

ABSTRACT

The purpose of this study is to present our contribution to the eternally unsolved issue of the substantial and formal autonomy of Commercial Law, through some of the most significant legal and material aspects of commercial contracts, focusing on the sale of goods and on the supply contract.

We strongly feel that there is a tendency of regulation within these contractual figures that can very easily help demonstrate a significant group of interests and particularities which give true meaning to the existence of Commercial Law. Those legitimate needs of the mercantile community are the ones that, to this day, justify its substantial autonomy.

The formal unification of Private Law that has taken place in some civil law countries is often thought as a winning argument in this discussion. However, not only is that a common misconception that we must clarify, but also, in many ways, it allows us to see through the concept of *one* Code, boosting our ability to comprehend that the defining mechanisms of Commercial Law remain unaltered.

We chose to focus on the sale of goods because it is, without a doubt, the contract that truly dominates Commercial Law. The Portuguese Commercial Code regulates this contract in a surprisingly recent way – we must remember that the Code was originally written in 1888 –, and it allows the conclusion that there is a significant reason for the difference between its articles and those in the Civil Code: that is that Commercial Law not only still justifies its existence, even when it does not appear formally on a Code, but also it has begun to spread its benefits to other areas of the Law. We are in the midst of a *commercialization of civil law*. The fact is that civil law has always been incredibly ill-suited to attend to commercial transactions; notwithstanding, nowadays, it has also begun to be ill-suited to attend to its own transactions.

Lastly, the supply contract was chosen not because it is often mistaken with the sale of goods; in fact, they are very different, but that is not the point we intend to make. Those interests and particularities of Commercial Law that we referred to before, become more noticeable in this contractual figure. Furthermore, the lack of regulation of this contract in Portuguese Law must be corrected. As it is not a type of the sale of goods contract, it requires its own legal attention, as

well as many other commercial contracts that flourish every day and are not considered in our very ancient – but still, in many areas, very relevant - Commercial Code. It is mandatory that a reform becomes imminent. There is not only place for a new Portuguese Commercial Code; there is, fundamentally, a real and very strongly felt need for it.

Keywords: substantial and formal autonomy of Commercial Law; unification of Private Law; commercial contracts; the sale of goods as a commercial contract; the supply contract.

