

SUMMARY

Key Words: contract law, contracts, buying and selling, sale of an enterprise, real estate.

Subject matter: The legal nature of contracts for the sale of an enterprise in civil law of the Russian Federation.

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The relevance of the research topic is due to the fact that the contract of sale is currently considered the main type of civil obligations used in property turnover. Purchase and sale is one of the most important institutions of civil law.

In modern law, the special significance of this institution is due to the great flexibility and breadth of its application, because purchase and sale is essentially the most universal form of commodity and money exchange. Chapter 30 of the Civil code of the Russian Federation (hereinafter – the civil code of the Russian Federation) is the basis of purchase and sale in Russian legislation. It is distinguished by a combination of classic provisions and new norms that were previously absent. The legal regulation of the contract has become more detailed and complete, which reduced the need for numerous bylaws.

In legal science, in particular in the field of civil law, with regard to the definition of an enterprise, the scientist`s opinions are divided into two points of view: some of them consider the enterprise an object of property rights, others recognize it as a property of a special subject. An enterprise as an object of ownership is recognized as a property complex and belongs to real estate.

Despite the fact that the functioning civil law, in contrast to the past, regulates in some detail the problems affecting enterprises as civil rights objects, it does not fully meet the needs of current business life. The transfer of the enterprise to the buyer represents the effective performance of the contract of sale concluded by the seller.

This is the most important acceptance of the scientific relevance of the problem under study and its novelty.

Purpose: to identify the theoretical and practical foundations of the legal nature of the contract of sale of an enterprise in the civil law of the Russian Federation.

Tasks:

to give a General description of the contract of sale of an enterprise;

to identify the specifics of concluding a contract of sale of an enterprise;

to consider the comparative characteristics of an enterprise as an object of contractual legal relations in Russia and abroad;

to highlight the features of the emergence and development of the institution of an enterprise purchase and sale in the Russian Federation;

to consider the sources of legal regulation, essential conditions and form of purchase and sale of an enterprise;

to analyze the performance of the contract of sale of an enterprise and the responsibility for violation of the terms.

The theoretical and practical significance of the research results

The theoretical basis of the research. The theoretical basis of the research is the works of domestic legal experts in the field of General theory of state and law, as well as branch legal Sciences, the work of philosophers and economists, as well as foreign legal experts. Domestic and foreign legislation has also been studied. The paper uses practical materials published in the press, as well as materials collected by the author in the arbitration court.

The methodological basis of the research. When writing a graduation qualification work the universal dialectical method of cognition and methods of research were used: the historical and linguistic approach (for example, to establish the meaning of the term "contract of sale"), system

approach (in particular, when considering the problem of determining the object of legal relations), the historical and logical methods, formal legal, comparative legal, structural-legal, etc.

The result of the research.

1. The development of the institution of purchase and sale of enterprise in Europe began much earlier than in Russia, which was the result of the development of industry in the VII–VIII centuries, which brought economic relations to a new level. The law, designed to formalize economic turnover and consolidate the results of the exchange, could not but reflected these new trends.
2. The purchase and sale Agreement is considered the main type of civil law contracts used in property turnover. One party (the seller) under the contract of sale undertakes to transfer the thing (goods) to the other party (the buyer) in ownership, and a buyer undertakes to accept this product and pay a certain amount of money (the price) for it. Any legal entities and individuals can be parties to the purchase and sale agreement.
3. The transfer of the enterprise to the buyer is the entry into force of the purchase and sale contract concluded by the seller.
4. If the actual transfer of an enterprise coincides with the moment of entry into force of the contract, we can talk about a special procedure for concluding the contract of sale and that it is executed at the time of conclusion, but not about the actual nature of the contract.
5. Since an enterprise is a special subject of the contract, which often employs a large number of people and with which the interests of a large number of creditors are directly related, the article 566 of the Russian Federation Civil code establishes special consequences of changing or terminating such a contract or declaring it invalid. The General consequences of invalidating or terminating a contract do not apply if they violate the rights and legally protected interests and rights of creditors provided for in the article 562 of the Russian Federation Civil code, the seller and buyer, or other persons, and are contrary to the public interest.
6. When speaking about the performance of the contract of sale of an enterprise, first of all, it should be meant that the parties exercise their rights and obligations, which largely follow from the provisions of the current civil legislation relating to the contract of sale as such. An equally important issue between the conclusion and execution of the contract is the question of the seller's liability, since the buyer in the legal relationship under consideration is directly the weak party. Civil liability is a type of legal liability that has all the characteristics of the latter. Legal liability is characterized by the fact that it is a form of state coercion which applies only to persons who have committed offenses, consists in the application of measures provided by law, and can only be applied by authorized state or other bodies.
7. The seller's liability arises, if it refuses to transfer the sold goods to the buyer. In this case, the buyer has the right to refuse to perform the contract of sale (clause 1 of the article 463 of the Civil code of the Russian Federation).

Recommendations:

It should be noted that the legal relations arising from the contract of sale of the enterprise are not sufficiently regulated by the norms of Russian law. The rules that govern the sale of real estate are applied to the sale of an enterprise as a property complex. If there are no such rules, the General provisions on the sale of goods have to be referred to. Hence, we conclude that paragraph 8 of Chapter 30 of the Civil code of the Russian Federation needs to be more thoroughly refined.

I also made a proposal to include an article on the obligation of contractors to conclude a preliminary agreement before concluding the main one in paragraph 8 of Chapter 30 of section IV of part 2 of the Code. It is assumed that this rule and the conclusion of a preliminary agreement will prevent the transfer of an enterprise with disadvantages and the occurrence of undesirable consequences specified in paragraph 1 of article 475 of the civil code of the Russian Federation.