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ROMAN ROOTS OF THE WARRANTY SYSTEM FOR ANIMAL PHYSICAL DEFECTS

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Latent physical defects of animals sold alive are, in general, of firmly different nature then in other movables or in immovables – they are illnesses [1]. Legal provisions applicable to animals cannot be applied just as to any other sale-objects, because of their specific features as living creatures subject to diseases.

Legal reaction to such facts during the history of humankind, dates back to the ancient Rome [2, 3, 4]. Since then, many various or strictly different regimes of warranty were created (e.g. the 'German model' of main defects, the English *caveat emptor* rules, the European consumer law of sales [5]), but the Roman 'stem' – or the Aedilician 'matrix' [6, 7] or 'pattern' – is still present all the general types of warranty for animal physical defects worldwide. Most of the current legislations are – in the analyzed normative area – mixed legal systems [8], based on Roman (or at least romanised) general rules with consumers' rights, and some, restricted elements of the 'German' tradition.

In different countries and legal regimes, the rules of warranty differ *en détail*, however they are parallel *en masse*. This is because most of them descent from the common quell and serve the same purpose.

The discussed Roman model of the responsibility is derived from the law of the curule Aediles, and is based on the *edictum Aedilium curulium de iumentis vendundis* [9, 10], and on the jurisprudence preserved in the Justinian's *Digest or Pandects* [10]. In its developed stage of the classical period, the seller should was responsible for any defects in the form of *morbi* and *vitia*, which diminish the usefulness of the animal under its proper usage (*usus ministariumque* – functional criterion). Latent defects should be unknown to the buyer in the time of the risk transfer, and detected by him in the period of 6 months. Traditionally, buyer's rights are recognized as claims *actio redhibitoria* (return of animal and money) and *actio quanti minoris* (*aestimatoria*, price reduction). This model also assumes the existence of the seller's liability for his assurances, both solemnly stipulated and informal (*dicta* and *promissa*).

So-called 'Roman legal principle' or 'model' of warranty creates the firm buyers' position, and protects their rights. This can be observed in the civilian, pecuniary responsibility of sellers': for defects, for features ascertained, for incompliance with the parties' will or the contractual purpose, for incapacity for normal usage and functional criterion.

Two thousand years have passed, but still the Aedilician redhibitory and price reduction claims are the most commonly used means of warranty [2, 11]. Moreover, they still seem to be sufficient to ensure proper protection of the buyers' interests. After all, they were created for this very purpose. Roman law can still be used as an inspiration and a formative factor of the common, inter-, and supernational private law.

Sometimes new ideas arise, but do not work better in practice than the elder ones, sometimes it could be enough to return *ad fontes*.

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