

Sale and Repurchase

1. Sale and Repurchase v. Buyback Option

- Used as a security for a loan, a pressure (penalty) measure to ensure certain conditions (if the buyer fails to comply with certain conditions imposed by the seller, the seller may repurchase).
- Sale and Repurchase must be agreed as one transaction.
- Buyback option contract may be agreed at any time.
- Buyback Option may last longer than 3 years (movables) or 5 years (immovables). The right of repurchase must be exercised within these periods.
- (Immovables): Sale and Repurchase is registered as a sub-entry of the sale transaction. Buyback option is registered as a stand-alone entry.
- Notice of repurchase must be given to the present owner of the property (if the property was conveyed to a third party in the meantime).

2. Repurchase price

- Unless otherwise agreed, sale price + buyer's expenses (Art. 590)
- Often used as a security for a loan.

3. Seller's right

- Upon notification (of the exercise of the right of repurchase) and tender of the repurchase price to the buyer, the title reverts? Probably yes.
- Original sale terminated? or a new sale completed?
 - 2000Da27411: After the Sale and Repurchase was registered, a mortgage was registered. The seller exercised the right of repurchase (and tendered the price?). Subsequently, the mortgagee (the creditor) went bankrupt. The seller who had exercised the right of repurchaser may rely on

retention of title claim to have the mortgage cancelled. The property does not form part of the bankruptcy estate.

- 90Daka16914: Sale and Repurchase was registered. The seller notified the buyer that he intends to exercise the right of repurchase. The acquisition by repurchase, however, was not registered. A creditor of the buyer attached the property. The seller may not prevail against the creditor.
- Seller's right of repurchase is transferable. But the transfer must be registered (immovables) or notified to the buyer.
- Immovables: Assignee of a registered right of repurchase may rely on the registered amount of repurchase price (regardless of the actual repurchase price agreed upon by the seller and buyer).

4. Buyer's right (Art. 594(2))

- Applicable to the buyer or to the third party who acquired the property from the buyer.
- To recover necessary expenses
- To recover the value of improvement or the expenses to improve the value
- If the right of repurchase is exercised by seller's creditor (via *action oblique*), the buyer may use the difference between the court appointed surveyor's valuation of the property and the repurchase price to discharge the seller's debt and have the right of repurchase extinguished (any surplus must be returned to the seller). Art. 593