving birth to the obligation to transmit in the future the property to a specified or determinable person*”. In addition, as regards the enforceability of the bilateral promise and the option agreement, Art. 906 of the New Civil Code provides the notation of these two types of contracts in the Land Book for third parties to recognize. This entering determines the impossibility to have available the property, object of the agreement for which such land book entering was done, until cancellation of the mention regarding the conclusion of the option agreement on the sale, namely upon the conclusion of the unilateral promise of sale.

Unlike the promisee, the promisor may not retract the promise which was given for its validity, as the offer to sell cannot be retracted and changed unilaterally. As stated, the promisor voluntarily waives the opportunity to change its mind about selling.

Therefore, irrevocability of the offer and unavailability of the property the new Civil Code is dealing with in the option agreement regarding the contract of sale is not likely to lead to the conclusion that it is not still an unilateral promise of sale, i.e. a gradual form closer to the final sales agreement.

Also, nothing prohibits that the contents of the unilateral promise of sale to stipulate the property unavailability allowance to be paid by the promisee.

The unilateral promise of sale and the option agreement regarding the contract of sales, essentially, require the existence of a period of time. In both cases, if the period of time does not appear in the parties’ agreement, the promisor or the promisee may contact the court for it to determine the term based on facts relevant to the case.

Both the unilateral promise and option agreement must include all essential elements of the sales contract in question.

Our case law has established in connection with the unilateral promise of sale, that it is not effective unless it contains sufficient information to determine the price of the promised sales – purchase agreement.

This applies to the option agreement as well, standing for the consent to the sale, so it could only be valid only if all the sales elements are already provided in that consent.

However, the consent to unilateral promise of sale is, in terms of the promisor different from the consent to the contract promised.

Thus, if for the option agreement, the legislature has regulated the form it must adopt as required by the law for the contract the parties aim to conclude (Art. 1278 Para. 5), such regulation in missing for the promise to contract, hence, in this latter case, the general rule of mutual consent applies (Art. 1178, "Form liberty"), whether the intended act is or is not one for which the law requires conclusion in solemn form.

This form identical to the form of the sales contract required by the option agreement is necessary taking into account how the new Civil Code provided that the sales agreement will be signed subsequently (drafted). According to Article 1278 Para. 4, this is concluded by the mere exercise of the option in the promisee accepting the declaration of will of the other party as agreed, with no need for a new manifestation of the will of the promisor. This is the reason for which, the declaration of acceptance shall be signed as prescribed by the law for the agreement the parties aim to conclude.

In the case of unilateral promise of sale, according to the new Civil Code, it is implied that a new manifestation of will by the promissory seller is needed, along with the recipient who exercises the actual option to purchase.

This new manifestation of will requested to the promisor results from the provisions of Art. 1699 Para. 1 and 3 of the New Civil Code. As already mentioned, Para. 1 stipulates that, when one of the parties having concluded a bilateral promise of sale deny, without solid grounds, to conclude the contract promised, the other party may request a decision to take the place of contract, if all other conditions of validity are met, and Para. 3 provides that the provisions of Para. (1) apply appropriately to the unilateral promise of sale.

Such a legal provision was required for the option agreement because, assuming its conclusion, the preparation of the final sales agreement does not require a new manifestation of the will of the promisor, so there is no question of a possible refusal to consent to the issuance of the final contract, refusal that needs to be sanctioned by the court, by an order replacing the contract; thus the sales completion no longer needs the expressed consent of the beneficiary as required by the law The promisor's refusal to execute the sale contract is a matter of its execution phase and not its conclusion.

We do not believe that these provisions imposed by the legislature on the form of the option agreement and on the mechanism of formation of the predicted contract are likely to conclude that the

option agreement is essentially different from the unilateral promise of sale. On the contrary, the reasons animating the promisor and promisee in both cases to conclude such acts are the same; it is essential for the promisee to obtain from the promisor an offer to sell that can not be withdrawn within the option term set in the promisee's favor and leading to the unavailability of the property, i.e. its impossibility to be sold. The existence of the promisee's option is also common.

In relation to the said mechanism on the formation of the final sales agreement predicted by the parties, the option agreement regarding the contract of sales appears to be a form of the unilateral promise to sell more powerful and closer to the sales agreement envisaged.

Chapter II entitled ***"Legal characters and nature. Autonomy of the unilateral promise of sale."*** is divided into three sections, the first dealing with ***"The evolution of discussions on the legal nature of the unilateral promise"***, the second, of ***"General characteristics of the unilateral promise"*** and last of ***"Autonomy and its legal nature".***

We showed that, although according to the doctrine and older case-law, the option agreement regarding the contract of sale was considered a unilateral contract, giving rise to obligations solely to the promisor, currently, in terms of obligations covered by the unilateral promise of sale, there are three reasons for which we consider it having a mutual character.

The social context is reflected in its contents and provides it reason. The practice of unavailability allowance is generalized and the new Civil Code allows the possibility of its stipulation.

Secondly, given the disputes arising from breaches of the obligations of such a promise, it is shown that the parties have intended to agree and achieve balanced and interdependent services .

Last, but not least, the legal regulation of the option agreement imposes a character a mutually, the contract being recognized for good and valuable consideration, autonomous and the two parties' will being undisputedly that of making from their mutual benefits, interdependent benefits, the option agreement, by virtue of rules contained by the new Civil Code, being a mutual agreement.

It was said that only a mutually binding promise of sale offers complete parallelism between the obligations of the parties, while under an unilateral promise the promisor commitment is "more difficult" than that of the recipient, revealing that the responsibility of the recipient is secondary to that of the promisor which is essential, although it may still be an alternative.

More recently, it was noticed that the payment of unavailability allowance is a mutual obligation of the promisor, but this context does not mean the perfect equivalence between the legal situations of the two parties. The legal situation of the two parties is not the same in the option agreement, but this does not mean that there is no real symmetry in it.

Symmetry resides in the option agreement and is based on its autonomy. The double obligation of the promisor must be considered separately, to make the offer for sale and to agree on a deadline for the exercise of the option by the promisee. One can imagine that the parties in a unilateral promise agreed without term, although the promisee is not required a determined period within which to exercise the right of option, determine that it can express the option at any time, the promisor being able at any time, to force him to express the choice, to exercise the right of option. In this case, the parties of the option agreement have created equivalent legal situation, assuring a perfect symmetry in the contract.

Section II extensively discussed the distinctions between the unilateral promise of sale and other similar institutions, respectively, the offer to contract, the pre-emption agreement (the contract under which the right of the conventional preemption arises), the mutual promise of sale-purchase, the sales purchase agreement and the sale itself.

Based on the differences found in Section III, we showed the aspects conferring the unilateral promise of sale an autonomous character. The unilateral promise is intended to create a voluntary legal situation whose specific characters are to be temporary and uncertain and to give the beneficiary the power to decide on the conclusion of the final sale, he wants absolute and to allow it to exercise a genuine and full choice.

The unilateral promise to sell qualifies it as a special contract. Based on this, related and symmetrical obligations arise. The promisor undertakes to agree on an option during a specified period. This means that it may not dispose of the promised property for the entire option period stipulated for the promisee and that it can not consent to any right devaluing it. The option is a benefit that the promisor often provides only in consideration of the beneficiary payment. The promisee payment obligation on the right of option is the cause determining the promisor's obligation.

Unless it can be said without reservation that the option agreement regarding the contract of sales is a mutually binding contract essentially, it is assumed that it is a mutually binding contract by nature. The unavailability allowance is the option consideration, and has now become unquestionably, generalized in all preparatory contracts concluded by simple or professional people .

If the unilateral promise of sale or the option agreement are mutually binding contracts, however, they will not be treated with the mutually binding promise to sign the contract nor with the bilateral promise of sale covered by Art. 1279 of the new Civil Code and Art. 1669 respectively of the same Civil Code.

Chapter III entitled ***"Validity conditions and elements of unilateral promise of sale"*** is structured in three sections.

The first section deals **with the conditions of substance and form of the unilateral promise of sale.** On this aspect, we made clear that, since it is a civil convention which, by definition, lacks the promisee's consent to purchase, but must meet all conditions of validity, generally governing the conclusion of civil contracts. So, it will gave to meet all the "essential conditions for the validity of the contract" under Art . 1179 Civil Code, namely the capacity to contract, the valid consent, a determined, possible and lawful object and a valid cause. We have illustrated the specific of the unilateral promise regarding these issues.

Unlike the promisor's situation, at the time the unilateral promise the promisee must meet, only the general conditions of capacity. It must be able to have full capacity to purchase when declaring this intention and when the contract of sale itself will be concluded.

Obviously, both the promisor and the promisee, must consent on the conclusion of the unilateral promise of sale, the difficulty consisting in making the difference between the consent necessary to form the promise and that regarding the sale itself. The distinction must be made in consideration of the two agreements.

Thus, through the option agreement, the promisor consents to consent to the sale and to maintain this consent available to the promisee for the duration of the promise (the offer for sale must be precise and firm and must cover all the terms of the final contract). For the conclusion of the unilateral promise to be valid and produce legal effects which are characteristic, the beneficiary's consent must be in full compliance with the elements and the conditions listed in the promisor's offer. There will be no unilateral promise of sale if, for example, following reception of the offer of sale by the promisee it subordinated its acceptance to a suspensive condition or any other method of payment of the price than the one provided in the offer for sale.

We have shown that, as regards the **form** of the unilateral promise of sale and the option agreement, there are some distinctive elements that should be highlighted.

Thus, the unilateral promise of sale is a consensual agreement validly being formed by the mere consent of the promisor and the promisee, applying the Art. 1178 of the New Civil Code. No special formality is therefore in principle required for its validity. This conclusion results from the interpretation of Art. 1278 Para. 3 of the new Civil Code, according to which, the option agreement must contain all elements of the intended agreement, so that it can be signed simply by the option promisee's acceptance.

However, as regards the option agreement, it should be noted that under Art. 1278 Para. 5 of the Civil Code, when it is signed in view of preparation for a solemn contract, it will lend the character of the prefigured contract, will be concluded as prescribed by the law for the validity of the final contract.

Relating these provisions to the specific case of the option agreement, means that when it refers to a land or buildings - homes or individual units, its conclusion in authentic form is mandatory.

The sanction for non-compliance with the form referred to in Art. 1242 Para. 1 of the new Civil Code, which provides: "*The contract is null and void unless concluded in the form, unquestionably, required by the law for its valid conclusion*".

Section II *"Elements specific and characteristic for the unilateral promise of sale"* thoroughly dealt with the promisor's obligation, the right of option, the option term and compensation of unavailability.

The promisor's obligation is the main obligation that arises under a unilateral promise of sale, because the entire economy of the contract is arranged around it and is the specific obligation which gives legal qualification allowing its clear delineation from other similar agreements.

On its legal nature, there were many controversies and several theories were born that have tried to enroll it in one of the categories of obligations to do or to give, theories that have argued that the promisor's obligation is an obligation to give, deny the existence of an independent option agreement, arguing that the promisor's obligation is that of a seller.

According to these, the sales agreement preceded by a promise of sale is a single global operation, consisting of two episodes that complement each other, the purchaser's consent being present in the second half. The promisor's obligation in this case, would be a conditional or possible obligation to transfer the property title, the condition or the event consisting in the purchase commitment shown by the promisee and fulfilled when the sale is accepted. More recently the French doctrine showed that the promisor's commitment is not intended to be an obligation to do, because the sale will be formed without any consideration expected from him, it is therefore useless to see an obligation to give, because the sale will not depend on the performance of such obligation, actually, the sale being achieved in two steps, being perfect when the promise with the promisor is made and when the option is relieved involving the promisee as well.

We appreciate that the obligation arising out of the unilateral promise of sale as it is currently regulated in the new Civil Code is an obligation to do, namely to keep the offer for sale within the period of the option, this assuming the promisor obligation to refrain from any act or fact that might prevent the promisee to exercise its right of option.

Although our whole doctrine is unanimous in saying that the promisor's obligation is an obligation to do, we agree with the view expressed in our modern legal literature, according to which this is not an obligation to do in the traditional meaning of the work, but has the character specific to the

unilateral promise and is based on the mandatory power of the contract, as defined by Art. 1270 of the Civil Code. The unilateral promise creates legal rules of particular nature, being a "legislative instrument", and the promisor must maintain the offer for sale within the option period, and not under an obligation to do, the consent to the conclusion of the contract can not be described as object of consideration, but under the binding power of the agreement concluded with the promisee.

The promisor's obligation can therefore be analyzed from a dual perspective: a firm sales offer at a determined price and object and keeping this offer within a specified period of time .

The sale is only possible, it is the essence of the unilateral promise of sale and therefore, leaves the final decision at the promisee's choice, all the originality and the advantage of this legal technique resides in this. In the case of option agreement, covered by the new Civil Code, the consent of the promisor will not be renewed in case of raising the option to concluding the sale agreement.

With regard to the **right of option**, correlative with the promisor's obligation, the option right arises in the promisee's property, under which, as seen from its marginal name, it can show the option to accept or not to buy the property pledged by the debtor.

This right is different from a mere possibility. It has a limited life, is prescriptive and rooted in the convention. Since the unilateral promise does not have the effect of transfer of ownership to the promisee and does not create an obligation to give, is means that the generated right is a personal right, a claim right.

The theory has qualified the right of option as a **potestative right**. The subject matter of choice consists of the power on a specific legal situation, totally independent of the one existing when the contract of sale is made. In the time allowed, any purchaser is entitled to wait until the last moment to make the decision public. This ends at the date stipulated in the contract or at the option raise, if it occurred before that date. During this period, although the promisor remains owner, he can only claim the unavailability allowance. The promisee is in total control of the situation. This notion of "power" includes the option right, which is more than a right to claim, without becoming a true real right.

The option right is an **autonomous right** assuming promisee choosing between two possibilities : to convert a provisional legal situation into a final legal situation during a period stipulated in the agreement (stipulation of the deadline is not essential) or to refuse to purchase, making the contractual relationship established by the promise to die . The right of option is completely separate from the right arisen when the sales contract is concluded. It is different from the right arisen from a final contract, because it is a right aimed at and intended to lead to the conclusion of the final agreement. The nature, real and final at the same time of the sales agreement has no echo in the current, personal and movable

legal situation created by the option agreement.

Last, but not least, the autonomy of the right of option is undisputed if we consider that it can be assigned, representing an asset, a security which by its nature is intended for circulation.

The promise undertaken by the promisor gives birth to a right which simply becomes current: the right to maintain the offer. The purpose of this right is the acquisition of further rights by signing the final contract. Exercising this right will lead to signing the final contract and it can be said that the scope of the option agreement is the possibility to form the contract of sale.

We showed that by the provisions of Art . 1668 of the new Civil Code, in the case of option agreement for sale, there is an explicit statutory limitation of ownership restricting the right to dispose of the property by the promisor for a determined period of time.

Since the commitment of its promisor involves maintaining the property available to the promisee for a period of time, the parties may agree for the promisee to pay an amount of money to the promisor. This money is called **unavailability allowance** and is provided for the promisor, representing the "price for exclusivity" agreed in favor of the promisee. The cause of unavailability allowance is the advantage of the promisee by securing the property in its own benefit, stipulating it in the content of the promise with its role of guaranteeing the right of option.

On **real estate advertising**, feeling the need to ensure an effective protection of the option agreement and the unilateral promise of sale, as well, responding to *lege farenda* proposals constantly made by the doctrine, by the new Civil Code the legislature set out the binding nature of publication of such agreements in cadastral records, having in regard the effect of provisional unavailability of the property, indicating at Art. 902 Para. 2 line 12 the notation in the land register of the preliminary agreement and option agreement.

Chapter IV entitled ***"Effects of the unilateral promise of sale"*** is divided into four sections. **The first section** deals with the **effects of the promise before raising the option by its promisee,** essentially showing that the main obligation that arises on the promisor is an obligation to do, i.e., to maintain its offer for sale throughout the option period, while the promisee becomes the creditor of the right of option on the conclusion of the promised agreement. If during the term of the option, the promisor notifies the promisee that he/she intends to withdraw the offer for sale and therefore the consent to the final sale, this declaration of will is ineffective without legal consequences.

The reference made by Para. 3 of Art. 1669 under para. 1, states that when one of the parties having concluded a bilateral promise of sale denies, without solid grounds, to conclude the contract

promised, the other party may request a decision to take the place of contract, if all other conditions of validity are met.

According to Article 1278 of the new Civil Code referring to option agreements, in general, the declaration of will of the promisor «*is considered a binding offer and has the effects under Article 1191»*, in compliance with the provisions of Art. 1191 Para. 2 Civil Code, *«Declaration of revocation of an irrevocable offer has no effect»*.

In case of disposition of the property by the promisor, in principle, the third party purchaser retains ownership of the property, being protected from any action by the promisee, unless it was in bad faith when signing the contract with the promisor, being aware of the unilateral promise of sale, violating the interdiction to sell and whether acquired the asset for free. We have shown that when it comes to cancellation of the sale concluded by the promisor with a third party in bad faith, they often confuse the regime of the action for annulment with the action applying unenforceability of the sale, differentiating the legal status of the two actions and making clear the consequences, the pros and the cons.

Section II, deals with the **effects of the unilateral promise of sale subsequent the option raise** by the promisee. After raising the option, namely after the promisee declares that he/she wants to buy the property on which the promisor undertook to sell, the unilateral promise to sell produces its full effects. Raising the option automatically implies the transfer of ownership in the case of option agreement regarding the contract of sale governed by new Civil Code, and the promisee's will to purchase meets the definite will of the promisor to sell, forming thus the perfect sales agreement, in the case of an unilateral promise of sale, but occurrence of such consequence involves co-existence of certain substantive and form requirements.

It may happen that, after the valid option raise by the promisee, the promisor to declare either that no longer agrees with the sale or to sell the property pledged to another person .

In case of unilateral promise of sale, the promisee, according to Art . 1669 Para. 1 and 3 of the new Civil Code, has the possibility to request a ruling from the court to replace the contract, if all other conditions of validity are met. He may also request the termination of the promise, with damages.

In the case of option agreement regarding the contract of sale under the new Civil Code, the first case indicated in paragraph 1 above, makes it clear that by the sale formed by raising the option, any cancellation by the promisor is ineffective. Given that the promisor has committed to maintaining its consent to sale throughout the agreed term, without the possibility of unilateral withdrawal and as a result thereof, by raising the option the sale is concluded without any need for a new manifestation of

willingness by promisor, we appreciate that, in this case, we speak about the sale foreclosure and not its formation.

In the case of option agreement regarding the contract of sales, governed by the new Civil Code, if the promisor alienates the property following raising the option by the promisee, the latter one primarily has the following versions: as a full owner can turn to action for recovery of property against the third party, the possibility to request termination of the sale and obtain damages or require the court to cancel the alienation made in his /her detriment and the foreclosure in kind of the sales agreement. He may also file court actions on unenforceability against the sale to a third party, where he must provide evidence, similar to the set aside action, the third party aiding the promisor to commit fraud.

The nullity and the assignment of the unilateral promise of sale were the content of the last two sections of Chapter IV.

In **Chapter V**, we made brief references to the **unilateral promise to buy**, showing that it assumes the promisor undertakes to buy a property from another person, the promisee, if it decides to sell. In this situation, the committed party, is the buyer . If changing his /her mind, he will be compelled to fulfill the promise to buy or can be obliged to pay damages.

Title III of the thesis, ***"Mutually binding promise of sale"*** consists of
three large chapters.

The first chapter dealt **with the appearance of the institution, its legislative developments and current utility, terminology and legal nature.** Starting from the configuration of the sales agreement in the Roman law, taking into account that originally, the property could be acquired only by transaction or taking possession and gradual alleviation of its real character to the detriment of the principle of mutual consent, we have highlighted the legislative developments of the bilateral promise of sale in our law.

We showed that, at present, with the entry into force of the new Civil Code, the bilateral sale promises have finally become laws, having the legal status laid down in Art. 1669 Para. 1 and 2 according to which *"(1) When one of the parties having concluded a bilateral promise of sale deny, without solid grounds, to conclude the contract promised, the other party may request a decision to take the place of contract, if all other conditions of validity are met. (2) The right to action is prescribed within 6 months after the contract had to be concluded.*"

The **third section** of this chapter, ***"The concept, the nature and the legal characteristics of the preliminary sales agreement"***, showed that the unilateral promise of sale, and the bilateral one, are referred to as preliminary contracts in the mean conception we showed in the beginning of this thesis.

In the current legal language, however, the term preliminary agreement of sale is normally used to describe the bilateral promise of sale purchase. The preliminary sales agreement is the contract by which the contracting parties undertake to conclude a future contract of sale whose essential elements (the price and asset sold) have already been agreed. Temporally and structurally, being located closest to the final agreement, thus representing a case of progressive training of its object, it was considered that the preliminary sales agreement is the most "dense" preparatory act, consisting of all essential elements of the final sale and the obligation of the parties not to resume discussion in the future.

In compliance with the provisions of Art. 1295 of the Civil Code dating back to 1864 which established the principle of mutual consent in respect of the sale agreement, *"The sale is perfect between the parties and the property is legally transmitted to the buyer, from the seller's viewpoint, once the parties have agreed on the asset and the price, although the asset would not be delivered and the price would not be counted yet."*

The new Civil Code defines the sale agreement in Art. 1650 as the *"contract by which the seller transmits or, where appropriate, undertakes to transmit to the buyer ownership of an asset in exchange of a price that the buyer is obliged to pay."*

From the interpretation of the two legal texts, it appears that when the parties have committed to sell, and to buy respectively, agreeing on the price and determining the property to be sold, we are facing the formation of the final sale agreement and not a bilateral promise of sale, except for the contexts where the final contract of sale is a solemn contract, for the valid conclusion of which the parties' consent on the essential elements of the sale is not sufficient, but compliance of the authentic form of the document.

This means that sometimes, in practice, it can be difficult to distinguish between the bilateral promise of sale and the final contract when the latter one is a consensual agreement. Thus, the mutual consent upon the conclusion of the final contract and the agreement on all the essential elements of the sale are sufficient for the its valid genesis, and if the parties wish to reserve the freedom to conclude the expected contract in the future and to explicitly identify the element on whose occurrence the final contract depends on, or to indicate the reason for which they understood to postpone the conclusion of the final sales - purchase agreement.

We showed that the examined institution is a consensual contract, mutually binding, autonomous (detaching it from other similar agreements), in the current regulation, designated, commutative, for consideration and with *uno ictu* enforcement.

The second Chapter, deals with ***"Conditions of validity and content of the bilateral promise of sale".*** The substantive conditions are common with any consensual agreement, but we underlined certain matters within the capacity of the parties, their consent and promise derivative, i.e., the property. In analyzing the content of the bilateral promise, we showed its mandatory elements and its content not-binding, the incidental and anticipatory clauses.

Any bilateral promise of sale to be valid must contain the parties' agreement on all elements essential for the final sale, i.e. on the property to be sold and the price to be paid. Actually, Art. 1279 of the new Civil Code refer to the promises to sign the contract generally, expressly stating that, *"The promise to sign the contract must contain all the terms of the contract promised, failing which the parties could not perform the promise."*

The bilateral promise of sale, as a type of promises to contract, must comply with the general and specific validity requirements.

Prefiguring the sale, the bilateral promise must contain the entire agreement between the parties on the property promised to be sold and the price and the obligation to take all necessary steps to conclude the sale and to reiterate the consent in the form required by law or agreed by the parties.

As regards the promise property, we showed that besides legal cases of perpetuity or restriction of the free movement of goods, in light of the new Civil Code, the conventional perpetuity of the property is possible, as well.

In terms of **incidental clauses** of the bilateral promise of sale, we have dealt with issues related to the perpetuity, forfeiture, termination, penalty clause and earnest money.

Next, we talked about the **anticipatory clauses** on the price payment, anticipated transmission of the actual possession and use of the property promised and the clause allowing the promissory buyer to build on the land covered by this bilateral promise of sale.

On the **form** of the bilateral promise of sale, we have shown that, even if it covers lands or buildings (dwellings and individual units) for the alienation of which, the legislature expressly stated that the *ad validitatem* authentic form is required; the doctrinal controversy on the form of this pre-agreement was laid down by the new Civil Code, namely that, for the valid conclusion of this convention there is no official form required for the validity of the final agreement.

Based on the infallible argument that the official form is a true exception to the principle of mutual consent of legal documents, it is obvious that one can not impose the obligation to conclude the bilateral promise of sale authentic form in the absence of relevant rules in this regard.

We should take into account the provisions of Art. 1242 Para. 1 of the new Civil Code which regulate the contract form, and stipulate that *"The contract is null and void unless concluded in the form, unquestionably, required by the law for its valid conclusion*". For the bilateral promise of sale, neither Art. 1669 of the new Civil Code, governing this legal institution, nor Art. 1279, generally governing the promise to sign contracts, do not stipulate undoubtedly that the form required for the conclusion of these agreements is authentic, so that the nullity is ineffective, the bilateral promise of sale being, *per a contrario*, valid by the mere agreement of the parties.

We dealt with the situation where the parties of a bilateral promise of sale, agree that the conclusion in authentic form of the final sales agreement is a condition of its validity, although the property concerned is not part of the assets to be validly sold only through authentic documents.

In this case, the will to "essentialize" the authentic form must be explicitly expressed by the parties, otherwise, assuming that the authentic form is provided only *ad probationem*, as long as the law does not require it *ad validatem*, and under the principle of mutual consent, the parties shall be deemed to have concluded the final sale itself, once they agreed upon the property and the price.

The third Chapter of this title is dealing with ***"Effects of the bilateral promise of sale"***, being composed of six sections. **Section I** deals with the ***"Obligations of the bilateral promise of sale parties"***, showing that the promissory - seller is primarily required to agree to authenticate the sale, the obligation not to dispose of or pledge the promised property in favor of others and the obligation not to conclude with third parties legal acts likely to restrict or eliminate the rights of the promissory -buyer, while promissory buyer is obliged to appear before the notary public to authenticate the sale covered by the pre-contract.

Section II examined the "***Transmission, transfer and termination of the rights and obligations arising from the bilateral promise of sale"***, showing that, before the entry into force of the new Civil Code, our law recognized only the assignment of debt, the possibility of debt transfer was not agreed by the legal practice, lacking legal basis and the fact that, currently, the contract assignment has a legislative basis, Art. 1315 providing that *"A party may substitute a third party in the relationship arising from a contract only if the considerations have not yet been fully executed, and the other party consents to it."*

Section III refers to "***Execution of the bilateral promise of sale and the effects of parties failing to perform the obligations".*** We have approached the substantiation in time of a court order admissibility replacing an authentic contract of sale, showing that currently, the Civil Code expressly provides in Art . 1669 Para. 1 as follows: *"When one of the parties having concluded a bilateral*

promise of sale denies, without solid grounds, to conclude the contract promised, the other party may request a decision to take the place of contract, if all other conditions of validity are met".

For the admissibility of the pre-contract enforcement action the following conditions have to be met : valid conclusion of a bilateral promise of sale, proof of unjustified refusal of one of the parties to conclude the contract of sale, proof of ownership of the property pledged, the performance of the obligations of the party filing the action and fulfillment of the essential requirements of sale.

Action for enforcement of the bilateral promise of sale is a personal action, arising out of the obligations to do having a heritage character arising from the Convention, may be instituted against the successors of the dead promisor, if they refuse to consent to the sale promised by their predecessor. It is clearly a lapse of time action, and to punish the lack of interest of the party in whose favor it was established, taking into account its special character, the legislature has provided that it has to be entered into a special term of limitation of six months, which flows from the date set out by the parties for the voluntary conclusion of the contract designed by the promise.

We approached comparatively the action for enforcement of the bilateral promise of sale and title registration, showing that the land book system, those who sought to obtain a court order by promoting the enforcement of a pre-sale agreement to become owners of the disputed real estate, needed this statement from the promissory seller, giving the consent to the title registration, which is hard to believe as long as he /she had not voluntarily performed the obligation to conclude the sale in authentic form.

The judicial practice made confusion between the title registration action and the action requesting delivery of a court order that takes place of authentic sales agreement.

The action for title registration was brought by the acquirer of the real right, who did not have the legal document containing the consent for title registration of the transmitter. In this case, the foundation of the action lies in the failure of fulfilling the obligations subsequent to the sale, to deliver all documents necessary for the registration (property registration agreement), that according to the law fall in the charge of the former owner of the property. The court decision replaces the consent of the person who has validly transferred the real right to the acquirer.

This right to title registration action can only arise from a mutual promise of sale because such an act can only give birth to the right to ask the court to deliver a court order that takes place the contract of sale, the document transferring the property, while, for title registration action the ownership transfer document must exist when the court action is being brought.

The foreclosure of the pre-sale agreement is based on the promisor refusal to conclude the sale agreement as required by the law. In the case of title registration action, this contract exists and was

validly concluded, all that prevents registration of ownership of the purchaser is the absence of the agreement at title registration given by the seller .

The action for enforcement of pre-sale agreement was used both in the system of transcription and inscription registers, and in the system of land books covered by the Decree -Law no . 115/1938, difference consisting in the fact that the beneficiary of the irrevocable court order which accepted the enforcement of the pre-contract could transcribe the decision in the transcriptions and inscriptions register, while the recipient of a similar decision, but that refers to a property falling within the Decree-Law no. 115/1938, can not be entered in the land registry unless the court order contains such provision.

Therefore, in the latter case, besides the main count on the pre-contract enforcement, an accessory count had to be formed, that would require the court to order the registration of ownership in the land registry.

This accessory count used to form the subject matter of the title registration action. Of course, nothing prevents the applicant, that, if holding an authentic sale agreement or a document of sale under private signature which did not contain the title registration clause, or an irrevocable court decision that upheld the action for enforcement of the pre-sale agreement, but that did not order the title registration, to file the said action separately and as main count.

We have shown that in light of the new Civil Code, returning to the land registry principles and rules established by the Decree - Law no . 115/1938, the confusions between the title registration action and the enforcement action in kind of the bilateral promise of sale could persist. We believe however that due to the current express regulation and the action seeking a court order replacing the authentic sales purchase agreement, this confusion will be extremely rare, quasi - nonexistent . We should note that the action for title registration in light of the Civil Code is limited to the general term of three years, which means that if its holder fails to exercise it within this term, it will not ever be registered.

Where, the promissory - seller sold the property in order to obtain the foreclosure in kind of its obligations, there is necessary either the dissolution or the declaration of unenforceability of the sale made by the contracting party or third party, otherwise, only damages can be obtained.

The first two possibilities will be likely to succeed, depending on whether the third party was of good or bad faith on the date of signing the contract with the promissory - seller.

In this matter, the theory and the case-law unanimously decided and accepted that the distinction between good and bad faith of the third party is based on whether he/she was or not aware of the existence of the bilateral promise of sale when signing the contract.

Section IV is dedicated to the termination of the bilateral promise of sale and **Section V** to the incidence of **imprevision in matters of pre-contract.** Since the scope of the theory of imprevision concerns only agreements with obligations denominated in a currency unit, closely related to the phase of execution of the agreement, its incidence is clear as regards bilateral promises of sale.

The role of contractual imprevision lies in restoring the interest to executing the contract in the new circumstances through adaptation, and where the purpose it was contracted for can not be reached, to terminate the contract, with the fair distribution of risks between the parties. In matters of mutual promise of sale, it is possible that before concluding the final sale, the price agreed to be paid by the promissory - buyer, due to the inflation, is no longer corresponding to the value of the property that is the object of the preliminary agreement, and this difference to make the performance of the promise by the promissory seller excessively burdensome.

One can imagine the reverse case, currently valid, where, because of an unpredictable instability of the real estate market and drastic decrease in the value of properties, the promissory buyer could be in the position to apply an excessively burdensome performance, the contractual unbalance being affected so that it needs to be restored through re-negotiation or mechanism of imprevision.

The new form of Article 1271, amended by the applicable Law, was intended to be an improvement of article 1271 from the initial form of the new Civil Code.

One can notice the conditions under which the legal text allows the intervention of the judge, the premises of its intervention being three.

The first condition is that the execution had become *excessively burdensome*, making it manifestly unfair for one of the contracting parties. This condition is particularly important because, if the execution would have become only *more burdensome*, the provisions of paragraph 1 of the above article, which is the rule, apply. It is a matter of evaluation and expertise, but if only enhanced burdensome of performance and not burdensome excessivity is found, the action must be dismissed by the court.

The second condition is that excessive burdensome is due to *exceptional changes in circumstances* envisaged by the parties at the time of contracting, but that change *had occurred after the contract conclusion*, as expressly required in letter a) paragraph 3.

The third condition is to not ascertain that the debtor has somehow assumed the risk of these exceptional changes in the circumstances taken into account when signing the contract and its consequences. Point c) of paragraph 3 points at the absence of express undertaking of this risk by the

debtor, because in such a situation, it means that it was provided at the time of contracting, but also the impossibility to reasonably believe that the debtor would have assumed such risk.

Even if hardship was established in law, the solution of court intervention in the parties' agreement must remain the exception, to avoid the abusive use of this legal action.

Section VI dealt with specific situations in matters of bilateral promise, that is the situation of its conclusion by only one spouse as far as a matrimonial property is concerned, the legal effects of real estate presale agreements concluded before and governed by Law 58 / 1974 and Law no. 59/1974, of applicability of the preliminary agreement in light of the legislation specific to the government program the "First Home" and the possibility of rendering enforceable the bilateral promise of sale signed in authentic form and indirect enforcement of the criminal clause or down payment clause inserted in its content.

In conclusion, we showed that sales promises today are no longer just some casual and convenient procedures, used only by certain categories of owners who wish to facilitate the sale of their property, but are true techniques, tools available to all classes of people, from professionals to ordinary individuals, by which they aim to satisfy the desires and needs, facilitating the movement of assets and the economic activity.

Currently, the parties seeking the conclusion of a sales-purchase agreement of a property of great importance, resort to many agreements or provisional agreements (negotiation, framework agreements, newsletters, protocols of agreement), that are multiplied and diversified by our modern law.

BIBLIOGRAPHY

Adam, Ioan*, Drept civil. Drepturile reale principale,* Ed. All Beck, Bucureşti, 2005

Adam, Ioan, *Drept civil. Teoria generală a obligaţiilor,* Editura All Beck, Bucureşti, ediția 1, 2004

Albu, Ioan si Man, Adrian*, Regula nemo plus juris ad alium trasferre potest quam ipse habet şi abaterile de la această regulă,* în "Revista de drept comercial ", nr. 7 – 8/1996

Albu, Ioan şi Man, Adrian*, Utilitatea terminologiei juridice latine cu referire la adagiile "pacta sunt servanda" şi "rebus sic stantibus",* în "Dreptul" nr. 2/1996

Albu, Ioan*, Noile Cărţi funciare,* Editura Lumina Lex, Bucureşti, 1997.

Albu, Ioan*, Drept civil. Contractul şi răspunderea contractuală,* Editura Dacia, Cluj-Napoca, 1994, p. 11;

Albu, Ioan*, Drept civil. Introducere în studiul obligaţiilor,* Editura Dacia, Cluj-Napoca, 1984

Albu, Ioan*, Probleme actuale privind reevaluarea judiciară a creanţelor, indexarea convenţională a obligaţiilor pecuniare şi indexarea dobânzilor,* în "Dreptul" nr. 44-53;

Albu, Ioan*, Răspunderea civilă precontractuală,* în « Dreptul » nr. 7/1993

Alexandresco, Dimitrie*, Explicaţiune teoretică şi practică a dreptului civil român*, t. IV, Iaşi, 1900

Alexandru, Cătălin*, Discuţii privind actualizarea creanţelor pecuniare,* în Pandectele Române" nr. 6/2002

Anca, P., *Natura şi efectele juridice ale promisiunii de vânzare în dreptul socialist,* în "Justiția Nouă" nr. 7/1963

Ancel, P., *Force obligatoire et contenu obligationnel du contrat,* RTD civ. nr. 4/1999

Andrei, D., Avram, M. Ronea*, Obligaţiile promitentului-vânzător şi executarea lor silita,* în "Dreptul", nr. 3/1995

Andrei, P.*, Dolul prin reticentă în literatura juridică şi în practica judiciară,* în "Revista Română de Drept", nr. 9/1982

Angheni, S.*, Clauza penală în dreptul civil şi comercial,* Editura Oscar Print, Bucureşti, 1996

Angheni, S., *Consideraţii teoretice şi practice privind reductibilitatea clauzei penale în dreptul român şi în dreptul comparat,* în "Revista de drept comercial" nr. 6/2001

Anton, Gabriela*, Teoria impreviziunii în dreptul român şi în dreptul comparat*, în "Dreptul" nr. 7/2000

Antonmattei, P.-H. , Raynard, J., *Droit Civil. Contrats spéciaux,* 4e édition, Litec, Editions du Juris-Claseur, 2003

Aynés, L.,Gautier, P.-Y., *Cours de droit civil. Les contrats spéciaux. Civils et commerciaux,* Editura Cujas, Paris, 2001

Azencot, M., *Transmiterea promisiunilor unilaterale de vânzare:*JCP N 1992

Bacher, S. Al., *Acțiuni tabulare*, în "Buletinul juridic de circumscripție: Curtea de Apel Oradea", nr. 47/1938

Baias, Fl., *Noul regim juridic al bunurilor imobile proprietate particulară,* în Studii de drept românesc nr. 1/1990

Baias, Fl., *Efectele juridice ale contractului de vânzare-cumpărare a unei construcții în condițiile abrogării decretului nr. 144/1958, (II),* în Dreptul nr. 7/1994

Bâldea, Georgiana, *Clauza penală, expresie a răspunderii contractuale,* în Dreptul nr. 2/2000

Bârsan, Corneliu şi Stoica, Valeriu, *Evoluția legislației privind circulația imobilelor,* în "Dreptul", nr. 6/1990

Bârsan, Corneliu, *Regimul juridic al bunurilor imobile,* Ed. Ştiințifica şi Enciclopedică, Bucureşti, 1983

Beleiu, Gh., Ştefănescu, S., *Antecontract de vânzare-cumpărare. Vicii ascunse ale construcției. Inteles. Acțiune în rezoluțiune. Termen de prescripție*, în "Dreptul" nr. 4-5/1991

Beleiu, Gheorghe, *Drept civil român. Introducere în dreptul civil. Subiectele dreptului civil,* Casa de Editura şi Presa "Sansa", Bucureşti, 1999

Bénabent, A., *Les contrats spéciaux, civils et commerciaux*, Monchrestien, 6e edition, 2001

Bénabent, A., *Droit civil. Les contrats spéciaux civils et commerciaux,* 3e edition, Montchrestien, Paris, 1997

Benac –Schmidt, Françoise, *Promisiunea unilaterală de vânzare*: D1990, chron

Benac-Schmidt, Françoise, *Le contrat de promesse unilaterale de vente*, Paris, Librairie Generale de Droit et de Jurisprudence, 1983

Bocşan, M. D., Bogdan, S., *Considerații civile şi penale asupra vânzării lucrului altuia,* în „Dreptul" nr. 6/1999;

Bocşsan, M. D., *"Natura juridică a acțiunii în prestație tabulara",* în "Dreptul" nr. 10/1998

Boyer, L., *Des promesses unilatérales de vente, 1932,* thése Toulouse

Boyer, L., *La clause de dédit, în "Mélanges offerts à Pierre Raynaud*", Dalloz-Sirey, Paris, 1985

Boyer, L., *Promesse de vente,* Répertoire de droit civil Dalloz

Brun, Ph., *Nature juridique de la clause de substitution dans le benefice d'une promésse unilaterale de vente: une autonomie de circonstance?,* RTD civ, 1996

Bruschi, Michel, *Les promesses unilatérales de contrat,* Editions Lamy, Droit des contrats, Paris, 1999

Burzo, M.-E., *Efecte ale devalorizării monetare în raporturile juridice civile patrimoniale, teză de doctorat,* Facultatea de Drept, Universitatea Babeş-Bolyai, Cluj-Napoca, 1998

Cantacuzino, M. B., *Elementele dreptului civil român,* Bucureşti, 1921

Cantacuzino, M. B., *Elementele dreptului civil,* Editura All, Restitutio, Bucureşti, 1998

Căpățână, Octavian, Babiuc, Victor*, Actualizarea datoriei în contractele comerciale,* în "Revista de drept comercial" nr. 7-8/2000

Căpățână, Octavian*, Modificările aduse regimului transcrierii şi inscripției imobiliare ca urmare a reorganizării notariatului de stat,* în Justiția Nouă nr. 5/1992

Capitant, F. Terre, Y. Lequette*, Les grands arrêts de la juriprudence civile*, t. 2, 11e, éd Dalloz, 2000

Cărpenaru, St. D.*, Unele precizări în legătură cu clauza penală ca mijloc juridic de întărire a disciplinei contractuale,* în "Revista Română de Drept", nr. 5/1967

Cazacu, A., *"Dreptul de protimis – originea şi evoluția lui în dreptul românesc",* Chişinău, 1932, Tipografia Eparhială „Cartea Românească"

Chelaru, Eugen*, Forța obligatorie a contractului, teoria impreviziunii şi competența în materie a instanțelor judecătoreşti,* în "Dreptul" nr. 9/2003

Chelaru, Eugen*, Circulația juridică a terenurilor,* Ed. All Beck, Bucureşti, 1999

Chirică, Dan, *Acțiunea întemeiată pe art. 12 din Decretul nr. 144/1958 şi acțiunea judecătorească de admitere a acesteia*, în "Studia Universitatis Babeş-Bolyai, Serie Jurisprudența" nr. 2/1990

Chirică, Dan*, Antecontractul în teoria şi practica dreptului civil,* Centrul de ştiințe sociale, Cluj-Napoca

Chirică, Dan, *Condițiile de validitate şi efectele promisiunii sinalagmatice de vânzare-cumpărare,* în Studia Universitatis Babes-Bolyai, nr. 2/2001

Chirică, Dan*, Consecințele modificărilor legislative postrevoluționare asupra circulației imobilelor proprietate particulară,* în Dreptul nr. 6/1991

Chirică, Dan, *Contracte speciale civile si comerciale V. I,* Ed. Roseti 2005

Chirică, Dan*, Denunțarea unilaterala a promisiunii sinalagmatice de vânzare-cumpărare în temeiul unei clauze de dezicere sau a unei clauze rezolutorii*, în "Dreptul", nr. 3/2001

Chirică, Dan*, Drept civil. Contracte speciale,* Editura Lumina Lex, Cluj - Napoca, 1997

Chirică, Dan*, Efectele juridice al antecontractului de vânzare-cumpărare imobiliara, încheiat in, calitate de promitent-vânzător sau de promitent-cumpărător de un singur soț, fără consimțământul expres al celuilalt soț*, în "Dreptul", nr. 5-6/1993

Chirică, Dan*, Pactul de preferinta*, in "Revista de Drept Comercial" nr. 11/1999

Chirică, Dan*, Promisiunea sinalagmatică de vânzare-cumpărare ca forma autonoma de contract,* în Studia Universitatis Babes-Bolyai, nr. 2/2000

Chirică, Dan*, Promisiunea unilaterală de a vinde şi de a cumpara,* Revista de drept comercial nr. 9/1999

Chirică, Dan*, Publicitatea transferurilor drepturilor de proprietate imobiliară,* în Dreptul, nr. 4/1992

Chirică, Dan, *Tratat de drept civil. Contracte speciale. Volumul I. Vânzarea şi schimbul.,* Ed. C.H. Beck, Bucureşti , 2008

Ciobanu, L*., Promisiunea de vânzare în dreptul civil român,* în "Pandectele Române" 1931.IV.200;

Ciutacu, Florin, Sarchizian*,* Artin, *Pactul de opţiune şi promisiunea de a contracta în Noul Cod civil,* în RNSJ

Codrea, Ruxandra*, Consecinţele vânzării lucrului altuia în situaţia în care cel puţin cumpărătorul ignoră că vânzătorul nu este proprietarul lucrului vândut,* în „Dreptul" nr. 9/1999

Cojocaru, Aspazia*, Contracte civile, Partea I,* Bucureşti, Universitatea "Dimitrie Cantemir", 2001

Collart-Dutilleul, Delebecque, Ph., *Contrats civils et commerciaux,* 5e edition, Dalloz Publishing House, Paris, 2001

Collart-Dutilleul, Fr., Delebecque*,* Ph*., Contrats civils et commerciaux,* 4e édition Dalloz, Paris, 1998

Collart-Dutilleul, Fr. şi Delebecque, Ph., Boyer, L., *Clauza de substituire şi promisiunea unilaterală de vânzare:* JCP1987

Collart-Dutilleul, Fr., Delbecque, Ph., *Contrats civils et commerciaux,* Dalloz, 2002

Collart-Dutilleul, Fr., *Les contrats préparatoires à la vente d'immeubles,* teză, Syrey, Paris, 1988

Conachi, Nicolae, *Cu privire la admisibilitatea pronunţării de către instanţa judecătoreasca a unei hotărâri care sa tina loc de act autentic de înstrăinare a unui teren, dacă exista, în acest sens, o promisiune stabilita prin convenţia părţilor*, în "Dreptul" nr. 1/2004

Cosma, Doru, *Teoria generală a actului juridic civil,* Editura Ştiinţifică, Bucureşti, 1969

Costin, M., Les, I., Minea, M., Radu, D*., Dicţionar de drept procesual-civil,* Editura Ştiinţifică şi Enciclopedică, Bucureşti, 1983

Costin, M., Mureşan, M., Ursa, M., *Dicţionar de drept civil,* Editura Ştiinţifică şi Enciclopedică, Bucureşti, 1989

Crăciunescu, M*., Aplicaţii ale teoriei aparenţei în drept*, în "Juridica ", nr. 6/2000

D'Houdaine, R*., De la promesse unilatérale d evente imobiliére,* Paris, 1898

Dagot, M., *Le pacte de preference,* ed. Litec, 1988

Dârjan, T., *Antecontractul de vânzare - cumpărare,* în „Dreptul" nr. 3/2000

Dârjan, T., *Distincţia dintre acţiunea în executarea silită a antecontractului şi acţiunea în prestaţie tabulară în dinamica sistemelor de publicitate imobiliară,* în "Dreptul", nr. 7/2002

Deak, Fr., Cărpenaru, St., *Drept civil. Contracte speciale. Dreptul de autor. Dreptul la moştenire,* Universitatea din Bucureşti, Facultatea de Drept, 1983

Deak, Fr*., Contractul de vânzare-cumpărare,* în *"Drept civil. Contracte speciale. Dreptul de autor. Dreptul de moştenire*", Universitatea Bucureşti, Facultatea de Drept, 1983

Deak, Fr*., Curs de drept civil. Teoria generala a obligaţiilor,* Ministerul Învăţământului, Bucureşti, 1960

Deak, Fr*., Drepturile statului asupra moştenirii,* în Revista română de drept nr. 3/1986

Deak, Fr*., Tratat de drept civil. Contracte speciale,* Editura Actami, Bucureşti, 1998

Defaye, R., *Les promesses unilaterale de vente,* Paris 1907

Dégre, Alexandru*, Vânzarea de lucruri străine*, în „Dreptul" 1875

Deleanu, Ion *Partile si tertii. Relativitatea si opozabilitatea efectelor juridice,* Editura Rosetti, 2002

Deleanu, Ion şi Deleanu, Sergiu*, Consideraţii cu privire la clauza penală,* în Supliment la revista Pandectele Române nr. 1/2003

Delebecque, Ph., *Régim de la réparation. Clause pénal,* Éditions du Jurris-Classeurs, 1998, fasc. 212, civ. art. 1146-1155, nr. 142;

Delommez, P., *Les promesses unilatérales de vente,* 1947, thése Lille

Demogue*,* R., *De la nature et des éffets du droit éventuel,* Revue trimestrielle du droit civil, 1906

Demogue*,* R.*„Traité des obligations en general – Des droits éventuels et des hypoteses au ils prennent naissance,* Rev. Trim., 1905

Demolombe*,* Jean-Charles Florent, *Cours de Code Napoléon, Traité des contrats ou des obligations conventionelles en generale vol. XXIV,* Tome Deuxiéme, Imprimerie Générale de Ch. Lahure, Paris, 1869

Deneş, S., *Drept funduar maghiar,* Budapesta, 1912.

Dobrev, Dumitru*, „Impreviziunea, o cutie a Pandorei în Noul Cod Civil?",* în Noul Cod Civil al României, Comentarii, Ediţia a II-a revăzută şi adăugită, Universul Juridic, Bucureşti, 2011

Dobrican, Ghe., *Incidenţa Legii nr. 58/1974 în materia executării silite imobiliară,* în Revista română de drept nr. 8/1977

Domat, Jean*, Les Loix civiles dans leur ordre naturel,* part. I, cartea I, tit. II, secţiunea 2, nr. 8, edit. de Paris, 1777

Dumitrache, Bogdan, *Obligaţiile promitentului-vânzător şi executarea lor silita, (II),* în "Dreptul" nr. 3/1995

Dumitrache, Bogdan, *Antecontractul de vânzare-cumpărare şi promisiunea sinalagmatică de vânzare-cumpărare, (II)* în "Dreptul", nr. 2/2002

Dumitrescu, D.*D., Clauzele de inalienabilitate în donaţiuni şi testamente.* Teză de doctorat, Bucureşti, Tipografia Coop. Presa, 1941

Durry, G., *Les restrictions conventionnelles au libre choix de la personne du cocontractant,* thèse Paris, 1957

Engelbach, Friedrich Ernst, *„Ueber die Usucapion zur Zeit der zwoelf Tafeln",* Marburg, 1828

Fabre-Magnan, Murielle*, De l'obligation d'information dans les contrats. Essai d'une theorie,* Librairie Generale de Droit et de Jurisprudence, Paris, 1992

Fenet, P. Antoine*, Recueil Complet Des Travaux Preparatoires Du Code Civil: Suivi D'Une Edition De Ce Code, A Laquelle Sont Ajoutes Les Lois, Decrets Et Ordonnances,* Paris, 1827

Flour, J., Aubert, J.-L., Savaux, E., *Droit civil. Les obligations. 1. L'acte juridique,* Éd. Armand Colin, 2000

Fontaine, M.*, Les clauses pénales dans les contrats internationaux*,"Droit et pratique du commerce international", 1982

Frison-Roche, V. A.-M., *Remarques sur la distinction de la volontè et du consentement en droit des contrats,* RTD civ. 1995

Fruth-Oprişan, M.*, Executarea în natură a obligaţiei de a face,* în "Revista Română de Drept" nr. 8/1986

Gabba, C.F., *Contributo della dottrina della promessa bilaterale di contratto,* Nuove questioni di dir.civ., 1912

Gabet, M., Sabatier*, La connexité dans le droit des obligations,* thése, Paris, 1977

Garron, F.*, La caducité du contrat. Étude de droit privé,* Presse Universitaie d'Aix Marseille, 2000

Gaudemet, E.*, Theorié générale des obligations,* Ed. Sirey, Paris, 1937

Georgescu,I.L., *Drept comercial român, Teoria generală a obligaţiilor comerciale, Probele. Contractul de vânzare-cumpărare comercială,* Ed. Lumina Lex, Bucureşti, 1994

Gérard, Azéma*, Promesses et compromis de vente*, 6e éd., Editions Delmas, Paris, 1996

Gerota, D. D.*, Teoria generală a obligaţiilor comerciale în raport cu tehnica obligaţiunilor civile,* Monitorul Oficial şi Imprimeria Statului, Bucureşti, 1932

Ghestin, V. J.*, Traité de droit civil. Les obligations. Le contrat: formation,* LGDJ, 2e edition, Paris, 1988

Ghestin V. J., Desche, B.*, Tratat de contracte - Vânzarea,* LGDJ, 1990

Ghestin, V. J., Jamin, Ch., Biliay, M., *Traité de droit civil. Les effets du contrat,* Librairie Général de Droit et de Jurisprudence, 2001

Ghestin, V. J.*, La promesse unilatérale de vente dont l'option ne peut être levé qu'après le décès est - elle un pacte sur succesion future?,* Recueil Dalloz nr. 19/1970

Ghestin, J.*, Notion de contrat. Droits,* Rev. fr. de théorie jur. n. 215

Gîdei, O.,(I), Sanilevici, R. (II)*, Promisiunea de vânzare-cumpărare şi dreptul unuia din soţi de a cere anularea antecontractului de vânzare-cumpărare a construcţiei – bun comun - întocmit de celalalt soţ, la încheierea căruia nu a participat,* în "Revista Română de Drept" nr. 9/1983

Giurcă, Grigore (I), Beleiu, Ghe. (II)*, Teoria impreviziunii - rebus sic stantibus - în dreptul civil român*, în "Dreptul" nr. 10-11/1993

Goicovici, Juanita*, Acordul de principiu,* în «Dreptul» nr. 4/2002

Goicovici, Juanita*, Cesiunea convenţionala a contractului,* în "Dreptul", nr. 1/2007

Goicovici, Juanita*, Formarea progresivă a contractelor - noţiune şi sfera de aplicare,* în «Dreptul», nr. 7/2008

Goicovici, Juanita*, Formarea progresivă a contractelor-noţiune şi sfera de aplicare,* în "Dreptul" nr. 7/2008

Goicovici, Juanita, *Formarea progresiva a contractului,* Editura Wolters Kluwer Romania, Bucuresti, 2009

Goicovici, Juanita*, Sancţionarea încălcării pactului de preferinţă,* în "Pandectele Române", nr. 4/2008

Golub, S.*, Aspecte privind vânzarea lucrului altuia,* în „Revista de drept comercial" nr. 5/2002

Gross, Bernard, Bihr, Philippe *Contrats, 1 /Ventes civiles et commerciales, baux d'habitation, baux commerciaux,* ed. Presses Universitaires de France, 2000*;*

Guillouard,L.*, Traité de la vente et de l'échange,* vol. I, Ed. Durand, Paris 1890

Hamangiu, C., I. Rosetti - Bălănescu, Băicoianu, Al., *Tratat de drept civil român, vol. II, Editura "Naţională" S. Ciornei,* Bucureşti, 1929

Hamangiu, C., I. Rosetti-Bălănescu, Băicoianu*,* Al, *Tratat de drept civil român, volumul II,* Editura All Beck, Restitutio, Bucureşti, 2oo2

Hanga, Vladimir şi Bob, Mircea Dan, *Instituţiile lui Iustinian,* traducere şi note, Editura Universul Juridic, Bucureşti 2009

Houin S.-A., *Le droit de préemption,* Bibliothéque Droit Privé, 1977, tome 164

Houin, R.*, La distinction des contrats synallagmatiques et unilatéraux,* 1937, thése Paris

Huet, J.*, Les principaux contrats spéciaux,* 2e éd., LGDJ, 2001

Huet, J., *Principaux contrats spéciaux, Paris, LGDJ,* 2ème éd. 2001, Traité de droit civil (dir. J. Ghestin)

Ionaşcu Aurelian, Mureşan, M. şi colaboratorii*, Contribuţia practicii judecătoreşti la dezvoltarea principiilor de drept civil roman,* Edit. Academică, Bucureşti, 1973

Jakab, Edgar, Bogdan Halcu*, Consecinţele civile şi penale ale vânzării lucrului altuia,* în „Pandectele Române" nr. 1/2005

Josserand,L., *Cours de droit civil positif français,* vol. I, Sirey, Paris, 1932

Kocsis, Jószsef, *Unele consideraţii privitoare la executarea silită a obligaţiilor de a face,* în "Revista de Drept Comercial", nr. 3/1999

Kocsis, Jószsef*, Unele consideraţii referitoare la arvună şi la convenţia accesorie de arvună,* în Dreptul nr. 12/1998

Laday, Şt., *Caracteristica generală a Codului civil austriac,* în "Ardealul Juridic", supliment la nr. 2/1923

Laday, Şt., *Codul civil austriac în lumina jurisprudenţei,* în "Ardealul Juridic" nr. 1/1924, supliment

Laday, Şt., *Codul civil austriac în vigoare în Ardeal. Completat cu legi şi regulamente modificatoare. Cuprinzând şi jurisprudenţa, vol. I*. Editura Ministerului Justiţiei, Directoratul general Cluj, 1924.

Laday, Şt.*„ În jurul Ordonanţei nr. 4420/1918,* în "Ardealul Juridic" nr. 3/1925

Lalou, H.*, Les pactes de préférence,* D. H. Paris, 1929

Laurent, F., *Principes de droit civil français, Tome XVII,* Librairie A. Maresque, Aine, Paris

Le Tourneau, Ph.*, Droit de la responsabilité et des contrats,* 6e éd., Dalloz, 2006

Lulă, I., *Discuţii cu privire la buna-credinţă şi aparenţa în drept,* în "Dreptul ", nr. 4/1997

Lulă, I., *Discuţii în legătura cu problematica daunelor cominatorii,* în " Dreptul" nr. 9/1994

Lulă, I., Hantea, D.*, Discuţii cu privire la promisiunea sinalagmatică de vânzare-cumpărare a terenurilor,* în "Dreptul", nr. 9/2003

Lulă, Ion*, Natura juridică a promisiunii unilaterale de vânzare*, în «Dreptul» nr.6/1998

Lulă, Ion*, Discuţii referitoare la controversata problemă a consecinţelor juridice ale vânzării bunului altuia,* în „Dreptul" nr. 3/1999

Lusseau, J. F.*, Les problémes actuels posés par la promesse unilatérale de vente immobiliére,* Revue Trimestrielle de Droit Civil, 1977

Mainguy, Daniel*, Contrats spéciaux*, 4e édition, Dalloz, 2004;

Malaurie, Ph., Aynés, L., Gautier,P.-Y., *Cours de droit civil. Les contrats spéciaux. Civils et commerciaux,* Ed. Cujas, Paris, 2001

Man, Adrian si Varo, Narcisa*, notă la hotărârea arbitrală nr. 83 din 31 octombrie 2000 a Comisiei de Arbitraj Comercial de pe lângă Camera de Comerț, Industrie şi Agricultură Cluj, în Dreptul nr. 4/2003*

Mazeaud, Denis *La notion de clause pénale,* Librairie Générale de Droit et de Jurisprudence, E.J.A., 1992

Mazeaud, Denis, Olivier, Jean-Michel*, L'actualité de la promesse de vente*, Editions du Cridon, Paris, 1998

Mazeaud, Henri, Leon et Jean*, Leçons de droit civil, Les obligations, t. II,* 6e édition, Paris, Editions Montchrestien, 1978

Mestre, J., *De la notion de clause pénale et des ses limites*, "Revue trimestrielle de droit civil", 1985

Micescu, Istrate N., *Drept civil. Curs de teoria generală a drepturilor de creanță,* Editura Themis Cart, Slatina, 2004

Mihai, Gh. C., Motica, R.*, Fundamentele dreptului. Optima justitia,* Editura All Beck, Bucureşti, 1999

Mihai, L.*, Abuzul de drept în domeniul aplicării dispozițiilor art. 12 din Decretul nr. 144/1958,* în "Revista Română de Drept" nr. 8/1982

Motica, R.I., Trăilescu, A., *Curs de drept funciar,* Editura All Beck, Bucureşti, 2001

Mureşan, M.*, Clauzele esențiale şi indispensabile ale antecontractului şi clauzele sale accesorii*, în "Dinamica relațiilor sociale reglementate de lege oglindită în teoria şi practica dreptului", Centrul de ştiințe sociale ale Academiei de Ştiințe Sociale şi Politice, Cluj-Napoca, 1988

Mureşan, M.*, Condițiile validității antecontractului,* în "Studia Universitatis Babeş-Bolyai", Jurisprudetia nr. 1/1988

Mureşan, M.*, Contractele civile. Contractul de vânzare-cumpărare, vol. I,* Editura Cordial Lex, Cluj-Napoca, 1996

Mureşan, M.*, Dinamica relațiilor sociale reglementate de lege oglindită în teoria şi practica dreptului,* Cluj-Napoca, 1988, Vol. II

Mureşan, M.*, Efectele antecontractului de vânzare-cumpărare a unei construcții –bun comun - încheiat de unul singur dintre soți,* în "Studia Universitatis Babes-Bolyai", nr. 2/1987

Mureşan, M.*, Particularitățile condițiilor de fond ale validității antecontractului,* în Studia Universitatis Babes-Bolyai, seria Jurisprudentia, 1/1988

Mureşan, M.*, Regimul juridic al fructelor bunurilor deținute de cei care s-au obligat în temeiul unui antecontract de vânzare-cumpărare*, în "Revista Română de Drept" nr. 9/1972

Mureşan, M., *Consecinţe ale abrogării Legii nr. 58/1974 asupra antecontractelor de înstrăinare imobiliară*, în "Dreptul" nr. 7-8/1991

Mureşan, M., Costin, M., Ursa, V., *Clauza penală*, în "Dicţionar de drept civil", Edit. Ştiinţifică şi Enciclopedică, Bucureşti, 1980

Najjar, I., *Le droit d'option, contribution á l'étude de droit potestatif et de l'acte unilateral,* Librairie Générale de Droit et de Jurisprudence, Paris, 1967

Neagu, V., *Sistemele de publicitate a drepturilor reale imobiliare,* Institutul de arte grafice şi editură "Glasul Bucovinei", Cernăuţi, 1927

Negrea, C*., Dreptul civil al ţinuturilor ardelene şi ungurene în comparaţiune cu dreptul civil român, vol. III, Raporturi de obligaţiuni, Partea I, Izvoarele obligaţiunilor*, Cluj, 1937

Nicolae, M*., Consideraţii asupra Legii nr. 213/1998 privind proprietatea publică şi regimul juridic al acesteia*, în "Dreptul" nr. 6/1999

Nicolae, M*., Prescripţia exctinctivă,* Editura Rosetti, Bucureşti, 2004

Nicolae, M*., Tratat de publicitate imobiliară, vol. II, Noile cărţi funciare*, Editura Universul Juridic, Bucureşti, 2006

Olteanu, E.G., *Promisiunea unilaterală de vânzare,* Revista «Studii Juridice» nr. 12/1998

Oprişan, C., *Este admisibilă practica daunelor cominatorii în dreptul nostru?,* în "Legalitatea populară" nr. 7/1958, p. 31-39;

Otetelişanu, Alexandru*, Studiu asupra cazului fortuit sau forţei majore şi a impreviziunii*, teză de doctorat, Bucureşti, Institutul de arte grafice "Îndreptarea", 1928;

Papp, I., Balaşiu, P., *Cartea funciară. Colecţie de legi, regulamente şi formulare referitoare la cărţile fundamentale din Ardeal, vol. I,* 1922, Tipografia "Carmen" din Cluj

Patulea,V*., Aplicarea în timp a legii civile în legătură cu înstrăinările de imobile,* în "Dreptul" nr. 11/1992

Patulea,V., *Atenuarea legală, contractuală şi judiciară a principiului pacta sunt servanda consacrat de art. 969 C. civ.,* în "Revista de drept comercial" nr. 4/1998

Pătulea,V., *Clauze de adaptare a contractelor comerciale,* în "Dreptul" nr. 6/1991

Patulea,V*., Obligaţia de plată a preţului în condiţiile variaţiilor de curs valutar,* în "Dreptul" nr. 2/1994

Pedamon, M., *Le contrat en droit allemand,* LGDJ, Paris, 1993

Peretz, Ion*, Curs de istoria dreptului român, vol. I, Ideea de drept la: sciţi, daci, romani, bizantini, slavi, români. Organizarea Daciei şi năvălirile barbare. Influenţele: rusă, polonă, ungară, iugoslavă, turcă şi franceză asupra dreptului românesc,* Bucureşti, 1926

Perju, Pavel, *Sinteză din practica secţiei civile a Tribunalului Suceava*, în "Dreptul" nr. 1/1998

Perju, Pavel*, Sinteză din practica secţiei civile a Tribunalului Judeţean Suceava*, în Dreptul nr. 10/1992

Pinto-Monteiro, A., *La clause pénale en Europe, Ettudes offerts à J. Ghestin,* Librairie Générale de Droit et de Jurisprudence, 2001

Planiol M., Rippert*,*G., *Traité practique de droit civil, vol. VI, nr. 144*

Planiol, M., Ripert, G., Hamel, J., *Traite pratique de droit civil francais,* 2 - eme Edition, Tome X, Paris, 1956

Planiol, M., Ripert, G., *Traité pratique de droit civil français,* Librarie Générale de Droit et Jurisprudence, tome X, Paris, 1932

Planiol, M., Ripert, G., *Traité pratique de droit civil, Tome VI, Obligations,* Paris, Librairie General de Droits, Jurisprudence, 1930

Plastara, Gh., *Curs de drept civil român, vol. VI, partea I,* Editura Ancora, Bucureşti, f. a.

Plopu, I*., Achiziţiunea dreptului de proprietate asupra lucrurilor mobile şi imobile în dreptul ardelean, notă la Curtea de Casaţie, s I, dec. nr 441/1922,* în "Pandectele Romane" 1930.I.109

Poenaru, E., *Introducere în dreptul civil. Teoria generala. Persoanele.,* Editura Europa Nova, Bucureşti, 1996

Pop, L., *Antecontracte de vânzare-cumpărare succesive. Acţiune formulate de beneficiarul ultimului antecontract împotriva primului dintre promitenţi. Problema admisibilităţii., nota (I),* în "Revista Română de Drept", nr. 1/1982

Pop, L*., Câteva consideraţii generale referitoare la categoria datoriilor de valoare,* în "Dreptul" nr. 9/2002

Pop, L., *Drept civil. Teoria generala a obligaţiilor,* Edit. Fundaţiei "Chemarea", Iaşi, 1996

Pop, L., *Dreptul de proprietate si dezmembramitele sale,* Editura Lumina Lex, Bucuresti, 2001

Pop, L., *Teoria generală a obligaţiilor,* Ed. Lumina Lex, Cluj - Napoca, 1998

Pop,Teofil*, Dimensiunea juridică a daunelor cominatorii,* în "Dreptul" nr. 12/1995

Popa, I., *(I), Antecontractul de vânzare-cumpărare şi promisiunea sinalagmatică de vânzare-cumpărare,* în "Dreptul", nr. 2/2002

Popa, I., *Contractul de vânzare-cumpărare. Studiu comparativ de doctrină şi jurisprudenţă, ediţia a II-a revăzută şi adăugită,* Editura Universul Juridic, Bucureşti, 2008

Popa, I.-F., *Cesiunea contractatului,* în "Dreptul", nr. 10/2006

Popa, I.-F., *Dolul şi obligaţia de informare în contractele sinalagmatice,* în "Dreptul", nr. 7/2002

Popa, I.-F., *Inalienabilitatea voluntară, în P.R. In honorem Corneliu Bârsan, Liviu Pop,* Editura Wolters Kluwer, Bucureşti, 2006,

Popa, Ioan (I), Baias, Flavius (II)*, Efectele juridice ale antecontractului de vânzare-cumpărare a unei construcţii în condiţiile abrogării Decretului nr. 144/1958*, în Dreptul nr. 7/1994

Popa, Ioan, *Contractul de vânzare-cumpărare. Studiu comparativ de doctrină şi jurisprudenţă,* Universul Juridic, Bucureşti, 2008

Popescu, Corneliu-Mihai*, Essai sur la théorie d'imprévision,* thése, Paris, 1937;

Popescu, T.R.*, Anca, P., Teoria generală a obligaţiilor,* Editura Ştiinţifică, Bucureşti, 1968

Popescu, T.R., *Contractul,* în «Teoria generală a obligaţiilor», de T. R. Popescu, P. Anca, Editura Ştiinţifică, Bucureşti , 1968

Popescu, T.R., *Drept comercial internaţional,* Ed. Didactică şi Pedagogică Bucureşti, 1983

Popescu, T.R., *Dreptul familiei, vol. I,* Editura Didactică şi Pedagogică, Bucureşti, 1965

Pothier, Robert -Josef*, Traite du droit de domaine de propriete, nr. 245,* edit. de Paris, 1776

Pothier, Robert-Josef*, Traité des obligations,* Orléans, 1761, Imprimeur du Roi, de la Ville & de l'Université

Prescure, T., Schiau, I., *Actualizarea pretenţiilor şi evaluarea daunelor în materie comercială,* în "Revista de drept comercial" nr. 12/1999

Răducanu, Dan-Rareş, *Reactualizarea creanţelor ca urmare a fluctuaţiilor monetare,* în "Dreptul" nr. 8/2003

Rădulescu, Octavian*, Interdicţia de înstrăinare a apartamentelor cumpărate de chiriaşi în baza Legii nr. 112/1995,* în "Dreptul" nr. 10/1997

Raffray V.G., *Les pactes de préférence,* Publications du Cridon de Bordeaux-Toulouse, 1979

Rath, J., *Vorvertrage nach den BGB,* 1906;

Redouin, J., *Les arrhes en droit français, thèse,* Ed. Rodez, Paris, 1935

Rieg, F., *La "punctation". Contribution à l'étude de la formation successive du contrat, Etudes offertes à A. Jauffret,* Faculté de Droit et de Science Politique d'Aix Marseille, 1974

Rizeanu, Dumitru*, Condiţii pentru acordarea daunelor cominatorii,* în "Revista română de drept" nr. 7/1971

Robert, A.-G.*, Action pauliene et conflits de proprieté, Á propos de Cass. 3^{e} civ., 6 octombrie 2004,* JCP nr. 49/2005

Roland H., Boyer, L., *Adages du droit français, editura Litec,* editia a 4-a, Paris, 1999

Roland H., Boyer, L., *Locutions latines du droit français, editura Litec,* editia a 4-a, Paris, 1998

Rosseti-Bălănescu, I., Băicoianu, Al., *Drept civil român. Studiu de doctrină şi jurispudenţă, Vol. II,* Ed. Socec, 1943

Rusu, Samuilă*, Pactul de preferinta,* în "Dreptul" nr. 1/2008

Safta-Romano, E.*, Sinteză teoretică şi practică referitoare la antecontractul prevăzut de art. 12 din Decretul nr. 144/1958,* în Dreptul nr. 1/1990

Safta-Romano, E.*, Contractele civile,* Editura Polirom, Iasi, 1999

Safta-Romano, E., *Regimul juridic al antecontractelor privind înstrăinările imobiliare subsecvent abrogării Decretului nr. 144/1958,* în "Dreptul", nr. 9/1993

Safta-Romano, E.*, Sinteza teoretica şi practica referitoare la antecontractul prevăzut de art. 12 din Decretul nr. 144/1958,* în "Dreptul" nr. 1/1991

Safta-Romano, E.*, Un alt punct de vedere privind executarea silită a antecontractelor în urma abrogării art. 12 din Decretul nr. 144/1958,* în "Dreptul" nr. 9/1992*;*

Saint-Alary Houin, Corrine*,* ***Le Droit De Preemption*****,** Librairie générale de droit et de jurisprudence, Paris, 1979

Saleilles, Raymond*, De la declaration de volonté,* Paris, 1901

Sanilevici, R.*, Andrei, P., Analiză asupra practicii daunelor cominatorii şi unele propuneri de lege ferenda,* în "Revista Română de Drept", nr. 9/1973

Sanilevici, R., *Drept civil. Teoria generală a obligaţiilor,* Universitatea Iasi, 1976

Sanilevici, R.,Macovei, I., *Consecinţele vânzării lucrului altuia în lumina soluţiilor practicii judiciare,* în „Revista Română de Drept" nr. 2/1975

Savu, C.*, Promisiunea unilaterală şi promisiunea sinalagmatică de vânzare,* Revista Studii Juridice nr. 16/2000

Schlossman, *Uber den Vorvertrag, Jherings Jahrbücher, vol. 45, p. I*

Schmidt, J.*, Negociation et conclusion de contrats,* Editura Dalloz, Paris, 1982

Schmidt, J., *Sanction de la faute precontractuelle*, RTD, civ. 1974

Schmidt-Szalewski, J.*, Art. 1589. Juris-Classeur Civil,* Éditions de Juris-Classeur, 1996

Schmidt-Szalewski, J., *Vente. Nature et forme. Pacte de préférence,* JurisClasseur Civil Code, cote :02, 1997;

Schmitd-Szalevski, J., *Le role de l'acte authentique dans la vente immobilière,* RD Imm.1989

Schmitz, W., *Über den Vorvertrag bei Consensualcontrakte,* Erlangen, 1895

Schutz, R.N., *L'exécution des promesses de vente,* Defrénois, 1999

Sebeni, Aladar, *Scurte observaţii asupra clauzei penale,* în "Analele Universităţii din Bucureşti", 2003-I

Şerban, S., *Efectele antecontractelor de vânzare-cumpărare a imobilelor după abrogarea Legii nr. 58/1974, art. 44-45 din Legea nr. 59/1974 şi a Decretului nr. 144/1958,* în "Dreptul" nr. 12/1991

Şerbănescu, I., *Efectele războiului asupra executării contractelor,* în "Dreptul" 1916, No. 54;

Serlooten V.P., *Vente,* Juris-Classeur Notarial, Fascicol H

Shultze, R., *Le droit privé commun européen,* RID comp., 1995

Spondheim, M.B., *Promisiunea de vânzare în dreptul privat român*, în "Pandectele Române" 1931.IV.200

Stapylton-Smith, D., *La promesse unilatérale de vente a-t-elle encore un avenir?,* AJPI, 1996

Stătescu, C.,Bârsan, C., *Drept civil. Teoria generală a obligaţiilor,* Editura All Beck, ediţia a III-a, Bucureşti, 2000

Stătescu, Constantin, *Antecontracte de vânzare-cumpărare succesive. Acţiune formulate de beneficiarul ultimului antecontract împotriva primului dintre promitenţi. Problema admisibilităţii., nota (II),* în Revista romana de drept, nr. 1/1982

Stătescu, Constantin, Bârsan, Corneliu, *Drept civil. Drepturile reale,* Universitatea din Bucureşti, Facultatea de drept, 1988

Steopan, A., *Consideraţii privind cesiunea convenţională de contract,* în "Studia Universitatis Babes-Bolyai", nr. 2/2003

Stoenescu, I., Zilberstein, S., *Drept procesual civil. Teoria generală. Judecata în primă instanţa. Hotărârea.,* Editura Didactică şi Pedagogică, Bucureşti, 1983

Stoffel-Munck, Ph., *Regards sur la théorie de l'imprévision,* Presses Universitaires d'Aix-Marseille, 1994

Stoica, V., Baias, Fl., *Executarea silită a antecontractelor de înstrăinare a imobilelor în condiţiile abrogării art. 12 din Decretul nr. 144/1958,* în "Dreptul" nr. 3/1992

Stoica, V., *Pactele comisorii exprese,* în "Dreptul" nr. 2/1997,

Stoica, V., *Rezoluţiunea şi rezilierea contractelor civile,* Editura All Educational S.A., Bucureşti, 1997

Stroe, Ioan A., *Teoria impreviziunii, teză de doctorat,* Institutul de arte grafice, Craiova, 1924;

Tallon, D., *Vers un droit européen des contrats,* Mélanges Colomer, Litec, 1993

Terrasson de Fougères, *A., Sanction de la rétractation de promettant avant la levée de l'option,* JCP 1995, éd.N.1

Terré, Fr., Simler, Ph., Lequette, *Droit civil. Les obligations,* Dalloz, Paris, 1999

Terré, Fr., Simler, Ph., Lequette, Y., *Droit civil. Les obligations,* 7e edition, Dalloz, 1999

Terré, Fr., Simler, Ph., Lequette, Y*., Les obligations,* 8 édition, Paris, 2002

Terța, I. D*., Considerente privind impreviziunea. Regula rebus sic stantibus,* în "Revista de drept comercial" nr. 6/1998

Titulescu, N., *Essai sur une théorie générale des droits éventuels,* Editura Göbels, Bucureşti, 1908

Titulescu, N., *Teoria generală a drepturilor eventuale,* Editura C. H. Beck, 2008

Toader, Camelia, *Contracte speciale-Curs Universitar,* ediția 3, ed. C.H. Beck, Bucureşti, 2008

Tudorache, C*., Executarea daunelor cominatorii*, în "Dreptul" nr. 3/1995

Țuluş, A*., Acțiunile de carte funciară în lumina noilor reglementări,* în "Dreptul" nr. 1/1999

Turcu, Ion*, Noul Cod civil. Legea nr. 287/2009. Cartea a V-a. Despre obligații (art. 1164-1649). Comentarii şi explicații",* Editura C.H. Beck, Bucureşti, 2011

Turianu, C., *Contracte civile speciale. Practica judiciară adnotată,* Editura All Beck, Bucureşti, 2000

Turianu, C*., Contracte speciale,* Editura Fundației "România de Maine", Bucureşti, 2001

Ungureanu, O., Bacaci, Al., Turianu, C., Jugastru, C*., Principii şi instituții de drept civil. Curs selectiv pentru licență,* Ed. Rosetti, Bucureşti, 2002

Valory, S., *La potestativité dans les relations contractuelles,* Ed. Presses Universitaires d'Aix - Marseille, 1999

Viatte, J*., Des promesses unilatérales de vente,* Gaz Pal., Paris, 1973

Vidican, Ghe*., Despre temeiul juridic al acțiunilor având ca obiect executarea silită a antecontractului de vânzare-cumpărare privind imobilele terenuri,* în "Curierul Judiciar" nr. 6/2007

Vivante, Cesare*, Traité de droit commercial,* Ed. Giard Paris, 1911

Vlachide, P*., Vânzarea lucrului altuia,* Bucureşti, 1943

Voiculescu, R*., Promisiunea unilaterală de vânzare imobiliară în dreptul comparat,* Bucureşti, Tipografia Curierul Judiciar, 1942

Voiculeț, Pompiliu*, Teoria impreviziunii, teză de doctorat,* Bucureşti, 1934;

Voirin, P., *Le pacte de préférence,* Juris-Classeur Périodique, 1954, I, nr. 1192

Vurdea, Ioan-C.(I) şi Bîrsan,Corneliu, Stoica,Valeriu (II)*, Evoluția legislativă privind circulația imobilelor,* în Dreptul nr. 6/1990

Weill, A., F. Terré, *Droit civil. Les obligations,* Dalloz, Paris, 1980

Werter-Ouisse, V*., La caducité en matiére contractuelle: une notion á réinventer,* JCP nr. 4/2001

Witz, Claude, *Droit privé allemande, I. Actes juridiques, droit subjectifs,* Litec, 1992

Zamşa, Cristina Elisabeta, *Teoria impreviziunii. Studiu de doctrină şi jurisprudenţă,* Editura Hamangiu, Bucureşti, 2006
Zilberstein, S., Ciobanu, V.M, Băcanu, I., *Drept procesual civil. Executarea silită, vol. II,* Ed. Lumina Lex, Bucureşti, 1996
Zinveliu, I., *Contractele civile. Instrumente de satisfacere a intereselor cetăţenilor,* Editura Dacia, Cluj-Napoca,1973

JURISPRUDENCE. NOTES. OBSERVATIONS.

Decizia camerei a treia civilă a Curții de Casație din 1 februarie 1984, publicată in Bulletin Civil, 1984

Decizia Înaltei Curți de Casație şi Justiție nr. LXXIX (79) din 5 noiembrie 2007, publicată în Monitorul Oficial al României, partea I, nr. 570 din data de 29 iulie 2008

Decizia comercială a Curții de Casație din 4 februarie 1970, publicată in Bulletin Civil, 1970

Decizia Tribunalului Seine din Paris din 16 decembrie 1953, publicată in Gazette du Palais, 1954

Decizia din 22 decembrie 1959 a primei camere civile a Curții de Casație, publicată in J.C.P. 60, II, 11494

Decizia Curții de Apel din Nimes din 21 aprilie 1982 publicată in Juris-data 0301

Decizia din 10 martie 1981 a Curții de Apel din Paris, secția comercială, publicată in Bull. Inf. Sociétés 1981

Decizia din 2 iulie 1974 a Curții de Casație, publicată in I.R. 1974

Decizia din 30 noiembrie 1982 a Curții de Casație, publicată in Rép. not. Defrénois, 1983

Decizia primei camere civile a Curții de Casație din 21 februarie 1951, publicată in Bulletin Civil I, 1951

Decizia camerei a treia civila din 10 mai 1984, publicata in Rev. dr. immob., 1985

Decizia camerei a 3-a civilă a Curții de Casație din 5 martie 1970, publicată in *Bulletin Civil III*, nr. 178

Requete din 12 ianuarie 1926, publicată in Dalloz Habitation, 1926

Decizia din 12 mai 1964 a Tribunalului de mare instanță din Lyon, publicată in Recueil Général Lois 1964

Decizia comerciala a Curții de Casație din 7 martie 1989, publicată in Bulletin Civil IV, 1989

Decizia din 1 iulie 1964 a Tribunalului de mare instanță din Valence, în cauza Sieur Boye şi alții.

Decizia primei camere civile a Curții de Casație din 15 decembrie 1965, publicată in Dalloz Social, 1966, p. 246, în Information Rapport Copropriété, 1966

Decizia camerei a treia civilă a Curții de Casație din 22 aprilie 1976, publicată in Bulletin Civil nr. 165 din 1976, în Répertoire Notarial Defrénois 1976

Decizia camerei a treia civilă a Curții de Casație din 26 octombrie 1982, publicată în Gazette du Palais 1983

Decizia Tribunalului din Douai din 29 octombrie 1968, publicată în Revue des Loyers 1969

Decizia camerei a treia civilă a Curții de Casație din 10 februarie 1999, publicată în Bulletin Civil III, 1999, Juris-Classeur Periodique 1999. II. 10191

Cass. ch. mixte 26 mai 2006, Pére, Bull. ch. mix., no 4 D. 2006, Jur. 1861

Cass. civ., 25 februarie 1997

Înalta Curte de Casaţie şi Justiţie, secţia civilă şi de proprietate intelectuală, decizia nr. 1597 din 14 februarie 2006, în "Jurisprudenţa Secţiei civile şi de proprietate intelectuală pe anul 2006", Ed. Hamangiu, 2007

Decizia civilă nr. 773/23.03.1973 a Tribunalului Suprem

Decizia nr. 215 din 18 februarie 1992 a Tribunalului Judeţean Timiş, secţia civilă

Hotărârea arbitrală nr. 83 din 31 octombrie 2000 a Comisiei de Arbitraj Comercial de pe lângă Camera de Comerţ, Industrie şi Agricultură Cluj, în "Dreptul" nr. 4/2003

Tribunalul Suprem, decizia civilă nr. 819/1971, în "*Repertoriu de practică judiciară pe anii 1969-1975"*

Tribunalul Suprem, decizia civilă nr. 1663/1960, în C.D., 1960

Judecătoria Ocolului I Iaşi, încheierea din 28 aprilie 1914, în "Curierul judiciar" nr. 47/1915

Înalta Curte de Casaţie şi Justiţie, secţia civilă şi de proprietate intelectuală, decizia nr. 2688 din 27 martie 2007, în Buletinul Casaţiei nr. 1/2008

Curtea Suprema de Justiţie, decizia civilă nr. 217/1993, în "Dreptul" nr. 7/1994

Curtea de Apel Timişoara, decizia civilă nr. 812/08.10.2009, www.jurisprudenta.com.

Decizia civilă nr. 323/1987 a Tribunalului Judeţean Timiş, în Revista română de drept nr. 2/1988

Tribunalul Suprem, decizia civilă nr. 44/1979, în Revista română de drept nr. 4/1980

Curtea de Casaţie, secţia I, decizia civilă nr 441/1922, în "Pandectele Romane" 1930.I.109

Curtea de Apel Braşov, decizia civilă nr. 237/R/1994, în "Curierul juridic" nr. 1/1997

Decizia civilă nr. 356/1979 a Tribunalului Județean Maramureş, în Revista română de drept nr. 2/1979

Decizia civilă nr. 1731 din 13 octombrie 1999 a Curții de Apel Cluj, în "Dreptul" nr. 12/2000

Decizia nr. XXI din 12 decembrie 2005, publicată în Monitorul Oficial, Partea I nr. 225 din 13/03/2006

Tribunalul Suprem, secția civilă, decizia nr. 1604 din 19 iulie 1989

Tribunalul Suprem, secția civilă, decizia nr. 1315/1972, în *Culegere de decizii pe anul 1972*
Hotărârea nr. 68/1974 a Comisiei de Arbitraj, Bucureşti, în T.R. Popescu, Drept comercial internațional, Ed. Didactică şi Pedagogică Bucureşti, 1983

Cass. civ.III, 4 martie 1971, nota de E. Franck

Cass. Civ., camera a III-a civilă, 20 martie 1979

Tribunalul Suprem, Secția civilă, decizia nr. 412/12.02.1980, în *Repertoriu de practică judiciară în materie civilă a Triunalului Suprem şi a altor instanțe judecătoreşti pe anii 1975-1980*, Editura Ştiințifică şi Enciclopedică, Bucureşti, 1981

Cass. com. 2 iulie 1974, D. 1975

Cass. Civ. 3e, 27 aprilie 1988, soc. Safranado, Bull. civ. III, no 83