



MASARYKOVA UNIVERZITA PRÁVNICKÁ FAKULTA

Locatio-conductio operis or emptio-venditio?

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- Emptio-venditio - Exchange for exchange
- Locatio-conductio (lease, usufructuary lease) is characterized as a contract, in case there is a ceded using of a thing, performance of a work or a creation of a work for a financial payment (*merces*)
- lease - using of a thing x usufructuary lease - enjoying of a thing (taking fruits)



Locatio-conductio

- **Roman law (classical)**
 - Locatio-conducio
- **Roman law (german pandectistic)**
 - Locatio-conductio rei
 - Locatio-conductio operis
 - Locatio-conductio operarum
- **Code Napoleon (1804)**
 - Lease contract and contract for work together
- **ABGB (1811)**
 - Lease and usufructuary lease (2. part, title XXV)
 - Service contract and contract for work (2. part, title XXVI)
- **BGB + Scheme 1937**
 - Lease contract, contract for work, employment contract - separate x in a row
- **CC 1950, CC 1964 (after 1991) and CC 2012**
 - Separated from a lease contract and employment contract
 - Contract for a work near to a command contract and transport contract



Gai III.145

„Adeo autem emptio et uenditio et locatio et conductio familiaritatem aliquam inter se habere uidentur, ut in quibusdam causis quaeri soleat, utrum emptio et uenditio contrahatur an locatio et conductio, ueluti si qua res in perpetuum locata sit.“

Purchase and sale are so nearly akin to letting and hiring that in some cases it is a question under which category the contract falls; for instance, when land is leased in perpetuity, as occurs with the land of municipalities, which is leased on the condition that, so long as the rent is paid, the lessee and his heirs shall continue in possession. But here the better opinion is that the contract is one of letting and hiring.



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Custom-made thing
-
Contract for work or
contract of sale?



Gai 3.147

„Item quaeritur, si cum aurifice mihi conuenerit, ut is ex auro suo certi ponderis certaeque formae anulos mihi faceret et acciperet uerbi gratia denarios CC, utrum emptio et uenditio an locatio et conductio contrahatur. Cassius ait materiae quidem emptionem uenditionemque contrahi, operarum autem locationem et conductionem; sed plerisque placuit emptionem et uenditionem contrahi. atqui si meum aurum ei dedero mercede pro opera constituta, conuenit locationem conductionem contrahi.“

Again, if a goldsmith agrees to make me rings of a certain weight and fashion out of his own gold for, say, two hundred denarii, it is a question whether the contract is purchase and sale or letting and hiring. Cassius says the material is bought and sold, the labour is let and hired, but most writers hold that there is only a purchase and sale. But if I provide the gold and agree to pay him for his work, the contract is settled to be a letting and hiring.



Roman law - Locatio conductio

- Locator ALWAYS hands a thing over to conductor:
- Rei - object of lease (ship, house)
- Operarum - object is a physical performance of work, so as if he hands „his body“
- Operis - e.g. cleaning of clothes - it is necessary to hand mentioned clothes for cleaning
- Operis - thing, which is about to emerge - also in this case, it is necessary to hand a basic stuff over for processing
 - Ring - gold (alternatively stone)
 - Clothes - cloth (not necessarily threads, buttons - less significant components)
- If locator does not hand it over, but conductor uses his personal one - contract of sale - for distinction important so called „criterion of the supplier of stuff“



German Law

- Allgemeines preussisches Landesrecht - may be a contract of work, even when the maker supplies the cloth
- Ehrenberg (one of authors of BGB) talks about special initiative of the orderer (drawings, instructions how to proceed)
- Piece of work x contract of sale
 - Not important the delivery of stuff, but the idea
 - Idea - who is the author of the form, who individualizes it - so called „criterion of the individualization of thought“
- E.g. Clothes made to measure
 - At dressmaker you choose the dress from the album of clothes, that she offers to sew.
 - You bring the photo of the dress that you want her to sew for you



Czech law 1950-2012

- CC1950, CC1964 - german inspiration - criterion of the individualization of thought x modification was very brief
- Commercial code 1990 - criterion of the supplier of stuff (influence of international law)



CC 2012

Section 2587

A work is to be understood as the making of a particular thing which is not subject to a contract of sale, as well as maintenance, repair or alteration of a thing, or an activity with any other result. A work is to be understood as any construction, maintenance, repair or alteration of a structure or part thereof.

Section 2590

(1) A contractor shall perform the work with necessary care within the stipulated period and **procure all that is needed for its performance.**

Section 2594

(1) **The contractor shall notify the client without undue delay of the unsuitability of a thing handed over or a mandate given to him by the client.** This does not apply if he could not have ascertained the unsuitability even by exercising necessary care.

Section 2596

If a contractor procures a thing which was processed during the performance of the work and such a thing becomes a component part of the work, **the contractor is in the position of a seller in respect of that thing.** The purchase price of the thing is presumed to be included in the price of the work.



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Thank You for Your attention

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