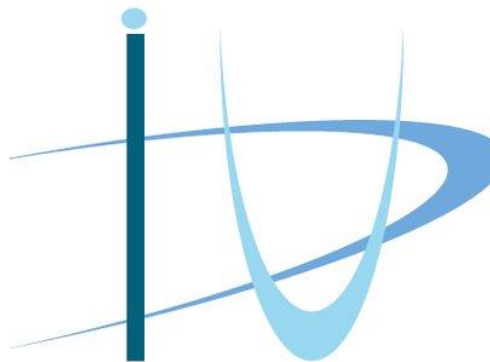


THE « STERE » AS A CUSTOMARY RULE

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When selling wood, you have to decide which unit of measure you will use in order to assess the amount sold. There are several unit of measures available, however one is specific to the measurement of piled wood : the « stère », or stere.

While an appropriate tool in the measurement process of stored burning wood, it possesses some drawbacks that may lead to problems in its applications. That is why it has been « abandoned » by Statutory Law as a measurement unit, and all of its characteristic must be analyzed with regard to Customary Law.

I – Definition of the stère

The notion of stère appeared in Statutory Law in article 5 of the 7 April of 1795, where it is described as a method of measurement of a quantity of piled cut trees. Its value is determined to be one cubic meter of such piled cut trees. It should be noted that the « decistère » is a subsidiary measurement tool which value is 0.1 stère. The « décistère » has been replaced in an Act of the 4th of november 1800 by the « solive ».

The use of stère implies the measurements of the circumference of the logs using a string with knots that correspond to fractions of the "foot". Any error is squared in the calculation of the volume.

However, in reality, there is more than 30% of empty space in a stere due to the interstices between the logs, so that it takes 1.43 stere to have a real cubic meter. This ratio is variable : it depends on the species, the size of the logs, and the proportion of straight or twisted wood. There resides all the specificities and the acerbities of the notion of stere : it is an inexact way of measuring, that can only give a rough idea of the amount of stored wood. This lack of total accuracy mirrors the inherent difficulties of the measurement of piled logs, and thus explain the usefulness of the use of the Stere unit as a Customary Rule.

II – Legal problems linked to the stère

A – Legitimacy requirement issues in the formation

The use of the stere seems to fulfill the requirements of the formation of Customary Rules, whether these requirements be subjective or objective. Such a usage is determined in the way its nature is a method of measurement, it is defined both geographically in the French territory and temporally since it appeared at the end of the 18th century. The invocability of this unit of measurement is also established since it used to be written in Statutory Law.

One of the requirements of the formation of Customary Rules can however be discussed : the legitimacy of the stère.

As it has been said, the unit of stere has been « abandoned » by the Statutory Law. Formally, it happened when the decree N°75-1200 of the 4th December of 1975, which stated that « *The stere is used to measure the volume of stacked firewood* », but also and especially that « *The use of the stere is to be discontinued by December 31 of 1977* », came in force. Does the existence of such a provision stating that the use of stere should be stopped nullifies the possibilities of creating a Customary Rule based on the stère ?

It is admitted that Customary Rules do not necessarily requires an express reference by Statutory Law in order to be granted legitimacy and invocability. Furthermore, Customary Law sometimes prevails over legislative provisions, and may be applicable despite Statutory Law providing the opposite. For example, in internal Law, the rule of joint liability between merchants is not stated in any statutes ; it is

nonetheless presumed, even if article 1310 of the Civil Code states that joint liability should be expressly stated. In the same way, in French Labor Law, a customary rule will automatically prevail over a statute if it is more protective of the employee. An analogy can be made with the present case, where the Customary Rule is contradicted by a written norm.

In order to decide upon contradicting statutes and customary laws, one central element must be taken into account : the reasonable aspect of the rule. It is admitted that the most reasonable rule shall prevail between a competitive legislative provision and a customary rule. In the present case, since the stère is an important usage strengthened by time and repetition, and is the most appropriate measuring unit for stacked wood, it shall be retained as the most reasonable rule.

Thus, insofar as the use of the stère does not contradict any other imperative written norm or non-written norm, the stère meets all the requirements of a customary rule and can be invoked before a Court. This seems to be also the interpretations of Courts, since decisions have admitted the resort of the term « stère » in a variety of cases involving the sale of burning wood long after the 31 of december of 1977 (Amiens, 28 november of 2000, n°99/00536, Orléans, 24 september of 2007, n°06/02345).

B – Technical issues in the application

Beyond the questions regarding the formation of the Rule and the requirements it involves, the use of stère in contractual relationships has direct consequences. As precised earlier, the stère is in itself a « rough » measurement unit, that entails taking into account the empty space implied by the stacking of wood. The complexities arises from the fact that not only is this empty space consistantly present when stacking wood, but its importance varies according to different factors, each difficult to assess accurately. This imprecision can be exploited by sellers, who can abuse from the inherent vagueness of the measure.

This problem has lead to decisions from Courts enabling the perspective of possible improvement to the usage. This was the subject of a decisions from the Tribunal of Saint-Omer on the 19th september of 2017 that was narrated in local newspapers (*Saint-Omer - Pourquoi il ne faut plus acheter de « stère », réponse mathématique au tribunal*, La Voix du Nord, 20/09/2017).

In this case, the fact that the stère is a rough unit of measurement was involved. A wood trader had been selling several stère to some customers. Those customers realized, days after the delivery, that the amount of wood they had received did not meet what they expected, and they thus started a judicial procedure in order to be repaired from this difference. An expert assessment from the Departmental Direction of Population Protection confirmed the substance their claim.

The judges, based on the definition of the stère, established that the inaccuracy of the measurement realized by the trader was to be attributed to the inherent characteristics of the stère. They thus decided to dismiss the seller.

This case allows us to take a step back and look at this usage in a new light. The use of stère can be improved in different ways, but in order to prevent the exploitation of the potential inaccuracy of the measurement, a seller using such a unit should for example specify the characteristics of the stère measurement, in order to give an idea of the amount of empty space in a stère. This implies that the seller specifies the factors that may make the amount of empty space vary, meaning the the species and the size of the logs. The size of the logs is particularly important since it is the most important factor, and the one at the root of the issue raised in the Saint-Omer case ; the smaller the logs, the greater the loss of material and the further away from a real cubic meter. The stère is an suitable and strongly convenient unit of measure, but can onyl benefit from this improvement.