

Секция «Английский язык и право (на английском языке) только студенты
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Is It Legal to Eat Unpaid Goods in Stores?

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Shoplifting is a form of larceny legally described as “the non-consensual taking and carrying away of a merchant’s property, with an intent permanently to deprive him of possession” [4]. But what about something in between? Nowadays, it is not uncommon to observe a customer opening and drinking a beverage while shopping, tasting some grapes from a bunch or eating a bag of chips. Therefore, it is deemed important to draw the conclusion on the legality of these actions according to the current Russian law.

In the beginning, it is necessary to determine the legal nature of the consumer’s actions in relation to goods yet not paid for. In the Russian doctrine of civil law there is no unity of opinions on the legal nature of consumption and destruction of property. Some jurists include consumption and destruction in the right of disposal [2]. Others refer destruction of a property to the right of disposal and consumption to the right of use [5].

Consumption and destruction can be included in the content of the right of ownership or a *ius in re aliena*. The person must be the owner or legal title holder to the certain property to be able to exercise these rights. Under the contract of retail sale, the buyer is entitled to start consuming or destructing the product since he is the owner of it. Until then, he should avoid doing it.

Thus, to draw a conclusion on the legality or illegality of the buyer’s actions aimed at consuming or destroying the product, it is necessary to define the moment of the acquisition of the right of ownership.

According to the art. 223(1) of the Civil Code of the Russian Federation (hereinafter referred to as CCRF), the right of ownership shall arise for the acquirer of a thing by contract from the moment of the transfer thereof unless otherwise provided by a law or contract. Particularly, the delivery of a thing to the acquirer shall be deemed to be the transfer. In this case, the thing shall be considered handed in to the acquirer from the moment of its actual receipt in the possession of the acquirer or person specified by him.

Interpretation of these norms may lead to a hasty conclusion that the right of ownership shall directly arise for the acquirer of a thing since the moment when the good was taken from a store’s shelves. This is erroneous, and the right of ownership for the acquirer does not arise at this very moment, because the transaction concerning the alienation of the property is needed (art. 218(1), (2) of the CCRF). The transfer of the thing is not deemed the one [1], and the contract of retail sale is not concluded yet. This is the causality of *traditio* in the Russian law; the right of the ownership does not arise from *nuda traditio* [3]. Consequently, in this case the right of ownership shall arise for the consumer of the product by contract from the moment of the transfer thereof, but not earlier than the contract of retail sale is concluded.

Being consensual, the contract of retail sale shall be considered concluded if agreement between the parties regarding all material conditions of the contract has been reached in the form required in appropriate instances, *i.e.* the clauses relating to the goods (the name and quantity of the goods and price (art. 455(3), 500(1) of the CCRF).

The contract of retail sale is a public contract. Displaying goods at the place of sale (on counters, in shop windows, etc.) shall be deemed to be a public offer (art. 494(2) of the CCRF). Therefore, the fact of receiving by the person who has made an offer of its acceptance shall entail the conclusion of the contract (art. 433(1) of the CCRF).

The typical sequence of the moment of a thing's transfer and the moment of the conclusion of the contract are: 1) *nuda traditio* → *nuda traditio*, the conclusion of the contract → the transfer of the thing; 2) the conclusion of the contract → the transfer of the thing; 3) *nuda traditio* → the conclusion of the contract. In the first two instances, the right of the ownership shall arise for the acquirer at the moment of the transfer of the thing (art. 433(1), 224(1) of the CCRF); in the latter one-at the moment of the conclusion of the contract (art. 224(2) of the CCRF).

So, the consumer allowing himself to prematurely consume the goods does not exercise the owner's powers. Not only does he not use and dispose but also damages and destroys another's property. As a consequence, under the Russian law, these actions constitute the *actus reus* of the administrative (art. 7.17 of the Code of Administrative Offences of the Russian Federation) or criminal offense (art. 167 of the Criminal Code of the Russian Federation.), the distinction between which is made by the criterion of the significance of the damage.

What are the legal consequences of the buyer's attempt to pay the price for the destroyed goods? It seems that in practice the seller would accept the payment and give him a document confirming payment, but this does not cohere with the theory and legislation. The purpose of concluding the contract of retail sale is to transfer the right of ownership to the goods from the seller to the buyer. Obviously, it is not going to happen since the "alienable" thing no longer exists by the time the contract is concluded. Therefore, it can be imagined that, if the seller accepts the payment for the good, the buyer may require transferring "the paid product" to him inasmuch as the contract has induced the mutual and sinalagmatic obligations. Moreover, if the buyer does not intend to voluntarily compensate for the damage of the seller's property, the seller still has the right to sue "the purchaser" and demand that the losses inflicted on him be compensated for (including actual damage and lost profit) (art. 1064(1), (2) and 1082 of the CCRF).

All of this together means that the buyer cannot consume, destroy, unwrap the packages of goods, and other such actions until getting the right of ownership to the good. So, if he does, it may constitute the *actus reus* of the administrative or criminal offense. Under the contract of retail sale the right of ownership shall arise for the acquirer of a thing at the moment of the transfer thereof, *nuda traditio* does not transfer the title of ownership, hence this right does not arise until the contract is concluded, *i.e.* until the consumer accepts the public offer of the seller. The offer shall be deemed to be accepted at the moment when the buyer transfers the good to the cashier for the subsequent payment, or, if the transaction is made in a self-service shop, at the moment of the payment.

Источники и литература

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