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COMPARATIVE CHARACTERISTICS OF CONTRACTS IN THE ROMAN PRIVATE LAW AND CIVIL LAW OF UKRAINE IN OUR DAYS

In contract law more than in the other branch of private law, was the influence of Roman private law and for further development is very important to investigate and compare the characteristics of Roman law treaties and agreements in civil law in Ukraine today.

The first treaties as a rule of law appeared in Roman private law. He was considered to be the most important source of obligations in Rome. The contract was considered an obligation that arose from the consent of the parties, and enjoyed the protection of the claim.

Agreement – a bilateral agreement in which the expressed will of the two sides aimed at achieving a certain legal result – the emergence, modification or termination of rights and obligations. In other words, the contract is an agreement between two or more persons about the implementation of a certain legal action or the refusal to carry out a particular action [4, c. 66].

Roman taxonomy law tried to create a general concept *conventio* – agreement, which was divided into a) *contractus* – a contract that defended the claim, and b) *pactum* – agreement on which is usually claim is not fed and protection carried out by referring to them as objections

Contracts as formal agreements were recognized as private law and protected by litigation. The system of contracts was closed, because of which they were not recognized for a long time by the agreements not covered by private law. However, under the influence of rapidly developing commodity needs, classical and post-classical private law allows for certain deviations.

The pacts are informal agreements, that is, those that were the legal form of business life outside the scope of contracts. They did not have litigation and unconditional legal significance: they relied only on the conscience of counterparties, on their moral qualities, and not on the norm of a positive law. Failure to comply with the pact does not entail legal liability. However, with the development of crafts, trade, agriculture, civilian circulation could not already be content with a closed circle of contracts. New relationships demanded new contractual forms. Roman legal practice was compelled to recognize the strength of contracts under certain covenants by providing them with litigation.

Contracts were divided into types for different reasons.

On the basis of the emergence of contract commitments were the criterion for the delimitation of certain types of contracts: verbal, literal, real and consensual [2, c. 489].

Each of these groups corresponded to a definite list of contracts, that is, each contract "knew" its place and could not move from one group to another. Accordingly, the four groups of contracts had an exhaustive list of contracts. Meanwhile, the practice required the definition of legal force and other contracts that are not included in this list. This is the fifth group, which in the Middle Ages was called *contractus in nominati* – non-nominal, or nameless contracts. By their legal nature, they approached real contracts.

The criterion for classifying contracts was also the degree of requirements for their "formalization". In pre-classical Roman law, when the formalism prevailed, in the case of the conclusion and interpretation of the content of contracts, the preference was given to the letter of the contract, and not to its substance. Even if the contract had an error that distorted its content, it was impossible to depart from the established provisions. In this way, interpreted and regulations. This is evident from the example of *Aquila's law*. This law provided that the person who wrongly destroyed or damaged someone else's property was liable for an indispensable condition: if the damage was caused by the *corpore corpori*, that is, the body of the body, the material object of the material object. So, if a stranger was killed by a stranger, the responsibility came, and if the slave was frozen by hunger, then no. Later, pretorial practice spread responsibility even in cases where there was no "*corpore corpori*".

According to the same criterion, the agreements also differ: *negotia stricti iuris* – transactions of strict law and *negotia bonae fidei* – acts of good conscience. The first were inherent in pre-classical law, the second – the classical right, when, in interpreting the legal norms, there is a tendency to take greater account of the content, which gives him an advantage over the letter. Then this trend goes on and on contracts. What is more important is not what it says – *id quod dictum est*, but what has been done, what the parties really wanted to do – *id quod actum est*.

Depending on the distribution of rights and responsibilities, there were unilateral and bilateral agreements, as well as the obligations arising from them. Contracts in which one party had only the right and the other only duties were called one-sided (eg, a loan agreement), and contracts in which each party had rights and obligations – two-way. Rights and responsibilities are distributed among the parties not always evenly. Sometimes one party had more rights and less responsibilities under the contract, and the other, on the contrary, had fewer rights and responsibilities. There were contracts in which the rights and duties were distributed among the parties evenly, that is, the rights and duties of one party met the duties and rights of another.

They were called synaglagmatic (for example, a contract of sale). In turn, the synagrama was fulfilled (if the obligations were reciprocal from the beginning) or inadequate (if the obligations were initially one-sided, then they became reciprocal. For example, a free contract of assignment gave rise to the duties of the principal to offset the expenses of the assignee if they had taken place)

By the criterion of indemnity distinguish between contracts of pay, when the property benefits are both parties (for example, in the case of sale), and free of charge, when the benefit is only one party (for example, interest-free loan, a loan).

Roman law also knew a number of other treaties: abstract and casual, formal and informal, and others like that.

In civil law of Ukraine, a civil-law contract (also a civil-law agreement) is an agreement (agreement) between two or more parties aimed at establishing, changing or terminating civil rights and obligations [1, c. 3]. It is one of the grounds for the emergence of binding legal relations, as well as the legal structure that mediates a wide range of various actions of participants in civil legal relations of property and organizational nature.

The subject of the contract is always a certain action, but this action can only be legitimate. If the subject of the contract is an unlawful act, that is, illegal, then such a contract is invalidated.

The contract is considered valid under the following conditions: legality of action; expression of the parties; observance of the form of the contract established by law; right and ability of the parties.

The content of any contract is the rights and obligations of the parties, established by him. The content of any contract is characterized by its terms. There are significant, ordinary and casual terms of the contract.

In comparison with Roman law, in modern Ukrainian civil law, too, there are unilateral and bilateral agreements, as well as multilateral ones (in which more than two persons take part (for example, a contract on joint activities for the construction of housing, the construction of roads, schools, etc.). Distinguish contracts real and consensual. Real contracts are concluded, that is, they acquire legal significance only from the moment of actual implementation of certain actions (for example, a loan agreement should be considered concluded not from the moment of agreement between the parties on a loan, and from the moment when the lender has given the borrower a certain amount of money). Consensus agreements are deemed concluded and of legal significance since the agreement was reached on the main terms of the contract (for example, purchase-sale, hire, contract, etc.) [3, c.354].

In the form of contracts can be oral and written. Written, in turn, are divided into simple and notarized ones. An oral form is allowed in contracts executed at the time

of their conclusion, unless otherwise provided by law (for example, a contract of sale for cash).

A simple written form is used in the case of agreements between legal entities, between a physical person and a legal entity, except for contracts executed at the time of their conclusion. Notarization of written agreements is required in cases stipulated by law. Thus, a contract for the sale of a residential building and some others are concluded.

The agreement is considered concluded when the parties have reached agreement on all essential conditions, and the agreement has been duly drawn up.

In the process of concluding a contract, there are two stages: a proposal to conclude an agreement (offer) and accept a proposal (acceptance).

Often, the parties themselves determine the moment when the agreement enters into force, that is, the moment from which the contract is deemed concluded, as explicitly stated in the contract: the contract enters into force on such a day of the month and year. In other cases, the time of the contract is determined by law. Thus, a contract for the sale of a residential building should be certified by a notary, but the legal force is acquired only from the moment of its registration in the local government.

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