



INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS
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**SYMPOSIUM ON CONTRACTS RELATING TO BREEDERS'
RIGHTS**

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SESSION I: LEGAL FRAMEWORK IN SELECTED UPOV MEMBERS: RELEVANT
LAWS AND JURISPRUDENCE – ARGENTINA

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Today, contracts are a part of all people's lives. People enter into agreements on a daily basis, from large-scale operations, such as the purchase of real estate or company start-ups, to everyday contracts which they conclude on numerous occasions without realizing it and which relate to work, transport or the use of goods.

I.- LEGISLATION

(a) In order to understand what a contract is and what role it plays in a given country, it must be analyzed from within the corresponding legal system.

There are two main legal systems in the world:

- The Anglo-Saxon system, known as **common law**, that was adopted first in England, then by the United States of America and other countries in the English-speaking world.

In the Anglo-American system, law is primarily customary, given that it is fundamentally based on such elements as the customs, practices and habits of a social group. As far as application is concerned, case law is of paramount importance, whereas positive law is secondary.

The law takes into consideration the particular features of each community to which it applies, constantly adapting to social, cultural and economic changes.

- The so-called **continental system**, which originated in Europe, particularly in France and Germany, and which consists of a system of written rules created specifically to regulate human behaviour. These rules are ranked differently and are related to each other in hierarchical terms.

The law is the highest expression of the continental system.

Here, the role of the judge is not to create law, as he could do with common law, but rather to interpret it and to apply its provisions to a particular case.

This is the system applied by the legal organizational frameworks based on the structure of Roman law, as in Europe and Latin America, including the Argentine Republic.

The Argentine Republic has a legal system composed of a legal framework based on written rules, which are structured hierarchically and which regulate both relations between the State and its inhabitants and relations between individuals, as is the case with contracts.

(b) The Argentine Republic adopted the **democratic system** as a form of government: a system of political organization primarily characterized by the fact that power is wielded by the people.

The democratic system adopted by my country is a **representative, republican and federal system**.

- It is **representative** because the people may only deliberate or govern through their representatives.
- It is **republican** because it is a political system characterized by the separation of the branches of government, which must oversee each other. It has adopted the traditional tripartite division with a legislative branch that creates the laws; an executive branch in charge of the administration; and a judiciary that interprets the law and settles disputes.
- It is **federal** because various provincial states existed prior to the founding of the Nation and came together to form a nation-State of their own free will, delegating certain powers to the central authorities and retaining non-delegated powers for themselves.

A Basic Law specifies which powers are devolved to the Nation and which lie within the purview of the provincial states.

In Argentina, the said law is the National Constitution, which was passed in 1853 and last amended in 1994.

In turn, each of the 23 provinces of the Argentine Nation has adopted a Constitution of its own with a view to establishing its own local institutions under the representative, republican system and to regulating the matters under its jurisdiction.

The National Constitution, the most important set of rules in the hierarchy, is the fundamental legal order of the State. As such, it takes precedence over all legislation: no law or act of an authority or individual can be contrary to its provisions.

In short, the Argentine National Constitution establishes a hierarchical order, whereby the highest rank is reserved for the Constitution, followed by international treaties, including treaties of integration; next are national laws, provincial constitutions and provincial laws; and official acts stemming from the executive or administrative authorities, such as decrees, resolutions or provisions, come last.

All the rungs in the pyramid constitute domestic public law.

At the base of the pyramid are contracts, the subject matter of the present symposium, which form part of so-called "private law".

If we transpose this hierarchical pyramid to the world of seeds and plant breeders' rights, the hierarchical regulatory system in Argentine law would be as follows:

Article 17 of the National Constitution provides that "Every author and inventor is the exclusive owner of his work, invention or discovery, for the term granted him by law", giving plant breeder's rights constitutional rank.

Second, there is the International Convention for the Protection of New Varieties of Plants of the International Union for the Protection of New Varieties of Plants, 1978 Act, a Treaty which Argentina ratified via Law No. 24.376 of 1994.

The national law in force governing plant breeder's rights in Argentina is Law No. 20.247 on Phytogenetic Seeds and Creations (1973), which regulates both the intellectual property of plant varieties as well as the national and international seed trade and is in its third version.

At a lower level is Decree 2183/91 regulated by the Law; Decree 2817/91 and Law No. 25845/2004, which established the NATIONAL SEED INSTITUTE (INASE) as an implementing body and numerous rules laid down by the administrative authorities to regulate various aspects of the intellectual property of plant varieties and trade in seeds.

(c) Let us now examine briefly how Argentine legislation deals with contracts.

Under the Argentine Civil Code, a contract comes into being when various persons agree on a declaration of common intent designed to regulate their rights.

In Argentinean law, contracts may be categorized as follows:

- **Legal agreements**, whose immediate purpose is to establish relations between persons with a view to creating, modifying, transferring, safeguarding or extinguishing rights;
- **Voluntary agreements**, concluded within the legal framework, with the intention of the person implementing it. This will must be expressed through a fact that projects it;
- **Agreements between persons**, who may be natural persons or legal persons; and agreements *intra vivos*;

- **Bilateral agreements**, which require the participation of two or more persons who take on mutual obligations towards each other;
- **Lawful agreements**, given that specific agreements may not set aside the laws, compliance with which is ensured by public order and proper conduct;
- **Economic agreements**, that is, agreements of a primarily financial nature.

Contracts in Argentina must be entered into in **good faith**, a general principle of law, as reflected by the integrity and uprightness that must guide the acts of the parties concerned in the implementation of an agreement, contract or process.

The predominant feature in contracts is “**the principle of the exercise of free will**”, a tenet embodied by the idea that if two persons freely negotiate all of the provisions of the agreement and manifest their will with discernment, intent and freedom, they remain bound by the agreement as if they were bound by the law itself. (*1)

Contracts and the law have a common denominator: they constitute a legal rule by which persons must abide.

Yet within the Argentine legal order, there are profound and conclusive differences between contracts and the law: the law is binding upon all inhabitants as a general rule, whereas a contract commits only those parties which have signed it.

“Contracts are subordinate to the law. The laws, which contain binding rules, may not be ignored by the contracting parties, which are bound by them, regardless of what they have agreed in their contracts. Likewise, agreements prohibited by the laws are void.” (*2)

Here, we can see that laws have precedence over specific agreements as well as the duty of compliance with their provisions, which individuals must observe when they enter into contracts.

II. BREEDER’S CONTRACTS USED IN THE ARGENTINE REPUBLIC

With the new techniques applied to plant breeding, seeds now form the nexus of a combination of scientific and technological factors that complicate matters from a plant-breeding perspective, leading to the need to regulate the rights and obligations of both long-standing actors and newcomers with regard to research and development (R&D).

INASE has no direct knowledge of the contracts entered into by individuals, for two reasons: first, there is no legal obligation to register such contracts with the implementing body; and second, INASE does not in any way exercise control over their provisions.

Consequently, with a view to characterizing existing contract types in our country, INASE has sought information from the private sector as well as the National Institute for Agricultural Technology (INTA), the official research body in the field of agriculture and the most representative public-sector breeder.

(a) PRIVATE SECTOR

In the private sphere we can differentiate between the following types of contracts, from the perspective of the contracting subject: (1) breeders and breeders; (2) breeders and holders of biotechnology; (3) breeders and propagators; and (4) breeders and farmers.

1.- BREEDER–BREEDER

Contracts in this category cover the earliest possible stage of breeding by means of exchanges of germplasm. The most common examples are those in which firms share germplasm for trials and genetic manipulation as well as crossing and licensing of lines to obtain hybrids.

In this category, we find the following, in ascending order:

1.1- Trial contracts

By means of this type of contract, a breeder (licensor) grants an exclusive license for a **(cross-pollinating) line** or **(self-pollinating) variety** to another breeder (licensee) so that the latter may sow, grow a crop, harvest and evaluate the outcome.

When a **line** is involved and if the results are satisfactory, the licensee may apply for a license so as to move ahead with plant breeding or produce cohybrids.

If the license is for breeding purposes, this presupposes permission to cross the germplasm with that of the licensor and to produce some type of genetic manipulation. If the license is intended for the production of cohybrids, the germplasm delivered by the licensor to the licensee may be used solely for this purpose and any other type of practice is prohibited.

In the case of a **(self-pollinating) variety**, if the results are satisfactory, the licensee may apply for a license to move ahead with plant breeding or a license for commercial use.

With regard to a **hybrid**, if the results are satisfactory, the licensee may apply for a license for commercial use.

Trial contracts are generally free and the licensee covers all of the growing-related costs. Riders relating to the prohibition of unauthorized acts, third-party confidentiality, the licensor's non-liability for the materials delivered, and the licensee's obligation to comply with all relevant regulations are frequently attached.

1.2 R&D contracts

IN R&D CONTRACTS, A BREEDER (LICENSOR) GRANTS AN EXCLUSIVE LICENSE FOR A LINE TO ANOTHER BREEDER (LICENSEE), EITHER FOR BREEDING PURPOSES OR TO CREATE A COHYBRID WITH ANOTHER LINE PROVIDED BY THE LICENSEE HIMSELF.

In the first instance, the licensee is authorized to perform all types of action with the germplasm delivered, unless the contract specifically stipulates otherwise.

In the second case, the licensee crosses one of his own lines with the line delivered and obtains a cohybrid.

In the case of a **(self-pollinating) variety**, the license which the licensor grants the licensee authorizes the latter to carry out breeding for selection or crossing.

As with trial contracts, these contracts are usually free of charge and the licensee covers all of the growing-related costs. Riders relating to the prohibition of unauthorized acts, third-party confidentiality, the licensor's non-liability for the materials delivered, and the licensee's obligation to comply with all relevant regulations are often attached. It is common practice to insert clauses covering any new discoveries by the licensee.

1.3 Commercialization contracts

With this type of contract, a breeder (licensor) grants another breeder (licensee) rights of commercial use of a (cross-pollinating **line**, a **hybrid** or a **(self-pollinating) variety** that is the property of the licensor.

The purpose of licensing a line is to enable the licensor to produce cohybrids.

When the hybrid is licensed, the breeder gives the licensor both lines so that the hybrid may be produced.

When a variety is involved, the licensee supplies the basic seed so that the licensor may produce the certified seed for delivery to the agricultural producer.

These contracts contain different provisions, inasmuch as they must:

- regulate entries in the National Cultivar Registry (commercial catalogue) of the germplasm in question if it is not registered, and in the Owners' Registry, which means that it is necessary to define who holds title to the right. Both lines and varieties are always the property of the licensor;
- regulate the financial terms on which the license is granted. The licensor generally sells the licensee the seed for the line or the basic seed for the variety, in addition to collecting a royalty for every bag sold to the producer of the licensed seed. With regard to self-pollinating varieties, an extended royalty to the producer is included, a concept which is explained below;
- regulate the validity of the contract, the modalities of early termination, confidentiality, the licensor's non-liability towards the licensee for the seed produced and delivered to the producer, etc.

2.- BREEDER-BIOTECHNOLOGY HOLDER

New technologies applied to traditional breeding make it possible to modify the germplasm contained in the seeds by including transgenes which provide the seeds with a different technology. This implies the possibility of holding a seed with two or more titles of rights protected for the same purpose and the need to share the benefits of the separate technological values with the respective title holders: the owner of the germplasm originally contained in the seed, and the owner(s) of the transgenic event(s) incorporated.

Contracts between breeders and biotechnology holders regulate the incorporation of the transgenic event in the original germplasm.

2.1 Backcrossing contracts

The owner of the transgene delivers the same to the breeder in a line that is public property or belongs to him, enabling the latter to engage in backcrossing with a view to introducing the gene into his germplasm and obtaining a new converted line.

2.2 Introgression contracts

Unlike the aforementioned type of contract, nowadays it is common practice for the owner of the event to ask the breeder wishing to incorporate the event for a line, and the owner of the event introduces the event into the germplasm delivered by the breeder.

The line that has been converted in this manner is a new line as far as Argentine legislation is concerned and is registered in the breeder's name.

Such contracts contain clauses which limit commercial activities and only regulate the supposed technologies, the above-mentioned general confidentiality clauses and prohibition of any action not specifically authorized.

2.3 Licensing contracts for commercialization

Once the event has been introduced into the breeder's germplasm, the owner of the event grants a license covering the use of his transgene in the seeds commercialized by the breeder.

This type of contract usually contains many restrictive clauses, limits on time and territory, provides for royalties and, in a new development, bars the sale of seeds to third parties which have not entered into an agreement with them for the commercial use of the incorporated event.

3.- BREEDER–PROPROPAGATOR

The owner of a plant variety may handle the reproduction and commercialization of the material on his own or through a third party with which he has signed a propagation contract.

The propagation contract may be defined as a contract whereby the holder of a breeder/licensor's right authorizes another subject–propagator/licensee to use the protected plant variety, with the scope stipulated and in exchange for consideration.

In the case of hybrids, the contract is similar to that of the breeder–breeder.

With varieties, there are two assumptions: (a) the propagator receives the basic seed from the breeder, sows it, and obtains certified seeds which he sells to farmers; or (b) he sows the seed and hands the crop over to the breeder.

In (a), the propagator pays for the basic seed received, followed by royalties for each bag of certified seed sold to farmers. In most of these contracts, the process relating to the

propagation, identity and quality of the product is overseen by the breeder, and the propagator is generally responsible to the farmer for quality and identity.

In (b), we say that it is a closed propagation contract, in which the propagator acts almost like a rural contractor who has been requested to ensure the reproduction of a given seed. In this case, the breeder pays the propagator for services rendered.

In closed contracts, the propagator hands over to the breeder the proceeds of the seed delivered and complies fully with the quality and identity conditions imposed by the breeder. It is the breeder himself who considers that the purpose of the agreement is to increase production, given that he is solely responsible as the issuer of the quality product label in relation to third parties.

4.- BREEDER-FARMER

The so-called "extended royalties" system is a contractual arrangement created by breeders in 2000 and based on the rules of the Civil Code.

It consists of a membership contract which entails an obligation for the farmer to pay the breeder a royalty, whenever the farmer sows and reproduces by each propagation the seed from the protected variety for his own use.

At present, the area under cultivation with these varieties and governed by the extended royalty system accounts for a growing share of the acreage set aside for growing soybeans and wheat in Argentina.

The characteristics of the extended royalty system are as follows:

- they have been implemented on new varieties, not those existing before the system went into force;
- the practice of farmers setting aside seeds for their own use is maintained but is no longer free of charge;
- the contract remains in force if the user continues to sow seeds obtained under this arrangement; and
- The contract ends upon expiry of the term of legal protection for the variety or when the user makes the entire crop available for industrial use.

The system operates as follows:

- The proposed commercial terms for the sale of the seed subject to the rules at a public hearing (intended for buyers/users/propagators/producers/distributors/merchants) are specified;
- The label on the seeds must specify the contractual terms of commercialization;
- A general clause reads as follows: "Anyone who acquires, propagates, sows or uses in any capacity or sets aside seeds for his own use...under the system of extended royalties

is subject to the terms of commercialization...in the public hearing”, which must be attached to the shipments and to a seal that is printed on the sales invoice;

- Opening the packaging is deemed to constitute tacit acceptance of the terms;
- Special clauses are inserted in model contracts between distributors and propagators with a view to preventing the seeds from being distributed without royalty contracts;
- During the harvest and the setting-aside of the seed, an obligation arises for the agricultural producer to inform the breeder of the quantity harvested, the amount the producer intends to set aside for his own use, and the storage and processing site;
- Whenever the variety covered by the system is sown, a payment obligation arises for the farmer.

B. PUBLIC SECTOR – NATIONAL INSTITUTE FOR AGRICULTURAL TECHNOLOGY (INTA)

The goal of INTA’s technology transfer policy is to create formal links with the regional and national agricultural, agro-food and agro-industrial system with a view to developing and transferring the new technologies and knowledge arising from the lines of research carried out by the Institution.

INTA’s knowledge and technologies are public assets, that is, they are for society as a whole, a factor which has obliged the Institution to forge strategic partnerships with firms to ensure their dissemination at the community level.

For this purpose, INTA enters into the following agreements:

1. Cooperation agreements with public, national or foreign institutions when not dealing with non-appropriable technology; and
2. Technical cooperation agreements with private-sector firms or, in the previous instance, with public institutions when dealing with appropriable technologies.

In this connection, INTA has three types of contracts: R&D contracts; technology transfer contracts and technical assistance contracts.

2. 1.- R&D

In this case, INTA joins forces with a company or group to generate a technology and commercialize it through the product in which it is incorporated. In this way, the firm and INTA share their capacities, generation and dissemination costs and the implicit technological and commercial risks.

If the innovation is a success, the firm reproduces or propagates and commercializes the product, compensating INTA by means of previously agreed royalties.

If the breeding is done over the long term, royalties are not agreed when the contract is signed but rather in a future agreement, which will be concluded once the development phase has been completed or when the registration is being processed.

There are two types of R&D contracts:

- Mutually exclusive contracts, when INTA's entire programme concerns a specific crop, such as wheat or alfafa. In this case, the associated company may not run a plant breeding programme for this species, and it also has exclusive sales rights to the varieties from the species making up the subject matter of the contract.
- Contracts for a particular variety or line.

The characteristics of these contracts are joint R&D combined with technology transfer; the setting of royalties for the duration of the license that matches the duration of the cultivar's ownership; the requirement that the agreement must be approved by INTA's Governing Board; and the requirement to display the Institution's logo when advertising or selling the materials obtained.

2.2. Transfer of technology (TT)

In this case, INTA, acting on its own, comes to the end of an innovative process incorporating technology and knowledge in a product or process.

INTA then transfers the technology to one or more companies by means of a public hearing covering a given territory and for a given time period, thereby collecting, in accordance with the nature of the license, a "royalty" payment.

The technology thus obtained is registered in the name of INTA, which authorizes its use with a sublicensing option. However, INTA reserves the right to audit and oversee the books of the company as well as a veto right in the case of sublicenses.

Under Law 23877 on the Promotion and Encouragement of Technological Innovation, royalties received by INTA are distributed as follows: 30 per cent for the researcher, 40 per cent for the unit or working group, with the remaining 30 per cent ploughed back into a technology enhancement fund designed to maintain intellectual property rights and plant breeding programmes prior to public hearings and training for technical staff.

2.3 Technical assistance: these are agreements pertaining to the transfer of knowledge and know-how, which basically consist of outsourcing to external consultants.

III. ARGENTINA'S EXPERIENCE WITH CONTRACTS RELATING TO BREEDER'S RIGHTS

(a) In general, problems arising between private individuals over the signing of a contract or the interpretation of its scope do not lie within the purview of the body that applies the Law on Seeds and Plant Genetic Creations, which in this case is the NATIONAL SEED INSTITUTE. It comes under the Executive and is equated with a State body, and the judiciary is competent to settle any disputes that may arise between the contracting parties.

There are, however, two exceptions to this rule.

First, when the National Seed Institute, as the body responsible for applying the law, must interpret the legal and regulatory provisions and lay down rules regulating the activities of the various players in the seed chain, and second, when this body, in the process of dispensing administrative justice, must decide whether or not to apply a sanction to a third party which has infringed a breeder's rights.

In the Argentine Republic, the National Seed Institute is the State body empowered to investigate and punish, upon request or at its own initiative, anyone who identifies or sells "cultivar" seeds whose propagation or commercialization has not been authorized by the breeder.

This coercive power is known as "policing power" and enables INASE, in addition to the above, to inspect and take samples at sites where the seeds are in use; to have access to premises and shops; and to inspect relevant documents and information.

Accordingly, INASE has on various occasions taken a stand with regard to contracts by means of consultations with or requests by private individuals or judicial authorities, as well as the settlement of administrative proceedings concerning violations of breeders' rights. It has handled over 500 such cases to date.

(b) Here are some examples of how the State body intervenes with regard to contractual terms.

➤ Breeder–breeder relationship

The case referred to INASE pertained to the authorship of various varieties which an official body wished to register in its own name and against which an objection had been raised by a breeder, who claimed that the varieties were his own, as they had not arisen in the course of his work contract with his employer.

INASE ruled to dismiss the objection, as the opposing party was unable to provide evidence that he had created the varieties prior to his work contract or that they stemmed from independent research. Moreover, he did not possess and had not possessed the related material – a factor strengthening the case of the official body which possessed live samples of the varieties to be protected.

➤ Extended royalties

The extended royalties system has been an arrangement used by breeders. According to them, it serves the following purposes: ensuring recognition of the right to intellectual property; promoting research; and guaranteeing that agriculture is able to compete. Breeders claimed the farmers' right to reserve their seed was economic in nature and could therefore be waived. (*3)

This arrangement was rejected by agricultural producers who argued that extended royalties were a gimmick that cheated farmers because when they acquired seeds under an extended royalty regime, the contractual conditions set implied a tacit waiver of the farmer's right to reserve and use his seeds, which was recognized by a legal system of public order based on food security and sovereignty of production. (*4)

One of the first points that deserved special attention was to define INASE's role in determining whether extended royalty contracts infringed farmers' right to reserve their own seeds, and second, whether or not the legal provisions embodied by farmers' right to reserve and use their seeds took precedence over the clauses in the extended royalty contracts stipulating that farmers were obliged to pay royalties for their seeds.

In a press release dated May 22, 2005, the Secretariat of Agriculture, Livestock, Fisheries and Food, stated: "INASE did not recognize the extended royalties system since, even though the problems arising from the exercise of the property rights in plant varieties between owners and users... come under private law, it is incumbent upon the State, in the case at hand INASE, to determine the scope of the articles of the Law on Seeds and Plant Genetic Creations and their regulatory standards, and these requirements may not be set, modified or altered by any condition or interpretation established by the breeders to license their varieties. In this sense, INASE determined... which requirements farmers must meet to align their situation with the rights granted by the rules referred to and the obligations they must fulfil for this purpose. If a farmer meets the requirements laid down by legal rules, his situation is aligned with the farmer's exception (underlining added by the author)... which envisages an exception to the breeder's right. This implies that the farmer is not obliged to secure the breeder's permission for the seeds obtained within this system. Therefore, the breeder may not impose conditions of any kind and in turn may not require the payment of royalties. It would seem, at first sight, that the system of extended royalties violates the article which grants the farmer's exception, given that the producer is not only required to pay royalties on seeds for his "own use" but must also meet obligations such as the submission of sworn statements regarding the quantity of seeds sown and their origin.

Other claims made by the breeder go beyond the present framework and refer to agreements or contracts between parties. This falls outside the purview of Law No. 20.247 (Law on Seeds and Plant Genetic Creations), and it is incumbent upon the courts to rule on the validity or otherwise of the contracts referred to...."(*5)

To date, there has been no court ruling on the matters in debate, either in proceedings brought by breeders or in those brought by farmers, as a result of which the discussion will continue to be based on arguments of free interpretation until such time as a ruling is handed down.

➤ **Direct payment of royalties by propagators and/or farmers to the owners of the technology**

In this case, the relationship was established between the owner of the transgenic event – the property of a biotech company – and the breeders, the owners of the germplasm, various other firms which had entered various transgenic varieties in the INASE Property Register and obtained a title of ownership. The biotech firm had delivered the transgene to the breeders with a view to its incorporation in the new varieties.

The seeds from those varieties were propagated and incorporated in the seed trade within seed certification systems and acquired by farmers, who, exercising their right enshrined in the Law on Seeds and Plant Genetic Creations to reserve their seeds, produced grain, which they proceeded to sell to exporters as end users and purchasers from other countries.

Although the case we are analysing embraced various issues of a legal nature, two facts were considered in relation to the contracts:

- First, the sales invoices delivered to seed propagators and/or users contained a clause formally stipulating that the payment made by the person purchasing the seed only cancelled out the value of the germplasm and did not cover the value of the technologies referred to in the transgenic event;
- Second, the holder of the transgenic event intended to enter into contracts with farmers and other links in the seed chain to collect royalties for his technology in the grain and not in the seed.

In this case, it was argued that when the holder of an event negotiates an agreement or contract with the breeder, the biotech firm has given its consent for the breeder to incorporate the transgene in his germplasm and hence in the varieties and seeds derived from his R&D.

The emerging intellectual property rights of the technology holder to oppose the use of his invention and derivatives on the grounds of breach of the contracts signed must be exercised against the breeder firms, the owners of the germplasm – those who used the invention and were the main beneficiaries.

The relationship between the owners of the technologies and the owners of the germplasm via payment and recognition of the intellectual property is limited to them, and any disputes arising therefrom cannot affect third parties.

The event cannot be separated from the seed. When an agricultural producer sows the seed of a transgenic variety which possesses intellectual property rights in the event and in the variety, he is using both creations for his benefit and is obtaining a result, through which he must compensate the inventors. **In practice, this takes place with the purchase of the seed bag.** Once the farmer has paid the sale price for this bag, this cancels out the value of all of the inventions it contains, exhausting the holders' rights. **This is what is called the “integral nature of the seed”.**

As far as the grain is concerned, if the farmer has legitimately purchased the original seeds, both rights are exhausted.

The holder of the breeder's right may not exercise his right again, given that this right ends with each production cycle. Moreover, the Law on Seeds and Plant Genetic Creations provides for the “exemption of consumption”, making it possible to use and sell the crop obtained from growing the plant genetic creation as a raw material or as food.

As for the creator of a genetic construction, it is not possible to infer that his invention has been utilized, given that its characteristics are expressed not in the grain but in the growing, as a result of which the invention lacks industrial application with regard to the grain.

➤ **Breeders' contracts, seed certification and the seed trade**

In certification processes and the seed trade, INASE requires the authorization of the breeder of the protected variety, which is used as a pre-determined licensing contract to register production batches, propagate the seed, secure authorization for nationwide sale, and import and export the seeds.

Authorization granted by breeders may be general, which implies that the authorized party may perform all types of actions in relation to the seed from the variety that forms the subject matter of the authorization. It may be partial, based on a strict list of the acts which the licensee may carry out: for example, whether he may only propagate or may propagate and commercialize and, in the latter case, whether trade is limited to the national level; if it is at the international level, a decision must be made as to the countries of destination.

INASE does not authorize the propagation of or trade in seeds which goes beyond the authorizations granted.

INASE has also decided that if the seed was acquired within the framework of a commercial seed production contract, the propagator may not decide on his own to use it for his own sowing, on the pretext of the farmer's exception, without prior authorization from the breeder.

Likewise, in Argentina, the Argentine Association for the Protection of New Plant Varieties (ARPOV) introduced a stamp which is affixed to the label on the seed bag showing that the labelled seed has been the subject of a prior contract with the breeder.

INASE has decided that affixing the ARPOV stamp to the label implies the breeder's authorization for the seeds it contains. If this stamp is missing, the holder must use other means of proof to demonstrate that the breeder has granted him the relevant authorization.

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