

PHD THESIS SUMMARY ON:

**THE NATURE AND LEGISLATION OF THE GAME AND BET CONTRACT
IN THE SYSTEM OF RANDOM CONTRACTS**

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This thesis presents a comparison between the 1864 Civil Code and the New one, regarding the game and bet contract. There is an etymological and historic presentation of the elements that this type of contract consists of, with the analysis of the term “alea”.

In our opinion, it is essential to present the vice of consent and the penalty carried regarding this type of contracts. We shall thoroughly present the vices of consent in a historic point of view, in comparison to other legal systems, and last but not the least, in a way that illustrates the impact on the Romanian legislation.

The thesis called: *The Nature and Legislation of the Game and Bet Contract in the System of Random Contracts* is structured in 7 chapters. The introductory chapter consists of 3 sections. It begins with a general analysis of the contracts, continues with a historic view and ends with section 3, that presents an economic, political and legislative analysis on gambling.

The second chapter called: “The particularity of the game and bet contract” presents the meaning of the game and gambling contract and the connection between them in our legal system. In French legislation it is stated that both life annuity contract and game and gambling one are random, but the difference between them is their purpose, the purpose of the life annuity contract is to bring resources to the person that needs them. The idea of the life annuity contract regarded as “a bet on life” consists in the fact that it does not have a judicial protection, fact that resembles it with the game and gambling contract.

Chapter 3 called “ Vices of consent in random contracts” presents fraud as a vice of consent from a historic perspective.

Chapter 4 consists of “ Effects of game and bet contract”, and chapter 5 “Aspects of special legislation applied in game and bet contracts”. The legislation of the game and bet is found in article 1636, 1638 Civil Code, which does not protect the winner in receiving his prize, nor the person who lost and already paid her dept. This legislation is also relevant to other contracts similar to the ones mentioned above, such as: the loan or representation.

When a special civil legislation appears concerning some games, it has the purpose to include these activities in the civil legislation and not a different one. For example, article 1637 illustrates the national organization of the games and sets the moral and legal ground of this activity. By gambling, we understand the process of allotment of any kind of winning, regardless of the means of acquisition. A good example would be: sports bet, lotteries, Bingo, and other similar games.

We need to pay a special attention to the legal and moral character of these games that are played with or without the direct participation of their players, without a difference regarding the means of playing, for example: casino games: roulette, dice, playing cards.

We expect that these authorized games and bets, as being contracts, to have the effects of any convention under the civil code. Furthermore, no one can ask to have his/her money back after they had paid, or the winner cannot force the loser to pay his debt. This method should also be applied to the other similar contracts, except for the loan for the game, because this is a great risk for the gambler, especially the loan took out from a casino.

The new Civil Code does not clarify the legal aspects of the game and bet contracts. There is the XIX chapter from Title VII, Civil Code. Some special contracts have their legislation in articles 2264-2266. There still is the distinction between game and bet, as the title of the chapter mentions, but also from the article 2264 concerning “ For the payment of a debt which was born from a game or bet contract there is no legal action”. Referring to the distinction made in the 2265 article, regarding the sports activities, by using only the word “bet”, the purpose was to refer to the sports games or games *lato sensu* , including in this notion both the word: game and the word: bet. Furthermore, the third paragraph of the same article mentions “persons who do not play *the game*”.

The new Civil Code keeps the common legislation through the article 2264, “The lack of legal action”: there is no legal action for the payment of a debt, nor for the payment of a bet”- a similar article to the one from the previous civil code: “The law does not admit any legal action to any person who has the right to receive a payment derived from a game or a bet”. The article 1638 from the previous Civil Code (which forbids the recovery of the payment except for the situations when fraud was used to determine the payment) is still presented in the second paragraph of the 2264 article: “Those who lose cannot ask for the recovery of their payment. But, they can have the right to receive their payment back, in case of fraud, or if the person who paid did not have a full legal capacity or had a restrained legal capacity. The new aspects of the Civil Code regard the interdiction of compensation, debt releasing, which cannot be subjects of game debt (paragraph 3, article 2264: “The debts from the game and bet contracts cannot be subjects of transaction, debt releasing, compensation, or other legal documents”.

The article 2265 mentions that the dispositions of 2264 will not apply to games with body exercise such as guns. As we can see, this is a limited, restrictive, express legislation throughout the article 2265 paragraph 1, as named *Sports Competitions*.

Paragraph 2, article 2265 from the New Civil Code brings an improvement: “if the sum of the bet is excessive, the court can reject the legal action or, can reduce the sum”. This means that beside the possibility of the judges to reject the legal action, they can now also reduce the sum of money existing in the game on in the bet.

Another improvement of the New Civil Code is paragraph 3 from the 2265 article: “in the situations mentioned at paragraph 1, the persons who are legally authorized to take the money from the persons who are not parts of the games, cannot benefit from the legal protection of the previous article”. This means that, regarding these persons, they cannot use the 2265 article, but they will respect the common legislation concerning the game and bet contracts, this means 2264 article. Furthermore, they do not have a legal action for requesting the payment of the debt, nor do they have the possibility to recover the voluntary- paid sum of money.

Another improvement is mentioned in the 2266 article concerning authorized lotteries:” Games and bets give birth to a legal action only after they had been authorized”. The authorities are concerned about the illegal games, frauds, embezzlement. This fact is well-seen in the continuous surveillance of the lottery organizers but also casino owners.

Chapter VI, called “Connections between the game and bet contract and other legal institutions” has two sections. The first one is called “Aspects regarding the consumer’s protection” and in Chapter VII: “The interference of criminal legislation in gambling”. The particularities of the crime mentioned in the legislation through the Law nr. 187/2012 in which it was established that the new Penal Code would be in force in 01 February 2014.

The new penal legislation mentions in article 118²: „n) crimes regarding the organisation and exploitation of gambling” and in art. 112¹: „l) crimes regarding gambling”, dispositions introduced by the Law nr. 63/2012 regarding the „extensive confiscation” in case of some crimes connected to gambling. There are significant improvements in comparison to art. 330 Penal Code, but not on the penalties, which have a special legislation: O.U.G. nr. 77/2009.