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Rīgas Stradiņa universitāte

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Summary of Doctoral Thesis
for obtaining the degree of a Doctor of Law
Speciality – Law
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CONTENTS

GENERAL DESCRIPTION OF THE PROMOTION PAPER

Cession is a claim transfer from one creditor to another as a result of legal operation, law application or a court decision. A creditor whose claim is being assigned to a new creditor is called an assignor and the new creditor is called an assignee.[1]

In their works, V. Kalniņš and I. Novitsky express the opinion that the antecedents of cession were present in the Roman Law already, with the only difference: the obligations had some clear personal nature and the Roman Law did not allow to segregate the claim from a person. In fact, in the Roman Law the cession was a procedural instrument having the notion of procedural implementation of claim rights. Initially, the Roman Law recognized the creditor's ability to authorize another person to represent his interests in court (at the praetor's). Such a representation was formalized by a contract of agency called *mandatum agendy*, where a *cedere actionem* was determined. Lately, a notion of *cessio actionem* has appeared, which, in fact, denoted the procedural implementation of claim rights without any creditor change. The afore-mentioned construction was not safe in terms or the realization of parties' will. The assignor could revoke the contract of agency, and the given contract of agency terminated after the assignor's death.[2]

There were different approaches towards people's exchange obligations on different stages of civil law development. In some judicial systems, any civil law obligations were related to the party's identity and it was believed that the rights and obligations could not be passed, while the change of the party was allowed only in extraordinary circumstances. Finally, the development of commercial intercourse, as well as practical needs, have resulted in the situation

[1] Torgāns K. Saistību tiesības. 1. daļa. Rīga, 2006, 155. lpp.

[2] Новицкий И. Б. Римское право. Москва, 1994, с. 143.

when people's obligations exchange had become a usual phenomenon wish some significant economical meaning. People's obligations exchange in legal relationship in any given case has its own personal motivation.[3]

V. Sinaysky has mentioned that almost all obligations prior to their fulfilment come to a circulation with economical values, thus multiplying the social means of circulation. That is why the cession is valuable from the socially-economical point of view.[4]

The first cession was included into the German Civil Law in 1896; then into the Swiss Civil Law in 1912[5]. Nowadays legal norms that regulate cession issues are included into civil laws of almost all states. Legal regulations of cessions in the Republic of Lithuania were included into the Civil Code 2000[6], legal regulations of cessions un the Republic of Estonia were included into the Law about Obligations adopted in 2000[7]. In the Russian Federation, the cession was included into the first part of the Civil Code of the Russian Federation adopted in 1995. The legal regulations of cessions in the Republic of Latvia are reflected in the Civil Law Obligations' division part nine: "Claim rights cession".

In the most foreign countries' legislation acts (civil laws, civil codes) cession has traditionally been examined in the general parts of laws concerining obligations. As an exclusion, the French civil Code can be mentioned, where the legal norms concerning cession are included in relation with purchase contracts.

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[3] Коллектив авторов. Гражданское и торговое право зарубежных государств. Москва: Международные отношения, 2004, с. 442.
[4] Sinaiskis V. Saistību tiesības. Rīga, 1940, 34. lpp.
[5] Годэмэ Е. Общая теория обязательств / Перевод с французского И. Б. Новицкого. Москва: Юриздат, 1948, с. 459.
[6] Civil Code of the republic Lithuania 2000, http://www.scribd.com/doc/238911/Civil-Code-of-the-Republic-of-Lithuania
[7] Estonia. Law of Obligations Act, 2000, http://www.legaltext.ee/text/en/X60032K1.htm

Therefore, until now one issue is under discussion: whether the cession contract is a separate contract or an element of various contracts which can be discussed in the general parts of laws concerning obligations.

Urgency of the research

During the last 10 years, in Latvia, a new type of business, debt collection, has been created and it functions. In many cases, conclusion of an assignment contract becomes economically convenient. In the early nineties of the last century Latvia had renewed her independence and started the transfer from command economy to the modern market economy. The renewal of independence of Latvia came along with some great changes in the legislation field. In the time period from 1992 till 1993, the activity of Latvian Civil Law adopted on January 28th, 1937, was renewed. Unfortunately, the Civil Law of 1937 was not a collection of new legal norms, but only a collection of legal views of previous centuries, since the Civil Law was based on the Roman law, the Napoleonic Code, as well as some older normative acts.

The urgency of the research is grounded by the fact that the amendments, which were made in the Latvia's Civil Law starting with 1992 till today, did not affect the legal norms regulating the cession of right to demand; and in Latvia's theory of law, there has been no fundamental researches of this topic. The Paper's author analyzes the current situation in the sector of cession's legal regulation, states the deficiencies in Latvia's Civil Law and offers solutions.

Aim of the Paper: to gather information about the existing deficiencies in the cession's legal regulation in Latvia, bring forward new theoretical ideas and verities within the context of cession's legal regulation.

To achieve the aim, the following **work tasks** were brought forward:

1. Study the cession's essence and analyze its understanding in the theory of law.

2. Analyze the cession development from the historical point of view staring with the Roman law times, study the stages of cession development in different law systems and their impact on the modern legal norms in the sector of cession's legal regulation.
3. Define the types of claims under cessation, describe them from scientific and legal aspects.
4. Define classification of cession agreement from the point of view of law theory, its conditions for validity.
5. Define the moment of transfer of demand and its influencing factors;
6. Analyze the right transfer connected with the ceded rights to demand (accessory), define problems connected with it.
7. Study the liabilities of assignee and the assignor and the legal consequences of their execution of non-execution.
8. Analyze the cession restrictions, define their types, analyze the cession restrictions within the context of agreement freedom and define the cession restriction's violation consequences.
9. Analyze the debtor's rights to defense, like debtor's objections and rights to clearing.
10. Analyze the legal acts of Latvia, other countries, law doctrines, judicial practice and works of law scientists connected with the issue under research; study the problematic issue of the topic under study, bring forward the suggestions for perfection of legislation of the Republic of Latvia.

Data acquisition and processing (analysis) methods

The scientific research methods will be used in the paper to achieve the set goals and tasks.

The following scientific research methods will be applied in the paper as the basis:

1) analytical method;

2) comparative method;

3) deductive method;

4) inductive method;

5) historical method.

One of the main research methods of this paper is the analytical method. It will be used both to study the judgments, normative acts, and also other legal sources. Analysis is the foundation of the made conclusions, assessments and suggestions.

The comparative method will be applied to prove the common features of law systems in the cession's legal regulation in Latvia and countries of German law system, as well as to reveal the existing differences.

With the help of deductive method in the paper, using general legal terms and aspects, a conclusion will be made about the individual issue – specific requirements of legal norms in their practical application in life.

Using the inductive method, the specific expression of legal norms and general law principles made by those applying legal norms will be shown both from the legal norms and the judicial practice, i.e., the specific action of those applying legal norms will be studied and the mistake reasons will be analyzed, as well as the verities acquired in practice will be generalized transferring them to the legal dogmatic.

The historical method will be applied for observation of the cession's notion and understanding development dynamics, for study of this notion's comprehension and interpretation.

Paper's hypothesis: the current actual situation in Latvia speaking of the cession's legal regulation needs solution of issues connected with it and perfection of the legislation.

Novelty of the research work

In Latvia's law theory, till today there have been no fundamental studies within the sector of cession's theoretical justification and legal regulation. The author analyzes the cession's theoretical and legal basics starting with the Roman law times; considers the civil law norms of different countries in the field of cession's legal regulation, compares them to Latvia's legal norms in connection with cession. In the paper, works of universally recognized civil law scientists from Germany, Austria, Switzerland, England, Latvia and Russia are analyzed. As a result of the research work, new theoretical verities and suggestions were developed for perfection of the legal regulation of cession of the rights to demand in Latvia.

Approbation of the promotion paper's results

In general, 32 author's scientific publications about the research topic have been published in Latvian, English, German and Russian languages, including in the USA, Germany, Italy, Turkey and Latvia. A part of the published articles is included into the scientific databases like SCOPUS – Elsevier, ProQuest – Social Sciences Index, EBSCOhost–EBSCO Publishing, Scirus Index – Elsevier, Index Copernicus International, Gesis, Global Impact Factor, Universal Impact Factor, SHS Web of Conferences and foreign library registers.

The basic scientific publications about the promotion paper's topic: the results of the promotion paper have been presented at 27 scientific conferences in Rome (Italy), Istanbul (Turkey), Riga, Daugavpils and Rēzekne (Latvija), 25 of which are scientific conferences.

Structure of the promotion paper

The paper consists of introduction, 6 chapters, conclusion and list of bibliographic sources.

CONCISE SUMMARY OF THE PAPER'S CONTENTS

1. Nature of Cession and Its Conception in the Legal Theory

The research of the change mechanism of the composition of the subject to obligation is one of the main stages in the research of the cession institute, its purpose and place in the legal relationship system.

Thus, the person transferring his rights to an acquirer was called *auctor* in the Roman law, but the acquirer – *successor*. From the *auctor`s* point of view the derivative acquisition of the right of is the transfer of rights, but from the *successor*`s point of view – the succession of rights – *successio.*[8]

The traditional definition of cession is as follows – this is an order transaction through which the change of the active part (creditor) happens. Such cession qualification is generally accepted. It is entirely possible to raise objections to the individual components of this definition, but it is entirely impossible to argue against the fact through the transfer only the legal relationship subject can be changed and nothing more. Such is the cession mechanism of the modern legal systems.[9]

In the English law[10], to designate objects of the law of obligations the term "thing (chose) in action" (literally – the thing in action, in the process) is used, which is contrasted with objects of the right in rem, called "thing (chose) in possession" (ownership of the thing). V. Anson mentioned

[8] Хвостов В. М. Система римского права. Москва: Спарк, 1996, с. 140.

[9] Цвайгерт К., Кетц Х. Введение в сравнительное правоведение в сфере частного права. Т. 2, Москва: Международные отношения, 1998, с. 160.

[10] Some scientists, such as Suhanov, notes that the division of the property rights to the right in rem and law of obligations are not known in the Anglo-Saxon law (see: Гражданское право / Под редакцией Суханова Е. А. Т. 1. Москва, 1998, с. 491). However, compared with the continental law the given classification can be fully applied ro the existing Anglo-Saxon law, with the exception of trust.

the definition of this term formulated in 1902: "[..] the saying "chose in action" is used to designate any of personal property rights in relation to which only the right to claim rather than the thing physical domination exists"[11]. Currently, according to existing practice the saying "chose in action" is simply translated as "the right to claim"[12]. But in the original sound it has a bit different shades of meaning. Apparently, with the word "action" was meant the process, suit. However, the other interpretation is required. If with the term "action" is meant conduct, then in the term "thing in action" the accent is placed on the fact that the essence of this intangible thing is in the debtor`s conduct, which will also be the object of the creditor`s rights. Thus, the English legal terminology has a model according to which the of object the law of obligations will be directly the debtor`s conduct.

While the transfer of rights – cession – is designated as "assignment" in the English law. The editor of the book "Fundamentals of contract law" by G. Samond and G. William notes that "in contrast to the continental European bourgeois countries` law, where the term and concept "cession" only refers to the transfer of obligation claims, English lawyers often extend the meaning of the term *assignment* that is translated as cession, transfer, up to the borders of the term, which means any act justifying the legal succession (except legal succession in case of death). According to it [..] it comes to the *assignment of property*, namely the transfer (relocation) of property rights and other rights in rem, including to real estate, *assignment of shares*, namely the right to transfer of shares [..]."[13] The mentioned English legal doctrine rules show that the takeover of rights in the right in rem and law of obligation has unified nature

[11] Ансон В. Р. Основы договорного права. Москва, 1947, с. 281.
[12] See example: Цвейгерт К., Кетц Х. Введение в сравнительное правоведение в сфере часного права Т. II. Москва, 1998, с. 161; Мамулян А. С., Кашкин С. Ю. Англо-русский полный юридический словарь. Москва, 1993, с. 75.
[13] Самонд Дж. и Вильямс Дж. Основы договорного права. Москва, 1955, с. 509.

and it develops according to the analogous provisions of both the Roman Germanic and Anglo-Saxon legal systems.

Russian word “cession” has a primary meaning “refusal of something in favour of another”. But from this fact it can not be concluded that the claim cession is the creditor`s unilateral action, his “refusal of the claim in favour of another person”, leading to the transition of claim regardless of the acquirer`s will. In the cession act, along with the *disclosure* of creditor`s will regarding the refusal of its claim for the benefit of another person, there is also the last will of the disclosure of this *claim-making*.

It must be noted that the nature of the cession transaction of the right to claim in civil law is not reflected in the sufficient amount. Thus, for example, it remains a moot point as to how to define the transaction (cession) – as a contract or as a unilateral transaction.

Some authors examine the claim cession as a unilateral transaction. For example, S. Eleksejev, pointing to the creditor`s possibility to dispose of his claim through the cession, notes that all transactions through which handling rights is implemented are unilateral acts in the nature. L. Novoselov also allows the claim cession with the intermediation of a one-sided transaction.

B. L. Haskelberg and V. V. Rovny note that “any transfer is based on the mutual expression of will of an alienor and an acquirer, and then in accordance with the accepted transaction classification it becomes a contract”.

Since this transaction consists of two persons` will expression, it is a contract and it can not be construed as a unilateral transaction. This is confirmed by the analysis of the foreign legal order prescriptions.

According to §1392 ABGB such action as a transfer (cession) provides the adoption by the new creditor, but in §1392 ABGB it comes to the cession agreement. §398 BGB exactly qualify the cession as a claim agreement.[14]. In the Swiss right to claim, the cession is not defined as a mutual transaction,

[14] Cession is a contract: unuilateral statement on the cession is not void if an acceptance is not enclosed to (often tacit). Enneccerus L., Kipp Th., Wolff M. Lehrbuch des bürgerlichen Rechts. 23.–27. Aufl. Marburg, 1927. Bd. 1. Abt. 2, S. 241.

but in Abs. 2 Art. 165 OR it comes to a cession agreement and such qualification of cession is not questioned among representatives of the Swiss civil science[15].

The concept of cession set out can be called traditional and prevailing in civil law, as it followed and continues to follow by the majority of authors who are turning to this issue.

The right to claim as one of the property rights may be transferred to another person with different aims, such as the opposite monetary rewards for other security (services, works, etc.) as compensation, donation etc.

It is necessary to note that the rules of Chapter 9 of Law of Obligations of the Civil Law of Latvia (cession of claims), as such, do not regulate this relationship by setting only the specifics of the transfer of rights (claim). They only set universal general criteria to be met by legal transactions to be the legal fact of transfer of law of obligations and/or obligation (conditions, form). Due to the need to oppose the agreement on the claim right cession, on the one hand, and the contract, which set what the contractual arrangements are received toward security, on the other hand, as collateral received from the inclusion of the assignee in the agreement document on the right cession does not change its as cession, legal essence.

Since the parties of the cession agreement are only a creditor and another person, it becomes apparent that the debtor`s participation in its conclusion is not necessary[16].

Ever since the Roman Law, two cession types have been known – voluntary (*cessio voluntario*) and necessary (*cessio necessaria*). According to

[15] See: Bucher E. Schweizerisches Obligationenrecht. Allgemeiner Teil ohne Deliktsrecht. 2. Aufl. Zürich, 1983, S. 547–548.

[16] The condition that the debtor`s participation in the conclusion of the cession contract is not necessary is generally accepted in the civil law. See example: Leonhard F. Allgemeines Schuldrecht des BGB. München und Leipzig, 1929, S. 671; Keller M., Schöbi Ch. Das schweizerische Schuldrecht. 2. Aufl. Basel und Frankfurt a.M., 1985, Bd. 4, S. 43.

words of V. Jefimof "the most common voluntary transfer of debt claim (cessio voluntaria), based on the parties` will: a contract or a will".[17] The necessary cession is understand by many representatives of civil science[18] as only the cession based on the law idea. The opinion of B. Vindsheid is the most reasonable, who by the cessio necessaria understood "the cession that followed without relying on the voluntary adopted commitment".[19] Thus, the definition of the necessary cession means not only the cession complying with the law (*cessio legis*), but also the transition of the right to claim by the court decision (*cessio judicialis*).

According to the established tradition in literature the transition of claim according to law and on the basis of a court decision is respectively referred to *cessio legis* and *cession judicalis*.[20] Based on the conditions of pandectarum science, D. Grim defines the cession as "the transition of the obligation claim from one creditor to another". Naming the claim transition according to the law and on the basis of a court decision on the cession, the authors assume that there is the *fiction* related to the claim cession that is present. For example, G. Dernburg understands the "cession" as only the transfer of the claim legal transactions[21], at the same time, calling the legitimate claim transition as "the necessary or factious cession", he directly points out that "it does not mean the right cession, but legal inheritance".[22] With the use of such words "it should have been disclosed that the legal effects of the voluntary cession occur also in

[17] Ефимов В. В. Догма римского права. Общая часть. СПб., 1893, с. 212.
[18] See example: Барон Ю. Система римского гражданского права. Вып. 3. Книга IV: Обязательственное право. 3-е изд. СПб.: Издание Книжного магазина Н. К. Мартынова, 1910. с. 113; Ефимов В. В. Догма римского права. Общая часть. СПб., 1893, с. 212; Байбак В. В. Вопросы цессии. Кодекс, 2000, Nr. 10, с. 48.
[19] Виндшейд Б. Об обязательствах по римскому праву / Под ред. Думашевского А.Б. СПб.: Типография Думашевского, 1875, с. 190.
[20] Гримм Д. Д. Лекции по догме римского права. Москва, 2003, с. 348.
[21] Дернбург Г. Пандекты. Т. 2. Обязательственное право. 3-е изд. Москва, 1911, с. 132; Гримм Д. Д. Лекции по догме римского права. Москва, 2003, с. 348.
[22] Дернбург Г. Пандекты. Т. 2. Обязательственное право. 3-е изд. Москва, 1911, с. 133; Гримм Д. Д. Лекции по догме римского права. Москва, 2003, с. 349.

cases of the legal claim transition".[23] Such explanatory way already then got opponents.[24] According to the F. Regelsbergger`s righteous note so-called the legitimate cession concept has no right to exist because legal phenomena included in it contain the claim transition, rather than the transfer, succession and cession, whose an integral sign, as for tradition, is conduct.[25] Therefore the use of the terms cession legalis and cession judicialis is permitted only with the excuse that they denote cases where we are dealing not with the claim cession but, as stated by the Roman lawyers, with quasi-cession (quasi cession) and subsequently with a quasi-assignor (a creditor who falls out of obligations) and quasi-assignee (acquirer of the claim).

[23] Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1.–2. Aufl. Halle a.S., 1899, Bd. 2, Abt. 1, S. 325.
[24] Crome C. System des deutschen bürgerlichen Rechts. Tübingen und Leipcig, 1902, Bd. 2, S. 343.
[25] Regelsberger F. Zwei Beiträge zur Lehre von der Cession // Archiv für die civilistische Praxis, 1880, Bd. 63, S. 158.

2. CESSION DEVELOPMENT FROM THE HISTORICAL POINT OF VIEW

2.1. Cession's dawn in the Roman law

The root of the claim transfer civil category (cession) does back to the Roman private law. As the most of institutes whose beginnings can be found in the Roman law, in their evolutionary process, the cession institute has passed the significant changes and improvements driven by needs of society in each of the subsequent stages of development.

In the early stages of the Roman law, the creditor transition to another person was not allowed.[26] The relationship as unilateral link appeared as "*vinculum iuris*" between a creditor and a debtor, the claim was inextricably linked to the creditor`s person and its transfer to another person was contrary to the nature of the relationship.[27] The reasons for such a situation, as indicated in literature, are different.

The Roman legal history shows that the first legal institute where one legal relationship ended up with the occurrence of another, with the same content, was the Novation institute. Their variants was the novation that alters the legal relationship content, and the novation that focuses on changes in the elements, namely subjects of the new relationship whose content are identical to the earlier. Proceed to the last type of novation, which has acquired the name of "delegation".

[26] Байбак В. В. Обязательственное требование как объект гражданского оборота. Москва: Статут, 2005, с. 8.

[27] See example: Ogris W. In Handwörterbuch zur deutschen Rechtsgeschifte. Band 1. Stichwort Abtretung. Berlin, 1971, S. 21; Kaser M., Knütel R. Römisches Privatrecht, 18. Aufl. München, 2005, S. 158; Mayer-Maly T. Römisches Privatrecht. 1 Aufl. Wien, 1991, S. 152; Stoll R. Die Globalzession. Nomos Universitätsschriften, 2010, S. 27.

The delegation is divided into **active** (delegation resulting in a change of its active obligation subjects-creditors) and **passive** (leading to a change of the debtor).

The active delegation delegates (debtor) by the delegator`s (previous creditor) order, formally promising, pledge responsibility towards delegator (new creditor). So the debtor undertakes to pay the debt to the new creditor. Consequently, the previous claim lapses.[28] Such scheme obviously has disadvantages. First, the debtor assumes new obligations towards the new creditor, the prior obligations expire. Consequently, the previous guarantees do not exist; they should be restored in the new debt obligations. Secondly, in the framework of formal promise the participation of the debtor is required, but it is not his duty.[29]

So the historical place of the delegation institute is in teaching of the origination and termination types of obligations, namely the novation. "In the historical sense", – the famous Russian novelist S. Muromcev writes, – "the novation was an initial, artificial concept, through which the Roman law came close to the concept of the *takeover* or *transfer* of obligations".[30]

However, this legal structure had its disadvantages. Thus, the delegator lost all additional rights, which belonged to his predecessor (security, interest, etc.), as they shared the principal legal fate of the creditor. Similarly, the delegation scheme required a mandatory participation of the debtor, from whose discretion even the possibility of changing obligations were dependent.

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[28] See example: Kaser M., Knütel R. Römisches Privatrecht, 18. Aufl. München, 2005, S. 269; Honsell H. Römisches Privatrecht, 5. Auflage. Zurich, 2001, S. 108; Stoll R. Die Globalzession. Nomos Universitätsschriften, 2010, S. 27.

[29] See example: Kaser M. Rechtsgeschichte des Alternums. Das römische Privatrecht, Erster Abschnitt. München, 1971, S. 648; Maier G. H. Zur Geschichte der Zession // Kunkel W., Wolf J. H. Festschrift für Ernst Rabel. Band 2. Tübingen, 2001, S. 206; Luig K. Zur Geschichte der Zessionslehre. Köln, 1966, S. 3; Stoll R. Die Globalzession. Nomos Universitätsschriften, 2010, S. 28.

[30] Муромцев С. А. Гражданское право Древнего Рима. Москва, 1883, с. 320.

The debtor had the unenviable position – if he had any objections towards the delegant`s claim, he had no longer the opportunity to bring towards the newly created (not temporary) delegator`s claim.

In such circumstances, the quite old, purely procedural institute was began to use for the change of persons in obligations, the development of which took place in parallel with the evolution types of delegation – procedural evaluation institute. In the original, earliest form of the procedural representation, called *cognition* (or otherwise *cogniture*), anything other than the transition of an application of claim was seen, and not in respect of any obligations, but only to obligations which were included in the marketable heritage mass composition[31]. Initially, the cognition relationship was found only in the formulary process and emerged after that when a member of proceedings gave solemn formula on the designation of his representative – *cognitor*. "The representative in the process was assigned with certain words in the presence of a defendant; directly the applicant assigns the cognitor with the words: "*Since, for example, I ask you the land, I appoint as a cognitor Publy Mevy*". Whether absent or present cognitor is appointed, he will be considered as a cognitor since he finds out on his appointment and undertakes cognitor`s duties.

However, the use of cognition for the change of persons soon began to be obsolete.

The novation and its disadvantages prompted the search for new solutions and as the cognition development became the other processual representative type – *procuratio in rem suam* where the representative has

[31] It should be noted that as the inheritage mass purchaser was declared the person to whom the heir not just committed to transfer or has tranferred property forming the mass of succession, but that in favor of which the heir carried out so-called iure cessio, namely, the one to whom the heir on behalf of him allowed to implement the right to claim, which is included in the inheritage mass. Thus, for the first time the term "cession" is used to denote the process of the transition of claims resulting from the universal right succession.

acquired the name of *prosecutor*. The German civil law scientist Luigi K. notes that it is the most important tool in the Roman law.[32]

The last stage of the development of procedural representation institute in Rome, which led to the spread of material legal relationship, became *cessio legis* – cesssion, based on the norms of law[33] – occurrence of institute. Its distinctive feature is that is based on a law, rather than an expression of the will of the creditor.

2.2. Cession development in the civil law

The main postulates of the transfer of the right to claim developed by the Roman lawyers have been adopted by the continental European legal systems.

Until the nineteenth century, many representatives of the civil science saw the nature of the cession in the transition of satisfaction, collection by obligations rather than the transition of the right to claim. This approach is rooted in the Roman law, according to which "by the form and name the assignor remains a constituent; as to bonitar owner the sources do not confer the title *heres* to *dominis* and pretotore heirs, just can no wait the use of the word of a creditor to "assignee". Therefore glossators unanimously considered that the Roman legal obligations were non-transferable, their point of view was also supported by the most prominent representatives of civil science of the French School of XVI Kujacy and Donel. The first protest against these views based on the ordinary law was expressed by the French lawyers and practitioners Rebuf and Tirakel. Their point of view was shared by the lawyer schools Lauterbach, Laurencius, Haubold, Hristianius and Goris, and German scientist – Shilter.

[32] Luig K. Zur Geschichte der Zessionslehre. Köln, 1966, S. 3.
[33] Покрлвский И. А. История римского права / Под ред. И. В. Рака. СПб.: Летний сад, 1998, с. 310.

He was the first who saw an analogy between the tangible things and the right to claim, as well as their types of their transfer tradition and cession. Shilter enjoyed tremendous authority, and he had a number of followers. One of them, Bomer, expressed the idea that the Justinian law already existed in the obligations of singular right takeover. But in 1817, the cession given to the Milenbr`s monograph, where was once defended the principal non-transition of obligations. He showed that, the assignee`s *actio utilis* and *actio mandata* are practically identical, while it follows that the assignee is still essentially a assignee`s representative.

O. Kolesnikov mentioned that in the old German law the free transition of eights were denied. Referring to H. Keller, he writes that the claim cession of the beginning of XIV was allowed only with the consent of the debtor. The cession free action was tried to bypass through contracts for the benefit of third party and the use of securities. Around the second part of century XIV the cession became possible without the participation of the debtor.

The German Civil Law of 1896 already contains provisions on the cession (ph. 398–413) and the transfer of debt (ph. 414–419)[34], while they are in the general part of the law of obligations, and in both cases it directly comes to subrogation. The relevant provisions on the cession, can be found not only in the German civil law collection, but also in the Austrian civil law collection, the Swiss act on the law of obligations, Greek and Turkish civil code.[35]

Karasevich, analysing French civil law until the end of century XVIII, wrote: "According to the general ordinary law in the context of a third party the third party may enter, using *transport* and *subrogation*. With transport is

[34] Гражданское и торговое право капиталистических государств. Сборник нормативных актов для студентов факультета экономики и права. Часть I. Москва, 1973, с. 127–128.

[35] Почуйкин В. В. Уступка права требования: Основные проблемы применения в современном гражданском праве России. Москва: Статут, 2005, с. 32.

meant alienation, carried out by the creditor (*cessio voluntaria* for Romans). Lawyers of centuries XVII and XVIII added to *transport* the Roman law principles and gave to the assignee the meaning of *procuratoris in rem suam*, but under ordinary law such cession was the real alienation of the law of obligations."[36]

The institute of takeover of obligations was equally difficult formed in England.

The United States adopted many English law provisions relating to the change of the obligation members. At the beginning of century XX, as noted by Malishev, "the old prohibition in the North of America made by England to transfer the right to claim or obligation claims, although nominally existed, but in practice lost all its validity, and courts of justice do not pay any attention; any fair paid transfer gives the supplier the same rights towards the initial debtor which the assignor had".[37] The important role in the development of the Institute in US was the adoption of the Uniform Commercial Code[38] (hereinafter – UCC). As noted by R. Narishkin, "in 1958, the project of the Uniform Commercial Code was developed where norms of the main issues of transaction turnover were included. During ten years, the Uniform Commercial Code (Uniform Commercial Code) becomes the law of all states (except Louisiana, Virgin Islands and Federal District)".[39] Rules of the transfer of rights are included in ph. 2 UCC applied to the contract of sale as well as ph. 9 UCC, which regulates the issues of the transaction security, due pavement sale,

[36] Карасевич. Гражданское обычное право Франции в историческом его развитии. Москва, 1875, с. 428.

[37] Малышев К. Гражданские законы Калифорнии.В сравнительном изложении с законами Нью-Йорка и других восточных штатов с общим правом Англии и Северной Америки. Т. 3. СПб., 1906, с. 14.

[38] Гражданское и торговое право капиталистических государств. Сборник нормативных актов для студентов факультета экономики и права. Ч. 1. Москва, 1973, с. 200–233.

[39] Гражданское и торговое право капиталистических государств / Под ред. Е. А. Васильева. Москва, 1993, с. 56.

contractual right and movable property. According to ph. 9 the right can be transferred not to the goods and services, but only the right to their payment or bills, with which under ph. 9–106 the right “to pay for the sold goods or leased goods or provided services [..] regardless there are earned by the fulfilment or not”.

In the Russian law, the cession of the right to claim obtained the partial legislative reinforcement at the end of centuries XVII and XIX.

3. CEDED CLAIMS' DIVERSITY AND THEIR SCIENTIFICALLY LEGAL DESCRIPTION

One of the basic topics connected with the institution of transfer of the rights to demand is the theoretical substantiation for a possibility to cede the claim from the so-called bilaterally binding agreements. Here, we speak about the agreement, according to which every this agreement's party assumes liability for benefit of the other party and shall be considered the other party's debtor, where it must perform it for benefit of the other party, and at the same time is its creditor, where it is entitled to demand from the other party (purchase, lease, labor contract etc.); i.e., regarding the agreement, which is mostly spread in the civil turnover, but which has the governing status in the entrepreneurship. In the civil law theory, it is traditional to call such agreements synallagmatic.[40]

The issue on the admissibility of cession of *the claim arising from the synallagmatic* (*mutual*) *agreement*, is not topical anymore for the Western Europe's civil law science. If in the end of the XIX century K. Atenhofer, studying the cession subject, considered it necessary to precisely substantiate the confirmative answer to it in relation to individual types of mutual agreements[41], then the opinion that the claims from mutual agreements might be the cession subject becomes prevailing.[42, 43] That is why J. Gernhuber in his

[40] Гражданское право: в 3 т.: учеб. для вузов / Под ред. Сергеева А. П. и Толстого Ю. К. Т.1. 6-е изд., перераб. и доп. Москва: Изд-во Проспект, 2004, ч. 2, с. 6.

[41] Attenhofer K. Der Gegenstand der Cession nach schweizerischem Obligationenrechte mit besonderer Berücksichtigung des heutigen gemeinen Rechtes // Zeitschrift für schweizerisches Recht. 1885, Bd. 26, S. 186–203.

[42] For example see: Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1–2 Aufl. Halle a. S., 1899, Bd. 2, Abt. 1, S. 307; Crome C. System des deutschen bürgerlichen Rechts. Tübingen und Leipcig, 1902, Bd. 2, S. 324; Oertmann P. Das Recht der Schuldverhältnisse. 2. Aufl. Berlin, 1906, S. 271; Matthiaß B. Lehrbuch des bürgerlichen Rechtes mit Berücksichtigung des gesamten Reichsrechts. 5. Aufl. Berlin, 1910, S. 246–247; Gierke O. Deutsches Privatrecht. München und Berlin, 1917, Bd. 3, S. 185; Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts.

article "Synallagma und Zession" states that currently the cession, for claims arising from mutually binding law of obligation, is not a problem anymore[44] and concentrates his attention only to its consequences, including, to determination of destiny of *Gestaltungsrechte* (constitutive rights) and other rights, which are due to the mutual agreement party.[45]

In case of synallagmatic agreement, the ceded object already exists at the moment of cession agreement's conclusion. However, the *future* interest also may be ceded, namely, those, substantiation of which at the moment of cession agreement conclusion is not yet executed.[46]

In Latvia, possibility of cession of the future claims is not doubted. It has been included into the Article 1798 of the Civil Law.[47] Analogue legal norms are in the Lithuania's Civil Code of 2000 (Clause 3, Article 6.101 of the Civil Code of Lithuania)[48] and the Law on Contract Law of Estonia of 2000 (Para 165 of the Law on Contract Law of Estonia).[49]

Tübingen, 1925, Halbbd. 2, S. 730; Enneccerus L., Kipp Th., Wolff M. Lehrbuch des bürgerlichen Rechts. 23.–27. Aufl. Marburg, 1927, Bd. 1, Abt. 2, S. 244; Leonhard F. Allgemeines Schuldrecht des BGB. München und Leipzig, 1929, S. 655; Gauch P., Schluep W., Schmid J., Rey H. Schweizerisches Obligationenrecht. Allgemeiner Teil. 7. Aufl. Zürich, 1998, Bd. 2, S. 298; Medicus D. Schuldrecht I. Allgemeiner Teil. 15. Aufl. München, 2004, S. 352.

[43] One of the few German civil law representatives who put forward the issue on admissibility of transfer of the claim arising from the mutual agreement was R. Stammler.

[44] Gernhuber J. Synallagma und Zession // Festschrift für Ludwig Raiser. Tübingen, 1974, S. 58.

[45] *Ibid*, pp. 59–61.

[46] For analogically anticipated cession, the current cession of claims not belonging to the assignor shall be looked at. See: Чуваков В. Б. К вопросу об уступке будущих требований. Юридические науки // Материалы Всероссийской научной конференции, посвященные 200-летию Ярославского государственного университета им. П. Г. Демидова: Ярославль: Изд-во Яросл. ун-та, 2003, с. 12.

[47] Cession subject may be – any claims, not depending whether they arise from the agreement or from unauthorized action; among them such, the term of execution of which has not yet commenced, as well as conditional and even coming and unsafe.

[48] Coming claim is also the cession's subject.

[49] The coming claims and the probable claims may also be ceded, if they are sufficiently defined at the moment of cession.

The "future" claims in practice mean two law categories:

1) rights to demand, the term of execution of which has not yet commenced;

2) law of obligation, which will appear in future.

The fact of the future claims' cession in no way increases the risk on the side of the debtor if compared to the current claims' cession. At the moment of debtor's appearance (when the agreement between him and the assignor is signed), the future claims become existing (current), and it means that the relations between the assignor and the assignee have no specific nature.

In the civil law science of the pre-revolutionary Russia, the possibility of cession of the claim's part was not doubted. D. I. Meyer believed that "liabilities may be divided into: one liability part is ceded to other person, but the other part –, like before, is kept by the principal. [..] For instance, A owes 1000 roubles to B: B transfers a part of his claim to C, but keeps the other part. [..] In such cases, the person does not get free from the liabilities in full, but only in relation to that part, which has been transferred to other person; but in relation to this part between the persons, which take part in liabilities, the same relations appear, which are given in case of full cession of law of obligation."[50]

The most part of civil law scientists in this case considers that partial cession is possible only in the so-called divisible liabilities (obligations).

Possibility of partial cession the legislator has prescribed in the Civil Code of Lithuania of 2000 (Part 1, Article 6.101 of the Civil Code of Lithuania)[51] and the Law on Contract Law of Estonia of 2000 (Part 1, Para 164

[50] Мейер Д. И. Русское гражданское право. Ч. 2. Москва.: Статут, 1997, с. 125.

[51] The creditor without debtor's agreement may cede to other person all or part of the claim, if transfer does not contradict the law or the agreement, or if the claim is not connected with the creditor's person. The claim cession cannot restrict the debtor's rights and make his obligations more difficult.

of the Law on Contract Law of Estonia).[52] The author believes that analogue legal norm shall be introduced into Latvia's Civil Law.

Since the Roman law times, the known vindication claim transfer (*rei vindicationis cessio*) was fixed in the legislation of several countries, incl. BGB 931§, and was in details developed in the legal literature[53]. Still, admissibility of such cession is often questioned[54]. For instance, according to thoughts of K. Larenz, the vindication claim cannot be ceded either individually from the property rights, or even with them. The author justifies her opinion with reference to the fact that the owner's claim to object transfer, which has appeared from the absolute property right violation, is nothing except the property right itself in its "aggravation" against the violator.[55] Such understanding of vindication claim does not match the reality. The vindication claim from the property rights and their violation is created by various legal facts, bound by different persons, whom the obligations refer to; they have different content and different legal features. The mentioned fact allows assuming that the vindication claim has *permanency* in relation to the property rights. It exists next to

[52] The creditor may transfer the claim fully or partially to other person basing on the agreement, irrespectively of the fact, whether the debtor agrees with it (claim cession). The claim may not be ceded if the cession is forbidden by the law, or also if the obligation cannot be fulfilled by other persons except only for benefit of the initial creditor, without changing the obligation's content.

[53] For example see: Stampe E. Die Lehre von der Abtretung der Vindikation // Archiv für die civilistische Praxis. 1893, Bd. 80, S. 305–427; Oertmann P. Beiträge zur Lehre von der Abtretung des Eigentumsanspruchs // Archiv für die civilistische Praxis. 1915, Bd. 113, S. 51–94; Крашенинников Е. А. Цессия в индикационного притязания // Построение правового государства: вопросы теории и практики. Ярославль, 1990, с. 54–58.

[54] For example see: Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 735–736; Larenz K. Lehrbuch des Schuldsrechts. 14. Aufl. München, 1987, Bd. 1, S. 583; Baur J. F. Stürner R. Sachenrecht. 17. Aufl. München, 1999, S. 6, 111; Palandt O. Bürgerliches Gesetzbuch. Kurzkommentar. 63. Aufl. München, 2004, S. 1420, 1441.

[55] Larenz K. Lehrbuch des Schuldsrechts. 14. Aufl. München, 1987, Bd. 1, S. 583.

them and is neither a part of these obligations, nor their special condition[56]. As the vindication claim cannot be acknowledged the "aggravation" of the property rights against the violator, admissibility fo this claim cession disputed by K. Larenz cannot be called convincing.

[56] See for example: Эннекцерус Л. Курс германского гражданского права. Том I. Полутом 2. Москва, 1949, с. 384–385; Тузов Д. О. Теория недействительности сделок: опыт российского права в контексте европейской правовой традиции. Москва, 2007, с. 464.

4. CESSION AGREEMENT, LEGAL PECULARITIES, PROBLEMS AND SOLUTIONS

4.1. Cession agreement – abstract causual transaction

The cession contract is directed at the transfer of a claim from the cedent to the cessionary. This transfer distinguishes it from the liability deal, which leads to the appearance of liabilities between the parties. Since deals, which mediate the transfer of rights, correspond to all the action deal features,[57] the cession contract is traditionally viewed as an action deal with the help of which the cedent deals with their claim.[58]

We cannot say that the notion of action deal is unknown to the civil rights science of Latvia either. E. Kalninsh defines the action deal as follows: "The action deal is a legal deal with which the existing subjective right is transferred, encumbered, altered or terminated."[59] K. Balodis speaking of pledge (liability – V. Ņ.) and action deals specifies: "The most common action deal is transfer of movable property to the possession (CL 987. p.). When transferring movable property to the possession, an expropriation agreement is fulfilled, which is a pledge. Action deals are also – in the liability right part of the civil law – a regulated claim right cession (CL 1793. p.) and cancellation agreement (CL 1862. p.)."[60] In the Russian literature attempts have been made

[57] Action deals are deals that are intended for the direct influence on existing laws: change of their content, transfer, encumbering or termination. Larenz K., Wolf M. Allgemeiner Teil des Bürgerlichen Rechts. 9. Aufl. München, 2004, S. 411.

[58] See for example: Crome C. System des deutschen bürgerlichen Rechts. Tübingen und Leipcig, 1902, Bd. 2, S. 322; Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 716; Larenz K. Lehrbuch des Schuldsrechts. 14. Aufl. München, 1987, Bd. 1, S. 575; Esser J., Schmidt E. Schuldrecht: ein Lehrbuch. 7. Aufl. Heidelberg, 1993, Bd. 1, Teilbd. 2, S. 283–284; Lüke G. Grundfragen des Zessionrechts // Juristische Schulung, 1995, S. 90; Palandt O. Bürgerliches Gesetzbuch. Kurzkommentar. 63. Aufl. München, 2004, S. 587.

[59] Kalniņš E. Tiesisks darījums // Privāttiesību teorija un prakse. Raksti privāttiesībās. Rīga: Tiesu namu aģentūra, 2005, 143. lpp.

[60] Balodis K. Ievads civiltiesībās. Zvaigzne ABC, 2007, 173. lpp.

to generally distinguish deals into actions and liability deals,[61] qualification of cession as an action deal has been made,[62] effects of simultaneous material or liability deal conclusion have been distinguished from the side of the represented and the representative with regard to the same subject[63] etc.

Causing the transfer of the ceded claim, the cession contract causes the increase of the cessionary's property at the expense of the previous creditor's property. This way a claim cession is an assignment (assignment deal) (*Zuwendung*)[64].

Among assignments abstract and causal deals are distinguished[65]. Therefore this qualification is also applicable to the cession contract.

Nature of tradition in the Roman law, namely the causal or abstract transaction qualification, still remains controversial in the modern civil science. If we accept the tradition of the causal transaction, then in the case if there is no justification or it is invalid, the tradition will not have legal effect, and the alienator will be able to submit compulsory demand against the new owner. Conversely, reasoning from the fact that tradition is an abstract transaction, in the case of justification absence or if it is invalid, the tradition either way will

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[61] See for example: Черепахин Б. Б. Правоприемство по советсеому гражданскому праву. Москва, 1962, с. 32; Тархов В. А. Гражданское право. Курс. Общая часть. Уфа, 1998, с. 216; Бекленищева И. В. Гражданско-правовой договор: классическая традиция и современные тенденции. Москва, 2006, с. 118, 187.

[62] See for example: Гражданское право / Под ред. М. М. Агаркова и Д. М. Генкина. Т. 1, с. 398; Серебровский В. И. Договор страхования жизни в пользу третьего лица // Ученые труды ВИЮН, 1947, Вып. 9, с. 350.

[63] Рясенцев В. А. Представительство и сделки в современном гражданском праве. Москва, 2006, с. 130.

[64] See for example: Crome C. System des deutschen bürgerlichen Rechts. Tübingen und Leipcig, 1902, Bd. 2, S. 322; Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 1, S. 176; Oser H., Schönenberger W. Das Obligationenrecht. Halbbd. I: Art.1–183., 2. Aufl. Zürich, 1929, S. 712; Koziol H., Welser R. Grundriss des bürgerlichen Rechts. 12. Aufl. Wien, 2001, Bd. 1, S. 116.

[65] Palandt O. Bürgerliches Gesetzbuch. Kurzkommentar. 63. Aufl. München, 2004, S. 75.

transfer property rights, but the alienator may require from the acquirer only legally obligations.

Speaking of the cession transaction abstractness, it should not be forgotten that practically in modern law there is no absolutely abstract transactions, that is completely separate from its justification. To some extent the justification existence and nature are taken into account by law, but only for certain purposes. Quite frequently abstractiveness is manifested in the distribution of burden of proof – in the abstract transaction justi-fication existence is presumed, but the opposite may be proved by the interested party.

Thus, the creditor on the basis of the causal transaction submitting a claim against the debtor must prove that the transaction took place, as well as the fact that it had *causa*, and it was implemented.

On the contrary the creditor on the basis of abstract transaction is not asked to prove *causa* existence and implementation. However, the debtor is entitled to prove *causa* absence or its failure to reach and thus to get rid of liabilities.

It is necessary to note that in the German civil law, on which our country lawyers are traditionally focused, the cession as any regulatory transaction has the abstract nature.

German civil law scholars[66] note that practically important consequences of the abstract cession contract are increased transferable claim turnover ability and the deprivation of debtor's opportunity to raise objections where objections are arising from the causal transaction between the assignor and assignee.

[66] See for example: Larenz K. Allgemeiner Teil des deutschen bürgerlichen Rechts. München, 1967, S. 329; Nörr K. W., Scheyhing R., Pöggeler W. Sukzessionen: Forderungszession, Vertragsübernahme, Schuldübernahme. 2. Aufl. Tübingen, 1999, S. 10; Crome C. System des deutschen bürgerlichen Rechts. Tübingen und Leipcig, 1902, Bd. 2, S. 341.

However abstractness is not a necessary cession contract feature. By the will of the parties of this contract its validity can be made dependent on the realisation of *causa cessionis*. This happens when the cession contract is concluded *on a condition*.

The author arrives at the conclusion that in the translation of the legal theory and legislation of different countries there are different opinions on the qualification of the cession contract. The opinion about the abstract nature of the cession contract is absolutely prevailing among representatives of the Germanic civil rights sciences. In the Austrian civil rights science[67] this contract, on the basis of positive rights prescriptions, is traditionally characterized as a causal deal. Among the civil rights science representatives of Switzerland[68] and Russia the question of the abstract or causal nature of the cession is arguable. The legislator of Latvia constructs the cession contract as an abstract action deal.

4.2. Conditions and legal aspects of cession agreement's validity

The Article 1793 of the Civil Law of Latvia defines that the claims may transfer from the previous creditor to the new one by the cession that takes place:

1) according to the law, without the previous creditor's will expression;

2) according to the court judgment;

3) according to the legal transaction, and it does not matter, whether the creditor has concluded it on the grounds of legal duty or freely.

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[67] See for example: Koziol H., Welser R. Grundriss des bürgerlichen Rechts. 12. Aufl. Wien, 2001, Bd. 2, S. 116; Zehetner J. Zessionsrecht. Wien, 2007, S. 5.

[68] About the abstract nature of cession:Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 719; Oser H., Schönenberger W. Das Obligationenrecht. Halbbd. I: Art. 1–183, 2. Aufl. Zürich, 1929, S. 712; In favour of the causative nature of cession agreement:Gauch P., Schluep W., Schmid J., Rey H. Schweizerisches Obligationenrecht. Allgemeiner Teil. 7. Aufl. Zürich, 1998, Bd. 2, S. 318.

For the cession to be in effect the following is required:

1) the claim must belong to the assignor;

2) the assignor must have power to act with the claim;

3) the claim under assignment must be defined.

It means, the cession is valid if there is belonging of the specific assignable claim and his rights to deal with this claim to the assignor.

1. Claim belonging. Cession agreement mediates the transfer of "right (claim), which belongs to a creditor basing on the liabilities". It means that cession has power only if claim which the assignor is dealing with exists. If the assigned claim did not belong to him, the assignee does not receive this right even in case of his potential good faith.[69] Otherwise protection of an assignee of good faith would take place at the expense of the debtor who would bear responsibility, which did not exist in relation to the assignor.[70] That is why assigning a claim, the principle "nemo plus juris ad alium transferre potest, quam ipse habet" is determinative. There is no rights visibility bearer, whom the beneficiary could trust; then honest claim acquisition from an unauthorized person is excluded[71].

2. Power to act with the claim. The cession agreement is valid only if the assignor has the powers to act with the claim or, which is the same,

[69] Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1.–2. Aufl. Halle a. S., 1899, Bd. 2, Abt. 1, S. 318.

[70] Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 748.

[71] See for example: Leonhard F. Allgemeines Schuldrecht des BGB. München und Leipzig, 1929, S. 681; Larenz K. Lehrbuch des Schuldsrechts. 14. Aufl. München, 1987. Bd. 1, S. 576; Koziol H., Welser R. Grundriss des bürgerlichen Rechts. 12. Aufl. Wien, 2001, Bd. 2, S. 119; Medicus D. Schuldrecht I. Allgemeiner Teil. 15. Aufl. München, 2004. S. 356; Fikentscher W., Heinemann A. Schuldrecht. 10. Aufl. Berlin, 2006, S. 353; Крашенинников Е. А. Основные вопросы уступки требования // Очерки по торговому праву: Сб. науч. тр. / Под ред. Е. А. Крашенинникова. Вып. 6. Ярославль, 1999, с. 8.

the rights to act with the claim. The rights to act with the claim in relation to the claim mean the related rights with the nature transforming the action[72].

The assignor's power to act with the claim is required at the moment when the cession agreement comes into effect.[73] If the creditor assigns the claim to other person, then he has no rights anymore to act with it: when the claim moves to the assignee, the assignor's action rights become "empty". After this moment the claim belongs to the assignee, who according to the law receives rights to act with this claim. If the creditor has assigned one and the same claim several times, the assignee who is the first by time receives it.[74]

3. Determination of the assigned claim. Like other directions, the cession agreement is subordinated to the principle of determination or speciality (*Bestimmtheits – oder Spezialitätsprinzip*): the contents of this agreement must make it possible to determine the claim, which belongs to the assignor.[75] Contrariwise, in the obligations agreement, when the claims are the debt subject, its determination also by the family features is allowed.[76]

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[72] See for example: Крашенинников Е. А. Правовая природа прощения долга // Очерки по торговому праву. Ярославль, 2001, Вып. 8, с. 46–48; Крашенинников Е. А. Передача притязаний // Проблемы защиты субъективных гражданских прав. Ярославль, 2003, Вып. 4, с. 5; Крашенинников Е. А. Распорядительные сделки // Сборник статей памяти М. М. Агаркова. Ярославль, 2007, с. 28–31.

[73] Keller M., Schöbi Ch. Das schweizerische Schuldrecht. 2. Aufl. Basel und Frankfurt a. M., 1985, Bd. 4, S. 46.

[74] See for example: Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1.–2. Aufl. Halle a. S., 1899, Bd. 2, Abt. 1, S. 315; Crome C. System des deutschen bürgerlichen Rechts. Tübingen und Leipcig, 1902, Bd. 2, S. 329; Koziol H., Welser R. Grundriss des bürgerlichen Rechts. 12. Aufl. Wien, 2001, Bd. 2, S. 119; Zehetner J. Zessionsrecht. Wien, 2007, S. 117.

[75] See for example: Medicus D. Schuldrecht I. Allgemeiner Teil. 15. Aufl. München, 2004, S. 354; Fikentscher W., Heinemann A. Schuldrecht. 10. Aufl. Berlin, 2006, S. 352.

[76] Medicus D. Schuldrecht I. Allgemeiner Teil. 15. Aufl. München, 2004, S. 73.

We could say in the most general form that the claim to be assigned, when oncluding a cession agreement, must be individualized so that it would be possible to determine what the assignee will receive.[77]

4.3. Claim transfer

Cession agreement causes claim transfer from the creditor to other person. Since the moment of agreement's effectiveness the assignor is not entitled to request the debtor to perform an action, which is a component of material content of the assigned claim, but the debtor has no obligation to implement the performance to the assignor. As the assigned claim is divided from the assignor's property, its creditors cannot attribute the collection from this moment on in relation to it; generally this claim refers to the assignee's property mass.

As the assignee acquires the assigned claim, the assignor loses it; it comes to the *translative* right assignment. By the cession agreement a separate creditor's claim is transferred; thus the assigned claim, which is acquired by the assignee, takes place through *singular* rights assignment.

The claim transition means the *claim's belonging changes*.[78] You might say the essence of the cession agreement is the change of rights (claim).

The claim cession agreement may be concluded *under condition*.[79] The operation of such an agreement, like any other conditioned transaction, is defined by the parties irrespectively of commencement of the coming unknown

[77] Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1.–2. Aufl. Halle a. S., 1899, Bd. 2, Abt. 1, S. 303.
[78] Larenz K. Lehrbuch des Schuldsrechts. 14. Aufl. München, 1987, Bd. 1, S. 577.
[79] See for example: Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1.–2. Aufl. Halle a. S., 1899, Bd. 2, Abt. 1, S. 302, 305; Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 648; Gauch P., Schluep W., Schmid J., Rey H. Schweizerisches Obligationenrecht. Allgemeiner Teil. 7. Aufl. Zürich, 1998, Bd. 2, S. 294–295.

condition. This dependence manifests itself differently depending on the fact, whether we speak about delaying or cancelling condition:

1) if the cession has taken place with a delaying condition, the assigned claim will transfer to the assignee not at the moment of cession agreement's conclusion, like it happens under general rules, but only with commencement of the condition, which is the cession's condition. For instance, in case of sale the delaying condition of cession agreement could be the purchase price payment;

2) in case of cession agreement under cancelling condition the claim is transferred at the moment of agreement conclusion. Still, when the condition appears, the rights of assignor's creditor are automatically renewed. For instance, in case of security cession the cession agreement's resolutive condition may be termination of security liability.

The question of the law of obligations transition moment from the assignor to the assignee until now has not obtained reflection in the current legislation and it is the subject of discussion among civil scientists. Moreover, the determination of the legal claim cession, rights transfer, the moment of its transition to the new creditor is of great importance, as exactly with this moment changes in the assignor and assignee property composition are associated. If the cession is made, then absolutely legal effect, on the creation of which this transaction is directed, is achieved, the property in the form of rights of claim is excluded for the assignor. On the property (rights of claim), which has been transferred to the assignee, can not be directed assignor debt collection, it is not included into the asignor property mass in case of insolvency. "Using rights of claim more widely as the transaction object, including security transaction object, may aggravate problems related to determination of several assignee claims prioritization."[80]

[80] Новоселова Л. А. О перемене лиц в обязательстве // Хозяйство и право, 2009; 5: 41.

If the cession contract does not contain any definitive fact provided with a designated role in the transfer of entitlement, then it turns out that the right is transferred at the time of conclusion of the contract. In this case there is no need to force the assignor to transfer the rights: firstly, the right of claim has already arisen for the assignee, secondly, the assignor can not make any entitlement transfer activities taking into account the fact that he does not have the associated liability. In practice, one is usually trying to achieve approval of the fact from the assignor that the rights of claim have been transferred to the assignee. However, such approval has the evidence, but not a right forming, nature.

As V. A. Belov rightly points, the task of the cession contract parties is "rights of claim transfer moment" attraction to one of the "agreements" directly ("the claim is considered to be transferred with the signing of this contract"), as well as in a complex form (e. g., "10 days after the fulfillment of this contract transferable claim payment obligations").[81]

The provision for parties cession agreement conclusion and its simultaneous execution will work in case if the parties on the basis of civil regulation dispositive nature of the transaction agree otherwise for the other (later) rights transition moment.[82] But even in this case, on the basis of nonmaterialism of the object transfer, no special "rights of claim transfer act" is necessary, but the legal consequences of the transaction are determined by the parties reached agreement. In other words, events with which the parties relate transitional moment of the right of claim play the legal fact that represents the transfer of the right, but not the transfer type role.

[81] Белов В. А. Уведомление должника об уступке требования // Законодательство, 2001, 7: 13.

[82] See for example: Постановление Президиума ВАС РФ от 30.03.2010 г. по делу № 16283/09 // Вестник ВАС РФ, 2010; 6.

4.4. Transfer of rights connected with the transferred rights to demand, problems and their solution methods

The consequences of rights transfer agreement do not always terminate by the transition of claim rights.

The volume of rights to be transferred has been defined in the Part 1 of the Article 1806 of the Civil Law of Latvia: "The assignee does not receive more and wider rights by the cession than the assignor used to have, but the claim itself is transferred to him with all rights belonging to it and existing at the moment of cession, even if they would be justified by personal goodwill towards the assignor, in so far as they have no exactly defined exception from this condition. The claim interests yet unpaid, if they are not directly contracted, transfer to the assignee as well."

Transition of rights connected with the claim rights to the assignee is the cession agreement's *legal collateral consequences*, which appear also in case when the agreement mentions nothing about it.[83] True, their commencement can be excluded by the agreement between assignor and assignee or the agreement between creditor and person giving guarantee (for instance, the creditor and the guarantor agree that the claim against the guarantor will not be transferred to other person, if transferring the basic claim rights).

The penalty's ensured activity is the debtor's encouragement to fulfill liabilities, threatening to impose additional duties on him. That is why the securing function is executed by him *only until commencement of condicio juris*. Like the "rights ensuring liability fulfillment" and which transfer to the assignee in case of the basic claim transfer, just the *conditioned claim for penalty payment* is brought forward. The claim that has already commenced regarding penalty payment in case of the basic claim rights transfer is not

[83] Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 738.

transferred ipso jure to the assignee, like it is thought by some civil scientists[84], it is kept by the assignor.[85]

Together with other guaranteed rights the *charging lien* also are transferred to the assignee.

One more related right, which is transferred to the assignee together with charging lien in case of legal transition of the claim cession is based on the Article 1278 of the Civil Law, which defines that the charging lien is such a right to a foreign thing, on the base of which this thing ensures to the creditor his claim in the order that he can receive this claim payment from it.

The charging lien as the proprietary interest allows the lienor using the mortgaged thing as the guarantee of debt obligation the way that he may receive the debt payment from the mortgaged thing or the money received by its sale.[86] The charging lien shall be recognized as the related right, and as such in case of cession it follows the basic claim. As the mortgage as the charging lien is entered into the Land Book, then on opposite to other cases, for instance, in case of renewal, cession registration in the Land Book needs no consent of mortgagor. "The assignee may request [..] – depending on the conditions of a mortgage agreement – non-actionable compulsory execution or real estate property sale at the voluntary auction through court."[87]

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[84] See for example: Enneccerus L., Kipp Th., Wolff M. Lehrbuch des bürgerlichen Rechts. 23.–27. Aufl. Marburg, 1927, Bd. 1, Abt. 2, S. 249; Leonhard F. Allgemeines Schuldrecht des BGB. München und Leipzig, 1929, S. 664.

[85] See for example: Oertmann P. Das Recht der Schuldverhältnisse. 2. Aufl. Berlin, 1906, S. 273; Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 740; Nörr K. W., Scheyhing R., Pöggeler W. Sukzessionen: Forderungszession, Vertragsübernahme, Schuldübernahme. 2. Aufl. Tübingen, 1999, S. 64; Крашенинников Е. А. Основные вопросы уступки требования // Очерки по торговому праву: Сб. науч. тр. / Под ред. Е. А. Крашенинникова. Вып. 6. Ярославль, 1999. с. 26; Грачев В. В. Притязание на неустойку // Очерки по торговому праву. Ярославль, 2006, Вып. 13, с. 43–44.

[86] Višņakova G., Balodis K. Latvijas Republikas Civillikuma komentāri. Lietas. Valdījums. Tiesības uz svešu lietu. Rīga: Mans īpašums, 1998, 160. lpp.

[87] Višņakova G., Balodis K. Latvijas Republikas Civillikuma komentāri. Lietas. Valdījums. Tiesības uz svešu lietu. Rīga: Mans īpašums, 1998, 230. lpp.

The Law of Commercial Pledge[88] regulates the conditions on commercial pledge transfer in case of guaranteed claim cession. The first part of the Article 35 of the Law on Commercial Pledge defines that assigning the guaranteed claim, the assignee is transferred also all rights of the commercial pledgee, unless the assignor and the assignee have agreed otherwise; and the second part of the given law's article defines that the commercial pledge register holder makes a note about the cession agreement conclusion on the grounds of the commercial pledgee's written notification.

Ensuring the claim to be transferred *guarantee*, the new creditor receives both the conditioned and the full claim towards the guarantor. Some believe that in case if the claim transfer is excluded, it is terminated for the guarantor.[89] However, the issue of the claim fate against a guarantor in case of the assignment of its exclusion from the secured claims is closely linked to the issue of the possibility of isolated assignment of this claim.

Still, the issue on the claim destiny towards the guarantor and its exclusion from the guaranteed rights in case of transfer is closely related to the issue on the possibility of this claim's isolated transfer. Because the latter issue needs to be solved positively that is why it is required to admit a possibility for the assignor to keep the right towards the guarantor as possible in case of isolated transfer of the basic claim.[90]

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[88] Komercķīlas likums. 21.10.1998. / Latvijas Republikas likums. Pieņemts Latvijas Republikas Saeimā 21.10.1998.; stājies spēkā 01.03.1999., ar grozījumiem, kas pieņemti līdz 21.04.2005. // Latvijas Vēstnesis, Nr. 337/338, 11.11.1998.

[89] See for example: Gierke O. Deutsches Privatrecht. München und Berlin, 1917, Bd. 3, S. 193; Lambsdorff H. G., Skova B. Handbuch des Bürgschaftsrechts. München, 1994, S. 168; Lüke G. Grundfragen des Zessionrechts // Juristische Schulung, 1995, S. 91; Palandt O. Bürgerliches Gesetzbuch. Kurzkommentar. 63. Aufl. München, 2004, S. 1136.

[90] See for example: Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 738; Enneccerus L., Kipp Th., Wolff M. Lehrbuch des bürgerlichen Rechts. 23–27 Aufl. Marburg, 1927, Bd. 1, Abt. 2, S. 249; Leonhard F. Allgemeines Schuldrecht des BGB. München und Leipzig, 1929, S. 665; Крашенин-

4.5. Liabilities of assignor and assignee and legal consequences of their execution or non-execution

Since this is a regulatory transaction the cession contract is directed for the modification of claim affiliation. Assignor and assignee's rights and obligations in respect to each other are determined by the causal transaction that is the cession basis. In this regard, specific analysis of the previous creditor obligations, provided by the CL Article 1806 part 3. nature and content, and its responsibility accordning to CL Article 1810 is needed.

Assignor obligations provided by the CL Article 1806 part 3

According to CL Article 1806 part 3 the assignor must transfer to the assignee all that serve as proof of the claim or may contribute to its recovery, as well as all that he has received from the debtor already after the cession.

Previous creditor's obligation is to transfer to the assignee documents confirming the ceded claims, and to provide information which is important for its implementation and is related to the cession agreement as such, but not to the liability transaction, which is its basis, according to the A. A. Pavlov.[91]

Certain difficulties using CL Article 1806 part 3 arise in the case of partial cession claim. If the cedant has an interest to keep for himself above mentioned documents, then the assignee is entitled to require only the certified copies[92] of those documents or documents for the temporary use.

Assignee's rights corresponding to the above-mentioned assignor obligations are intended exclusively for his claim’s implementation ensuring. Therefore, if the assignee passes this claim further, these rights are transfered to his legal successor.[93]

ников Е. А. Правовые последствия уступки требования // Хозяйство и право, 2001; 11: 8.

[91] Комментарий к Гражданскому кодексу Российской Федерации. Часть первая (постатейный) / Под ред. Н. Д. Егорова и А. П. Сергеева, с. 737.

[92] Oertmann P. Das Recht der Schuldverhältnisse. 2. Aufl. Berlin, 1906, S. 274.

[93] See for example: Crome C. System des deutschen bürgerlichen Rechts. Tübingen und

Assignor responsibility according to CL Article 1810

Since Roman law times, responsibility for the assignment authenticity is put on the assignor (Veritas nominis). D. I. Meiers extends liability *ex veritate nominis* to the number of the relationships, the nature of which is defined as "the obligation transfer", moreover "the same, regardless of the grounds on the basis of which the transfer occurs"[94]. K. N. Anņenkovs indicates that the assignor is obliged to be responsible for assignment authenticity alienation "it follows from the very nature of the assignment, as the act of the contractual rights that causes subrogation in favor of the assignee".[95]

However, it seems more reasonable that such liability is referred not to the cession agreement as such, but to its compensation basis.[96] In favor of this Roman lawyers decision about the issue interesting for us speaks, they determined claim's appropriate guidance in case of sale. Pandectists also considered that it is not possible to provide an answer for the question of the assignor's liability of the claim legal existence and actual implementation that is based on one transfer fact; everything depends on the causa cession.[97]

This same idea permeates § 1397 ABGB, Art. 171 OR, art. 1266 CC it., odst. 1 § 527 ObčZ. In the first BGB project there was the reference according to which a person who took the cession claim by contract is responsible in

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Leipcig, 1902, Bd. 2, S. 336; Leonhard F. Allgemeines Schuldrecht des BGB. München und Leipzig, 1929, S. 670; Nörr K. W., Scheyhing R., Pöggeler W. Sukzessionen: Forderungszession, Vertragsübernahme, Schuldübernahme. 2. Aufl. Tübingen, 1999, S. 68.

[94] Мейер Д. И. Русское гражданское право. Ч. 2. Москва: Статут, 1997, с. 117.

[95] Анненков К. Н. Цессия договорных прав // Журнал гражданского и уголовного права, 1891; 2: 97–98.

[96] See for example: Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1.–2. Aufl. Halle a. S., 1899, Bd. 2, Abt. 1, S. 302; Leonhard F. Allgemeines Schuldrecht des BGB. München und Leipzig, 1929, S. 671; Gauch P., Schluep W., Schmid J., Rey H. Schweizerisches Obligationenrecht. Allgemeiner Teil. 7. Aufl. Zürich, 1998, Bd. 2, S. 319.

[97] Барон Ю. Система римского гражданского права. Санкт-Петербург, 2005, с. 647.

the face of new creditor only for the claim legal existence. This reference was evaluated as unsuccessful legal relations confusion between the assignor and the assignee, which varies in different *causa cessionis.*[98] Therefore assignor responsibility for the claim legal existence was determined according to the BGB provisions on purchase (§ 437 BGB) and donation (§ 523 BGB).

With the recent modernization of the BGB liability law rules on the matter and the purchase of rights were made equal, and German legislation withdrew the assignor special regulatory liability claims in case of sale.[99]

[98] Stammler R. Das Recht der Schuldverhältnisse in seinen allgemeinen Lehren. Studien zum Bürgerlichen Gesetzbuche für das Deutsche Reich. Berlin, 1897, S. 197.

[99] See more about it: Reinicke D., Tiedtke K. Kaufrecht: Abzahlungsgeschäfte, Allgemeine Geschäftsbedingungen, Eigentumsvorbehalt, Factoring, Fernabsatzverträge und elektronischer Geschäftsverkehr, finanzierte Kaufverträge, Haustürgeschäfte, Leasing, Pool-Vereinbarungen, Produzentenhaftung, Teilzeit-Wohnrechtsverträge (Time sharing), UN-Kaufrecht und Verbrauchsgüterkaufverträge. 7. Aufl. München, 2004, S. 469.

5. CESSION RESTRUCTIONS, THEIR ANALYSIS WITHIN THE CONTEXT OF AGREEMENT FREEDOM

After H. Dernburga fair opinion, the probability of cession is not the claim mandatory feature,[100] whereas in a number of cases the claim assignment probability can be excluded. This can happen due to the nature of the claim, the parties' agreement, or on the basis of law.[101] Exclusion of cession may be absolute, if the claim is not transferable under any circumstances, and conditional, if under certain circumstances the claim may be transferred. In the latter case it is possible to talk about a limited claim assignment.

However, it should be noted that the probability of such a restriction is a serious limiting factor in terms of commitment (especially money) of claims circulation development. Contractual restrictions, unless they are directed to the legitimate interest preservation, may thus be an inappropriate retardment for market economy principles observation. To the extent in which payment obligations have the same impact on the debtor, regardless of the creditor's personality, some kind of contractual restrictions would contradict the principle, which is aimed on compliance with the regard to the limitation on expropriation.

First of all, it is necessary to set the objective for this restriction determination in agreement. Despite the possible diversity of situations, objective of such a restriction is that the debtor could obtain additional guarantees for the stability of legal relations with a particular creditor (due to the competence of latter, existing protracted economic relations, etc.). Obviously, this provision does not give any other benefits to the transaction participants.

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[100] Dernburg H. Das bürgerliche Recht des Deutschen Reichs und Preussens. 1.–2. Aufl. Halle a. S., 1899, Bd. 2, Abt. 1, S. 308.

[101] Крашенинников Е. А. Основные вопросы уступки требования // Очерки по торговому праву: Сб. науч. тр. / Под ред. Е. А. Крашенинникова. Вып. 6. Ярославль, 1999, с. 22.

It is necessary to emphasize that the existing law includes legal provisions for the cases, where it is necessary to defend the interests of the debtor. In all other cases it is only a question of the additional obligations of the creditor, which reduces the debtor risk in the transaction with a particular contractor. Indirect confirmation of this thesis is the legislation applicatory position that the contractual transfer prohibition lost the legal effect after court decision acceptance about debt collection according to the claim in respect of which it was determined.

In this situation, debtor's right to contest the claim transfer transaction is his interest protection emergency measure; moreover, interests of the assignor, the assignee and the person who may in future purchase the dispute rights are significantly affected.

Already in the last century, civil scientists drew attention to the different nature of claims which by the legislature were combined into the same group. Thus, I. B. Novickis distinguished claims which in their content are associated with a given creditor, and claims, according to which the debtor must personally carry out the execution to the creditor and therefore is sufficiently interested in the personality of the creditor; if the first cannot be assigned in principle, then the assignment of the second is allowed with the consent of the debtor. This opinion is consolidated in the current Russian legislation, which terminates the claims inextricably connected with the identity of creditors[102] and claims in which the creditor's personality is essential for the debtor.[103]

In Latvian Civil law cession restrictions are formulated in Article 1799:

1) all claims, use of which either according to the parties agreement or according to the law, are related with the creditor person;

[102] Гражданский кодекс Российской Федерации (1995). Москва, 1995, ст. 383, www.interlaw.ru/law/docs/10064072/10064072-001.htm

[103] Гражданский кодекс Российской Федерации (1995). Москва, 1995, п. 2, ст. 388, www.interlaw.ru/law/docs/10064072/10064072-001.htm

2) claims, content of which with its performance to any other person, but not to the actual creditor completely alter.

The author considers that given formulation should be specified as much as possible.

Claims which are inextricably connected with the creditor's personality (strictly personal or highly personified claims) are eligible claims recovery for damage caused to life or health, as well as claims for the payment of maintenance. These claims inextricable connection with the creditor's personality is determined by the fact that performed payments are directed strictly to the maintenance of the citizen. Such a nature is characteristic for the claims for the citizen lifelong maintenance with dependent, as a result they are strictly personal claims.

Relating to the maintenance contract as liability law, then, even though maintenance contract may be concluded for the benefit of another person, however the Civil Law determines restriction and in accordance with Article 2102 of the Civil Law maintenance receiver's right for the maintenance is not transferable. Maintenance receiver's right is a personal nature right, therefore the law excludes the assignment of this right, as well as its transition through inheritance.

The same applies to the maintenance claims arising from the family law, which are based legally and do not arise from a contract. "To claims which, are inextricably connected to the creditor's person and therefore cannot be assigned, e.g. following claim belongs: right of parents to demand maintenance from their children, mentioned parents claim right cannot be assigned even when there is child's consent to such assignment."[104]

Also according to the Civil Law children and parents mutual alimentation requirements as well as former spouses mutual maintenance

[104] Сводъ гражданских узаконений губерний Прибалтийских / Сост. В. Буковский. Рига, 1914, т. 2.

recovery claims cannot be assigned. Although the law does not have direct reservations, however, the claims arising from the family law always have personal nature; its execution to another person could change the purpose and nature of the claim. Consequently, the claim content with its performance to another person completely alters.

According to Article 286 of the Civil law the guardian cannot recede or assign claims for the capital owned by a minor without the permission of the court of wards. Article 287 of the Civil law determines that if a third party claim against minor is assigned for a guardian, a guardian loses his entitlement in favor of a minor.

Cession exclusion due to the nature of the claim can be discussed differently depending on whether it is a strictly personal claim or claim for which the creditor's personality is essential for the debtor. In the first case, the purpose for which the legislator seeks providing claim indissoluble connection with the creditor's personality is achieved only with the performance to the given creditor (for example, a claim for the maintenance provision of dependent). Therefore, such a claim assignment is invalid even if it is supported by the debtor. In the second case the claim assignment is excluded only in the interests of the debtor. So in the case of his consent, such a claim assignment is considered to be assigned.[105]

W. Luke considers that the claim assignment performance, despite its contractual prohibition, is possible if there is an agreement between the assignor, the assignee and the debtor, within which the assignor and the debtor agree on the cession prohibition cancellation, but the assignor and assignee – on a claim repeated assignment.[106] However, in this case for the assignment

[105] Крашенинников Е. А. Основные вопросы уступки требования // Очерки по торговому праву: Сб. науч. тр. / Под ред. Е. А. Крашенинникова. Вып. 6. Ярославль, 1999, с. 23.
[106] Lüke W. Das rechtsgeschäftliche Abtretungsverbot // Juristische Schulung, 1992.

performance a simple assignment of the contract acceptance by a debtor is sufficient,[107] as the assignment prohibition, as well as abandonment of it are just the debtor's sphere of interests.

Modern law is characterized by restriction of activities of contractual assignment prohibition in two directions.

First, they contain provisions, which require the defense of assignee, which was not aware of the prohibition. Thus, BGB § 405 and Abs. 2 Art. 164 OR provide if honest assignee received the claim, relying on a written proof of the debt, which does not mention the cession prohibition, debtor cessus cannot oppose the complaint that cession was excluded by agreement between the parties. Italian law also considers debtor's reference to the agreement as unacceptable if it is not proved that the assignee knew about it at the time of cession (com. 2 art. 1260 CC it). Obviously, it is necessary to implement such conditions into the Latvian legislation.

Secondly, there is a tendency to recognize the cession of a monetary claim, regardless of the cession performance in spite of the contractual prohibition. For example, UNIDRUA Convention Article 6 part 1 "On international factoring" (Ottawa, May 28, 1988) provides that the monetary claim cession from the part of supplier to the financial agent will remain in force even if an agreement on its prohibition exists between the supplier and the debtor. Similar legal provision is included in the Commercial law Article 470: An agreement concluded between the debtor, who is a businessman, and the customer, according to which the customer claim transfer to another person is restricted or prohibited, is not in force regarding to the claim transfer to a person who provides factoring services.

[107] See for example: Palandt O. Bürgerliches Gesetzbuch. Kurzkommentar. 63. Aufl. München, 2004, S. 593; Крашенинников К. А. Допустимость уступки требования // Хозяйствоиправо, 2000; 8: 84.

Civil law Article 1389 determins that redemption rights are not transferable, as well because the person who owns the right of redemption, cannot transfer it to anyone else, and if the opponent requires he confirms by the signature that he redeems it only for himself and for his own benefit.[108] Redeemer cannot transfer the redemption rights to another person, because it belongs to the Redeemer personally, therefore it cannot be redeemed in favor of another person, acting as this person silent or open deputy. The author agrees with the Latvian legal scholars who points out that the acquirer right – to require from the redeemer the approval of redemption for himself and for his own benefit – has no practical sense because it is not prohibited for the redeemer first redeem the property for himself and alienate it further to another person immediately after the acquisition of property rights. According to the author this given legal provision must be excluded from the Civil law.

If the claim cession is excluded, the assignment will not be transferred to the assignee, but will remain as cedent.

[108] Civillikums. Trešā daļa. Lietu tiesības. 28.01.1937. / Latvijas Republikas likums. Pieņemts Latvijas Republikas Saeimā 28.01.1937.; stājies spēkā 01.03.1993.; ar grozījumiem, kas pieņemti līdz 22.06.2006. // www.pro.nais.dati.lv – 1389. p.

6. DEBTOR'S PROTECTION MEASURES AND PROBLEMS

6.1. Debtor's objections and disputes' procedural solutions

By CL Article 1808 firstly, objections in its technical means (for example, the objection relating the requirements claims limitation, the right to suspend its obligations, liens), secondly, the circumstances which hinder the occurring of transferable requirements or cause its termination, to which the debtor may refer (such as the invalidity of the transaction on which transferable rights of claim are based, or the claim termination with the performance) are accepted as the objections.[109]

Confining of this type of objection plays a role, particularly whether if the debtor's application of appropriate the conditions is necessary so that the court could reject the assignee application.

Technical objection is debtor's counterclaim against the assignee claim. Therefore, the court may refuse to bring actions only if it will be implemented by an authorized person; it is not entitled to do so, referring only to the execution of complaint's actual composition.[110] Thus, in the case of the plea of counter claim failure, it is required that the debtor notifies about the suspension of his obligations performance.

Where as the court must take into account facts interfering the implementation of rights and facts interrupting the rights regardless of whether

[109] Definition "Einwendungen" hast he same meaning: §1396 ABGB un § 404 BGB un "Einreden" – Abs. 1, Art. 169, OR. Tuhr A. Der allgemeine Teil des deutschen bürgerlichen Rechts. Leipzig, 1910, Bd. 1, S. 289; Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 748–749; Popp F. Das Schuldanerkenntnis des Schuldners gegenüber dem Zessionar. Wien, 2001, S. 2.

[110] See for example: Tuhr A. Der allgemeine Teil des deutschen bürgerlichen Rechts. Leipzig, 1910, Bd. 1, S. 292; Larenz K. Allgemeiner Teil des deutschen bürgerlichen Rechts. München, 1967, S. 259.

the debtor cessus refers to the following conditions.[111] For example, the invalidity of the transaction, to which rights of the claim are assigned, means that there has been an unauthorized transfer of the claim to the creditor; hence the transfer contract is null and void. Thus, the court must take into account the absence of a transaction, from which transferable rights of claim arise, ex officio. It is omitted by V. A. Belov, whose point of view is that the court is entitled to take into account invalidity of the basic transferred rights of the claim rather than on its own initiative, but only on the debtor's application basis.[112]

Some objections due to the creditor personality are entitled to the debtor as a result of procedural rights prescription. Implementation of the assignee requirements through the court occurs taking into account the provision, according to which all the activities carried out before the new creditor involvement into the process, is bounding on him to the same extent as for the cedant. Therefore, if the assignor has refused the requirement, but after that assignee brought the same action, then the assignor action sequences, thanks to transfers of rights, refer to the assignee, and it is necessary to interrupt the action.

Determining what objections has "been" in the meaning of Civil law Article 1808 there is a place to compare its text with OR Article 169 subparagraph 1, which provides: "Oppositions that has confronted the transferor requirement, the debtor may raise against the acquirer if they already existed (vorhanden waren) to the moment when he received the information about the transfer of rights." Commenting this prescription, Swiss civil law scholars indicate that it comes about all the objections that have existed prior to the notification of transfer of rights, and namely, it is not necessary at this

[111] Tuhr A. Der allgemeine Teil des deutschen bürgerlichen Rechts. Leipzig, 1910, Bd. 1, S. 292.
[112] Белов В. А. Сингулярноеправоприемство в обязательстве. Москва: ЮрИнфоР, 2000, с. 268–269.

moment so that the opposition can already be contrasted with the process, it is sufficient that there is a legal basis for it.[113] In this way, the debtor may contrast to the new creditor those objections ex persona cedent is whose justification existed in the moment of debtor's information about transition of rights of claim, even if he did not submit or could not provide an adequate statement of objections at this moment.

In order to avoid uncertainty regarding the objections which the debtor may raise against the new creditor requirements, it is necessary to clarify that it comes to objections, which legal basis for submission is the result of the receipt of the notification moment.

Not only objections that were against the original creditor, can be contrasted to assignee requirement but also objections submitted against any assignee legal predecessor (for example, if the right of claim was ceded several times).[114]

Debtor's objections from a relationship with the previous creditor can be divided into two groups:

1) reasonably up to the claim rights transition to the assignee and

2) justified after the claim rights transition, but before the notification of the debtor.

6.2. Rights to clearing and problems

The Article 1808 of the Civil Law provides for that the claim, which the debtor uses for clearing, must be opposed, namely, it shall be directed against the main claim's creditor. In case of the claim transfer (cession) this clearing precondition is subject to considerable modifications.

[113] Oser H., Schönenberger W. Das Obligationenrecht. Halbbd. I: Art. 1–183. 2. Aufl. Zürich, 1929, S. 733.

[114] Gauch P., Schluep W., Schmid J., Rey H. Schweizerisches Obligationenrecht. Allgemeiner Teil. 7. Aufl. Zürich, 1998, Bd. 2, S. 310.

As it was noted before, according to the Article 1808 of the Civil Law, the debtor is entitled to put forward objections against the new creditor, which he had against the initial creditor at the moment of receipt of the notification on transfer of the law of obligation to the new creditor. These objections include also reference to the termination of the ceded claim at the moment, when the debtor has learned about cession. If the debitor cessus already before transfer of the claim had notified the assignor about the counter-claim clearing directed against him, it means that the assignee has received nothing, as the cession subject was already non-existing claim. Still, the Article 1808 of the Civil Law functions for benefit of the debtor and when he notified about the clearing after transfer of the ceded claim to the assignee, however, till receipt of the notification about it. In this case, we deal with clearing against the assignor, which was not the creditor by the transferred claim. The basis for this clearing is the trust to the creditor's visibility, which is preserved for the assignor till the moment, when the debtor will receive the notification about cession. The risk of unfavorable consequences regarding such failure to notify is born by the assignee.

Besides, according to the Article 1808 of the Civil Law, in case of claim ceding, the debtor is entitled to clear against the new creditor's claim his own counter-claim against the initial creditor. Analogue rights are granted to the debtor also by the legislators of other countries, for instance, Germany, Switzerland and Czech Republic (BGB 406, Para 2, Art. 169 OR, Para 2, § 529 ObČŽ).

In case of partial provision of the claim, the debitor cessus may choose, against which part of the claim he will make clearing.[115]

[115] See for example: Tuhr A. Allgemeiner Teil des schweizerischen Oblihationenrechts. Tübingen, 1925, Halbbd. 2, S. 751–752; Palandt O. Bürgerliches Gesetzbuch. Kurzkommentar. 63. Aufl. München, 2004, S. 597.

The foreign civil law scientists emphasize that one shall admit the debtor's rights to the claim against the former creditor, which are closely connected with clearing of the same legal relation as the ceded claim, irrespectively of their appearance moment and awareness about cession.[116] The debtor's rights to the claim against the assignor, which are closely connected with clearing of the ceded claims, are specially stipulated in Clause 2, Article 11:307 of the European contractual law principles, at the same time, when other claims against the assignor may be cleared by the debtor against the assignee provided that they exist at the moment, when the debtor receives a notification on the claim's cession.

[116] Zehetner J. Zessionsrecht. Wien, 2007, S. 18.

CONCLUSIONS AND RECOMMENDATIONS

Conclusions

1. The roots of the civil and legal category of claim's transfer (cession) shall be looked for in the Roman private law. Like the most part of institutions, the start of which can be found in the Roman law, during its evolution process the cession institution has endured considerable changes and improvements, which was defined by the society's needs at each stages of its further development. Allowance of obligations claim for participation in the circulation became a logically necessary element in construction of civil law structure. The basic condition of the private law is hidden in the subjective law transferability.

The main postulates of the institution of cession of rights to demand, which were developed by the Roman lawyers, were accepted by the continental European state legal systems. Till the nineteenth century many civil law representatives noticed the cession essence in the transfer of satisfaction, collection by the obligation, and not in the transfer of the right to demand itself.

The assignment, which is possible if the rights arise only in the property legal relations, gradually gained acknowledgment also in the obligations. The institution of claim cession has gone a long way of evolution – from complete rejection till legislation strengthening in many civil systems. Singular assignment in obligations became possible thanks to both the economical and the legal factor. The economical factor expressed itself in the way that the obligation started to encumber not only the debtor's personality but its property. The essence of the legal factor lies within search of legal forms, with the help of which assignment of such rights could be implemented and the claim cession became as such.

2. The regulations of Part 9 of the Law of obligation of Latvia's Civil Law (cession of rights to demand) define the specific nature of claim assignment. They define only the universal general criteria, which must comply with the civil and legal transaction for it to be the legal fact of transfer of the law of obligation and/or responsibility (conditions, form). Due to this, one shall not oppose the agreement on cession of rights to demand, on the one hand, to the agreement, which defines the security received instead, – on the other hand, as the inclusion of the condition on the security received instead from the assignee into the agreement in the document on rights cession does not change the legal essence of it as the cession. Segregation of the claim from the contractual relation within the Civil Law has been fixed in Article 1800 of the Civil Law: "The claim cession, if it has not been agreed otherwise, shall be acknowledged the cession of that claim, which is the claim's subject; but the assignee (Art. 1801) is transferred only the right to demand, but not that contractual relation, from which this right arises."

3. The claim cession is an agreement, conclusion of which requires expression of coordinated will of two parties – creditor and person, which will receive the claim. Such an agreement on cession is a *bilateral transaction*, i.e., *agreement.* The view of some civil law scientists should be admitted as erroneous that the cession is a unilateral transaction.

4. The most widely spread cession type is the cession by legal transaction or contractual cession, which is concluded according to the third part of Article 1793 of the Civil Law. In this case, cession is a legal transaction or an agreement between the assignor and the assignee, which must correspond both to the special norms defined in the Civil Law, which regulate exactly the cession of right to demand, and to the general validity regulations of the transactions, which are regulated by the Articles 1403, 1404, 1405 of the Civil Law, etc. Likewise the legal norms defined by the Civil Law on the agreements shall be fully attributed to the cession.

The claim may transfer to other person not only according to the cession agreement, but also according to the law and basing on the court's judgment on claim assignment (transfer). The distinct feature of these substantiations is that here we have no transaction, which is directed at the claim's transfer. As the claim cession is also an agreement, it becomes obvious that in cases when the claim is transferred according to the law or basing on the court judgment, the issue on cession is disputable.

5. The cession agreement is directed at claim transfer from the assignor to the assignee. Such direction separates it from the obligation transaction, which leads to obligation appearance between the parties. As the transactions, which mediate the right transfer, comply with all features of executive transactions, in the Western European countries, the cession agreement is traditionally considered as the executive transaction, by which the assignor acts with his claim.

6. Causing transfer of the ceded claim, the cession agreement causes increase of the assignee's property at the expense of the previous creditor's property. Thus the claim cession shall be *granted* (*assignment transaction*). This is the position of the Western European law scientists. The increase of the assignee's property as a result of the claim cession is rather real: the ceded claim may serve as the assignee's action subject, is included into his property mass; collection may be directed at it etc. The author concludes that the qualification of cession as being granted cannot be subject to any doubts.

7. The opinion about the abstract nature of cession is absolutely governing among the German civil law scientists. On the contrary, in Austria's civil law science, this agreement, basing on the positive law instructions, is traditionally described as causal transaction. The Swiss civil law scientists question this issue on the abstract or causal nature of cession. Speaking about the abstract nature of cession's transactions, we shall note that in the modern law, there are virtually no abstract transactions, i.e., that are completely

isolated from their substantiation. Somehow or other, the existence and nature of substantiation in the law is taken into account, but only for specific purposes. Quite often the abstract nature is expressed in distribution of proving obligation – the substantiation existence in the abstract transaction is presumed, but the opposite can be proved by the interested party.

8. The nature of claims arising from synallagmatic agreements does not exclude its cession possibility, as their correspondent relationship inter-dependence does not lead to a stronger connection between the creditor and the debtor than that inherent to other types of commitment relations. The issue of the cession admissibility of the claim arising from synallagmatic (inter-connected) agreement is no longer relevant for Western Europe civil science. In order to become a creditor according to one elementary obligation arising from the mutual agreement, it is not necessarily for the assignee to take the assignor debt according to the opposite obligation, if this assumption did not occur, then as before the assignor remains in debt to the debtor with regard to the allocation.

9. In Chapter 9 "Cession of claims" of Latvian Civil Law of Obligations it is not specifically provided that the cession of a part of the claim is possible, even though, according to all Civil law legal provisions it is possible, there are no obstacles for the cession of the part of the claim. As Lithuanian Civil Code and Estonian Law of Obligations are new legislation acts (adopted in 2000), they have a reference to the opportunity of the cession of a part of the claim. Respectively that is LT CC paragraph 6.101 point 1 and EE LO paragraph 164 point 1. The author considers that paragraph 1793 of Civil Law requires changes, respectively incorporated reference to the opportunity of the cession of a part of the claim.

10. With regard to the cession in the context of solidarity, it should be considered as a liability in a broad sense, within which there are several elementary obligations. If there are joint and several obligations with a number

of active persons, then each joint creditor has the right to transfer his claim to another person. As in the case of joint and several debt, there are several independent separately transferable requirements associated with the unity of extinguishing actions. Therefore, if one of the joint creditors transfers his right of claim to another person, but the debtor performs to the second creditor, then assignee obtained requirement will expire. In the joint and several obligations with several passive parties the claim transfer against one joint debtor should be recognized as an acceptable.

11. Problem of identification of the cede claim is one of the main for the anticipated cession.

Among the law scientists, there are different opinions about the way to identify the future claim. One of them believe that it is sufficient for the ceded future claim to be defined by the debtor's personality, subject and amount, one of them believe that the ceded future claim must be individualized the way that there are no doubts about the possibility of its cessation the latest during its implementation.

The consideration of issue on cession of the law of obligation, which arises in future, is important connected with this institution's demand in the modern economical practice. In many countries and on the international level, the financing mechanisms are actively used, which are legally mediated by agreements, the subject of which is the "non-existing", future (factoring, project financing etc.) law.

In Latvia, the possibility of cession of future claims is not questioned. It is included in the Article 1798 of the Civil Law. Some civil law scientists believe that the future claim means also the claim, the term of payment of which has not yet commenced, but substantiation of this claim already exists. The author, looking at the notions "existing" and "future" rights to demand, refers only the law of obligation (claims) to the future claims in the literal sense of the word, which have not yet appeared.

12. For cession to be valid the following is required:

1) the claim must belong to the assignor;

2) the assignor must have the power to act with the claim;

3) the ceded claim must be defined.

It means that cession is valid, if there is belonging of the specific ceded claim and its rights to act with the claim to the assignor.

Thus, the cession has the power only if there is a claim, with which the assignor is acting. If the ceded claim did not belong to him, then the assignee does not get this right even in case of his possible good faith. That is why, ceding the claim, the principle "nemo plus juris ad alium transferre potest, quam ipse habet" is determinative. The person, which has undertaken the liabilities to transfer one and the same claim to different persons, is entitled to perform only one claim cession, which would have the power. The creditors, which have not the first role in the claim transfer liability, have general liability non-execution consequences.

The cession agreement is valid only if the assignor has the power to act with the claim, or, which is the same, the rights to act with the claim.

Like other instructions, the cession agreement is subject to the principle of determinacy or specificity; this agreement's content must make it possible to define the claim, which belongs to the assignor. On the contrary, in the liability agreements, when the debt subject is the claims, its determination is allowed also with the family signs.

In the most general form it may be said that the ceded claim, concluding the cession agreement, must be individualized, to be able to determine what the assignee will receive.

13. The cession agreement causes the claim transfer from the creditor to other person. Upon the date of contract's term of validity, the assignor is not entitled to claim from the debtor the action performance, which is the component of the ceded claim's material content, but the debtor has no duty to

perform execution to the assignor. As the ceded claim is distributed from the assignor's property, its creditors from this moment cannot refer the collection in relation to the fact that in general this claim refers to the assignee's property mass.

As the assignee receives the ceded claim, the assignor loses it; then we speak about the *translative* rights assignment. By the cession agreement, a separate creditor claim is transferred; thus the ceded claim, which is acquired by the assignee, takes place through *singular* rights assignment.

14. The issue on the moment of transfer of law of obligation from the assignor to the assignee till now has not gained its reflection in the valid legislation and is the discussion subject among the civil law scientists. Besides, the moment of determination regarding transfer, assignment of cession of the rights to demand to the new creditor is very important, as exactly with that moment the changes in the property structure of the assignor and of the assignee are connected. If the cession has been performed, then the absolutely legal effect, the creation of which this transaction is aimed at, is reached, and the property in the form of rights to demand to the assignor is excluded. No assignor's debt collection may be directed to the property (rights to demand), which has been transferred to the assignee; it is not included into the assignor's property mass in case of insolvency. Using the rights to demand wider as the transaction object, including as the security transaction object, the problems may become more difficult, which are connected with determination of priority of several assignee's claims.

Conclusion of the cession agreement does not mean the right transfer, but the change of persons in liabilities. It means that it needs additional legal facts.

If in the cession agreement there is no defined fact, which has been granted the meaning of designation of transfer of the rights to demand, then it

shall be concluded that the rights have been transferred at the moment of agreement conclusion.

15. Effect of rights of claim transfer on the fate of legal security may be different.

Provided with transferable claim with a guarantee the new creditor receives conditional, as well as the actual claim against the guarantor. Alongside other ensured rights the pledge right is also transfered to the assignee.

16. Penalty is one of the most applied types of liability law reinforcement adjacent to guarantee, pledge (mortgage) and deposit.

Penalty has a punishment and loss compensation function. In cases where from the circumstances of the case it can be concluded that the penalty compared by its amount with the losses caused by the possible infringement, mainly performs the function of punishment, its application is evaluated according to the application of the general principles of punitive nature legal measures, including principles of penalty proportionality and fairness.

Penalty secured action is the debtor's encouragement to meet his obligations, threatening him by imposing additional obligations. Therefore it performs security function *only to condicio juris accession*. As “the right which ensures the fulfillment of obligations” and which is transfered to the assignee in the case of the main claim transfer, protrudes only a *conditional requirement penalty payment*. Already occurred claim for a penalty payment in the case of the main claim transfer does not pass ipso jure to the assignee, but remains at the cedant.

17. A claim for damage compensation has an *independent nature* in relation to the rights from the infringement of which it originated. This requirement continues to exist, even if the infringed rights have expired and in the case of its alienation does not pass ipso jure to the new owner of the rights, but is alienated by a separate cession agreement.

18. Interest by its economic nature is the compensation for loss of profit, i.e. part of losses.

Civil Law Article 1806 Part 2 provides that still unpaid claim interest, if it is not directly contracted, is also transfered to the assignee.

This formulation raises a number of issues. First of all, it is not explained what kind of interest is meant: interest for late payment or interest due for the application of funds, allocated in accordance with the loan agreement, credit agreement, commercial form of credit, etc. Appears that such a differentiation in relation to Civil Law Article 1806 Part 2 is carried out as the claim for the fate of unpaid interest is necessary to determine in the same way as claims for incurred damages, with debtor disregarding payment periods, as well as the postponement penalty: if there is no separate agreement, they all remain at the cedant.

19. Arbitration court law adopted on the September 11, 2014 and entered into force on January 1, 2015, is positively evaluated, in Article 13 Part 4 of which a long-awaited legal provision is incorporated: "By assignment of the claim the assignee recieves the right of claim, but not the clause for civil arbitration contained in the contract."

20. Assignor liability in front of the assignee is defined in CL Article 1810. The author considers that it is necessary to oblige the cedant to be responsible for the invalidity of the assignment.

21. Cession restrictions are defined in Civil Law Article 1799. Exclusion of cession may be absolute, if the claim can not be transferred under any circumstances, and conditional, if under certain circumstances, the claim may be transferred. Civil law Article 1799 defines the criteria according to which the cession is not allowed:

1) all claims the use of which either by agreement of the parties or by law, is related to the creditor party;

2) claims with a content of the performance for any other person, but not the actual creditor completely alter.

The given legal norms have general nature, thus enabling their interpretation in a broad sense. It is necessary to formulate cession restrictions as concretely as possible as the claims must be turned over.

22. Protection of the debtor in the case of rights of claim transfer is not the legislature act of tolerance and mercy, but it creates the required correlate of his non-participation in the transfer of rights of claim, in other words, the necessary creditor's discretion correlate. The debtor's right for the objections and offset is defined in CL Article 1808, which should be clarified.

23. During working out the author came to the conclusion that the Civil Law of Obligations Chapter Nine “Cession of rights of claims” is outdated and requires modernization im the following directions:

1) clarification and improvement of legal provisions;

2) increase of assignor and assignee liability;

3) increasing of debtor protection.

Recommendations

The author offers:

1) to express Section 9 of the Law of Obligations of the Civil Law in the following new wording:

Chapter nine

Cession of rights to demand

First sub-chapter

Legal grounds of cession

1793. (1) The creditor can transfer the claim in full or in part to other person on the grounds of the agreement without debtor's consent.

(2) The rights to demand may transfer to other person on the grounds of law or the court's judgment.

1794. The filing clerk and generally every deputy must cede the claims acquired basing on own authorization or representation to the person, affairs of which he conducts or whom he generally replaces.

1795. If someone has to give any object he then shall cede also claim, which refer to this object.

1796. The one who must compensate other person lost things or damaged things, he/she may request to cede claims to him, which refer to these things.

1797. The one who satisfies the creditor on behalf of the debtor, regress claim against the debtor is due to him/her.

Second sub-chapter

Cession subject

1798. (1) The cession subject may be any claims, all the same, whether they arise from the agreement or from unauthorized action, among them there

are also such, the term of which has not yet commenced, as well as conditional and even future and unsafe.

(2) The future claims may be ceded, if they are sufficiently defined at the moment of cession.

1799. Exceptions from Article 1798:

1) claims, which are forbidden by the law;

2) claims arising from the family law;

3) claims for person's health and life support;

4) claims, against which regress is impossible;

5) penalty.

1800. The claim cession shall be admitted as the cession of the same claim, which is the claim subject; but only the right to demand is transferred to the assignee, and not that contractual relation, from which these rights arise.

Third sub-chapter

Cession form

1801. The agreement on claim cession is subject to the same formalities, as it is defined for the main liability.

Fourth sub-chapter

Notification on the claim cession

1802. (1) The assignee's duty is to duly (in a registered letter) notify the debtor about cession.

(2) The debtor is entitled to demand from the assignee to present evidence of claim transfer (cession agreement).

(3) The fact of the assignment of the claim may be invoked against third persons and the debtor from the moment when the debtor acquiesced in it, or

received a copy of the document confirming the fact of the assignment of the claim, or any other evidence of the fact of the assignment of the claim.

Fifth sub-chapter

Assignor's responsibility

1803. The assignor shall transfer to the assignee everything that serves as the claim evidence or that may facilitate its collection, as well as anything that he has received from the debtor already after cession.

1804. The assignor (previous creditor) shall be liable towards the assignee (new creditor) for the invalidity of the assigned claim, though he shall not be liable for the debtor's non-performance of the obligation arising from this claim, except in the cases when the assignor gives a surety to the assignee for the debtor.

Sixth sub-chapter

Cession consequences

1805. Cession is valid even if the debtor does not know about it.

1806. (1) The former creditor, despite cession, is still considered as such till the moment, when the assignee has duly notified the debtor about cession. Till that time, the debts may be repaid to the assignor, as well as conclude settlement with him and likewise he keeps also the right to demand.

(2) If the claim has been assigned several times, the performance of the obligation in favour of any subsequent creditor shall be deemed to be right.

(3) In case of dispute, regarding the claims to the right to demand, the debtor is entitled to refuse to perform payment to any specific creditor and fulfill a liability by paying the sum to the sworn notary's deposit account.

1807. The assignee may from the cession moment act with creditor's rights and on this base act with the claim, cede it to someone other and use it against the debtor.

1808. (1)The assignee does not obtain more and bigger rights with cession than the assignor used to have, but the claim itself is transferred to him with all its appurtenant rights and already existing at the moment of cession as far as they have no directly defined exception from this regulation.

(2) The claim's interest yet unpaid, the term of which has commenced, if it is not stipulated otherwise in the agreement, remain for the assignor.

1809. The debtor's status with cession may not worsen that is why the assignee, if he personally owns any privileges against the debtor, may not use them.

1810. (1) The debtor shall have the right to set up against the assignee all the defences which he was entitled to set up against the assignor at the time of receiving the notice about the assignment of the claim.

(2) If the promissory note has been ceded with a blank inscription, then the debtor may raise not only all his objections against the assignee, but also those objections, which he had before cession and during it against the last assignor and those previous assignors, whose names are seen from the promissory note itself.

(3) He may direct also his counter-claims, the legal grounds of which against the assignor has appeared when he had been notified about cession, for clearing also against the assignee.

2) to exclude Clause 1389 of the Civil Law.

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