

**GENERAL PROVISIONS ON OBLIGATIONS IN PRIVATE
INTERNATIONAL LAW**
**VISPĀRĪGIE NOTEIKUMI PAR SAISTĪBU AR STARPTAUTISKO
KOPĒJO PRIVĀTTIESĪBĀS**

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***Abstract:** authors in this article focus their attention on concept, system and foundations of arising of obligations in private international law. The authors pay special attention to such a foundation of emergence of obligations as contract and its nature. The main principles of selection of applicable law are considered.*

***Keywords:** concept, contractual, non-contractual, obligations, principles*

Introduction

The law of obligations is a branch of private law under the civil law legal system and so-called "mixed" legal systems.

An obligation is a legal bond (*vinculum iuris*) by which one or more parties (obligants) are bound to act or refrain from acting. An obligation thus imposes on the obligor a duty to perform, and simultaneously creates a corresponding right to demand performance by the obligee to whom performance is to be tendered. Obligations may be civil, which are enforceable by action in a court of law, or natural, which imply moral duties but are unenforceable unless the obligor consents. In this paper concept, foundations of emergence of obligations as well as principles of selection of applicable law are studied through analyzing, comparing and summarizing. The aim of this paper is to define obligations legal relationships in private international law. The tasks are to give a definition of an obligation, describe system and foundations of arising of obligations and uncover main principles of selection of applicable law in obligations legal relationships in private international law.

Justinian first defines an obligation (*obligatio*) in his *Institutiones*, Book 3, section 13 as "a legal bond, with which we are bound by necessity of performing some act according to the laws of our State." He further separates the law of obligations into contracts, delicts, quasi-contracts, and quasi-delicts.

Every obligation has four essential requisites otherwise known as the elements of obligation. They are:

- the obligor: obligant duty-bound to fulfill the obligation; he who has a duty.
- the obligee: obligant entitled to demand the fulfillment of the obligation; he who has a right.
- the subject matter, the prestation: the performance to be tendered.
- a legal bond, the *vinculum iuris*: the cause that binds or connects the obligants to the prestation.

Obligations arising out of the will of the parties are called voluntary, and those imposed by operation of law are called involuntary.

Obligations are classified according to the nature of the performance (*prestation*):

- real obligations - undertakings to give or deliver property, possession, or enjoyment
- specific real obligation - delivery of a determinate thing when it is particularly designated or physically separated from all others of the same class
- generic real obligation - delivery of a generic thing

- personal obligations - undertakings either to do or not do all kinds of work or service
- positive personal obligation - performance
- negative personal obligation – forbearance.

According to the foundations of origin all obligations are divided into two types: contractual obligations and non-contractual obligations. Contractual obligations arise on the basis of the concluded contract and non-contractual obligations consider wrong acts (delicts) to be their basis.

A contract is a legally enforceable agreement, express or implied, which gives rise to certain rights and obligations. Thus in case of a breach of contract the injured party may go to court to sue for money damages, or for the rescission, or for specific performance if money damages would not compensate for the breach. But these rights and obligations cannot arise except between the parties to the contract.

There are four essential elements of a valid contract:

- Capacity of the parties;
- Legality of subject matter;
- Consideration (something of value given in exchange for a promise)

Mutual agreement (assent), meeting of the minds (a valid offer and acceptance) and intention of the parties to create legal relations.

Each of the four essential requirements must be met in the formation of a valid contract.

Under the law, only a person who is legally competent has the power to make a binding contract and can be held to any promises contained therein. Persons who may be considered to be legally incompetent include minors, insane persons, and, sometimes under specified circumstances, intoxicated persons.

If the subject matter of an agreement is not legal, the agreement is not enforceable in a court of law. In this respect, we do not use the expression “void” or “voidable”; the illegal agreement simply has no existence in contemplation of law. Generally, neither party has access to a court for the assistance of law with respect to any aspect of the agreement.

There are two reasons why the subject matter of a contract may be illegal: statute and public policy. Statutes are legislative acts; public policy is a judicial determination of prevailing morality.

Consideration is something of value that is given in exchange for a promise. It is based on the idea of “quid pro quo” (“something for something”). In almost all contracts, consideration is required for enforceability.

Contracts usually consist of mutual promises given by parties with intent to bind themselves. A promise creates for the promisor (the person making the promise) a future obligation. For the promisee (the person to whom the promise is made) it creates an expectation that the promise will be fulfilled. Furthermore, the promisee will often rely on the promise.

It is not necessary that the thing promised be affirmative; it may be refraining from acting or promising not to act. A promise made to give 1,000 US dollars to a friend if she does not smoke (a negative unilateral contract) is mutual and binding.

Contractual and non-contractual obligations are divided into groups. There are such contractual obligations as obligations for realization of property, obligations for providing property for use, obligations for executing works, for transportation, for rendering services, for insurance, for credit and settlements etc.

Non-contractual obligations are divided into two groups: obligations arising out of unilateral contracts (for example, representation, power of attorney) and protective obligations (for example, obligations arising out of infliction of injury).

Obligations arise out of contracts, unilateral wrong acts as well as events (for example, natural disasters etc.), legal acts (for example, finding, finding out of treasure-trove etc.)

In the framework of private international law the most popular foundations of arising of obligations are contracts and delicts.

When regulating contractual obligations the main connecting factor for selection of applicable law is principle of party autonomy. It means that when parties enter into a contract or later on they may select by agreement between them the law that will govern their rights and duties under the contract.

According to the Russian legislation selection of applicable law made by parties after the conclusion of a contract shall have retroactive effect and it shall be deemed valid, without prejudice for the rights of third persons and validity of a contract regarding its form's requirements, beginning from the time when the contract was concluded. The parties to a contract may select applicable law both for the contract as a whole and for specific parts thereof.

According to item 5 Article 1210 of the Civil Code of the Russian Federation if it ensues from the group of circumstances of a case that were in existence as of the time of selection of applicable law that the contract is actually connected with only one country the parties' selection of the law of another country shall not affect the imperative norms of the country with which the contract is actually connected. This norm helps to prevent avoidance of imperative norms of national law by selection of law of another country.

Where there is no agreement of parties on applicable law, the contract shall be subject to the law of the country where the party responsible for the performance under the contract of crucial significance for the content of the contract has its place of residence or main place of business, except as otherwise ensuing from the present Code or other law. A party responsible for the performance under a contract of crucial significance for the content of the contract shall be a party which, in particular, is the following: a seller - in a sales contract; a donor - in a donation contract; a lender - in a contract of gratuitous use; a contractor - in a contract; a carrier - in a carriage contract, a lender (a creditor) - in a loan (credit) contract etc.

Conclusions and suggestions

Law of obligations is the largest subbranch of private international law.

An obligation is a legal bond (*vinculum iuris*) by which one or more parties (obligants) are bound to act or refrain from acting. An obligation thus imposes on the obligor a duty to perform, and simultaneously creates a corresponding right to demand performance by the obligee to whom performance is to be tendered.

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Summary

Law of obligations is a significant branch of private international law.

An obligation is a legal bond (*vinculum iuris*) by which one or more parties (obligants) are bound to act or refrain from acting. An obligation thus imposes on the obligor a duty to perform, and simultaneously creates a corresponding right to demand performance by the obligee to whom performance is to be tendered.

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