PRICE FIXING IN RURAL RENTALS: AGRICULTURAL PRODUCT OR CURRENCY

Higor Henrique de Albuquerque Silva¹
Flávio Henrique de Freitas²
Paulo José Libardoni ³

ABSTRACT

Introduction: The possibility or not of setting the price of rural rentals in agricultural products, a practice prohibited, a priori, by Federal Decree No. 59,566/66, which regulated the Land Statute (Law No. 4,504/64).

Contextualization/Concept: There is jurisprudential divergence regarding the nullity of the contractual clause that defines the rental price for a certain quantity of fruits or agricultural products; others, however, advocate that this form of price adjustment is perfectly valid, due to usage and customs in the agricultural environment and, also, from the perspective of objective good faith.

Objective: Analyze agrarian legislation in light of the principle of Good Faith.

Methodology: This scientific research, qualitative in nature, based on a bibliographic review (secondary sources), suggests a solution to the impasse.

Conclusion: Among the results, the importance of applying customs and practices and objective good faith to agrarian contracts is emphasized, providing support for consolidating understanding within the scope of national courts.

Keywords: Agrarian Contracts, Rural Rental, Price, Agricultural Product.

A FIXAÇÃO DO PREÇO NO ARRENDAMENTO RURAL: PRODUTO AGRÍCOLA OU MOEDA CORRENTE

RESUMO

Introdução: A possibilidade ou não de fixação do preço do arrendamento rural em gêneros agrícolas, prática vedada, a priori, pelo Decreto Federal n.º 59.566/66, que regulamentou o Estatuto da Terra (Lei n.º 4.504/64).

Contextualização/Conceito: Há divergência jurisprudencial frente a nulidade da cláusula contratual que define o preço do arrendamento em determinada quantidade de frutos ou produtos agrícolas; outros, porém, preconizam que essa forma de ajuste do preço é perfeitamente válida, em decorrência dos usos e costumes no meio agrícola e, ainda, sob a ótica da boa-fé objetiva.

Objetivo: Analisar a legislação agrária frente ao princípio da Boa-fé.

Metodologia: A presente pesquisa científica, natureza qualitativa, a partir de revisão bibliográfica (fontes secundárias), sugere solução para o impasse.

¹ Faculdade Centro Mato-Grossense (FACEM), Sorriso, Mato Grosso, Brazil
E-mail: higor.albuquerque@advsassociados.com.br Orcid: https://orcid.org/0009-0009-0653-6221
² Faculdade Centro Mato-Grossense (FACEM), Sorriso, Mato Grosso, Brazil.
E-mail: flavioadvogado@hotmail.com Orcid: https://orcid.org/0009-0000-8938-2348
³ Instituto Federal do Paraná (IFPR), Florianópolis, Santa Catarina, Brazil. E-mail: libardoniadv@hotmail.com
Orcid: https://orcid.org/0000-0003-3596-9922

1 INTRODUCTION

The problem of the study lies in the triad of legislation, doctrine and jurisprudence. From a null legalistic perspective would be the contractual clause stipulating the rental price in agricultural commodities, since the agrarian laws are mandatory rules, of public order and protective character, whose non-observance leads to absolute nullity. Others, however, taking into consideration the customs and customs and, notably, the principle of objective good faith, consider this form of covenant to be valid.

Brazilian economic history, with its social, political, cultural and legal implications, has strong roots in agribusiness. With fertile, extensive land and a climate that is favorable for agriculture, Brazil has 388 million hectares of agricultural areas and high productivity, which corresponds to 22% of the world's agricultural land. These factors favor agriculture and other economic activities linked to the productive chain, highlighting the Brazilian vocation for agribusiness and its technological advances (NEVES; CASAGRANDE; CAMBAÚVA; TEIXEIRA; TOLEDO, 2023).

According to data released by the Center for Advanced Studies in Applied Economics (Cepea), of Esalq/USP, in partnership with the Confederation of Agriculture and Livestock of Brazil (CNA), agribusiness represents roughly 25% of the national Gross Domestic Product (GDP), playing an essential role in the balance of trade, with the supply of food and raw material, besides being an important generator of employment and income, boosting the country's economic development.

In this productive panorama, the Brazilian legislator, concerned with the process of expansion of agricultural activities and environmental preservation, published Law No. 4,504, of November 30, 1964 ("Land Statute"), with the intention of regulating the relationships of use of the rural property for the implementation of agricultural activity.

Two years later came Federal Decree No. 59,566, of November 14, 1966, which regulated the agrarian contracts.

The production of primary commodities often comes from the work carried out by producers who have only temporary ownership of the agricultural areas (BARUFALDI, 2023), from the rural lease and from the agricultural, livestock, agro-industrial and extractive partnership - main agrarian contracts that comprise the temporary use of the land.

Although it is common practice to fix the payment of the rural lease on fruits or agricultural products, Article 95, paragraph XI, letter "a", of the Land Statute and Article 18 of Decree No. 59.566/1966 establish that the price of the lease must be adjusted in a fixed amount of money, sealing its stipulation in agricultural commodities.

With this context, starting from a dialog between theory and practice, the objective of the study is to examine the great controversy surrounding the theme, in order to identify whether, and to what extent, the contractual clause defining the rental price in a given quantity of fruit or agricultural products is null and void.
From the normative, systematic and finalistic interpretation, it is intended, in general, to discuss the formation of agrarian contracts, their form of interpretation, the effectiveness of the rules of public policy, the importance of customs and customs and objective good faith, with a view to finding, within the agrarian normative microsystem, the best solution applicable to the celeuma.

It is important to mention, still in the introductory stage, the great importance of the theme addressed, given its noticeable repercussion in the legal, economic and social milieu. This is because, in practice, it is very common to fix the price of rural leases on a certain quantity of agricultural fruit, a circumstance that is a priori forbidden by legislation, which has given rise to several legal discussions.

As to the methodological aspect, the hypothetical-deductive method was used, with research of a qualitative nature, starting from bibliographic, normative and jurisprudential review (secondary sources), consisting mainly of books, periodicals and jurisprudential repertoire, whose collected data were analyzed and will be exposed in three parts.

In the first chapter, a general approach will be taken on agrarian contracts, their concept, the contractual arrangements and the way of interpreting agrarian pacts.

The second part of the study will focus specifically on rural leasing, its concept, the parties involved, the mandatory clauses, the importance of customs and customs in the agrarian environment and objective good faith.

Finally, it is worth pointing out divergence of case-law in the Superior Court of Justice, which has not pacified its understanding on the subject and there are decisions for both directions, thus justifying efforts to improve and clarify the normative content and scope of the legal provisions, so as to build the exegesis more in line with the legal order and thus achieve legal certainty.

2 OF AGRARIAN CONTRACTS

2.1 Concept and Legislative Developments

Edson Ferreira de Carvalho (2010) defines the agrarian contracts as being "agreements of will, signed according to the laws 4.504/1964 (arts. 92 to 96) and 4.947/1966 (arts. 13 to 15) and Decree 59.566/1966, with the purpose of safeguarding, modifying or extinguishing rights relating to the exploitation of the agrarian property or part of it".

For Antonino de Moura Borges (2012), "agrarian contract is agreement of wills between the owner or owner of the rural property with the one who intends to temporarily work the land in agricultural and pastoral activities, through the payment of an income or fruits".

Since the Brazilian colonial period - with the system of uncultivated land, evolving into hereditary captaincies, the general governors and the Royal Charter of land registration -, there has always been the relationship of ownership and ownership of man with rural properties.

From Resolution No. 76, of July 22, 1822, it was established that no public land was conferred on individuals except by the purchase order.

The Imperial Constitution, granted on March 25, 1824, expressly recognized, in its Article 179, inciso XXII, the right to property (CARDOSO; DAL BOSCO, 2023), in all its fullness.

In this historical framework, another important legislative landmark was Law No. 601 of September 18, 1850 (Law of Lands), which provided for the devolved lands of the Empire. Before Law No. 601, the acquisition of rural property occurred through possession with effective culture. After the stages of land grants and possessions, with this diploma, the phase of the "land law" (OPITZ; OPITZ, 2017) was passed.
However, in spite of the emergence of some sparse laws relating to rural properties, the fact is that, in the Brazilian legislation before the 1900s, the order was completely lacking in the regulation of legal-contractual relations related to agrarian activities and the economic exploitation of the land.

This changed with the Civil Code of 1916, the first legal act to introduce rules applicable to agricultural buildings, with general provisions referring to agricultural partnership and rural leasing (Articles 1.211 to 1.215 and 1.410 to 1.423).

The Beviláqua Code, however, did not deal with an Agrarian Law itself, leading to the need for a specific normalization (SODERO, 2006).

As Paulo Tornim Borges points out (1998), the first Rural Code was presented to the National Congress in 1914 by Joaquim Luís Osório. New projects were unsuccessfully presented in 1937 (by Favorino Mércio and in the same year by Borges de Medeiros) and in 1942 (by a Commission of jurists).

Brazilian agriculture, from the beginning of colonization to the implementation of urban-industrial activity in the country, was largely dominated by the economic model based on pure and simple extractive activity. Starting from the urban-industrial modernization, the field also began to exercise the function of generator of resources necessary for industrialization (REIS, 2017).

With the evolution of society and the need for better regulation of agrarian relations, came the Land Statute (Law No. 4.504/1964), which regulated the rights and obligations concerning rural real estate, for the purposes of implementing agrarian reform and promoting agricultural policy, besides creating the implementing bodies, the Brazilian Institute of Agrarian Reform (IBRA) and the National Institute of Agrarian Development (INDA), later transformed, by Decree Law No. 1.110, of 1970, in the National Institute of Colonization and Agrarian Reform (INCRA). In its articles 92 to 96, the diploma concerned itself with regulating, in a specific manner, the relationships of use, enjoyment and temporary possession of the rural areas.

Shortly afterwards, Law No. 4,947 was promulgated, of April 6, 1966, aimed at discipline, supervision and control of the administrative acts related to the planning and implementation of agrarian reform, with express mention, in its Article 13, to the agrarian contracts, fixing its guiding precepts. Its menu enshrined, for the first time, the denomination "Agrarian Law".

The regulation of the Land Statute was given in the same year, with the edition of Decree No. 59,566, of November 14, 1966, at which time the agrarian contracts came to have their own normalization, which implemented a great change of paradigm in agrarian contracts.

Due to the strong concern of the State in the conservation of rural property - one of the greatest sources of wealth and instrument for the economic stability of the country -, coupled with the need for the preservation of natural resources and the socio-economic protection of the rural man, Law No. 4,504/1964 and Decree No. 59,566/66 make up a microsystem, endowed with public order, mandatory, imperative and irrevocable. Thus, the will of the parties was replaced by state-led government (CARVALHO, 2010).

On the constitutional level, the Charter of 1967, in its Article 8, paragraph XVI, letter "b", attributed to the Union the competence to legislate on agrarian law.

The Federal Constitution of 1988, maintaining the exclusive competence of the Union to legislate on the matter (article 22, paragraph I), also enshrined the fundamental right to private property (article 5, caput and XXII), which will attend its social function (article 5, XXIII, and article 170, paragraph III), revealing itself as one of the pillars of the economic order (article 170, paragraph II) and instrument of promotion of urban and rural development policy (articles 182 and 186).
In order to realize its social function, it is necessary to seek the rational and adequate use of available natural resources, the preservation of the environment, the observance of the provisions that regulate labor relations and the exploitation that favors the well-being of producer agents who act directly in the exploitation and use of the land (Article 186, Articles I to IV, of the Federal Constitution).

The agrarian contracts were removed from the Civil Code of 2002 (Law No. 10,406, of January 10, 2002), which entered into force in January/2003, depending on the specific legislation in force.

2.2 The Terms of Land Contracts

Agrarian contracts may derive from the law or from the will of the parties. When the law itself gives the contract a proper denomination, a nomen juris, defining the modality of contracting and subjecting it to the rules it details, it is said that the contract is nominated or typical.

The main typical contracts that comprise the temporary use of the land are the rural leasing and the agricultural, cattle raising, agro-industrial and extractive partnership (Art. 92 of Law No. 4,504/64 and Art. 1 of Decree No. 59,566/66).

As for the rural partnership, the definition is in Article 4 of the same law:

Art. 4 Rural partnership is an agrarian contract whereby a person undertakes to cede to another, for a fixed period or not, the specific use of rural property, part or parts thereof, including or not, improvements, other goods and facilities, with the purpose of being engaged in farming, livestock farming, agro-industrial, plant mining or mixed mining; and or to deliver to him animals for breeding, recreation, wintering, fattening or extraction of raw materials of animal origin, by sharing risks of unforeseeable circumstances and force majeure of the rural enterprise, and of the fruits, products or profits in the proportions they stipulate, observed the percentage limits of the law (Article 96, VI of the Land Statute).

Innominate or atypical contracts, in turn, are those defined by the parties themselves and there is no legal stipulation to designate them. They stem from the freedom to contract and result in adjustments not contemplated by the legislator. They are also recognized by Article 39 of Decree No. 59.566/66 and by Article 425 of the Civil Code, and, although not designated by the agrarian rules, the atypical contracts are subject to them (Articles 2, caput, and 39 of Decree No. 59.566/1966). As an example of atypical agrarian contract, one can cite rural lending.

2.3 The Interpretation of Agrarian Contracts: Between State-Run Government and Private Self-Government

By the principle of private autonomy, affirmed in Article 421 of the Civil Code, the parties are free to contract and dispose about the content of the agreement of wills, according
to the interests to be regulated. Human will is the core, source and legitimacy of the legal relationship (WANDERLEY, 2023).

In the lesson of Francisco Amaral (2003), "private autonomy is the power that individuals have to regulate, by the exercise of their own will, the relations they participate, establishing the content and the respective legal discipline".

Cláudia Lima Marques (1998), in the same north, defines private autonomy as the freedom to contract or to refrain from contracting, the freedom to choose your contractual partner, to fix the content and the limits of the obligations that you want to assume, the freedom to be able to express your will in the form that you wish, always counting on the protection of the right.

In civil contracts in general, in the light of the principles enshrined in the Civil Code, private autonomy prevails and, therefore, the parties have greater freedom to regulate, by the exercise of their own will, the conditions of engagement.

Specifically in the area of contract law, the principle of private autonomy appears with some limitations. Article 421 of the Civil Code, which deals with the freedom to contract, states that it shall be exercised "within the limits of the social function of the contract".

With the advent of Law No. 13.874/2019 ("Law of Economic Freedom"), the only paragraph was added to Article 421 of the Civil Code, providing that "in private contractual relations, the principle of minimum intervention and the exceptionality of contractual revision will prevail".

However, land contracts are subject to greater intervention by the State, with the imposition of rules of public order, which limit the freedom of contract, providing for obligatory clauses or certain prohibitions on the parties, with a view to protecting the socio-economic function of property, the balance in the relationship, and the protectionism that one wants to lend to the man in the countryside.

Precisely, by the way, the magisterium of Pinto Ferreira:

Agrarian contracts represent the collective or general interests of society, with predetermined rules laid down by law and above the will of the contracting parties. They are mandatory, imperative and indispensable standards. Because of that determination, no agreement between the parties may be in force if it would directly or indirectly contradict both the spirit and the letter of the law, since such an offense would automatically render the contract concluded null and void. Nor may any of the privileges established by law be waived. Renunciation is impracticable, and the acts thus performed will not be effective; they are equivalent to the act not performed (1995, p. 226).

Similarly, Wellington Pacheco Barros (2012) asserts that ‘agrarian contracts cannot be interpreted in the same way as contracts governed by the Civil Code’, and that, in them, ‘there is no such fullness of will. The parties are governed by the law of the State, represented by the Statute of the Land and by Decree No. 59.566/66”. Therefore, "the autonomy of will in the manner prescribed in the Civil Code will exist only in the decision or not to contract, since if there was an option of contract, the will will be subsumed into the dictates of the law. Contractors must comply with the wishes of the legislator’.

The particularities of agrarian relations promote real paradigm breaking, with important reflections on the autonomy of negotiation, imposing some limitations on the content of the business.

This analysis is based on the instrumental notion of contract. As Enzo Roppo teaches:

... the contract cannot be understood in its entirety, if we simply consider it in a purely legal dimension .... The legal concepts - and, first of all, the contract concept - always
reflect a reality outside themselves, a reality of interests, relationships and economic situations, for which it fulfills, in various ways, an instrumental function (2009, p. 16).

From the case-law of the courts, the Superior Court of Justice, for its Fourth Chamber, when judging the Special Appeal No 1.182.967/RS, under the report of Minister Luis Felipe Salomão, summed up very well the essence of the interpretation of the agrarian contracts, emphasizing that "agrarian law contracts are governed both by elements of private law and by rules of a public and social nature, compulsory observation, and therefore indispensable", in that their primary purpose is "the protection of those who, by their work, make the land productive and extract from it, giving effect to the social function of property".

From this point of view, it should be pointed out that, despite the imperative nature of the agricultural rules, there must be a balance between contractual management and the autonomy of the parties’ will, as Helena Maria Bezerra Ramos rightly points out:

Even with profound changes, the autonomy of the parties' will was not relegated to accessory. It is still present among the parties (lessor and lessee) to the contract, where clauses can be stipulated that do not conflict with public norms, not least because it is the autonomy of the will that directs the parties to contract. In fact, there is a balance between contractual dirigisme and the individualistic autonomy of the will of the parties (2012, p. 41).

It follows that the principle of private autonomy is not absolute in agrarian law, and there are certain restrictions imposed by the rules of public policy governing agrarian contracts.

3 OF THE RURAL LEASE

3.1 Concept

A rural lease is a type of land contract, governed by land laws, "whereby a person, owner or not, temporarily cedes the use and enjoyment of a rustic building to another, for agricultural or livestock farming, upon payment of an annual rent" (RAMOS, 2012).

Its normative tract is disciplined in Article 95 et seq. of Law No. 4.504/64 (Statute of the Earth), with the modifications introduced by Articles 13 and 15 of Law No. 4.947/66, and by its respective regulation, Decree No. 59.566/66.

In the rural lease agreement, the intervening parties are referred to in Article 3(2) and (3) of Decree No 59.566/1966, being referred to as tenant (who disposes of the property) and tenant (who receives it).

3.2 Formalities and Mandatory Clauses

The lease and partnership contracts can be written or verbal (Art. 11 of Decree No. 59.566/66). Whatever its value and form, it can be proved by witnesses (Art. 92, § 8, of the Statute of the Earth and Art. 14 of Decree No. 59.566/66).

Like any legal business, agrarian contracts are subject to the general requirements of validity provided for in Article 104 of the Civil Code, that is, they must contain capable agent; lawful, possible, determined or determinable object; and prescribed or non-defense in law.

Under the influence of state dictatorship, the rules governing agrarian contracts have a cogent and indispensable character, imposing a specific rule, which must be observed in the formation of the contractual relationship, under penalty of absolute nullity.
Legal strictness imposes mandatory standards that such contracts must follow. Among the main mitigations to private autonomy, in Article 12 of Decree No. 59.566/66, the requirement that written contracts indicate: place and date of signature of the contract; full name and address of the contractors; characteristics of the lessor or the granting partner and of the lessee or the concession partner; subject of the contract (lease or partnership), type of activity of exploitation and destination of the property or goods; identification of the property and description of the gleba, with its improvements; duration, price of the lease or conditions for sharing of the property fruits, products or profits accrued, among others.

Article 13 of Decree No. 59.566/66 also imposes mandatory clauses, such as, for example, prohibition of renunciation of rights or advantages established by Laws or Regulations, by tenants and bestowal partners; respect for minimum terms of the contract; observance of the rules relating to the conservation of natural resources; fixing, in a certain amount, the price of the lease; causes of extinction and termination; rights and obligations regarding improvements, and others.

According to Law No. 4.947/66, in its Article 13, paragraph IV, "all agrarian contracts shall be governed by the rules of this Regulation, which shall be enforceable throughout the national territory and the rights and advantages established therein shall be irrevocable". Consequently, "any contractual stipulation, contrary to the rules laid down in this article, shall be null and void in its own right and of no effect" (Article 2, single paragraph, of Decree 59.566/66.

Helena Maria Bezerra Ramos explains:

... the lease contract is governed by the general principles which govern the contracts more often than not, as regards the agreement of intent and the subject matter. However, it must comply with the agrarian law provisions relating to the compulsory clauses for agrarian contracts, the non-observance of which will automatically render the contract void (2012, p. 81).

Ending this brief incursion into the obligatory clauses in the agrarian contracts, it does not hurt to remember that Article 166 of the Civil Code considers the legal transaction null and void when "it does not take the form prescribed by law" (section IV) and "the law exhaustively declare it null and void, or prohibit the practice, without imposing a penalty" (section VII).

3.3 The Importance of Customs and Customs as Sources of Agrarian Law

Derived from customary Latin, the word custom is used to designate everything that is established by virtue of habit or use, "with the tacit consent of all persons who admit their strength as the norm to follow in the practice of certain acts. In this sense, then, it is affirmed that the custom has force of law (consuetudo param vim habet cum lege)", De Plácido e Silva (2003) teaches us.

Time can help to consolidate this rule in written law through the legislative process. Hence it is said, with paraphrase in the doctrine of Caio Mário da Silva Pereira (2001), that the custom is the first form of elaboration of the norm; it is the raw material of the legal norm; it is the substratum of the law.

Pontes de Miranda (1981), treading the same path, emphasizes that "the custom is that makes the law, it is said in a document of the 12th century; hence the plurality of local rights, an inevitable fact in the traditional and empirical elaboration of the law".

Even after codification of the law, the custom still maintained its great importance, going on to integrate the legal repertoires.

In the legislative sphere, among the various norms that make mention of customs, Decree-Law No. 4657, of September 4, 1942 (Law of Introduction to the Norms of Brazilian
Law - LINDB) provides that, "when the law is omitted, the judge will decide the case according to the analogy, customs and general principles of law" (art. 4).

In the field of negotiating interpretation, the caput of Article 113 of the Civil Code states that "legal affairs shall be interpreted in accordance with good faith and the uses of the place of their celebration".

As of Law 13.874/2019 ("Law of Economic Freedom"), customs and customs are also included in Paragraph 1, Section II, of the same provision, in a more comprehensive way, as parameters of interpretation of legal affairs.

It was affirmed in Paragraph 1 of Article 113 of the Civil Code that the interpretation of the legal transaction must give it the meaning corresponding to ‘the customs, customs and practices of the market relating to the type of business’ (Section II), to good faith (Section III) and to the meaning which ‘is confirmed by the conduct of the parties after the conclusion of the business’ (Section I).

In this way, customs are fundamental elements for the interpretation of contractual instruments and for the correct attribution of meaning to the conduct adopted by the parties of the business, integrating the hermeneutic process. After all, the contract has a reality that surrounds it - notably in the agrarian contracts, aimed at the man of the field - and the disregard of these circumstances would prevent the interpreter from understanding the whole negotiation (LUDWIG, 2005).

3.4 Objective Good Faith And Its Related Duties

With the conception of obligations as a process, the traditional paradigm of the law of obligations based on the legal valuation of human will is broken and "a new paradigm for the law of obligation is inaugurated, no longer based exclusively on the dogma of will (individual, private or legislative), but on objective good faith" (MARTINS, COSTA, 2003).

The legal order is built on the aegis of objective good faith (CC, art. 113), the main interpretative vector of declarations of will - and one of the fundamental principles of private law -, which "constitutes a model of social conduct or an ethical standard of behavior, which imposes, concretely, on every citizen who, in his life of relationship, acts with honesty, loyalty and probity" (SANSEVERINO, 2010).

The emphasis of objective good faith ultimately lies in "the observance of the interests of the opposing party through intersubjective collaboration" (BUSSATTA, 2008, p. 72).

Humberto Theodoro Júnior, with the usual precision, adds:

In accordance with the principle of good faith, the parties to the contract are required to conduct themselves correctly, from the median point of view of the social milieu, viewed not with a focus on the agent's subjectivism or psyche, but objectively. What is important is to verify whether the party's procedure, when negotiating the preliminary agreements, when stipulating the conditions of the contract finally concluded, when implementing the adjustment and even after the contracted service has been completed, has met the ethical standards of the social environment. (THEODORO JÚNIOR, 2014, p. 26)

Cláudia Lima Marques (1998), speaking on the theme, asserts:

Objective good faith means, therefore, a "reflected" action, a performance reflecting on the other, on the contractual partner, respecting him, respecting his legitimate interests, his reasonable expectations, his rights, acting with loyalty, without abuse, without obstruction, without causing injury or excessive disadvantage, cooperating to achieve the good end of the obligations: the fulfillment of the contractual objective and the realization of the interests of the parties (1998, p. 107).
Judith Martins-Costa's lesson is no different:

[...] the concept of objective good faith underlies the ideas and ideals that inspired Germanic good faith: good faith as a rule of conduct founded on honesty, righteousness, loyalty and, above all, consideration for the interests of the "alter", seen as a member of the social group that is legally protected. This includes consideration for the expectations legitimately generated, by the conduct itself, in the other members of the community, especially in the other side of the obligatory relationship. Objective good faith therefore qualifies as a rule of fair conduct (2003, pp. 79-80).

In the obligatory relationship, good faith performs multiple functions, from the phase before the formation of the bond, through its execution, until the phase after the implementation of the obligation (Article 422 of the Civil Code): interpretation of the agreed rules (interpretative function), creation of new rules of conduct (integrative function) and limitation of the exercise of subjective rights (control function against abuse of right - Article 187 of the Civil Code).

As Lutz Coelho explains in agrarian contracts:

... by its very nature as a public rule, objective good faith must be observed in agrarian contracts’, performing ‘an integrative and hermeneutic function, which is an important tool for it to be used in resolving the omitted cases, as a means of achieving and securing the aims for which agrarian law is intended. (RABBIT, 2006)

The contractual phenomenon is now analyzed from a more positive, complex and dynamic mentality, integrated by a set of reciprocal rights and duties, being understood as an order of cooperation, from which duties arise for both parties. ‘The main duty is supplemented by additional obligations, which make it possible to achieve compliance’ (SILVA, 2010, p. 97).

As a hermeneutic-interpretative canon, objective good faith assumes the mission of assisting in the search for the true contractual meaning, that is, to unveil the real content of the declarations of will issued, specifying the exact contractual end.

In order to realize the limiting function of the exercise of rights and to impose an ethical standard of conduct on the parties in the obligatory relations, functional specializations or partial figures have been developed doctrinally - such as venire contra factum proprium, suppressio, surrectio, tu quoque and duty to mitigate the loss-, as well as listing a bundle of attached duties - care, information, cooperation (KONDER, 2017).

Specifically the formula *tu quoque* acts "by preventing the violator of a norm from subsequently seeking to rely on the same norm which was previously infringed in order to exercise a right or claim", Maurício Mota and Gustavo Kloh (2011) explain.

The theory of proprietary acts, translated into the prohibition of the *venire contra factum proprium*, prohibits a party against the party seeking to exercise a legal position contrary to the conduct previously assumed. In this sense, the valuable lesson of Ruy Rosado de Aguiar Júnior (2004), defines that "after creating a certain expectation, by reason of the conduct surely indicative of a certain future behavior, there is a breach of the principles of loyalty and trust if an act contrary to what is foreseen is committed with surprise and detriment to the counterparty".

Thus, from the point of view of objective good faith, the contradictory conduct of the person who, having been compelled by the performance of the contract, after years of the contractual relationship established, would lead to the invalidity of the payment of the rent as an agricultural product, in clear breach of the legitimate expectation placed in the legal business by the defendant, is unquestionable.
4 THE FIXING OF THE PRICE OF THE LEASE IN AGRICULTURAL PRODUCTS AND THE POSITION OF THE COURTS

In the lease contract, the fixing of the price is mandatory (Article 12, paragraph VIII, of Decree No. 59,566/66). The remuneration will be adjusted by the contracting parties and will have as limit the established in Article 95, paragraph XII, of the Land Statute (Article 16 of Decree No. 59,566/66).

One of the main obligations of the lessee is to "pay the rental price on an ad hoc basis, by the way, within the time limits and at the appropriate places" (Article 41 of Decree No. 59,566/96). If it fails to comply, it is defaulted, giving rise to termination of the contract and eviction for failure to pay the lease.

In rural lease contracts, especially in the predominant agricultural regions, it is customary practice to fix the lease on a certain quantity of agricultural product (soybean, corn, rice, arroba de boi, etc.), using the income itself extracted from the land as the main currency for the adjustment of the price, without monetary intermediation, especially for the ease it has in calculating the costs and advantages of production.

This is what Vilson Ferretto points out in the doctrine:

In agriculture, in which the harvest of the fruit and products is previously estimated, the farmer also estimates the cost of his production, taking into account how many fruits or products he will spend with the leasing of the land, in order to analyze the viability of his enterprise and the results to be obtained after the harvest. Therefore, the cost of the lease is calculated in quantity fruits or products that will have to disburse, for the respective payment, since the nominal variation of their prices can be better controlled, only subject to the oscillations of the market, different from the cost of money, whose fluctuations, always the largest, are determined by the most diverse factors and that escape their control (2009, p. 123).

The setting of the price in the rural lease contracts is regulated in the Land Statute (Law 4,504/64), in art. 95, XI, letter "a", as amended by Law 11,443/2007, which establishes that, obligatorily, in the lease contracts, "limits of remuneration and ways of payment in cash or its equivalent in products".

The Land Statute was regulated by Decree No. 59,566/66, whose Article 18 disciplined the way of payment of the lease:

Art. 18. The price of the lease can only be adjusted in a fixed amount of money, but its payment can be adjusted in cash or in a quantity of fruits whose current price on the local market, never lower than the official minimum price, is equivalent to that of the rent, at the time of settlement. ... Single paragraph. It is prohibited to adjust as rental price fixed quantity of fruits or products, or their cash equivalent.

The legal dispute, which is being debated here, is: can the price of the lease be fixed in terms of the quantity of agricultural produce or fruit or, necessarily, is there a requirement to stipulate in monetary terms?

In the context of the Superior Court of Justice, the matter is far from peaceful.

When judging the Special Appeal No. 1,266,975/MG, the Fourth Chamber of the Superior Court ruled that "there is no contractual clause fixing the price of the rural lease in fruits or products or its equivalent in cash, pursuant to the single paragraph of Article 18 of
Decree No. 59.566/1966” (BRAZIL, 2016). There are, in the case-law repertoire of the Superior Court, several judgments in this regard⁴.

However, in ruling on Special Appeal No 1.692.763/MT on 11 December 2018, the Third Chamber of the Superior Court of Justice, having regard to the wishes of the parties and the practices in the region (customs and customs of the place where the contract was concluded), and to the prohibition of contradictory behavior and objective good faith, concluded that the clause fixing the rental price on agricultural produce should be maintained. The menu of the judge is placed, as appropriate:

SPECIAL RESOURCE. IMPLEMENTATION EMBARGOES. RURAL LEASE. CLAUSE FIXING THE PRICE ON PRODUCTS. CONTRARY TO THE PROVISIONS OF DEC. 59.566/66. SPECIFIC CIRCUMSTANCES OF THE HYPOTHESIS. OBJECTIVE GOOD FAITH. PROTECTION OF TRUST. NEMO POTEST VENIRE V FACTUM PROPRIUM. NEMO AUDITUR PROPRIAM TURPITUDINEM ALLEGANS.

... 4. Dec. 59.566/66, in its article 18, single paragraph, prohibits the contractors to adjust the price of the rural lease in fixed quantity of fruits or products (or their equivalent in cash).
5. The High Court has held that the reliance on a defect in the legal transaction by the person who gave it cause reveals contradictory conduct, capable of preventing the judicial decree of alleged invalidity, in so far as it represents an affront to objective good faith, a principle enshrined in Article 422 of CC/02. Precedents.
6. In particular, the fact remains that, in addition to the fact that no defect of consent to the contract was identified, the contract was signed more than 16 years ago, and there is no news that, before the opposition of the present embargoes, (approximately four years after the advent of the final agreed term), the applicant had filed any insurgency with regard to the clause at issue.
7. To understand the impracticability of the continuation of that performance would be tantamount to rewarding the contradictory conduct of the applicant, who, for more

---

⁴ “1. There is no enforceable title in the file, since the execution was ordered with a rural lease whose price was adjusted in quantity of agricultural products, which is expressly prohibited by the single paragraph of Article 18 of Decree No 59.566/1966.
2. Since the tenancy agreement is vitiated by the form of remuneration of the landlord, the lack of certainty, liquidity and enforceability of the title remains established. ...” (BRAZIL. Superior Court of Justice. Feature: Internal Aggravation of the Aggravation in Special Feature (AgInt no AREsp) No. 1.000.062/TO. Rapporteur: Minister Ricardo Villas Bôas Cueva. Third Class. Date of trial: 27/04/2017. Release Date/Source: DJe 04/05/2017. "Second flows from the arts. 95, XI, 'a', of Law No. 4.504, of 30.11.1964 (statute of the land), and 18, single paragraph, of Decree No. 59.566, of 14.11.1966, it is closed to adjust as rental price fixed quantity of fruits or products, or their equivalent in cash. 2. As precedents of this court, the clause fixing the price of the rural lease in quantities of products is null and void.” (BRAZIL. Superior Court. Resource: Special Resource (REsp) 231.177/RS. Rapporteur: Minister Luis Felipe Solomon. Fourth Class. Trial Date: 26/08/2008, Publication Date/Source: DJe 15/9/2008).
‘1. It is prohibited to fix the price of the lease in quantity of products, to the content of Article 18 of Decree No. 59.566/1966, Precedents of the STJ.
II. Removed, by null and void, the price clause, it is necessary to replace it by that which is established in liquidation of the judgment, by arbitration.” (BRASIL. Superior Court of Justice. Resource: Special Resource (REsp) 566.520/RS. Rapporteur: Minister Aldir Passarinho Júnior. Fourth Class. Date of trial: 11/05/2004 Date of Publication/Source: DJ 30/08/2004). 
"The clause fixing the price of the rural lease in quantity of products is null and void (Decree No. 59.566, 1966, Art. 18), and must be replaced by what is established, by arbitration, in settlement of judgment.” (BRASIL. Superior Court of Justice. Resource: Special Resource (REsp) 407.130/RS. Rapporteur: Minister Ari Pargendler. Third Class. Trial Date: 27/06/2002, Publication Date/Source: DJ 05/08/2002).
than half of the duration of the contract, imposed his obligation in the manner agreed (delivery of goods), having invoked the nullity of the clause only when the enforcement proceedings seeking the satisfaction of the unpaid installments were ongoing, in clear breach of the legitimate expectation placed in the legal business by the defendant.

8. The prohibition of contradictory behavior is a legitimate expression of the public interest, which is based both on the protection of trust and on intolerance to malicious conduct, coarse conduct or deception.

9. The fact that the contract that is the subject of the present performance provided for the remuneration of the lease of a fixed quantity of bags of soya does not, in itself, deprive it of the attributes that characterize it as an enforceable title - certainty, enforceability and liquidity (Arts. 580 and 618, I, of CPC/73). In particular, the Court of Origin, sovereign in the examination of the factico-evidentiary acquis, was categorical in stating that the actual value of the debt in collection can be obtained by simple mathematical operation.

More recently, however, on August 08, 2022, the Fourth Class of the STJ, again decided that "it is closed to adjust as rent price fixed quantity of fruits or products, or their cash equivalent, being null the contractual clause that encarta such forecast" (AgInt no Resp 1.546.289/MT, Rapporteur: Minister Luis Felipe Salomão, Fourth Class, Judgment Date: 08/08/2022, Publication Date: 15/08/2022).

In the State Courts of Justice, in addition to the divergence within the Superior Court of Justice, the understanding has prevailed for the absence of nullity of the clause fixing the price of the lease on agricultural product, taking into consideration the application of the practices and customs of the region, so as to depart from the strictness of the rule that regulates agrarian contracts.

Regarding the theme, given its wide tradition in the agricultural industry, it is of paramount importance to raise the positioning of the Court of Justice of the State of Mato Grosso, summarized in terms of the menu below:


It is perfectly possible to fix the price as a product under a rural lease, depending on the customs of the region which must be observed, and also to prevent the unlawful/unjustified enrichment of the party signing the contract and only then, when the default occurs and after having exploited the subject matter of the contract, does it claim the nullity of that term.

Thus, the prohibition conveyed by Article 18 of Decree No. 59.566/66 (Statute of the Land), must be mitigated against the primacy of good faith contractual and regional customs.

To understand the impracticability of further performance would be tantamount to rewarding the contradictory conduct of the applicant who, for another 80 years of the contract’s duration, imposed his obligation in the manner agreed
(delivery of goods), having invoked the nullity of the clause only when the enforcement proceedings seeking satisfaction of the unpaid installments were ongoing, in clear breach of the legitimate expectation placed in the legal business by the defendant. Precedent of the STJ (REsp No. 1692763/MT).

The prohibition of contradictory behavior (nemo potest venire contra factum proprium and nemo auditur propriam turpitudinem allegans) is a legitimate expression of the public interest, which is based both on the protection of trust and on intolerance to the practice of malicious conduct, coarseness or deception.

The fact that the contract which is the subject of the present performance provided for the remuneration for the fixed-volume lease of soya bags does not, in itself, deprive it of the attributes which characterize it as an enforceable instrument - liquidity, certainty and enforceability.6

In the same north, the case law of the Court of Justice of Rio Grande do Sul, by concluding the validity of the contractual clause that fixes the price of the lease in agricultural product, softens the interpretation of the single paragraph of Article 18 of Decree 59.566/66, in view of the customs and customs of the interior. For example, it is worth checking the following judgments:

CIVIL APPEAL. AGRARIAN CONTRACTS ACTION FOR REPOSSESSION AND COMPENSATION FOR DAMAGES.

... In the particular and specific circumstances of the case, there is no invalidity in the clause of the rural contract setting the rental price in terms of quantity of the product. Application of Art. 18, single paragraph of Decree No. 59.566/66 that remains mitigated, considering the local customs and customs and the fact that the authors exercise the rural activity in several properties possessing full conditions to know if the price adjusted by the lease was fair or excessive. ... Maintenance of the judgment of dismissal. APPEAL DEVOID.7

CIVIL APPEAL. AGRARIAN CONTRACTS ACTION FOR ANNULMENT OF A LEASE CONTRACT FOR DAMAGES. [...] PAYMENT IN PRODUCT. POSSIBILITY. MITIGATION OF ARTICLE 18 OF DECREES 59.566/66. VILE PRICE. IT DOES NOT OCCUR. REJECTION OF THE APPLICATION.

... II. The clause in a rural lease agreement fixing the rental price in terms of quantity of the product is not invalid. Mitigation of Article 18, sole paragraph of Decree No. 59.566/66.

... APPEAL DEVOID. UNANIMOUS.8

The same approach is shared and defended by the Court of Justice of the State of Goiás, as can be seen from the following:

---


CIVIL APPEAL. PRECAUTIONARY ACTION FOR ARREST. RURAL LEASE. PRICE. FIXING IN QUANTITY OF PRODUCTS. THE CLAUSE IS INVALID. MITIGATION OF ARTICLE 18 OF DECREES 59.566/66.

... 2- In accordance with the provision set out in Article 18 of Decree No. 59.566/66, the contractual clause establishing the price of the farm lease on agricultural products, and not in cash, is void.

3- It is true that the fixing of the price as a product is common practice in rural lease contracts, especially in those regions where the economy is strongly governed by agricultural activity. In view of this, in view of local customs and customs, which also need to be valued, the strictness of the law should be relaxed, thus avoiding the unjustified enrichment of one contractor in relation to the other. In the light of the principle of good faith in the contract, it must not be overlooked that there has been an unquestionable breach of contract, and it is perfectly credible to support the need to relax the understanding to the contrary, so as to prevent the one who has benefited from the rented area from benefiting from his own mischief. Therefore, since it is only when they are called upon to enforce the portion of their obligations, the appellants argue as to the form of the adjusted price, the claim of nullity of the contract must be rejected. CIVIL APPEAL KNOWN, BUT DEVOID.9

As can be noted, despite the contrary position, there is strong jurisprudential current, especially in regions where the economy is predominantly agricultural, relaxing the strictness of the single paragraph of Article 18 of Decree No. 59.566/66, considering the fixing of the price in agricultural commodities valid - common practice in rural lease contracts, widely enshrined by customs and customs -, so as to avoid the unjustified enrichment of one contractor in relation to the other, as well as to prevent that who has benefited from the rented area can benefit from its own turmoil.

Between advances and setbacks, there is still a divergence in case-law within the Courts, especially the Superior Court of Justice, since, on the one hand, it is perfectly possible to fix the price in product in a rural lease, depending on the customs of the agricultural environment and objective good faith; on the other hand, starting from a purely literal interpretation - undoubtedly the simplest hermeneutic method -, there are judgments concluding that the contractual term is null and void, for breach of the mandatory law, in the face of the fence contained in the agrarian normative microsystem.

5 CONCLUSION

As demonstrated throughout the present study, agrarian contracts are permeated by public order rules, which delimit the content of the business, restricted the freedom to contract on several points.

With regard to the problem that involves research, it is found that there is a great controversy in the case-law about the validity or otherwise of the contractual term that adjust the price in products or pecuniary, however, the position of the court egregio is the preservation of the agreement by the parties, even if in dissonance of the normative text.

Although several judgments of the Third Chamber of the Superior Court of Justice, accompanied by the majority of the state courts, have correctly affirmed that the payment of remuneration in fruits or products does not cause nullity of the contractual term, giving precedence to the customs and customs of the agricultural environment and to objective good faith, the Fourth Chamber of the Superior Court, relying on the strictness of Article 18 of Decree No. 59.566/66, has manifested itself by the nullity of the contractual term that adjust the

---

remuneration in product, ceasing to consider the reality experienced in the field and in the day-
to-to-day-to-to-of agrarian contracts.

In this context, it can be seen that the objective of the study was met, demonstrating that
the remuneration and the payment in the contract of rural immovable property generate
controversy in the doctrinal and jurisprudential milieu, being indispensable that there is
pacification of the controversy, so as to impart more legal certainty to the agrarian contracts,
preventing the business come to be questioned in the judicial sphere, worth remembering that
agribusiness is largely responsible for the progress and economic development of the country.

Thus, with this research, we sought to provide subsidies for the correct interpretation of
the matter, based on legal and legal doctrine, being sure that the work will contribute to the
training of professionals working in the area of Agrarian Law, scholars, professionals and
society in general, so we sincerely hope to have offered our modest contribution.

REFERENCES

AGUIAR JÚNIOR, Ruy Rosado de. Extinção dos contratos por incumprimento do devedor


BARROS, Wellington Pacheco. Curso de direito agrário. v. 1. 7 ed. Porto Alegre: Livraria do

BARUFALDI, Wilson Alexandre Des Essarts. A interpretação do contrato de arrendamento
rural pelo superior tribunal de justiça na perspectiva dos princípios do microsistema jurídico

BORGES, Antonino de Moura. Curso completo de direito agrário. 4 ed. Campo Grande:
Contemplar, 2012.


BUSSATTA, Eduardo Luiz. Resolução dos contratos e teoria do adimplemento substancial. 2.

CARDOSO, Luiz Guilherme Luz, DAL BOSCO, Maria Goretti. COMMODITY,
PROPERTY, OR RIGHT: WHAT IS THE LEGAL NATURE OF LAND IN BRAZIL? Rev.


COELHO, José Fernando Lutz. Contratos Agrários, uma visão neo-agrarista, 1 ed. Curitiba:


SILVA, Niviane Maria Gomes da; CESARIO, Andressa Vieira; CAVALCANTI, Ivan Ramos. *Relevância do agronegócio para economia brasileira atual*. Centro de Ciências Sociais

